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(2026) 4 ILRA 11
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 09.04.2026

BEFORE

THE HON'BLE SAURABH SRIVASTAVA, J.

Application U/S 528 BNSS. No. 6617 of 2026

Rajnesh Rai & Ors.

...Applicants

Versus

State of U.P. & Anr.

...Opposite Parties

Issue for Consideration

Matter pertains to whether the Investigating Officer was legally justified in submitting a subsequent charge sheet implicating the applicants, who had already been exonerated in the earlier charge sheet upon conclusion of investigation, without obtaining prior permission of competent Magistrate/Court for conducting further investigation as contemplated u/s 193(9) of Bharatiya Nagarik Suraksha Sanhita, 2023.

Headnotes

Bharatiya Nagarik Suraksha Sanhita, 2023 - ss. 528, 193(9) - Bharatiya Nyaya Sanhita, 2023 - s. 110, 191(2), 191(3), 115(2), 352, 351(2), 324(4) - Further investigation - Power of Investigating Officer - Requirement of permission of Court - Commencement of trial - Scope - The instant matter arose from an application filed u/s 528 of BNSS, 2023, whereby the applicants challenged the criminal proceedings arising out of an FIR registered for offences under various sections of BNS, 2023 - Initially, several persons, including the applicants, were named as accused in the FIR - Upon investigation, the Investigating Officer submitted the first charge sheet dated 10.01.2025 only against two co-accused persons and specifically recorded that the investigation with respect to the applicants and other unnamed accused had concluded - On the basis of the said charge sheet, cognizance was taken by the Magistrate and the applicants stood exonerated - Subsequently, a another charge sheet was submitted on 14.08.2025, wherein the applicants were implicated on the basis of same facts and evidence, and cognizance was again taken against them - Aggrieved by such subsequent implication, the applicants approached the High Court contending that the Investigating Officer could not have conducted further investigation and filed a supplementary charge sheet against persons already exonerated without obtaining prior permission of competent Court as required u/s 193(9) of BNSS.

Held: The distinction of provisions as mentioned u/s 193(9) of BNSS is crystal clear that the court which is empowered for granting permission to concerned Investigating Officer for conducting further investigation is the court who took the cognizance of offence and is in way to try the matter - The wording mentioned as that the court 'trying the case' is not qualifying as provided in the provisions 'during the trial' and as such the distinction between 'trying the case' and 'during the trial' is one and the same and the stand taken up by learned counsel for opposite party no. 2 is not sustainable in the eye of law - Thus, it is the trite law that irregularity of procedure will not vitiate the entire commencement of the matter, accordingly, instant application u/s 528 BNSS allowed - The order will not preclude the Investigating Officer for taking fresh action permissible as per law. [Paras 13 to 15] (E-13)

Case Law Cited

Pramod Kumar and others v. State of U.P. and others passed in Criminal Appeal No. Nil of 2026 arising out of SLP (Criminal) No. 350 of 2024 - referred to

List of Acts

Bharatiya Nagarik Suraksha Sanhita, 2023; Bharatiya Nyaya Sanhita, 2023.

List of Keywords

Application u/s 528 BNSS; BNSS, 2023; BNS, 2023; Criminal proceedings; Cognizance of offence; Charge Sheet; Investigating Officer; Further investigation; FIR; Exonerated; Implication of accused; Named accused; Unnamed persons; Non-bailable warrant; Recall of warrant; s. 193(9) BNSS; Permission of court; Court trying the case; Commencement of trial; Procedural irregularity; Further inquiry; Oral evidence; Documentary evidence; Report of Police Officer; Investigation pending; Cognizance taken; Set aside; Application allowed; Preclude the concerned Investigating Officer; Fresh action as per law.

Case Arising From

ORIGINAL JURISDICTION: Application u/s 528 BNSS No. - 6617 of 2026

From Judgment and Order dated 08.09.2025 passed in the Case no. 6998 of 2024 arising out of Case Crime No. 419 of 2024 by the Chief Judicial Magistrate, Jhansi

Appearances for Parties

Adv. for the Applicant(s):

Deepak Dubey

Adv. for the Opposite Party(s):

Dharmendra Kumar Dwivedi, G.A., Mridul Tripathi

(Delivered by Hon'ble Saurabh Srivastava, J.)

1. Heard Sri Deepak Dubey, learned counsel for applicants, Sri Pawan Srivastava, learned AGA for State and Sri P.K.Tripathi holding brief of Sri Dharmendra Kumar Dwivedi, learned counsel for opposite party no. 2.

2. Through instant application, applicants are challenging entire proceeding of Case no. 6998 of 2024 arising out of Case Crime no. 419 of 2024 in pursuance to sections 110, 191(2), 191(3), 115(2), 352, 351(2), 324(4) BNS pending before learned Chief Judicial Magistrate, Jhansi along with charge sheet no. 12A of 2025 preferred by concerned Investigating Officer on dated 14.8.2025 whereupon cognizance of offence has been taken up by learned court concerned on dated 8.9.2025.

3. Learned counsel for the applicants submitted that initially 12 named persons along with 20 unknown persons were implicated as accused at the time of lodging FIR at Case Crime no. 491 of 2024 at the behest of opposite party no. 2, wherein name of the applicants were mentioned at serial nos. 5, 6, 7, and 10. The implication of all the accused in the cognizable offences culminated into conduction of inquiry by concerned Investigating Officer who preferred charge sheet on dated 10.1.2025 against two co-accused and also intimated that inquiry has now been concluded and over in respect of the applicants along with 20 unnamed persons but at the same time, it is also mentioned in the charge sheet dated 10.1.2025 that the investigation is still continuing in respect of other co-accused, whereupon cognizance of offence has been taken up by learned Additional Chief Judicial Magistrate, Jhansi vide order dated 13.1.2025 by way of summoning only two co-accused namely Satyendra Yadav and Rakesh Yadav.

4. Learned counsel for the applicants sought attention of the Court over the second paragraph of the order dated 13.1.2025 through which cognizance of offence has been taken up against two co-accused against whom charge sheet was filed namely Satyendra Yadav and Rakesh Yadav and specific explanation has been called from concerned Investigating Officer who exonerated name of the applicants and the matter has been directed to be registered as Misc. Case for seeking recall of the non-bailable warrants. Thereafter, Non-Bailable Warrant issued against the applicants has already been recalled vide order dated 27.1.2025 passed by learned Additional Chief Judicial Magistrate, Court no. 1, Jhansi. The certified copy of the order dated 27.1.2025, although not filed but provided during course of the argument and being the court of record, it is taken on record, through which it is transpired that Non-Bailable Warrant issued against the applicants has already been recalled.

5. After submission of the charge sheet 10.1.2025, whereupon cognizance of offence has been taken up vide order dated 13.1.2025, another charge sheet no. 12A has been preferred on dated 14.8.2025 since there was crystal clear disclosure of the pendency of the investigation at the time of preferring first charge sheet. Learned counsel for the applicants submitted that while preferring second set of charge sheet, all the applicants have been implicated and main accused have been exonerated whereupon cognizance has been taken up vide order dated 8.9.2025 without considering the order dated 13.1.2025 and order dated 27.1.2025.

6. As legal submission, learned counsel for applicants took reliance of Section 193(9) BNSS wherein specific provision is available that further investigation during trial may be conducted with the permission of the court trying the case and the same shall be completed within a period of 90 days which may be extended with the permission of the court itself. In the instant matter, it has been submitted by learned counsel for the applicants that once the name of all the applicants have been exonerated while preferring first set of charge sheet whereupon cognizance of offence has been taken up and implicated co-accused have been summoned, on similar set of evidence and facts concerned Investigating Officer committed patent error of law which is apparent on face of record, by way of implicating all the applicants in second set of charge sheet without mentioning any permission sought from learned concerned court itself. For substantiating his arguments, learned counsel for the applicants also demonstrated certain facts which has been received in questionnaire that at no point of time, any application has ever been preferred by concerned Investigating Officer for seeking permission of learned concerned court for conducting further investigation. On above mentioned grounds, the entire proceeding of Case no. 6998 of 2024 arising out of Case Crime no. 419 of 2024 has been sought to be quashed and set aside, since there is hardly any provision provided in favour of the Investigating Officer for conduction of further investigation, especially in respect of those who have already been exonerated at the time of preferring first set of charge sheet whereupon cognizance of offence has been taken up by learned court concerned and again implicating same persons in second set of charge sheet without seeking any proper permission from learned court for investigating further against those who have already been exonerated.

7. For substantiating his arguments, learned counsel for applicants also relied upon judgment dated 4.2.2026 rendered by Hon'ble Supreme Court in case of Pramod Kumar and others vs. State of U.P. and others passed in Criminal Appeal no. nil of 2026 arising out of SLP (Criminal) no. 350 of 2024 wherein it has been held that power to direct further investigation in a case rests solely at

the discretion of the Magistrate/Court concerned. In the event, the police/ investigating agency is of the opinion that further investigation is necessary in any particular case to cull out complete facts and truth in the case, it is binding upon them to file an appropriate application before the Magistrate/Court, without directing an order for further investigation by themselves.

8. Sri P.K.Tripathi, learned counsel appearing on behalf of opposite party no. 2 vehemently opposed the prayer as made through instant application and rebutted the entire stand taken up by learned counsel for the applicants. While controverting the derivation of the legal proposition as derived by learned counsel for the applicants, Sri P.K.Tripathi submitted that provisions for seeking permission for conducting further inquiry is mandatory as per the statute when the trial is proceeding, in the instant matter, the trial is still to be proceeded and as such provisions of Section 193(9) BNSS shall not be applicable and will not give any benefit to the applicants, moreover once the investigation was pending and during course of investigation, implication of the applicants was found, they were implicated at the time of preferring second set of charge sheet whereupon cognizance of offence has been taken up by learned court concerned, which is justified.

9. Sri Pawan Srivastava, learned AGA appearing for State also supported the entire action performed by concerned Investigating Officer and justified the order passed by learned concerned court which impugned the instant application and seconded the arguments as made by Sri P.K.Tripathi, learned counsel for opposite party no. 2.

10. A precise query has been made before learned counsel appearing for opposite party no. 2 in respect of "commencement of trial" and in the most fair and candid manner, it has been replied by the learned counsel for opposite party no. 2 that the commencement of trial in the instant matter is yet to be initiated since it is the stage where the charges have not been framed and only the cognizance has been taken up by learned concerned court.

11. After having the rival contentions raised by learned counsels for the parties, this Court observes that commencement of trial starts from the date when cognizance of offence is taken over the charge sheet submitted after conclusion of investigation carried out over the FIR lodged at the behest of informant. Insofar as commencement of trial in the complaint case is concerned, the same starts from the date when accused is summoned on the basis of averments made in the complaint as well as statements recorded under section 200 Cr.P.C./section 223(1) BNSS.

12. By and large the entire arguments so made by learned counsel for the applicants which has been rebutted by learned counsel for the opposite party no. 2 as well as learned AGA is based upon the provisions available under Section 193(9) of BNSS. For ready reference same provision is reproduced herein below:

"Section 193(9)- Report of Police Officer on Completion of Investigation- Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (3) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form as the State Government may, by rules, provide; and the provisions of sub-sections (3) to (8) shall, as far

as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (3): Provided that further investigation during the trial may be conducted with the permission of the Court trying the case and the same shall be completed within a period of ninety days which may be extended with the permission of the Court."

13. By fine scrutiny of the provisions of Section 193(9) BNSS, two things are apparently mentioned which are as under:

(i) further investigation during the trial ...

(ii) permission of the court trying the case...

The distinction of the provisions as mentioned under Section 193(9) of BNSS is crystal clear that the court which is empowered for granting permission to concerned Investigating Officer for conducting further investigation is the court who took the cognizance of offence and is in way to try the matter. The wording mentioned in (ii) as mentioned above that the court 'trying the case' is not qualifying the above mentioned wording provided in the provisions 'during the trial' and as such the distinction between 'trying the case' and 'during the trial' is one and the same and the stand taken up by learned counsel for opposite party no. 2 is not sustainable in the eye of law.

14. In view of above mentioned facts and circumstances, it is the trite law that irregularity of the procedure will not vitiate the entire commencement of the matter which is in shape of Case no. 6998 of 2024 arising out of Case Crime no. 419 of 2024 and as such charge sheet dated 14.8.2025 preferred in Case Crime no. 491 of 2024 specifically in respect of the applicants as well as order dated 8.9.2025 passed by learned Additional Chief Judicial Magistrate, Jhansi specifically in case of the applicants are hereby set aside. The instant application u/s 528 BNSS stands allowed accordingly.

15. However, this order will not preclude the concerned Investigating Officer for taking fresh action permissible as per law.

(2026) 4 ILRA 15
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 09.04.2026

BEFORE

THE HON'BLE ABDUL SHAHID, J.

Application U/S 529 BNSS. No. 4251 of 2025

Damini

...Applicant

Versus

State of U.P. & Anr.

...Opposite Parties

Issue for Consideration

Matter pertains to whether the Gram Nyayalaya has the jurisdiction to entertain, adjudicate, and execute proceedings relating to maintenance of wife, children, and parents under the provisions corresponding to ss. 144 to 147 of Bharatiya Nagarik Suraksha Sanhita, 2023, or whether such jurisdiction exclusively vests with the Family Court under Family Courts Act, 1984.

Headnotes

Bharatiya Nagarik Suraksha Sanhita, 2023 - ss. 147 - Family Courts Act, 1984 - s. 7 - Gram Nyayalayas Act, 2008 - s. 12 - Maintenance petition - Execution of maintenance order - Jurisdiction of Gram Nyayalaya - Scope - The instant matter arose from an application filed u/s 529 of BNSS, 2023, seeking a direction for expeditious disposal of an execution petition pending before the Gram Nyayalaya, Karhal, Mainpuri - The applicant had earlier instituted proceedings u/s 125 of Code of Criminal Procedure, 1973, seeking maintenance, which were decided in her favour by competent court - Subsequently, the applicant initiated execution proceedings u/s 147 of BNSS, 2023, for enforcement of maintenance order - As the execution proceedings remained pending, the applicant approached the High Court seeking appropriate directions - The issue before the High Court was whether the Gram Nyayalaya has the jurisdiction to entertain and decide proceedings relating to execution of maintenance orders in view of provisions contained under Family Courts Act, 1984 and Gram Nyayalayas Act, 2008. (E-13)

Held: The Gram Nyayalaya has jurisdiction to try and decide applications and cases relating to the maintenance of wives, children, and parents under Chapter IX of Code of Criminal Procedure, 1973 (ss. 125 to 128), as well as the corresponding provisions under Chapter X of B.N.S.S., 2023 (ss. 144 to 147) - The Nyayadhikari of the Gram Nyayalaya is directed to decide the pending Execution Petition No. 25 of 2024 (Damini v. Pankaj Sharma), u/s 147 of B.N.S.S., 2023, in accordance with law, as expeditiously as possible, preferably within a period of six months - Accordingly, the application disposed of. [Paras 8 to 11] (E-13)

Case Law Cited

Nil

List of Acts

Bharatiya Nagarik Suraksha Sanhita, 2023; Family Courts Act, 1984; Gram Nyayalayas Act, 2008; Code of Criminal Procedure, 1973

List of Keywords

Application u/s 529 BNSS; s. 125 Cr.P.C.; s. 147 BNSS; Jurisdiction; s. 7 of Family Courts Act, 1984; s. 12 Gram Nyayalayas Act, 2008; Criminal Jurisdiction; Cognizance; Complaint; Police Report; Maintenance of wife; Maintenance of children; Maintenance of parents; Chapter IX Cr.P.C.; Chapter X BNSS; Part II of First Schedule of Gram Nyayalayas Act, 2008; Pending Execution Petition; Nyayadhikari of Gram Nyayalaya; Expeditious as possible; Accordance with law; Requisite jurisdiction; Disposed of.

Case Arising From

ORIGINAL JURISDICTION: Application u/s 529 BNSS No. - 4251 of 2025

From the Judgment and Order dated 30.11.2024 passed by the Nyayadhikari, Gram Nyayalay, Mainpuri in Maintenance Petition No. 217 of 2018.

Appearances for Parties

Adv. for the Applicant(s):
Sanjay Kumar Yadav

Adv. for the Opposite Party(s):
G.A.

(Delivered by Hon'ble Abdul Shahid, J.)

1. Heard learned counsel for the applicant.

2. The present application has been filed with a prayer to direct the learned Gram Nyayalayas, Karhal, Mainpuri, to decide the proceedings of Petition No. 25 of 2024 (Damini versus Pankaj Sharma), under Section 147 of the B.N.S.S., Police Station Karhal, District Mainpuri, expeditiously, within a stipulated period.

3. Learned counsel for the applicant has submitted that Petition No. 217 of 2018 (Damini versus Pankaj Sharma), under Section 125 Cr.P.C., was filed and the same was decided by Sri Rajeev Kumar Pal, Nyayadhikari, on 30.11.2024. Thereafter, the applicant filed Execution Petition No. 25 of 2024 (Damini versus Pankaj Sharma) under Section 147 of the B.N.S.S., 2023, before the same court, wherein the applicant has prayed that the execution petition be decided as expeditiously as possible.

4. Section 7 of the Family Courts Act, 1984 defines the jurisdiction as follows:

7. Jurisdiction.(1) Subject to the other provisions of this Act, a Family Court shall?

(a) have and exercise all the jurisdiction exercisable by any district court or any subordinate civil court under any law for the time being in force in respect of suits and proceedings of the nature referred to in the Explanation; and

(b) be deemed, for the purposes of exercising such jurisdiction under such law, to be a district court or, as the case may be, such subordinate civil court for the area to which the jurisdiction of the Family Court extends.

Explanation.- The suits and proceedings referred to in this sub-section are suits and proceedings of the following nature, namely:

(a) a suit or proceeding between the parties to a marriage for a decree of nullity of marriage (declaring the marriage to be null and void or, as the case may be, annulling the marriage) or restitution of conjugal rights or judicial separation or dissolution of marriage;

(b) a suit or proceeding for a declaration as to the validity of a marriage or as to the matrimonial status of any person;

(c) a suit or proceeding between the parties to a marriage with respect to the property of the parties or of either of them;

(d) a suit or proceeding for an order or injunction in circumstance arising out of a marital relationship;

(e) a suit or proceeding for a declaration as to the legitimacy of any person;

(f) a suit or proceeding for maintenance;

(g) a suit or proceeding in relation to the guardianship of the person or the custody of, or access to, any minor.

(2) Subject to the other provisions of this Act, a Family Court shall also have and exercise? (a) the jurisdiction exercisable by a Magistrate of the first class under Chapter IX (relating to order for maintenance of wife, children and parents) of the Code of Criminal Procedure, 1973 (2 of 1974); and (b) such other jurisdiction as may be conferred on it by any other enactment."

5. Section 12 of the Gram Nyayalayas Act, 2008, is quoted hereinbelow: "Criminal Jurisdiction.-(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) (corresponding B.N.S.S., 2023) or any other law for the time being in force, the Gram Nyayalaya may take cognizance of an offence on a complaint or on a police report and shall? (a) try all offences specified in Part I of the First Schedule; and (b) try all offences and grant relief, if any, specified under the enactments included in Part II of that Schedule. (2) Without prejudice to the provisions of sub-section (1), the Gram Nyayalaya shall also try all such offences or grant such relief under the State Acts which may be notified by the State Government under sub-section (3) of section 14."

6. Part II of the First Schedule, as per Sections 12 and 14 of the Act, 2008 (supra), includes clause (v), which pertains to orders for maintenance of wives, children, and parents under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974) (corresponding to the B.N.S.S., 2023).

7. There are two legislations which have provided the cases relating to the maintenance of wives, children and parents. As per section 7 of Family Court Act, 1984 as well as by section 12 of Gram Nyayalayas Act, 2008 in part II of the First Schedule. Part II is as follows: "PART II OFFENCES AND RELIEF UNDER THE OTHER CENTRAL ACTS (i) any offence constituted by an act in respect of which a complaint may be made under section 20 of the Cattle-trespass Act, 1871(1 of 1871); (ii) the Payment of Wages Act, 1936 (4 of 1936); (iii) the Minimum Wages Act, 1948 (11 of 1948); (iv) the Protection of Civil Rights Act, 1955 (22 of 1955); (v) order for maintenance of wives, children and parents under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974); (vi) the Bonded Labour System (Abolition) Act, 1976 (19 of 1976); (vii) the Equal Remuneration Act, 1976 (25 of 1976); (viii) the Protection of Women from Domestic Violence Act, 2005 (43 of 2005)."

8. Hence, the Gram Nyayalaya has jurisdiction to try and decide applications and cases relating to the maintenance of wives, children, and parents under Chapter IX of the Code of Criminal Procedure, 1973 (Sections 125 to 128), as well as the corresponding provisions under Chapter X of the B.N.S.S., 2023 (Sections 144 to 147).

9. In view of the aforesaid provisions of law and statutory framework, the Gram Nyayalaya has the requisite jurisdiction to decide the aforesaid pending petition.

10. The Nyayadhikari of the Gram Nyayalaya is directed to decide the pending Execution Petition No. 25 of 2024 (Damini versus Pankaj Sharma), under Section 147 of the B.N.S.S., 2023, in accordance with law, as expeditiously as possible, preferably within a period of six months.

11. With the aforesaid directions and observations, the present application under Section 529 of the B.N.S.S. is hereby disposed of.

(2026) 4 ILRA 19
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 21.04.2026

BEFORE

THE HON'BLE SIDDHARTHA VARMA, J.
THE HON'BLE JAI KRISHNA UPADHYAY, J.

Criminal Appeal U/S 413 BNSS No. 158 of 2026

Ram Kumar

...Appellants
Versus

State of U.P. & Ors.

...Respondent

Issue for consideration

Regarding inconsistent testimony of victim in acquittal order, qcquitting the accused u/s 376 (2) (n) IPC.

Headnotes

Indian Penal Code-376 (2) (n)- Trial Court acquitted the accused-impugned-Appeal- glaring inconsistencies in the statements of Prosecution witnesses regarding date, time and manner in which the incident happened- PW-1-victim-provided conflicting dates for the incident and gave contradictory statements regarding her Medical Examination-statement u/s 164-that medical examination was never conducted- despite records and her own examination-in-chief which had stated otherwise- allegation of repeated rape - no such mention was made in the tehrir- PW2-father of the victim-contradicted the victim on almost every major detail-impugned order does not warrant any interference-**Appeal dismissed.** (E-9)

List of Acts

Indian Penal Code, 1860

List of Keywords

Internal examination; presumption of innocence; perversity; glaring inconsistencies.

Appearances of parties

Counsel for Appellant (s) : Counsel for Appellant(s) : Neelabh Srivastava, Vijai Kumar Singh
Counsel for Respondent(s) : G.A.

(Delivered by Hon'ble Jai Krishna Upadhyay, J.)

1. Heard Sri Neelabh Srivastava, learned counsel for the appellant and learned AGA for the State, and perused the record.

2. The instant appeal has been filed under Section 413 BNSS by the appellant against the judgment and order dated 01.12.2025 passed by learned Additional Sessions Judge/Special Judge (POCSO Act), Court No. 43, Shahjahanpur (J.O. Code U.P. 6453) in Special Session Trial No. 239 of 2021 (CNR NO. UPSH 010075392021) (State vs. Pappu) arising out of Case Crime No. 307 of 2021 under Sections 363, 376 (2) (n) IPC & 3/4 IPC & 3/4 the POCSO Act, Police Station - Khudaganj, District - Shahjahanpur.

3. The prosecution story in a nutshell is as follows:-

(i) The applicant, Ram Kumar, S/o Rampal, R/o village Tadainiya, police station - Khudaganj, district Shahjahanpur submitted written report/tahrir stating therein that Pappu, S/o Ram Swarup of the same village, used to tease his daughter (victim) on the way coming and going.

(ii) On 26.09.2021 at about 12:00 noon, the accused grabbed the hands of the applicant's daughter and attempted to drag her away. When she raised an alarm, he ran away. When she informed the applicant about this incident, the applicant went to police station to lodge the First Information Report and seek necessary action. His daughter is about 16 years old.

(iii) On the basis of above complaint of the informant, an FIR at police station - Khudaganj, District - Shahjahanpur was lodged against Pappu bearing Case Crime No. 307 of 2021 under Section 354 IPC and Sections 7/8 POCSO Act.

(iv) During investigation, offence under Sections 363, 376 (2)(n) of IPC & 3/4 POCSO Act were added against Pappu and Section 354 IPC and Sections 7/8 POCSO Act were deleted.

(v) After investigation, Investigating Officer submitted charge sheet against the accused, Pappu under Section 363, 376 (2) (n) of IPC and under Section 3/4 POCSO Act.

(vi) Thereafter charges were framed against accused, Pappu under Sections 363, 376(2) (n) of IPC and Section □ POCSO Act. The above charges were read over and explained to the accused. He denied the charges and claimed to be tried.

4. To prove the prosecution case, the prosecution examined a total of 10 witnesses: P.W.-1 (Victim), P.W.-2 informant Ram Kumar, PW-3 Santram, PW-4 Nirmala Devi, PW-5, Incharge Headmaster Vichitra Sharma, PW-6 Inspector Satish Kumar, PW-7 C.C. Ankur Chaudhary, PW-8 Ram Singh, PW-9 Dr. Shalini Singh and PW-10 M.P. Gangwar. The accused was examined under Section 313 Cr.P.C. No evidence in defence was led by the accused.

5. PW-1 (Victim) stated that on the night of 25.09.2021, she had gone to the bathroom. Suddenly, Pappu of the same village came and closed her mouth and intimidated her with a country made pistol / tamancha. He took her to his house in a room and raped her 3-4 times. The police had released her from the room in the morning. On 26.09.2021, at 12:00 noon, Pappu again entered her house and started pulling her by the hand and attempted to takes her away. When she raised an alarm, her father and brother arrived there. Even then Pappu forcibly dragged her to his house, where he took off all her clothes and raped her three to four times. Pappu's wife had died many

years ago. She told her parents about the incident. Her father Ramkumar submitted the written report of the incident in the police station. The police had got a medical examination done. The police had recorded her statement on the spot and the police had got her medical examination done twice. The police had recorded her statement in the court. A sealed envelope was opened in the Court, which contained her recorded statement u/s 164 C.r.P.C. marked as Ex-ka-1.

6. PW-2 Ramkumar, father of the victim, stated that this incident occurred about a year ago. It was 12:00 noon. His daughter had gone to defecate in the toilet built outside the house. Just then, Pappu- accused of his village, came and started molesting her. His daughter ran and entered the house. On the same night, her daughter went outside again. Then again, Pappu, caught hold of her hand, dragged her away, locked her in his room and did wrong things with my daughter three times. His daughter raised an alarm, and Pappu left her and fled . His daughter informed him of the entire incident, and he subsequently went to the police station to lodge a complaint in writing. The police went to the spot at around 10:00 in the morning. The police found accused and his daughter there. After lodging the report, he went to the police station twice. The police prepared the scene map/ naksha nazri. The police inquired to his daughter and got her daughter medically examined. Paper No. 3 Ka-3 was annexed in the file, which is Ex-Ka-2.

7. PW-3, Santram, son of Ram Kumar (PW-2) stated that he is uneducated and he is unable to remember the date of incident. The incident is of about 2 years ago. His sister (the victim) whose age which he is unable to recollect, had gone to defecate, when she was abducted by accused Pappu of the same village and raped after being taken to his house. His father gave a written report to the police only of molestation due to fear of being defamed by the villagers, but in actual the accused had raped her sister. The next day, the police caught the accused, Pappu, with country made pistol and his sister was medically examined and her statement was also recorded in the Court.

8. PW-4, Nirmala Devi, wife of Dabloo, R/o village Mahmadpur, police station Pihani, District ? Hardoi, who is a house wife, stated that she is uneducated and the incident had happened two and half years ago. The next day after the incident, she arrived at her parental house for a feast. She reiterated the same thing as has been stated by PW-2.

9. PW-5, Vichitra Sharma, Incharge Headmaster, school of the same village stated that upon being summoned by the Court, he appeared before the Court along with the record of date of birth of the student/victim. He stated that her date of birth mentioned in the record is 12.05.2006. He has produced the documents which are Ex-ka-3 and Ex-ka-4.

10. PW-6, Satish Kumar, Inspector who was posted as Sub Inspector at the police station Khudaganj, District ? Shahjahanpur in the year 2021 stated that during his posting, case crime no. 307/2021, under Section 354 IPC and 7/8 POCSO Act was registered on 26.09.2021 against accused Pappu and the investigation of the case was entrusted to him. He has annexed several papers during the investigation along with age certificate of the victim and recorded the statement of the victim under Section 161 Cr.P.C. Her medical examination was also conducted. The Statements of the accused, in charge Headmaster of the School and informant were also recorded. Due to contradiction in the statements, a further statement of the victim was recorded and charge were amended. Section 354 IPC and 7/8 POCSO Act were deleted and charge was framed under

Section 363, 376, (2)(n) of IPC and POCSO Act. The statement of Nirmala Devi (PW-4) and Santram and Ram Singh (PW-8) were recorded and the spot was inspected. The statement of Dr. Shalini Singh (PW-9) and lady constable Sapna were recorded and a case was registered against the accused a charge sheet No. 326/21 was submitted which is Ex-Ka-5 and Naksa nazri and other paper is Ex-Ka-6 and Ex-ka-7.

11. PW-7, Ankur Chaudhary, stated that he was posted at police station Khudaganj, District ? Shahjahanpur on 26.09.2021 as C.C. He reiterated the same version as has been stated by the other witnesses and has annexed copy of the FIR No. 307/2021 which is Ex-ka-8 and GD NO. 46 which is Ex-ka-9.

12. PW-8, Ram Singh from the same village has stated that he is uneducated and the incident is of about 4 years ago. The incident was happened in the night of 25/26.9.2021. He stated the same thing as stated by PW-2 and PW-3.

13. PW-9, Dr. Shalin Singh, a doctor of a Jain Sons Hospital, Hardoi stated that on 27.02.2021 she was posted at Medical Officer as District Hospital. On the same day, the victim was brought to hospital for medical check up at 11.10 am. She medically examined her externally and found no injury on her body. The victim refused for internal examination. According to victim, while she was taking bath in the bathroom, the accused arrived and on the point of country made pistol took her to his house and pressed her breast. For age determination of the victim, an X-ray was conducted and sent for report. Based on her findings, according to her (PW-9) she prepared a supplementary report including medical report, which are Ex-ka-10 and Ex-ka-11. She opined that the age of the victim is about 16 years. Again, victim was brought back to hospital for medical check up on 08.10.2021 and was medically examined. No marks of external injury was found on her body. The victim stated that while she was taking a bath in the bathroom, the accused Pappu, arrived armed with pistol and took her to his house and did wrong activities with her. On her internal examination, old hymen tear was found. Two sliders of the vaginal smear were prepared for sperm analysis and sent to the pathology department. According to PW-9, she had prepared the report and X-ray report which is Ex-ka-12 and again prepared medical report which is Ex-Ka-13.

14. PW-10, M.P. Gangwar, has stated that on 28.09.2021 he was posted as Professor at ASME, Shahjahanpur. He stated that on that day, X-ray of the victim, daughter of Ram Kumar (PW-2) was referred by EMO, CHC, Tilhar, were taken under his supervision. The epiphysis bones of the wrist were found to be fused to the corresponding bones. The X-ray report and X-ray plate is Ex-Ka-14.

15. Learned counsel for the appellant has made the following submissions:

(a) The trial Court has illegally acquitted accused- Pappu of charges under Section 363, 376(2) (n) of IPC and under Section □ of POCSO Act.

(b) The trial Court without considering the oral and documentary evidence placed before the trial court acquitted the accused ? Pappu.

(c) The trial court has also not testified the truthfulness of averment made by the victim in support of her claim, therefore, the impugned acquittal order dated 01.12.2025 is liable to be set aside.

(d) The trial court has not considered the statement under Section 161 Cr.P.C and 164 Cr.P.C. and also overlooked the medico legal examination report of the victim dated 27.09.2021 and 08.10.2021 respectively.

16. On the other hand, learned AGA for the State supporting the impugned judgment, has submitted that there is no infirmity or illegality in the impugned order. The trial court has rightly acquitted the accused. It was further submitted that prosecution has proved its case beyond reasonable doubt, therefore, this appeal lacks merit and is liable to be dismissed.

17. The appellate Court is usually reluctant to interfere with a judgment acquitting an accused. The principle to be applicable is that the presumption of innocence in favour of the accused has not to be lightly disturbed. The above principle has been consistently followed by the Supreme Court while deciding appeals against acquittal by way of Article 136 of the Constitution or appeals filed under Section 378 and 386 (a) Cr.P.C. This view was taken in the judgment of in State of M.P. Vs. Sharad Goswami, (2021) 17 SCC 783; State of Rajasthan Vs. Shera Ram, (2012) 1 SCC 602, Shivaji Sahabrao Bobade Vs. State of Maharashtra, (1973) 2 SCC 793.

18. The Supreme Court in the case of Ramesh Babulal Doshi Vs. State of Gujarat, (1996) 9 SCC 225 has observed that the High Court must examine the reasons given by the trial Court for recording their acquittal before disturbing the same by re-appraising the evidence recorded by the trial court. For clarity, para 7 is extracted herein below:

"Before proceeding further it will be pertinent to mention that the entire approach of the High Court in dealing with the appeal was patently wrong for it did not at all address itself to the question as to whether the reasons which weighed with the trial Court for recording the order of acquittal were proper or not. Instead thereof the High Court made an independent reappraisal of the entire evidence to arrive at the above quoted conclusions. This Court has repeatedly laid down that the mere fact that a view other than the one taken by the trial Court can be legitimately arrived at by the appellate Court on reappraisal of the evidence cannot constitute a valid and sufficient ground to interfere with an order of acquittal unless it comes to the conclusion that the entire approach of the trial Court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable. While sitting in judgment over an acquittal the appellate Court is first required to seek an answer to the question whether the findings of the trial Court are palpably wrong, manifestly erroneous or demonstrably unsustainable. If the appellate Court answers the above question in the negative the order of acquittal is not to be disturbed. Conversely, if the appellate Court holds, for reasons to be recorded, that the order of acquittal cannot at all be sustained in view of any of the above infirmities it can then - and then only - reappraise the evidence to arrive at its own conclusions. In keeping with the above principles we have therefore to first ascertain whether the findings of the trial Court are sustainable or not."

19. Also the Supreme Court in the case of *Sadhu Saran Singh Vs. State of U.P.*, (2016) 4 SCC 357 has observed that an appeal against acquittal has always been on an altogether different pedestal from an appeal against conviction. In an appeal against acquittal, where the presumption of innocence in favour of the accused is reinforced, the appellate court would interfere with the order of acquittal only when there is perversity.

20. Still further the Supreme Court in the case *Basheera Begam Vs. Mohd. Ibrahim*, (2020) 11 SCC 174 has held that the burden of proving an accused guilty beyond all reasonable doubt lies on the prosecution. If, upon analysis of evidence, two views are possible, one which points to the guilt of the accused and the other which is inconsistent with the guilt of the accused, the latter must be preferred. Reversal of a judgment and other of conviction and acquittal of the accused should not ordinarily be interfered with unless such reversal/acquittal is vitiated by perversity. In other words, the court might reverse an order of acquittal if the court finds that no person properly instructed in law could have, upon analysis of the evidence on record, found the accused to be "not guilty". When circumstantial evidence points to the guilt of the accused, it is necessary to prove a motive for the crime. However, motive need not be proved where there is direct evidence. In this case, there is no direct evidence of the crime.

21. The Supreme Court in the case of *Kali Ram Vs. State of H.P.*, (1973) 2 SCC 808 has observed as under:

"25. Another golden thread which runs through the web of the administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and other to his innocence, the view which is favourable to the accused should be adopted. This principle has a special relevance in cases wherein the guilt of the accused is sought to be established by circumstantial evidence."

22. The Supreme Court again examined in *State of Odisha v. Banabihari Mohapatra & Ors*, (2021) 15 SCC 268 the effect of the probability of two views in cases of appeal against acquittal and held that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused, and the other to his innocence, the view which is favourable to the accused should be adopted.

23. The Supreme Court in *Sujit Biswas v. State of Assam*, (2013) 12 SCC 406 has reiterated the position that suspicion, however strong, cannot replace proof. An accused is presumed to be innocent unless proven guilty beyond a reasonable doubt.

24. In the background of the law discussed herein above and after looking closely at all the evidence, we find that there are glaring inconsistencies in the statements of Prosecution witnesses regarding date, time and manner in which the incident happened. PW-1 first of all provided conflicting dates for the incident and secondly she gave contradictory statements regarding her Medical Examination. She claimed in her statement under Section 164 that medical examination was never conducted, despite records and her own examination-in-chief which had stated otherwise. Furthermore, her allegation of repeated rape is severely weakened by the fact that no

such mention was made in the tehrir despite her claiming she had informed her father of the same before the report was filed.

25. The case is further weakened by the testimony of PW2, who contradicted the victim on almost every major detail. While the victim said the incident happened at night and that they went to the police station in a police car, PW2 claimed it happened in the middle of the day and that he went to the police station by bicycle. Most importantly, PW2 claimed in court that he witnessed the incident. However, the tehrir states that he was only told about it later by his daughter. It is to be noted that applicant's family constitute 20-25 members, including children. In such a situation, the allegation that the accused alone took her away from the house appears highly unnatural. Because of these massive differences between what the witnesses said and what the documents revealed, the prosecution has failed to prove the case beyond all reasonable doubts.

26. In view of the aforesaid discussions, we are of the view that the learned trial Court has given logical and plausible findings in the impugned judgement in conformity with the evidence on record and has rightly concluded that the prosecution has miserably failed to prove its case beyond reasonable doubt. The judgment and order of the trial court is just and proper and carries no perversity therein. Hence it does not warrant any interference by this Court. The reasoning adopted by the learned Trial Judge is based upon proper application of judicial mind. No illegality, infirmity or perversity is found in the impugned judgment and order and it needs no interference by this Court.

27. Hence the appeal is devoid of merit and deserves to be dismissed. Accordingly, it is dismissed.

(2026) 4 ILRA 25
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 20.04.2026

BEFORE

THE HON'BLE RAJNISH KUMAR, J.
THE HON'BLE ZAFEER AHMAD, J.

Criminal Appeal No. 237 of 1988

Chhidu & Ors.

...Appellants
Versus

State of U.P.

...Respondent

Issue for consideration

Matter pertains to legality of conviction order based on circumstantial evidence.

Headnotes

Circumstantial Evidence-- defence could not adduce any evidence-that there was any such enmity on account of which, they could have been falsely implicated- enmity, on account of illicit relations between the appellant No.3 (now dead) wife of appellant No.1 (now dead) with the deceased is apparent-which was the

motive- case of circumstantial evidence coupled with the last seen- impugned judgment and order has rightly been passed-**Appeal dismissed.** (E-9)

Case Law Cited

1. Baldev Singh Vs. State of Punjab; (2014) 12 SCC 473
2. Subhash Aggarwal Vs. State of NCT of Delhi; (2025) 8 SCC 440
3. Sharad Birdhichand Sarda Vs. State of Maharashtra; AIR 1984 SC 1622
4. State (NCT of Delhi) Vs. Navjo Sandhu @ Afsan Guru; (2005) 11 SCC 600
5. V. Prabhakara Vs. Basavaraj K. (Dead) by legal representatives and another; (2022) 1 SCC 115
6. Shivaji Chintappa Patil Vs. State of Maharashtra; (2021) 5 SCC 626
7. State of Madhya Pradesh Vs. Balveer Singh; (2025) 8 SCC 545

List of Acts

1. Indian Evidence Act, 1860
2. Indian Evidence Act, 1872

List of Keywords

Circumstantial evidence; illicit relationship; recovered; motive; last seen.

Appearances of parties

Counsel for Appellant (s) : K.K. Dixit, Kamlesh Kumar Gupta, Sunil Kumar Singh
Counsel for Respondent(s) : Govt. Advocate

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

(1) The instant criminal appeal under Section 374(2) of the Code of Criminal Procedure, 1973 (here-in-after referred to as Cr.P.C.) has been filed by the accused/convicts/appellants, Chhidu, Rohan, Smt. Sukhdevi, Dayaram, Kallu alias Ram Kishore and Raghubar, assailing the judgment and order dated 13.04.1988 passed by VIth Additional District and Sessions Judge, Sitapur, in Sessions Trial No. 66 of 1985 ; State Versus Chhidu and others, emanating from Case Crime No. 200 of 1984, under Section 364 of the Indian Penal Code, 1860 (here-in-after referred to as I.P.C.), Police Station Sandana, district Sitapur, whereby the appellants have been convicted and sentenced under Section 302 I.P.C. for life imprisonment and under Section 201 I.P.C. for seven years rigorous imprisonment, whereas appellant No.4, Daya Ram was acquitted under Section 148 and 364 read with Section 149 I.P.C. and rest of the appellants have been acquitted under Sections 147 and 364 read with Section 149 I.P.C.

(2) The prosecution case, in short, is that complainant Vijay Kumar, had submitted a written complaint (Ext. Ka.1) at police station Sandana, district Sitapur on 17.08.1984 alleging therein that his brother Ram Gopal seemed to having a secret illicit relationship with the wife of Chhidu Chamar of his village, because of which, Chhidu Chamar had beaten his wife. On 14.08.1984, at about 06:00 in the evening, wife of Chhidu took away his brother Ram Gopal to her house and Hajju son of Madhaee, Rambilash son of Badri and Ramkumar son of Amrit Lal etc. of his village saw them going towards the house of Chhidu. Since then, his brother has been missing and was not found anywhere among his relatives etc. In such circumstances, it appears that Chhidu Chamar and Rohan son of Deo and wife of Chhidu have made his brother disappear with the intention of killing him. It is possible that they have killed. Report may be written and necessary action may be taken.

(3) On the basis of the aforesaid written report, F.I.R., bearing Case Crime No. 200 of 1984, under Section 364 I.P.C. was registered at police station Sandana, district Sitapur on 17.08.1984 at 12:30 p.m.

(4) The investigation was entrusted to S.I. Radhey Shyam. He along with the police personnel reached to the place of incident and recorded the statements of uncle of complainant Ram Prasad, mother of complainant Kaushaliya, witness of F.I.R. Hajju, and witnesses Ram Khelawan and Ram Kumar. He, thereafter, prepared the site plan on the pointing out of complainant. On 18.08.1984, at 12:30 in the night, he apprehended accused Dayaram from his house and on his pointing out, police party along with witnesses proceeded further with accused Dayaram leading from the front. Upon reaching the house of Chhidu, accused Dayaram knocked at his door and called out Chhidu. However, on seeing the police, accused Chhidu fled by jumping over the back wall. Thereafter, Dayaram himself opened the door with his own hand and took the police party to eastern room where the dead body of Ram Gopal had been concealed. He recovered the dead body of Ram Gopal in the presence of witnesses Janki Prasad, Lallan and Jayram, who identified the dead body. Thereafter, he prepared recovery memo of the dead body of the deceased Ram Gopal and site plan. He prepared the Panchayatnama of the dead body of deceased Ram Gopal at 09:00 in the morning and the site plan of recovery of dead body at 09:30 in the morning. He also prepared challan lash, sample seal, photo lash, sample seal and letter to C.M.O. He, thereafter, sent the dead body of the deceased Ram Gopal for post-mortem along with Constable Bachu Lal at 09:30 in the morning. On 19.08.1984, at 06:00 in the morning, he arrested accused Chhidu, Sukhdei, Kallu and Raghubar.

(5) The post-mortem of the dead body of the deceased Ram Gopal was conducted by Dr. S.K. Srivastava, District Hospital, Sitapur on 19.08.1984 at 04:00 P.M. He found the following ante-mortem injuries on the dead body of deceased Ram Gopal :-

1. Incised wound 16 cm x 10 cm x bone cut 7th cervical vertebra's (sic) cut underneath trachea oesophagus as well as both carotid vessels and muscles are cut.

2. Incised wound 11 cm x 3 cm x bone cut head of Rt. humerus bone is cut on the tip of Rt. sholuder.

On external examination, Dr. S.K. Srivastava found that the deceased was of average built; rigor mortis passed from all extremities; mouth and eyes were closed; sutures of skull bones are loosed and brain matter is liquefied.

As per the opinion of Dr. S.K. Srivastava, cause of death was shock and haemorrhage due to ante-mortem injuries.

(6) On 22.08.1984, accused Rohan surrendered in Court. The Investigating Officer, after completing investigation, filed the charge sheet under Sections 364, 302, 201, 147, 148, 149 I.P.C. on 17.10.1984 against the accused persons.

(7) Learned Additional Munsif Magistrate, Sitapur took cognizance on the aforesaid charge-sheet and committed the case to the Court of Session by means of order dated 28.01.1985, where

the case was registered as Sessions Trial No. 66 of 1985 : State Vs. Chiddu and others. The learned VI Additional Sessions Judge, Sitapur, by means of the order dated 28.04.1987, framed charges against accused persons, Chhidu, Rohan, Sukhdei, Dayaram, Kallu alias Ram Kishore and Raghubar. Accused persons denied their charges and claimed to be tried.

(8) In order to prove its case, the prosecution examined nine witnesses, which are as under :-

P.W.1	Vijay Kumar	Complainant/brother of deceased Ram Gopal
P.W.2	Hajju	Neighbour of accused Chhidu and witness of last seen
P.W.3	Manna Lal	Witness of recovery of dead body and inquest report
P.W.4	Ram Shankar	Witness of accused persons coming out of the house of Chhidu
P.W.5	Maiku	Witness who heard the screaming coming out from the house of accused Chiddu
P.W.6	Bachan	Witness, who saw four accused persons coming to house of accused Ram Kishore and going all five together on the date of incident on their intimation that the matter is fit
P.W.7	Rajaram	Witness who saw all five persons going together on the date of incident, saying that matter is fit
P.W.8	Dr. S.K. Srivastva	Conducted the post-mortem of the dead body of the deceased Ram Gopal and proved the autopsy report
P.W.9	S.I. Radhey Shyam	Investigating Officer

(9) Apart from aforesaid witnesses, the prosecution produced material exhibits recovered during investigation and relevant documents have also been placed on record and proved by the prosecution, which are as under :-

Ext. Ka.1	Written Report
Ext. Ka.2	Recovery memo dated 18.08.1984 (recovery of dead body of deceased Ram Gopal on the pointing out of Dayaram)
Ext. Ka.3	Recovery memo dated 18.08.1984 (recovery of Kathari and bora)
Ext. Ka.4	Inquest Report
Ext. Ka.5	Autopsy Report of deceased Ram Gopal
Ext. Ka.6	Carbon copy of check F.I.R.

Ext. Ka.7	Copy of GD No. 17 dated 17.08.1984 at 12:30 O'clock
Ext. Ka.8	Site plan dated 17.08.1984 (showing the place, from where wife of Chhidu took away the deceased Ram Gopal towards her house)
Ext. Ka.9	Site plan dated 18.08.1984 (showing the place, where dead body of the deceased was recovered)
Ext. Ka.10	Challan lash
Ext. Ka.11	Sample seal on the sealed dead body of deceased
Ext. Ka.12	Photo lash
Ext. Ka.13	Police Report dated 18.08.1984 requesting the Superintendent, District Hospital, Sitapur for post-mortem
Ext. Ka.14	Charge-sheet
Ext. Ka.15	GD No. 12 dated 18.08.1984 at 11:30 A.M.

(10) After completion of the evidence of the prosecution witnesses, the statement of the accused persons were recorded under Section 313 of Cr.P.C., wherein they denied the occurrence and shown ignorance to many things placed from evidence. Accused Chhidu stated that a case under Section 107 is going on with Rajaram and Swamidayal and due to this enmity, he has been falsely implicated. He denied having any illicit relationship of his wife. He also denied that he had beaten his wife some days before on account of illicit relationship. Sukhdei also denied having any illicit relationship with Ram Gopal. Accused Chhidu and Sukhdei admitted the fact that accused Rohan is the real brother of accused Chhidu and first wife of accused Chhidu had died 15-16 years ago and thereafter he married to Sukdhei, from whom she has 4-5 minor children. From his first wife, he has a son, namely, Rampal. Accused Raghubar Dayal admitted that Rampal lives separately. He further stated that Ram Kumar had an enmity with Munna Bacchan arising out of case under Section 107. Accused Kallu alias Ram Kumar stated that he was at his maternal home on the date of the incident and he is residing there.

(11) The defence/accused persons have not produced any oral evidence, however, they produced two documents viz. (1) Certified copy of the order dated 06.03.1980 passed in case crime no. 590 of 1959, under Section 107/116 Cr.P.C. Police Station Sandana by S.D.M., Mishrikh, District Sitapur (Ext. Kha.1) and (2) Certified copy of the order dated 06.03.1980 passed in case crime no. 589 of 1958, under Section 107/116 Cr.P.C. Police Station Sandana by S.D.M., Mishrikh, District Sitapur (Ext. Kha.2).

(12) After hearing the learned Counsel for the parties and considering the evidence and material on record, the learned trial Court, by means of the impugned judgment and order dated

13.04.1988, convicted and sentenced the accused Chhidu, Rohan, Sukhdei, Dayaram, Kallu alias Ram Kishore and Raghubar under Sections 302 I.P.C. to undergo life imprisonment and under Section 201 I.P.C. to undergo 7 years R.I. Both the sentences were directed, by learned trial Court, to run concurrently.

(13) Being aggrieved by the impugned judgment and order dated 13.04.1988, accused/convict persons Chhidu, Rohan, Sukhdei, Dayaram, Kallu alias Ram Kishore and Raghubar preferred the instant appeal.

(14) It is pertinent to mention that during pendency of this appeal, appellant no.1-Chhidu, appellant no.2-Rohan, appellant no.3-Smt. Sukhdevi (wrongly mentioned, it shall be read as 'Sukhdei') and appellant no.6-Raghubar have died, therefore, the instant appeal filed on behalf of appellants no. 1, 3 and 6 stood abated by means of order dated 02.07.2001, whereas the instant appeal filed on behalf of appellant no.2 stood abated by means of order dated 16.03.2026. Hence, the present appeal survives only on behalf of appellant no. 4-Daya Ram son of Chillu and appellant no.5-Kallu alias Ram Kishore son of Shivadhar, who are in jail.

(15) Heard, Shri Narayan Dutt Tiwari holding brief of Shri Atul Bhushan Pandey, learned Counsel for the appellants and Shri Arunendra, learned A.G.A. for the State.

(16) Learned counsel for the appellants submitted that the appellants have wrongly and illegally been convicted and sentenced by means of the impugned judgment and order placing reliance on the testimony of highly inimical witnesses. He further submitted that the case is based on circumstantial evidence and the learned Trial Court failed to appreciate that the prosecution witnesses kept silence from the alleged date of incident i.e. 14.08.1984 to 17.08.1984, which creates doubt about the veracity of their testimony. He further submitted that in the F.I.R., only three persons, namely Chhidu, his wife Sukhdei and Rohan were shown alleged suspects, but the learned Trial Court has convicted all the six appellants without any evidence against them. He further submitted that the appellant No.4, Daya Ram was arrested from his house in the intervening night of 17/18.08.1984 and it has been alleged that he had admitted the guilt and got recovered the dead body, but if he would have participated in the alleged incident, he must have escaped from his house. He further submitted that the deceased was of bad character and was having affairs with several ladies, therefore, anyone could have invited him and murdered. He further submitted that the investigation was not made in proper manner and it was highly tainted and there was a long delay in lodging of F.I.R. and the prosecution story is highly improbable. He further submitted that the deceased had only two injuries, which itself creates doubt about the participation of six persons. He further submitted that the learned Trial Court, even after disbelieving the recovery under Section 27 of the Indian Evidence Act, 1872, has wrongly and illegally convicted the appellants. Thus, he submitted that the impugned judgment and order has been passed in an illegal manner without considering the evidence and material on record appropriately and recording perverse findings, which is not sustainable in the eyes of law and the same is liable to be set aside and the appellants are liable to be acquitted.

(17) Learned A.G.A. vehemently opposed the submissions of learned counsel for the appellants. He submitted that delay in lodging of F.I.R. is self-explanatory as the deceased had got

missing from 14.08.1984 and looking to the previous conduct of the deceased, after coming to know that he was seen going in the house of Chhidu, the F.I.R. was lodged, therefore, the delay stands explained. He further submitted that the motive behind the occurrence is apparent because the wife of the accused Chhidu had relations with the deceased Ram Gopal, which has been proved by the prosecution witnesses. He further submitted that the submissions of learned counsel for the appellants are wrong and misconceived and not tenable in the eyes of law as the learned Trial Court has rightly and in accordance with law passed the impugned judgment and order after considering and appreciating the evidence and material on record correctly. There is no illegality or error in the impugned judgment and order passed by the learned Trial Court and the appeal has been filed on misconceived and baseless grounds, which is liable to be dismissed.

(18) We have considered the submissions of learned counsel for the parties and perused the records.

(19) The complainant Vijay Kumar appeared as P.W.-1. He deposed that the deceased Ram Gopal had illicit relations with wife of Chhidu, on account of which, Chhidu had beaten his wife about a week prior to the incident. He further stated that on 14.08.1984 at about 06:00 in the evening, Sukhdei, wife of Chhidu had called his brother, Ram Gopal and took him towards her house. He further stated that at that time, he, his uncle Ram Prasad and his mother were present at home. He further stated that his brother did not return on that night, therefore, he had searched for him in the village and other villages in his relationship but his whereabouts could not be known. He also stated that his brother used to go leaving home. Sometimes he used to come back on his own, but sometimes, he used to search and call him and only then, his brother used to return, therefore, when he came to know from Hajju, Ram Kumar and Ram Bilas on 17.08.1984 that they had seen Ram Gopal going with wife of Chhidu inside her home, then he suspected that Chhidu, Rohan and Sukhdei must have killed his brother and then he got the report written from Swami Dayal and signed it after it was read over to him and gave it to Munshi in the Police Station. On the basis of said report, F.I.R. (Ex. Ka-7) vide Case Crime No.200 of 1984, under Section 364 I.P.C. was lodged at Police Station Sandana, District Sitapur on 17.08.1984 at 12:30 PM. He further stated that after taking a copy of the F.I.R., he came back to his village, where Inspector came and took his statement.

(20) In view of above, the explanation for delay in lodging of F.I.R. has been given by the complainant, which is obvious in the facts and circumstances of the case, in which, the deceased used to go leaving home time and again and used to come on his own or on being searched and called by the complainant. Even otherwise the delay in lodging the F.I.R. can not be the sole ground to disbelieve the prosecution case. The learned Trial Court, after considering the evidence and material on record, has recorded a finding that in the circumstances of case, there is no undue delay in lodging of F.I.R. and whatever is the delay, it has sufficiently been explained. This Court does not find any illegality or error in the finding recorded by the learned Trial Court in this regard. Even otherwise, this Court is of the view that in the facts and circumstances, as disclosed in the F.I.R. and the evidence of the prosecution witnesses, such delay in lodging the F.I.R. cannot be of any benefit to the defence or fatal to the prosecution case. The Hon'ble Supreme Court, in the case of Baldev Singh Vs. State of Punjab; (2014) 12 SCC 473, has held that there can not be any doubt that delay in lodging of F.I.R. often results in embellishment as well as the introduction of a

distorted version of what may have actually happened, but the facts of each case have to be examined to find out whether the delay in lodging the FIR is fatal for the prosecution case.

(21) The appellant No.1, Chhidu and the appellant No.3, Sukhdei, who have died, were husband and wife. The appellant No.3 was the second wife of the appellant No.1. The first wife of the appellant No.1 had died and the appellant No.1 had one son from the first wife. As per prosecution witnesses, the said son was living separately as he and the appellant No.3 were not on good terms. The appellant Nos.1 and 3 had five children. It is consistent case of the prosecution witnesses of fact that the appellant No.3, Sukhdei had illicit relations with the deceased, Ram Gopal, on account of which, about a week prior to the date of incident, the appellant No.1, Chhidu had beaten also to the appellant No.3. It has also been stated by the prosecution witnesses that the appellant No.3 had extra marital relations with many persons in the village but the most affinity was with the deceased, Ram Gopal. The motive behind the murder is the said extra-marital relationship.

(22) In regard to the illicit relations of the deceased with the appellant No.3 i.e. the wife of the appellant No.1, the P.W.-2, Hajju, P.W.-4, Ram Shankar, P.W.-5, Maiku and P.W.-6 Bachan have joined the P.W.-1, complainant in their evidence and have specifically stated that wife of the appellant No.1 i.e. the appellant No.3 was characterless and she had relations with many persons in the village, but the most affinity was with the deceased, Ram Gopal. Thus, the illicit relations of appellant No.3 with the deceased alongwith others have been proved, which can be the motive behind the murder of deceased. The learned Trial Court has recorded a finding that illicit relations of Sukhdei with the deceased was motive for her husband, Chhidu and his brother Rohan and Kallu, Raghubar and Daya Ram collided in crime not only on account of friendship with Chhidu but because of their love for Sukhdei, but she had special affinity with the deceased and Sukhdei must have been forced for calling the deceased and join them. This Court does not find any illegality or perversity in the said finding recorded by the learned Trial Court. However, motive loses its significance if the prosecution case is otherwise proved, therefore, it may not be of much significance. The Hon'ble Supreme Court, in the case of Subhash Aggarwal Vs. State of NCT of Delhi; (2025) 8 SCC 440, has held that when the circumstances are very convincing and provide an unbroken chain leading only to the conclusion of guilt of the accused and not to any other hypothesis, the total absence of a motive will be of no consequence. The relevant paragraph 33 is extracted below:-

"33. The declaration in the cited decisions and the decisions relied on therein, is to the effect that if the case is built solely upon circumstantial evidence, absence of motive will be a factor that weighs in favour of the accused. Just as a strong motive does not by itself result in a conviction, the absence of motive on that sole ground cannot result in an acquittal. When the eyewitnesses are not convincing, a strong motive cannot by itself result in conviction, likewise when the circumstances are very convincing and provide an unbroken chain leading only to the conclusion of guilt of the accused and not to any other hypothesis; the total absence of a motive will be of no consequence."

(23) The P.W.-9, S.I. Radhey Shyam has stated that check F.I.R. was written by Liyakat Ali, Head Moharrir and he recognizes his writing and signatures. He further stated that the

corresponding entry was made in the G.D. No.17 on the same date i.e. 17.08.1984 at 12:30 in the day by the said Liyakat Ali and the investigation of the same was entrusted to him. He further stated that after copying the check F.I.R. and entry of the G.D. in the Case Diary, he proceeded to the place of incident by cycle alongwith the force and upon reaching there, he, after lighting the lantern, recorded the statements of Constable Umesh Chandra Yadav and, thereafter, the statements of complainant, uncle of the complainant Ram Prasad, mother of the complainant Kaushalya, witnesses in the F.I.R., namely, Hajju, Ram Khelawan and Ram Kumar and inspected the spot as pointed out by the complainant and prepared the site plan (Ex. Ka-8). He further stated that he made enquiries from the villagers. The evidence of the Investigating Officer indicates that on the information received by him from an informant, he went to the house of Dayaram, found him and caught at 12:30 in the night on 18.08.1984 and on his pointing out alongwith the witnesses, he reached on the house of Chhidu and knocked the door of Chhidu and called Chhidu. Upon seeing the police, Chhidu ran away by jumping from the back wall. Then Dayaram opened the door and took them to the small room on the east side and pointed out the place, where the dead body of the Ram Gopal was hidden and hay was also put on it. In the presence of witnesses, Janki Prasad, Lallan, Mannalal and Jai Narayan, the hay was kept aside, a bad odour was coming and upon digging, a blanket (kathri) and gunny bag (tat bora) was found, where the dead body of Ram Gopal was buried. They had gas light and torch at that time and there was blood on the gunny bag and blanket. The dead body was taken out from the ditch, which was recognized by the witnesses as the dead body of Ram Gopal. The ditch was 5 feet long, 5 feet deep and 3 feet wide. It was in the residential house of Chhidu. The Investigating Officer also proved recovery memo, inquest report, challan lash, sample of seal, photo lash and letter to C.M.O. He also stated that the dead body was handed over to constable Bachu Lal at 09:30 in the morning for taking it to the Sitapur for post-mortem.

(24) The P.W.-3, Manna Lal has stated that the constable had come to call him at 12:30 in the night about 3 years back and when he reached on the door of Pradhan, he found Janki Prasad, Jai Narayan, Lallan, the accused Daya Ram and the Inspector of Police Station. He further stated that in their presence, Daya Ram admitted his guilt and stated that he can tell the place of dead body of Ram Gopal. Then the constable, Inspector and they proceeded and upon reaching the house of Chhidu, the door was found closed and when it was knocked, Chhidu ran away after jumping from the southern wall. He further stated that there was some space between the doors, from which, Daya Ram opened the door and upon reaching inside found that there was latch (कुंजी) on the door of small room on the western side of the courtyard, which was opened by Daya Ram. He further stated that after entering into the small room, Daya Ram kept aside the hay and started digging the mud, then the dead body of Ram Gopal was found in the ditch. He further stated that upon digging, the gunny bag and the blanket was found and, thereafter, the dead body was found under the same. He further stated that the Inspector had prepared the documents, which were signed and on the same, he put his thumb impression. He recognized his thumb impression on Ex. Ka-2. He further stated that the gunny bag and the blanket were also sealed and he also recognized his thumb impression on the recovery memo of the same, which is Ex. Ka-3. He also stated that the inquest report was prepared in the morning, thereafter, he had put his thumb impression on the same and recognized it, which is Ex. Ka-4. He also stated that when the dead body was found, Daya Ram was in custody. Thus, the recovery of dead body of the deceased Ram Gopal from the house of the appellant No.1 Chhidu is proved.

(25) The post-mortem of the dead body was conducted by Dr. S.K. Srivastava, who was posted as Medical Officer, E.S.I., Sitapur, on 19.08.1984. He appeared as P.W.-8. He deposed that post-mortem was conducted at 04:00 in the evening. He further stated that the dead body was brought by Constable 140 Bachu Lal of Police Station Sandana and he recognized the dead body. He further stated that the deceased had died about 5 days back. He proved the injuries in the post-mortem, which have been reproduced above. He also stated that the cause of death was shock and excess bleeding. He proved the post-mortem report as Ex. Ka-5. He also stated that the death could have been after 06:00 in the evening on 14.08.1984. In the cross-examination, nothing could be extracted which may create even a doubt on his testimony. He himself stated that brain liquefies in 5 days and it also depends on the place where the dead body was kept. No further cross-examination has been made from him.

(26) In view of above, the date and time of the death of the deceased is after six in the evening on 14.08.1984, which stands proved and the recovery of dead body was made from the house of accused-appellant No.1, who is dead now, which has been proved by the aforesaid prosecution witnesses and it is also apparent from the inquest report, which has been prepared on 18.08.1984 at 09:30 AM. It is also recorded in the inquest report that the dead body was recovered on the pointing out of the accused Daya Ram, who had admitted his guilt and also stated that the deceased was killed by cutting his neck with a knife and it was kept in the ditch. No cross-examination has been made in this regard from any of the witness. Thus, the injuries to the deceased also stand proved.

(27) Now, the question to be considered is in regard to the complicity of the accused-appellants and as to whether they were involved and what are the circumstances, on account of which, the appellants can only be said to have killed the deceased Ram Gopal and concealed the dead body of the deceased as there is no eye witness and it is a case of circumstantial evidence. The P.W.-1, complainant has stated that the house of Chhidu is about 150-200 steps away on the south of his house, where accused Chhidu (appellant No.1, now dead), accused Sukhdei (appellant No.3 and wife of appellant No.1, now dead) and their five children are residing and none else is residing. He further stated that Deo has two sons, namely, Chhidu and Rohan and both are accused. He further stated that the accused, Raghubar and Daya Ram are friends of Chhidu and Rohan and the accused, Sukhdei is the second wife of the accused, Chhidu. He further stated that first wife of Chhidu has died. Chhidu had one son from his first wife, whose name is Ram Pal, who lives separately in the old house of Chhidu. Rohan resides in half portion of that house. He further stated that wife of Chhidu and son from the first wife i.e. Ram Pal were not at good terms, therefore, about 2 □ 3 years back, Chhidu, his second wife and children from her started residing separately in new house. He further stated that wife of Chhidu, namely, Sukhdei was characterless, therefore, she was on bad terms with Ram Pal. He further stated that his brother Ram Gopal had illicit relations with Sukhdei wife of Chhidu and it was known to the whole village. He also stated that Sukhdei had relations with many persons in the village and it was known to Chhidu also and Chhidu had beaten also his wife, Sukhdei about a week prior to the date of incident. He further stated that on 18.08.1984, the wife of Chhidu had come to his house in the evening and took his brother, Ram Gopal towards her house and at that time, he, his uncle Ram Prasad and his mother were at home and when the Ram Gopal did not return on that night then he searched for him in the village and another villages in his relations but his brother was not found. However, when he came back to his village in the morning on 17.08.1984, Hajju, Ram Kumar and Ram Bilas met and

informed that they had seen his brother, Ram Gopal going with the wife of Chhidu inside her house on 14.08.1984, then he suspected that Chhidu, Rohan and Sukhdei had murdered his brother and, accordingly, he lodged the F.I.R. He also deposed that the dead body of his brother was recovered from the house of Chhidu on 18.08.1984. In the cross-examination, he stated that on 14.08.1984, he had gone to the house of Chhidu alone, where Chhidu and his wife, who were sitting on the door, met and when he asked about Ram Gopal, they informed that he had gone from there, thereafter, he searched for him at the places, wherever his brother used to sit.

(28) P.W.-2, Hajju has stated that Chhidu resides for the last 15-16 years on the south of house of Kailash and the name of wife of Chhidu is Kaushalya. Seeing the accused standing in the Court, he stated that this is Kaushalya. He further stated that this lady had illicit relations with Ram Gopal and she had relations with others also in the village but she had more affinity with Ram Gopal. He further stated that prior to 7-8 days of murder, Chhidu had beaten this lady and it was known in the village that wife of Chhidu is characterless and the relations of this lady with Ram Gopal were known to whole village. He further stated that about three years and two months ago, while he was coming back from his field at about 6:00-6:30 in the evening, Ram Kumar and Ram Bilas were with him and he saw that the wife of Chhidu and Ram Gopal were going inside the house of Chhidu and, thereafter, he went to his house. He further stated that on the third day, Vinay Kumar had met and then he informed it to him. In the cross-examination, nothing was asked in this regard except a suggestion, in response to which, he stated that it is wrong to say that he had not seen the Ram Gopal coming with Chhidu with his wife to his house. However, he also stated that while he was coming from his field to his house and passing through the house of Chhidu, Ram Bilas and Ram Kumar met him in the east of the village but he does not know as to from where they were coming. He also denied that it was 7:00 in the evening.

(29) Ram Shankar, the P.W.-4 has stated that about 3 years and 3 months back, he had gone towards the house of Chhidu and it was about 05:00 - 05:30 in the evening, at that time he saw Chhidu, Daya Ram, Raghubar, Kallu and Rohan, who all were going inside the house of Chhidu and he was astonished to see it. He also stated that wife of Chhidu is of loose character. Her name is Sukhdei. She had relations with many people in the village. He further stated that the deceased, Ram Gopal had special relations with her. In the cross-examination, he stated that he had come to know from the villagers that wife of Chhidu is characterless and besides it, Ram Gopal, Daya Ram, Kallu and Raghubar used to go to the house of Chhidu. He had also come to know it from Raj Kumar Shukla and Hajju etc., who are the neighbours. He had also seen the wife of Chhidu and Ram Gopal talking with each other in a hidden manner. He also stated in the cross-examination that he knows Ram Pal, who is aged about 27-28 years and he is son of first wife of Chhidu and resides in the old house of Chhidu and Chhidu resides in his new house. He denied the suggestion that the same is not the house of Chhidu, rather his courtyard. He also stated that he is son of witness, Manna Lal, Ram Bilas is his cousin uncle and Swami Dayal is the son of Ram Bilas and his cousin brother. However, he denied any information regarding any case under Section 107 and 117, in which the parties had compromised. He reiterated that his house is on the north-west of the house of Chhidu at about 10 steps and there are three houses between their houses. He also stated that he had seen the accused persons at about 05:30 in the evening, when he was going towards his field and in return he had not passed through the house of Chhidu.

(30) The P.W.-5, Maiku has stated that it was about 3 years and three months back, he was returning after cutting grass and it was about 6:00 □ 06:30 in the evening, when he reached near the house of Chhidu, who is present in Court, he heard murmuring from the house of Chhidu and his main door was closed from inside. He further stated that he knocked on the door and asked what is the matter, then Chhidu told that children are playing and there is no matter. He also stated that wife of Chhidu, who is present in Court, is characterless and she had special relations with Ram Gopal and many others. In the cross-examination, he stated that since he brought the second lady i.e. the accused Sukhdei, therefore, Chhidu and Ram Pal live separately from 12 □ 13 years. He further stated about murmuring that he had told this in his house about it and it was not told to anybody else, however, it was told to the Inspector also. He further stated that he had seen the Ram Gopal talking with this lady and whenever Chhidu was not at home, Ram Gopal used to go to his house. In further cross-examination, he also stated that in north-eastern corner of house of Chhidu, there is house of Ram Gopal and there is no other house between their houses.

(31) P.W.-6, Bachan has stated that about 3 years and 2 □ 3 months back, when he reached near the house of Chhidu at about 07:30 in the evening when the darkness had started, he saw that Daya Ram, Kallu, Raghubar and Rohan coming out hurriedly, whereas Chhidu went inside and closed the door. He further stated that he asked from these persons as to what is the matter, in response thereof they told that there was nothing and then all the four persons went away and the P.W.-6 went to his house. He also confirmed that the wife of Chhidu had special relations with Ram Gopal alongwith others. In the cross-examination, he stated that he was coming back at 07:30 in the evening on the said date after seeing his field, which is at a distance of about half furlong from his house. He also told that his house is after about 5 □ 6 houses on the south west of the house of Ram Gopal. He further stated that on the next morning, he went to Kulai Purwa and on third day, he came back.

(32) P.W.-7, Raja Ram has stated that about 3 years back, he had gone to drop a letter in the post-box, which is at the door of Ram Kishore at about 04:30 in the evening, when Ram Kishore was sitting at his door and in the meantime, Chhidu, Rohan, Raghubar and Dayaram came and stated to Ram Kishore that the matter is fit and why they are doing late and, thereafter, all the five persons went from there and he also went. In the cross-examination, he stated that he had written a letter to his maternal uncle in response to a letter received from him about 02 days back. He also disclosed that a letter-box is on the west side of door of Ram Kishore.

(33) In view of above, all the aforesaid witnesses had seen the accused persons in the evening of 14.08.1984 either going inside the house of Chhidu or going out of the house of Chhidu and the P.W.-7 had also seen the five accused persons, namely, Chhidu, Rohan, Daya Ram, Ram Kishore and Raghubar together in front of the house of Ram Kishore and thereafter going from there on the information of Chhidu, Rohan, Raghubar and Dayaram that the matter is fit.

(34) The dead body was found on the pointing out of the appellant No.4, Daya Ram, buried in the house of Chhidu and as per Doctor, the death could have occurred after six in the evening on 14.08.1984 and as per inquest report, the deceased was killed by cutting throat with a knife and injuries show cut underneath trachea oesophagus as well as both carotid vessels and muscles were cut and cut head of right humerus bone on the tip of right shoulder, which have been proved by the

doctor and nothing could be extracted from him, which may create any doubt about veracity of his testimony and testimony of other witnesses.

(35) The Investigating Officer has proved various steps of investigation made by him and if there is any negligence on the part of the Investigating Officer, it can not be said that the same goes to the root of the matter and is fatal for the prosecution case.

(36) In the statement under Section 313 Cr.P.C., the accused persons have stated about enmity but it is settled law that enmity is double edged weapon, which may be a reason for false implication and/or motive. However, the defence could not adduce any evidence to show that there was any such enmity, on account of which, they could have been falsely implicated, therefore, if there was any enmity, it may be only the motive for the crime. The enmity suggested with the witnesses could not be proved. However, the enmity, on account of illicit relations between the appellant No.3 (now dead) wife of appellant No.1 (now dead) with the deceased, Ram Gopal, is apparent from the evidence and material on record, which was the motive, and nothing could also be extracted from the prosecution witnesses, on account of which, it may be said that the evidence of prosecution witnesses is not believable.

(37) In view of above, it is a case of circumstantial evidence coupled with the last seen and the panchsheel i.e. the five golden principles for completing the chain of circumstances to record the guilt of accused, as held by the Hon^{ble} Supreme Court in the case of Sharad Birdhichand Sarda Vs. State of Maharashtra; AIR 1984 SC 1622, are to be considered and seen as to whether the chain of circumstances are complete in a manner, which refers to guilt of the appellants only and there is no hypothesis of their innocence. The 5 golden principles are as under:-

"(1) The circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned must or should and not may be established;

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

(3) The circumstances should be of a conclusive nature and tendency;

(4) They should exclude every possible hypothesis except the one to be proved; and

(5) There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the-innocence of the accused and must show that in all human probability the act must have been done by the accused."

(38) The following are the circumstances, which completes the chain of circumstances and refers to the guilt of the appellants:-

(i) The appellant No.3, Sukhdei had illicit relations with the deceased, on account of which, her husband Chhidu; the appellant No.1 had beaten her about a week ago from the date of incident.

(ii) The evidence of P.W.-7, Raja Ram, who had heard the conversation of accused persons near the letter-box, which was at the door of the accused, Raj Kishore, according to which, the matter is fit and upon hearing it, Ram Kishore also went with the accused persons.

(iii) The evidence of P.W.-4, Ram Shankar, who had seen accused persons going inside the house of Chhidu on the date of incident at 05:00 □ 05:30 in the evening.

(iv) The evidence of P.W.-1, complainant Vinay Kumar, who proved that the appellant No.3, Sukhdei wife of the appellant No.1, Chhidu had called the deceased, Ram Gopal from his house and took him with her at about 06:00 in the evening on 14.08.1984 towards her house and P.W.-2, Hajju has deposed that he had seen Ram Gopal going inside the house of Chhidu with his wife. Hajju has also stated that he met Ram Bilas and Ram Kumar at about 06:00 □ 06:30 in the evening, when he saw the wife of Chhidu i.e. Sukhdei and the deceased, Ram Gopal, going inside the house of Sukhdei.

(v) P.W.-5, Maiku has proved that on the date of incident, he heard murmuring from the house of Chhidu at about 06:00 06:30 in the evening, while he was going back after cutting grass and coming towards his house and upon his asking as to what is the matter, Chhidu had told that the children are playing.

(vi) P.W.-6, Bachan, whose house is about 5 6 house away from the house of Chhidu, has proved that when he was going back after seeing his field at about 07:00 in the evening, he saw the accused persons coming out of the house of Chhidu hurriedly.

(vii) The complainant (P.W.-1) i.e. the brother of the deceased, Ram Gopal searched his brother, when he did not return after he went with Sukhdei towards her house, when she had come to call him on 14.08.1984, in the village and in other villages in his relationship and on 17.08.1984 in the morning, when he came back to his village Hajju, Ram Kumar and Ram Bilas met him and informed that he had seen Ram Gopal going inside the house of Chhidu with his wife, Sukhdei.

(viii) The recovery of the dead body of the deceased, which was buried in a small room of Chhidu and recovery on the pointing out of the accused Daya Ram and recovery has been proved by the P.W.-9, S.I. Radhey Shyam and P.W.-3, Manna Lal and Chhidu ran away jumping wall when they reached to his house for recovery. The recovery from the house of Chhidu has not been disputed by the defence but only plea has been taken that it was brought from some other place and has been shown to have been recovered from the house of Chhidu. However, no such evidence has been adduced and no enmity could be proved, on account of which, they may have been falsely implicated.

(ix) The house, from where the dead body was recovered, was the house where Chhidu alongwith his wife Sukhdei and five minor children were residing because Ram Pal S/o of first wife

of Chhidu was residing separately after the second marriage of the Chhidu as Ram Pal S/o first wife of Chhidu was residing in old house, on account of loose character of the second wife of Chhidu, which has been proved by the prosecution witnesses. The house, from where the dead body was recovered, has been proved by the Investigating Officer, who also found the elder son of Chhidu aged about 10-11 years, utensils and chapatis in the said house and grains, rice, clothes and blankets were also kept in the small room. However, a doubt has been tried to raise that it was not the residential house of Chhidu, rather it was courtyard (हत्त), but no evidence in this regard has been adduced by the defence. Consequently, the evidence adduced by the prosecution is sufficient to come to the conclusion that it was the house, where Chhidu alongwith his wife Sukhdei and children from her was residing after his second marriage and his son, Ram Pal from the first wife was residing separately.

(39) The aforesaid circumstances also leads us to consider the conduct of the appellants, particularly the appellant No.1, Chhidu, who, on account of illicit relations of his wife Sukhdei, the appellant No.3 involved with him not only other accused but his wife also for committing the murder and thereafter concealed the dead body to disappear the evidence of murder, which is relevant under Section 8 of the Indian Evidence Act, 1872, which alongwith illustrations (f) and (i), relevant in the case in hand are extracted herein below:-

"8. Motive, preparation and previous or subsequent conduct.- Any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact. The conduct of any party, or of any agent to any party, to any suit or proceeding, in reference to such suit or proceeding, or in reference to any fact in issue or relevant thereto, and the conduct of any person an offence against whom is the subject of any proceeding is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact, and whether it was previous or subsequent thereto.

Illustration (f) The question is, whether A robbed B.

The facts that, after B was robbed, C said in A's presence - "the police are coming to look for the man who robbed B", and that immediately afterwards A ran away, are relevant.

Illustration (i) A is accused of a crime.

The facts that, after commission of the alleged crime, he absconded, or was in possession of property or the proceeds of property acquired by the crime, or attempted to conceal things which were or might have been used in committing it, are relevant."

(40) In view of above, the conduct of an accused, previous or subsequent to the committing of crime is also relevant for considering his complicity because it is commonly seen that the conduct of an accused speaks of itself, as is a maxim in Hindi "चोर की दाढ़ी में तिनका होता है". Before advertng to the relevant conduct of the appellants, particularly of appellant No.1, who is main author of crime, we would like to refer the consideration of Section 8 of the Indian Evidence Act, 1872 and it's effect by the Hon'ble Supreme Court.

(41) The Hon'ble Supreme Court, in the case of State (NCT of Delhi) Vs. Navjo Sandhu @ Afsan Guru; (2005) 11 SCC 600, has held that the conduct, in order to be admissible, must be such that it has close nexus with a fact in issue or relevant fact. The relevant paragraphs 205 and 206 are extracted below:-

"205. Before proceeding further, we may advert to Section 8 of the Evidence Act. Section 8 insofar as it is relevant for our purpose makes the conduct of an accused person relevant, if such conduct influences or is influenced by any fact in issue or relevant fact. It could be either a previous or subsequent conduct. There are two Explanations to the section, which explain the ambit of the word conduct. They are:

Explanation 1. The word conduct in this section does not include statements, unless those statements accompany and explain acts other than statements, but this explanation is not to affect the relevancy of statements under any other section of this Act.

Explanation 2. When the conduct of any person is relevant, any statement made to him or in his presence and hearing, which affects such conduct, is relevant.

The conduct, in order to be admissible, must be such that it has close nexus with a fact in issue or relevant fact.

Explanation 1 makes it clear that the mere statements as distinguished from acts do not constitute conduct unless those statements 'accompany and explain acts other than statements'. Such statements accompanying the acts are considered to be evidence of *res gestae*. Two illustrations appended to Section 8 deserve special mention:

(f) The question is, whether A robbed B.

The facts that, after B was robbed, C said in A's presence the police are coming to look for the man who robbed B, and that immediately afterwards A ran away, are relevant.

(i) A is accused of a crime.

The facts that, after the commission of the alleged crime, he absconded, or was in possession of property or the proceeds of property acquired by the crime, or attempted to conceal things which were or might have been used in committing it, are relevant.

206. We have already noticed the distinction highlighted in Prakash Chand case [(1979) 3 SCC 90 : 1979 SCC (Cri) 656 : AIR 1979 SC 400] between the conduct of an accused which is admissible under Section 8 and the statement made to a police officer in the course of an investigation which is hit by Section 162 CrPC. The evidence of the circumstance, simpliciter, that the accused pointed out to the police officer, the place where stolen articles or weapons used in the commission of the offence were hidden, would be admissible as 'conduct' under Section 8 irrespective of the fact whether the statement made by the accused contemporaneously with or antecedent to such conduct, falls within the purview of Section 27, as pointed out in Prakash Chand

case [(1979) 3 SCC 90 : 1979 SCC (Cri) 656 : AIR 1979 SC 400] . In Om Prakash case [H.P. Admn. v. Om Prakash, (1972) 1 SCC 249 : 1972 SCC (Cri) 88 : AIR 1972 SC 975] this Court held that: (SCC p. 262, para 14)

[E]ven apart from the admissibility of the information under Section 27, the evidence of the investigating officer and the panchas that the accused had taken them to PW 11 (from whom he purchased the weapon) and pointed him out and as corroborated by PW 11 himself would be admissible under Section 8 of the Evidence Act as conduct of the accused.

(42) The Hon'ble Supreme Court, in the case of V. Prabhakara Vs. Basavaraj K. (Dead) by legal representatives and another; (2022) 1 SCC 115, has held that conduct of a party would be construed as a fact under Section 8 and such a conduct may either be a previous or subsequent one. It is the product of a motive or a preparation. The relevant portion of para 14 is extracted here-in-below:-

"14. Section 3 of the Evidence Act defines 'a fact'. Conduct of a party would be construed as a fact under Section 8. Such a conduct may either be a previous or subsequent one. It is the product of a motive or a preparation. When evidence is given on the conduct of a party and if it is proved to the satisfaction of the court particularly when it involves an admission, adequate weightage is required to be given. Such a conduct would include a silence emanating from a party who is expected to speak and express....."

(43) Adverting to the facts of the case in hand, the conduct of accused/appellants as discussed above and particularly of the appellant No.1. Chhidu, who had beaten his wife about a week ago of incident on account of her illicit relations with the deceased, telling the complainant that his brother has gone from house on the date of incident after his wife had taken away the deceased towards her house, which shows that he had gone to his house with his wife, upon hearing murmuring when P.W.-5 asked as to what is the matter, he told that children are playing and the most important when P.W.-9 and P.W.-3 reached at his house with the accused-appellant Daya Ram for recovery of dead body on his pointing out, he ran away jumping the wall of his house, are relevant and also shows their complicity in the murder.

(44) In view of above, this Court is of the view that the chain of circumstances is complete in the manner, which refers only towards the guilt of the appellants and the aforesaid conduct of the appellants is also in aid of those circumstances and no hypothesis of innocence of the appellants coupled with the fact that no evidence and material could be placed on record, on account of which, any inference contrary to the aforesaid could be drawn by this Court.

(45) In view of above, once it has been proved that the appellants had assembled in the house of Chhidu and thereafter the dead body of the deceased, Ram Gopal was found buried in a small room of the house of the appellant No.1, Chhidu and the appellant No.3, Sukhdei as well as brother of the appellant No.1, Rohan and that the appellant No.1, Chhidu ran away jumping the wall of his house when the police reached at his house alongwith appellant No.3, Daya Ram to recover the dead body, the appellants were required to show/prove as to why they had assembled in house of Chhidu and as to how the dead body has been found in house of Chhidu, thereafter, buried in a

small room and what had happened in the said house at that time because no other person could have the access or possession over the same, in view of Section 106 of the Indian Evidence Act, 1872, which provides that if any fact is especially within the knowledge of any person, the burden of proving that fact is upon him but the said appellants failed to adduce any evidence to clear the cloud on the appellants in this regard.

(46) The Hon'ble Supreme Court, in the case of Shivaji Chintappa Patil Vs. State of Maharashtra; (2021) 5 SCC 626, has held that Section 106 of the Indian Evidence Act, 1872 does not absolve the prosecution discharging its general or primary burden of proving the prosecution case beyond reasonable doubt and it is only when the prosecution has led evidence which, if believed, will sustain a conviction, or which makes out a prima facie case, that the question arises of considering facts of which the burden of proof may lie upon the accused.

(47) The Hon'ble Supreme Court, in the case of State of Madhya Pradesh Vs. Balveer Singh; (2025) 8 SCC 545, has held that Section 106 of the Indian Evidence Act, 1872 will apply to cases where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding guilt of the accused. The relevant paragraph 97 is extracted herein below:-

"97. If an offence takes place inside the four walls of a house and in such circumstances where the accused has all the opportunity to plan and commit the offence at the time and in the circumstances of its choice, it will be extremely difficult for the prosecution to lead direct evidence to establish the guilt of the accused. It is to resolve such a situation that Section 106 of the Evidence Act exists in the statute book. In the case of Trimukh Maroti Kirkan (supra), this Court observed that a Judge does not preside over a criminal trial merely to see that no innocent man is punished. The Court proceeded to observe that a Judge also presides to see that a guilty man does not escape. Both are public duties. The law does not enjoin a duty on the prosecution to lead evidence of such character, which is almost impossible to be led, or at any rate, extremely difficult to be led. The duty on the prosecution is to lead such evidence, which it is capable of leading, having regard to the facts and circumstances of the case."

(48) The learned Trial Court has also considered the evidence and material on record under the aforesaid circumstances and has recorded a finding that it is a case of circumstantial evidence, in which the motive and the opportunity of murder was with the accused persons and, consequently, the chain of circumstances has been proved, even after considering the possibilities of innocence referred by the accused persons. The learned Trial Court considered the evidence and material on record and further it found that after murder of deceased Ram Gopal, which has been proved beyond reasonable doubt, the dead body of the deceased was concealed in the house of Chhidu after digging a ditch to disappear the evidence of murder, therefore, the charge under Section 302 and 201 I.P.C. have been found proved and, accordingly, the accused-appellants have been convicted.

(49) This Court, upon considering the evidence and material on record and the aforesaid findings recorded by this Court, does not find any illegality or error in the findings recorded by the learned Trial Court and nothing could be pointed out before this Court, on account of which, there

may have been even a possibility of taking any other view on the evidence and material on record in favour of the accused-appellants.

(50) Thus, this Court is of the view that the impugned judgment and order has rightly been passed in accordance with law by a speaking and reasoned order after considering the evidence and material on record and there is no illegality or error in it. This appeal has been filed on misconceived and baseless grounds, which is liable to be dismissed.

(51) The appeal is, accordingly, dismissed upholding the impugned judgment and order passed by the learned Trial Court. The conviction of the appellants for the offences punishable under Sections 302 and 201 I.P.C. is upheld and the sentences awarded to them under Sections 302 and 201 I.P.C. are confirmed.

(52) Appellant no.1-Chhidu, appellant no.2-Rohan, appellant no.3-Smt. Sukhdei and appellant no.6-Raghubar have died, whereas the appellant no. 4-Daya Ram son of Chillu and the appellant no.5-Kallu alias Ram Kishore son of Shivadhar are alive and are on bail. The appellant no. 4-Daya Ram and the appellant no.5-Kallu alias Ram Kishore shall surrender within a period of two weeks from today before the Chief Judicial Magistrate, Sitapur, who shall send them to jail to serve out the sentence, failing which, the Chief Judicial Magistrate, Sitapur shall take appropriate steps in accordance with law for their arrest to serve out the sentence.

(53) Let a copy of this judgment alongwith Trial Court's Record be transmitted to the Court concerned forthwith and in any case within a period of one week from today for compliance.

(2026) 4 ILRA 43
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 21.04.2026

BEFORE

THE HON'BLE BRIJ RAJ SINGH, J.

Criminal Appeal No. 392 of 1991

Vijay Pal & Ors.

...Appellants

Versus

State

...Respondent

Issue for consideration

Matter pertains to legality of conviction order u/s 304 B IPC in delayed FIR without explanation and discrepancies in evidences.

Headnotes

Indian Penal Code-Section 304-B-owry death;Suicide-FIR- inordinate delay of nine days- after thought and consultation with the interested witnesses- no plausible explanation-entire prosecution case has been set up at the behest of two witnesses-both are interested witnesses- enmity between the parties is established- no pre-demand of dowry- ingredients of Section 498-A IPC are not found- post-mortem- Cause of death -

asphyxia as a result of ante-mortem hanging-no mark of injury external or internal was found - rather the deceased committed suicide by hanging herself due to severe illness- prosecution has miserably failed- if the medical evidence not corroborate with the statements of the fact witnesses- the conviction of the appellants on that basis cannot be permissible in law-**Appeal allowed.** (E-9)

Case Law Cited

1. Babu Vs. State of U.P., 2013 SCC OnLine All 13756;
2. Ramaiah alias Rama Vs. State of Karnataka, (2014) 9 SCC 365
3. Raju alias Balachandran and others Vs. State of Tamil Nadu, (2012) 12 SCC 701;
4. Mahesh Kumar Vs. State of Haryana, (2019) 8 SCC 128;
5. Prahlad Vs. State of Madhya Pradesh, (2024) 14 SCC 203.

List of Acts

Indian Penal Code, 1860

List of Keywords

Circumstances of the case; credible evidence; predemand of dowry; inordinate delay; ante-mortem hanging; asphyxia.

Appearances of parties

Counsel for Appellant(s) : U.P. Singh, Ajai Kr. Singh, Ajai Kumar Tripathi, Anil Tripathi, Raghvendra Kr. Singh, Vijay Kumar Tripathi **Counsel for Respondent(s)** : Govt. Advocate

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

1. The present appeal under Section 374(2) Cr.P.C. has been filed against the judgement and order dated 30.07.1991 passed by the IVth Additional Sessions Judge, Hardoi in Session Trial No.412 of 1990, Police Station Sandi, District Hardoi, thereby convicting and sentencing the appellants under Section 498-A IPC for three years rigorous imprisonment with a fine of Rs.5,000/- each and in default of payment of fine to further undergo additional imprisonment of one had a half year and under Section 304-B IPC for seven years rigorous imprisonment. However, all the sentences shall run concurrently.

2. Since Desh Raj, appellant no.4 and Smt. Ram Devi, appellant no.6 have died as per the office reports dated 18.04.2023 and 05.01.2021, the appeal against them is already dismissed as abated vide orders of this Court dated 07.01.2021 and 06.07.2023.

3. The prosecution case, in brief, is that on 12.08.1989 Smt. Jagdevi, wife of Subedar, submitted an application to the Superintendent of Police, Hardoi with the allegations that her daughter Bitana was married with accused Vijai Pal about two and a half years ago and during this period, she was beaten for several times in connection with dowry. She was also subjected to cruelty and harassment and she was threatened to bring she-buffalo, cycle and Masehari from her parents. It was also asked to her that if she would not bring the dowry, she would be killed. It is alleged that about seven months ago, her daughter was carried by accused Madan Pal after performing Vidai and since then her daughter Bitana remained in the house of accused Vijai Pal, and during this period she was also beaten severally in connection with the demand for dowry and was subjected to cruelty and harassment. Complainant-Smt. Jagdevi also went to the house of accused for Vidai of her daughter, but they did not perform her Vidai and she was asked that Vidai

will be not performed till the dowry is not received. The complainant went to the in-laws' place of her daughter a day before Tizian in Sawan for her Vidai and accused Vijai Pal asked her that if the dowry is not brought by her within two days, Vidai will never be performed and at that time Lala Ram, Dharm Jit Singh, Hari Singh and Shiv Kumar, residents of Village Samjalpur, P.S. Sandi and so many others were present. On 08.08.1989 at 4 A.M., the complainant came to know that her daughter has died. On suspecting that a week before her daughter was quite well, then how she died, the complainant went to the Police Station Sandi and submitted an application for lodging the FIR, but the same has not been lodged. It is alleged that at the time of post-mortem, thumb impression of her husband was taken on a blank paper without giving him any information. It is further alleged that in the night of occurrence, her daughter shouted loudly, on which Lala Ram came there and saw in the light of Torch that accused Vijai Pal and Madan Pal were throttling the neck of Bitana with Lathi and wife of Chet Ram gagged her mouth and accused Jagannath, Dash Raj and Jagat Ram were caught hold her. On being challenged by Lala Ram, body of Bitana was carried in side the Kothri by the accused by pulling it. When the complainant reached to the spot, the entire story told to her by Lala Ram.

4. On this typed report (Ext.Ka.1) of the complainant, Superintendent of Police, Hardoi Passed an order (Ext.Ka-5) for registration of the case and accordingly F.I.R. (Ext.Ka.3) was written at Police Station Sandi, District Hardoi on 17.08.1989 and the case was registered vide General Diary Report No.7 at 8 A.M., carbon copy of which is Ext.Ka.4. After conducting inquest, post-mortem was done and report (Ext.Ka.6) was prepared accordingly. During inquest, Sari of the deceased was recovered, which is Ext.Ka.13. During investigation, the Investigating Officer visited the spot and prepared site plan, which Ext.Ka.14.

5. The case was investigated by the Investigating Officer and after completing the investigation, charge sheets were filed under Sections 498-A and 304-B IPC and in the alternate under Section 306 IPC against the accused-appellants (Ext.Ka.15 and Ext.Ka.16). Charges were framed in the aforesaid sections. The accused pleaded not guilty and requested for trial.

6. The prosecution to prove its case, produced the following seven witnesses:-

P.W.1 Smt. Jagdevi (complainant)

P.W.2 Hari Singh (witnesses of fact)

P.W.3 Lala Ram (witnesses of fact)

P.W.4 C. Ram Bahadur Singh (scriber of FIR)

P.W.-5 Dr. S.S. Rathore

P.W.6 Sub-Inspector S.P. Pal

P.W-7 Sri Babu Ram, Investigating Officer

7. The accused were confronted under Section 313 Cr.P.C. and they denied the charges and pleaded before the court that they were falsely implicated in the case due to enmity.

8. P.W-1 Smt. Jagdevi has stated before the court that her daughter was married with accused Vijai Pal. Accused Madan Pal and Smt. Ram Devi are the brother and mother of accused Vijai Pal, whereas accused Jagannath and Deshraj and Jagat Ram are nephew and uncles of accused Vijai Pal and all the accused are residents of Village Samjalpur, P.S Sandi, District Hardoi, which is about five miles away from her village. She has further stated that marriage of her daughter took place with accused Vijai Pal three years ago and her daughter died one year and three months ago in the house of accused Vijai Pal and she was not having any child at the time of her death. She has also stated that when her daughter came back from her Sasural, she told her that her in-laws used to beat her and did not provide food to her and used to say to bring demanded articles from her parents. She also stated that before the death of her daughter she went to the Sasural of her daughter in the month of Baisakhi for her Vidai, then they sent her daughter with her and after a month, accused Vijai Pal took her daughter after getting her Vidai from her house. After that she again went to the house of accused persons one day prior to Tijia for Vidai of her daughter, but the accused persons did not perform her Vidai and said to bring demanded articles within ten days, otherwise they would kill her and would not perform her Vidai. Thereafter, she came back to her village. She has also stated that her daughter died a day after Tijia and information regarding which was brought by Udan, resident of the same village, who informed that her daughter has died, upon which she went to the village of accused persons, where accused persons did not allow her to see the dead body of her daughter. On the same day, she went to the Police Station Sandi, but the police asked her to bring written report, on which she went to the house of her maternal uncle Babu Lal at Sandi and with the help of Ram Sanahi, brother of Babu Lal, got her report written through Munshi and was submitted at the Police Station, but the police did not take any action on that report. Thereafter, on fourth day she came to Hardoi and in Kuchehri, she narrated the incident to a Munshi, who got her report typed, which was read over to her, then she put her thumb impression on it. She proved her report as Ext.Ka.1. She also stated that she went to the residence of Superintendent of Police, Hardoi, where she handed over that report. She further stated that her husband is not sane and she used to perform all the household works. She also stated that Sub-Inspector got thumb impression of her husband on a paper. She further stated that on getting information about the death of her daughter, she went at the house of Chet Ram, where Lala Ram and Hari Singh met her, who informed her that Vijai Pal and other inmates of his house have killed her daughter by throttling her with Lathi. She also stated that police went to the house of Chet Ram and at that time, she and her husband were present there and then she became able to see her daughter. She also stated that injury on her neck was visible.

9. P.W.-2 Hari Singh has stated that accused persons are known to him. Deceased-Bitana was the wife of Vijai Pal and her marriage was performed two and a half years before her death with Vijai Pal. Bitana was the resident of Village Baj Karehka, P.S. Bilgram and was the daughter of Subedar and she died about one year ago in the house of accused Vijai Pal in Village Sajalpur and she was killed by the accused persons. He further stated that his house is one furlong away from the house of Chet Ram and his agricultural field is near the house of Chet Ram. A day before Tijia, when mother of Bitana came at the house of Vijai Pal for her Vidai, the accused persons were talking about dowry outside their house in Galiyara and at that time, he was working in his field.

Vijai Pal and others were saying that till dowry is not provided to them, they would not perform Vidai of her daughter and when Vidai of Bitana was not performed, her mother went to her house. He further stated that a day after Tijia, he came to know that Bitana has been killed. He further stated that he did not go at the house of Chet Ram and on the noise of Lala Ram, he went at the roof of his house.

10. P.W.-3 Lala Ram has stated that accused persons are known to him and they are the residents of his Village. His house is adjacent to the house of accused persons in south and his father's name is Makrand. Daughter of Subedar, resident of Village Baj Karehka, was married with Vijai Pal one and a half year before her death. Her name was Bitana and she died one year and three months ago in the house of Vijai Pal. He further stated that on the date of incident he was lying on the roof of his house and court-yard of the house of accused persons is visible from his roof and at about 11 P.M. while he was sleeping, he heard the noise of Bitana and in the light of torch, he saw accused persons beating Bitana and on flashing his torch, accused immediately carried Bitana inside the Kothri.

11. In defence, accused-Vijai Pal stated before the court that proceedings under Section 107 Cr.P.C. took place between them and witnesses. Jagannath is his uncle and his wife used to remain ill due to severe pain in chest. In spite of so much treatment, she could not become well and, therefore, she committed suicide. Accused-Jagannath also stated that he gave statement against the witness Lala Ram. Accused-Desh Raj had further stated that proceedings under Section 107 Cr.P.C. took place between him and Lala Ram and Hari Singh. Mani Ram is his brother, who gave statement against the witness Hari Singh. He had further stated that there was a case under Section 324 IPC against Lala Ram, in which his father was witness. It has been stated under Section 313 Cr.P.C. that Lala Ram and Hari Singh have become witness only for the reason that their enmity with the appellants is established on record, otherwise they had not seen the occurrence.

12. The post-mortem of the deceased has been conducted by P.W.-5 Dr. S.S. Rathore and in the post-mortem, the following injury has been found on the body of the deceased:-

Ligature mark of size 26 cm x 1.6. cm around the neck obliquely placed between larynx and Chin with a gap of 6 cm present on left side of neck below and behind left ear. Mark grooved which had lathering on dissection along with glistening subcutaneous tissue with margin congested.

13. Cause of death is asphyxia as a result of ante-mortem hanging.

14. The trial court after examining the witnesses and adducing the evidence on record, convicted the appellants as mentioned above. Hence, the present appeal has been filed.

15. Sri Ajay Kumar Singh, counsel for the appellants has submitted that as per the FIR, the incident took place on 08.08.1989 and the inquest report was prepared on 08.08.1989 itself. Father of the deceased, namely, Subedar and her uncle Nanhe Lal were present at the time of inquest. He has further submitted that even the mother of the deceased was present at the time of inquest, which fact is also admitted by her in her cross-examination. But surprisingly no FIR was ever lodged, rather an application was given to the Superintendent of Police, Hardoi on 12.09.1989 and on

whose direction, the FIR was lodged on 17.08.1989 and a vague explanation has been given that the police did not lodge the report. Counsel for the appellants has further submitted that there is inordinate delay in lodging the FIR and after nine days from the date of incident, the FIR was lodged, which is an after thought and there is no plausible explanation has come forward from the side of the prosecution, therefore, the entire prosecution case is highly doubtful on this ground alone.

16. Counsel for the appellants has invited the attention of the Court towards the post-mortem report, which indicates that there is no external or internal injury found on the person of the deceased except the ligature mark. Cause of death is asphyxia due to ante-mortem hanging. He has further submitted that post-mortem report falsifies the version of the prosecution in the FIR as well as in the statement of the fact witnesses i.e. P.W.-2 Hari Singh and P.W.-3 Lala Ram. P.W.-3 Lala Ram deposed before the court that in the light of torch, he had seen that accused Vijai Pal, Madan Pal, Desh Raj and Jagannath were assaulting the deceased-Bitana by kicks and fists. P.W.-3, Lala Ram further stated that accused had throttled the neck of the deceased with Lathi, due to which she died. However, he has changed his version before the court while he was examined by the defence side. He has further submitted that since there are material contradictions in the statements of the fact witnesses i.e. P.W.-2 Hari Singh and P.W.-3 Lala Ram and on whose persuasion, the complainant moved an application to the Superintendent of Police, Hardoi for registration of the FIR against the appellants and further the injury mentioned in the post-mortem report does not corroborate with the statements of the fact witnesses, it is clear that the appellants have been falsely implicated in the case and on this ground also the appellants cannot be convicted.

17. Counsel for the appellants has further submitted that P.W.-2 Hari Singh and P.W.-3 Lala Ram are the interested witnesses and they persuaded the complainant to lodge an FIR against the appellants on assurance that they become witnesses of the case as they wanted to settle their personal score on account of enmity between the accused and these witnesses Lala Ram and Hari Singh, which is evident from their statements. Therefore, the statements of P.W.-2 Hari Singh and P.W.-3 Lala Ram, who are interested and inimical witnesses, cannot be relied upon and on that basis, the applicants cannot be convicted in view of the settled law of the Hon'ble Supreme Court in this regard. In support of his contention, counsel for the appellants has placed reliance upon the following judgments:-

1. Babu Vs. State of U.P., 2013 SCC OnLine All 13756;
2. Ramaiah alias Rama Vs. State of Karnataka, (2014) 9 SCC 365;
3. Raju alias Balachandran and others Vs. State of Tamil Nadu, (2012) 12 SCC 701;
4. Mahesh Kumar Vs. State of Haryana, (2019) 8 SCC 128; and
5. Prahlad Vs. State of Madhya Pradesh, (2024) 14 SCC 203.

18. Sri Piyush Kumar Singh, learned AGA while rebutting the arguments of learned counsel for the appellants has submitted that seven witnesses have been examined and they have proved

their case. He has further submitted that prosecution case is corroborated with medical examination, therefore, no interference is called for by this Court and the appeal is liable to be dismissed.

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

20. So far the argument of counsel for the appellants regarding inordinate delay in lodging the FIR is concerned, it is to be noted that as per the FIR, the incident took place on 08.08.1989 and the inquest report was prepared on 08.08.1989 itself in the presence of father and uncle of the deceased, namely, Subedar and Nanhe Lal. Even according to the cross-examination of the complainant, who is the mother of the deceased, she was also present at the time of inquest, but surprisingly no FIR was lodged immediately, rather an application was given to the Superintendent of Police, Hardoi on 12.09.1989 by the complainant and on whose direction, the FIR was lodged on 17.08.1989. Therefore, there is inordinate delay of nine days in lodging the FIR, which is an after thought and consultation with the interested witnesses and no plausible explanation has come forward from the side of the prosecution except a vague explanation that police did not lodge the report, which cast doubt on the prosecution case.

21. The law in this regard is settled by the Hon'ble Supreme Court in the case of Ramaiah alias Rama (supra) that it was necessary for the prosecution to at least come forward with the explanation as to why the complainant kept quiet and why she did not report the matter to the police immediately. No such explanation is coming forward in the present case. Moreover, in the instant case, the delay is seen as fatal when examined in juxtaposition with other material that has come on record and discussed above, which shakes the veracity of the prosecution case, bringing it within the four corners of doubtful prosecution story. In paragraph-25 of the aforesaid judgement, it has been held as under:-

We may hasten to add here that many times in such type of cases, there can be reasons for keeping quiet at the given time and not reporting the matter immediately. Therefore, we are conscious of the legal position that delay per se may not render prosecution case doubtful as there may be various reasons for lodging the FIR with some delay (see Sahebrao v. State of Maharashtra [(2006) 9 SCC 794 : (2006) 3 SCC (Cri) 408]). Thus, there is no hard-and-fast rule that any delay in lodging the FIR would automatically render the prosecution case doubtful. However, what is emphasised is that if that was so, it was necessary for the prosecution to at least come forward with the explanation as to why the complainant kept quiet and why he did not report the matter to the police immediately. No such explanation is coming forward in the present case. Moreover, in the instant case, the delay is seen as fatal when examined in juxtaposition with other material that has come on record and discussed above, which shakes the veracity of the prosecution case, bringing it within the four corners of doubtful prosecution story.

22. In the case of Babu (supra), this Court has observed that the incident of the said case took place on 04.04.1989 while the FIR of the case was lodged on 13.04.1989. The application to the Senior Superintendent of Police was moved by the complainant on 12.04.1989 and the FIR was lodged after nine days. The delay in lodging the FIR can be one of the factors, which carries the

credibility of the prosecution. In paragraphs 28 and 29 of the aforesaid judgment, it has been held as under:-

28. In the instant case the occurrence is alleged to have taken place on 4.4.1989 while the FIR of this case was lodged on 13.4.1989. The application to the SSP was moved by the complainant on 12.4.1989, therefore, the FTR was lodged after a delay of 9 days, while admittedly the occurrence had come to the notice of the complainant and other family members of the deceased on the date of occurrence and they had visited the place of occurrence, participated in the inquest proceedings and also went up to the Hospital and thereafter handed over the dead body to the appellants. In this case there is a considerable delay in lodging the FIR. Hon'ble Apex Court in the case of *Jitendra Kumar v. State of Haryana*, (2012) 6 SCC 204 : (AIR 2012 SC 2488) has considered the effect of delay in FIR on the prosecution case and has held that "it is a settled principle of criminal jurisprudence that mere delay in lodging the FIR may not prove fatal in all cases but in the giving circumstance of the case, delay in lodging the FIR can be one of the factors which carried the credibility of the prosecution version. The delay in lodging the FIR cannot be a ground by itself for throwing away the entire prosecution case. The Court has to seek an explanation over the delay and check the truthfulness of the version to be forwarded. If the Court is satisfied with the explanation then the case of the prosecution cannot fail on this ground alone.

29. It is true that if it is so found that the FIR has been lodged after a considerable delay and no satisfactory explanation is coming forward then an inference would rightly follow that the prosecution story may involve some facts after consultation, on the contrary if it is found that there is no delay in recording the FIR the prosecution story stands immeasurably strengthened.

23. So far the argument of counsel for the appellants that there are material contradictions in the statements of the fact witnesses is concerned, it is to be noted that in the FIR, the complainant has stated that in the night when the incident took place, her daughter was shouting loudly, on which P.W.-3 Lala Ram had seen the incident in the light of torch that accused Vijai Pal and Madan Pal were throttling the neck of the deceased with Lathi and wife of Chet Ram had gagged her mouth. Jagannath and Desh Raj were dragging the body of the deceased inside the Kothri. However, during cross-examination, they have changed their version particularly P.W.-3 Lala Ram, who said the aforesaid fact, denied the version that he never gave such statement to the police that accused throttled the neck of the deceased with Lathi. The witnesses of fact i.e. P.W.-2, Hari Singh and P.W.-3 Lala Ram have changed their version during cross-examination only for the reason that post-mortem report does not indicate any external or internal injury on the person of the deceased, rather she died due to asphyxia as a result of ante-mortem hanging. The deceased might have committed suicide for the reason that she was suffering from severe illness. Therefore, the entire prosecution case, which is based on the statements of P.W.-2 Hari Singh and P.W.-3 Lala Ram, has been shattered because of material contradictions in their statements, who have set up a case at one point of time and change the same at a later point of time just to improve the prosecution case. It is settled law time and again that if there are material contradictions in the statements of the witnesses of fact, which is the basis of the prosecution case, then there is bleak chance of conviction of the accused on that basis.

24. One important fact to be noted here is that injury mentioned in the post-mortem report does not corroborate with the statements of the witnesses of fact as they have stated that appellants have beaten the deceased with fists and kicks and thereafter they throttled her neck with Lathi and dragged her body in the Kothri. However, in the post-mortem report, no external or internal injury was found on the body of the deceased except the ligature mark, which itself falsifies the prosecution case. The law in this regard is settled that if the medical evidence on record does not corroborate with the statements of the fact witnesses, the conviction of the appellants on that basis cannot be permissible in law.

25. So far the argument of counsel for the appellants that since P.W.-2 Hari Singh and P.W.-3 Lala Ram are the interested and inimical witnesses, their statements cannot be relied upon and on that basis, the appellants cannot be convicted, is concerned, it is to be noted that P.W.-1 Jagdevi admitted in her cross-examination that P.W.-2 Hari Singh and P.W.-3 Lala Ram told that her daughter was throttled by the accused with Lathi, due to which she died and on their statement, she had given information to the police. Thus, it is clear that the entire prosecution case has been set up by the complainant at the behest of these two witnesses. Lala Ram and Hari Singh are interested witnesses and the enmity between the parties is established on record. More over, P.W.-2 Hari Singh in his cross-examination has admitted that Ram Kishun is belonging to his village and one criminal case under Section 107/117 Cr.P.C. is pending between him and the accused along with Ram Kishun and he was arrested in the said case. An arm was also recovered from his possession and a false case was lodged against him. Similarly, P.W.-3 Lala Ram has also deposed before the court that Shiv Kumar is his cousin brother. Ram Kishun had lodged a case under Section 324 IPC and in the said case, accused Jagannath was witness. P.W.-1 Jagdevi has specifically admitted in her cross-examination that P.W.-2 Hari Singh and P.W.-3 Lala Ram persuaded her to lodge the FIR on assurance that they would become witnesses of the case as they wanted to settle their personal score with the appellants because of enmity between them. Both independent witnesses Hari Singh and Lala Ram are interested witnesses and their enmity with the appellants is established on record particularly they themselves have deposed before the court that enmity with the accused was going on. Thus, testimony of P.W.-2 Hari Singh and P.W.-3 Lala Ram cannot be relied upon and taken into consideration while convicting the appellants.

26. In the case of Raju alias Balachandran (supra), Hon'ble Supreme Court has considered the issue of interested and inimical witnesses and has observed that PW-5 Srinivasan is not only a related and interested witness, but also someone who has an enmity with the appellants. His evidence, therefore, needs to be scrutinised with great care and caution. In paragraphs 24, 25 and 26 of the aforesaid judgment, it has been held as under:-

24. For the time being, we are concerned with four categories of witnesses: a third party disinterested and unrelated witness (such as a bystander or passer-by); a third party interested witness (such as a trap witness); a related and therefore an interested witness (such as the wife of the victim) having an interest in seeing that the accused is punished; a related and therefore an interested witness (such as the wife or brother of the victim) having an interest in seeing the accused punished and also having some enmity with the accused. But, more than the categorisation of a witness, the issue really is one of appreciation of the evidence of a witness. A court should examine the evidence of a related and interested witness having an interest in seeing the accused

punished and also having some enmity with the accused with greater care and caution than the evidence of a third party disinterested and unrelated witness. This is all that is expected and required.

25. In the present case, PW 5 Srinivasan is not only a related and interested witness, but also someone who has an enmity with the appellants. His evidence, therefore, needs to be scrutinised with great care and caution.

26. In *Dalip Singh v. State of Punjab* [(1953) 2 SCC 36: AIR 1953 SC 364 : 1953 Cri LJ 1465 : 1954 SCR 145] this Court observed, without any generalisation, that a related witness would ordinarily speak the truth, but in the case of an enmity there may be a tendency to drag in an innocent person as an accused?each case has to be considered on its own facts. This is what this Court had to say: (AIR p. 366, para 26)

26. A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily, a close relation would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth. However, we are not attempting any sweeping generalisation. Each case must be judged on its own facts. Our observations are only made to combat what is so often put forward in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts.

27. In the case of *Prahlad* (supra), Hon'ble Supreme Court has considered the question of veracity and credibility of the statements of the interested and inimical witnesses. In paragraph 42 of the aforesaid judgment, it has been held as under:-

42. It is also equally well settled that previous enmity is a double-edged sword. Though, it can provide a motive for the crime, it can also be a ground for false implication. Reliance in this respect, could be made on the judgment of this Court in *Ramashish Rai v. Jagdish Singh* [*Ramashish Rai v. Jagdish Singh*, (2005) 10 SCC 498 : 2005 SCC (Cri) 1611], wherein this Court has observed thus: (SCC p. 501, para 7)

7. By now, it is well-settled principle of law that enmity is a double-edged sword. It can be a ground for false implication. It also can be a ground for assault. Therefore, a duty is cast upon the court to examine the testimony of inimical witnesses with due caution and diligence.

28. So far the ingredients of Sections 498-A and 304-B IPC in the case of appellants are concerned, it is to be noted that P.W.-1 Jagdevi in her statement has stated that at the time of Bidai, accused Vijai Pal, Jagannath and Madan Pal had demanded a she-Buffalo, bicycle and Masehri, on which she had told them that she will provide the aforesaid dowry later on. After fifteen days from the Gowna, the deceased came back to her parents house and told that she was being harassed and

beaten by her in-laws and they were demanding the dowry. However, in spite of the aforesaid allegation, no FIR or report was ever lodged either by the deceased or by her parents. Thus, it is a case where there is no pre-demand of dowry because no FIR was ever lodged before the death of the deceased. Thus, the ingredients of Section 498-A IPC are not found in the present case. So far the offence under Section 304-B IPC is concerned, it has been submitted that the prosecution case has been shifted from the version of the FIR when the prosecution witnesses were examined before the court. In the FIR, allegation is levelled that the deceased was throttled by the accused and the incident was witnessed by the witnesses Lala Ram and Hari Singh, but during cross-examination, they have denied the aforesaid version and they have said that the deceased committed suicide because of the dowry demand and torture made by the accused. It is relevant to note here that alternative charge under Section 306 IPC was also framed, but the trial court did not find the charge was proved under Section 306 IPC, rather appellants have been convicted under Sections 498-A and 304-B IPC.

29. In the case of Mahesh Kumar (supra), the issue of soon before death where dowry demand report is lodged has been considered by the Hon'ble Supreme Court, wherein it has been held that for the offence under Section 304-B IPC, the prosecution has to prove that harassment and cruelty were related to the demand of dowry soon before the death. In paragraphs 10, 11 and 12 of the aforesaid judgment, it has been held as under:-

10. This Court in *Satvir Singh v. State of Punjab* [*Satvir Singh v. State of Punjab*, (2001) 8 SCC 633 : 2002 SCC (Cri) 48] examining the significance and implication of the use of the words 'soon before her death' in Section 304-B, has held as under: (SCC pp. 642-43, paras 20 & 22)

20. Prosecution, in a case of offence under Section 304-B IPC cannot escape from the burden of proof that the harassment or cruelty was related to the demand for dowry and also that such cruelty or harassment was caused 'soon before her death'. The word 'dowry' in Section 304-B has to be understood as it is defined in Section 2 of the Dowry Prohibition Act, 1961. That definition reads thus:

2. Definition of 'dowry'.? In this Act, 'dowry' means any property or valuable security given or agreed to be given either directly or indirectly?

(a) by one party to a marriage to the other party to the marriage; or

(b) by the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person;

at or before or any time after the marriage in connection with the marriage of the said parties, but does not include dower or mahr in the case of persons to whom the Muslim Personal Law (Shariat) applies.

22. It is not enough that harassment or cruelty was caused to the woman with a demand for dowry at some time, if Section 304-B is to be invoked. But it should have happened soon before

her death. The said phrase, no doubt, is an elastic expression and can refer to a period either immediately before her death or within a few days or even a few weeks before it. But the proximity to her death is the pivot indicated by that expression. The legislative object in providing such a radius of time by employing the words soon before her death? is to emphasise the idea that her death should, in all probabilities, have been the aftermath of such cruelty or harassment. In other words, there should be a perceptible nexus between her death and the dowry-related harassment or cruelty inflicted on her. If the interval which elapsed between the infliction of such harassment or cruelty and her death is wide the court would be in a position to gauge that in all probabilities the harassment or cruelty would not have been the immediate cause of her death. It is hence for the court to decide, on the facts and circumstances of each case, whether the said interval in that particular case was sufficient to snuff its cord from the concept ?soon before her death

11. In *Hira Lal v. State (NCT of Delhi)* [*Hira Lal v. State (NCT of Delhi)*, (2003) 8 SCC 80 : 2003 SCC (Cri) 2016] , this Court held that there must be material to show that soon before her death the victim was subjected to cruelty or harassment. The prosecution has to rule out the possibility of a natural or accidental death so as to bring it within the purview of death occurring otherwise than in normal circumstances. It was held as under:(SCC pp. 86-87, para 9)

9. A conjoint reading of Section 113-B of the Evidence Act and Section 304-B IPC shows that there must be material to show that soon before her death the victim was subjected to cruelty or harassment. The prosecution has to rule out the possibility of a natural or accidental death so as to bring it within the purview of death occurring otherwise than in normal circumstances. The expression ?soon before? is very relevant where Section 113-B of the Evidence Act and Section 304-B IPC are pressed into service. The prosecution is obliged to show that soon before the occurrence there was cruelty or harassment and only in that case presumption operates. Evidence in that regard has to be led by the prosecution. ?Soon before? is a relative term and it would depend upon the circumstances of each case and no straitjacket formula can be laid down as to what would constitute a period of soon before the occurrence. It would be hazardous to indicate any fixed period, and that brings in the importance of a proximity test both for the proof of an offence of dowry death as well as for raising a presumption under Section 113-B of the Evidence Act. The expression ?soon before her death? used in the substantive Section 304-B IPC and Section 113-B of the Evidence Act is present with the idea of proximity test. No definite period has been indicated and the expression ?soon before? is not defined. A reference to the expression ?soon before? used in Section 114 Illustration (a) of the Evidence Act is relevant. It lays down that a court may presume that a man who is in the possession of goods ?soon after the theft, is either the thief or has received the goods knowing them to be stolen, unless he can account for their possession?. The determination of the period which can come within the term ?soon before? is left to be determined by the courts, depending upon facts and circumstances of each case. Suffice, however, to indicate that the expression ?soon before? would normally imply that the interval should not be much between the cruelty or harassment concerned and the death in question. There must be existence of a proximate and live link between the effect of cruelty based on dowry demand and the death concerned. If the alleged incident of cruelty is remote in time and has become stale enough not to disturb the mental equilibrium of the woman concerned, it would be of no consequence.

12. In Sakatar Singh v. State of Haryana [Sakatar Singh v. State of Haryana, (2004) 11 SCC 291 : 2004 SCC (Cri) Supp 58] , the Court was examining as to whether, letter written by the deceased discloses an offence under Section 304-B IPC. It was held that: (SCC p. 297, para 11)

11. In the above background, we will now consider the evidence led by the prosecution to establish the charge levelled against the appellants. In this process, we will first examine the letter written by the deceased to her mother. Though this letter does not mention the date, there is no dispute that the same was posted on 20-5-1986 which is evident from the postal seal found on the envelope which would be a date prior to the incident leading to the death of Devinder Kaur and the children. The contents of the letter indicate what transpired during her mother's visit to her in-laws' house and does not anywhere even remotely indicate any demand made by her in-laws. It only reflects the attitude of the deceased towards her in-laws and that she entertained a feeling that her mother was not properly treated by her mother-in-law during her last visit.

30. After going through the contents of the FIR, statements of P.W.-1, Jagdevi, P.W.-2 Hari Singh and P.W.-3 Lala Ram and their cross-examination, it is amply clear that there are material contradictions in their statements and further they have shifted the version of the FIR only for the reason that in the report of the post-mortem, no mark of injury external or internal was found on the person of the deceased, rather the deceased committed suicide by hanging herself due to severe illness.

31. Considering the over all facts and circumstances of the case and the evidence on record, it transpires that the prosecution has miserably failed to prove the case by leading cogent and credible evidence. The trial court has failed to appreciate the evidence on record in the correct perspective. Therefore, conviction of the appellants is not sustained in law and it amounts to abuse of process of law.

32. Accordingly, the appeal is allowed and the impugned judgement and order dated 30.07.1991 passed by the IVth Additional Sessions Judge, Hardoi in Session Trial No.412 of 1990, Police Station Sandi, District Hardoi is hereby quashed. The appellants no.1, 2, 3 and 5 are on bail. Their bail bonds are cancelled and sureties are discharged. They need not surrender unless required in any other case. However, appellants are directed to comply the provisions of Section 437A Cr.P.C.

33. Let lower court record be sent back forthwith along with a copy of this judgement and order for compliance.

(2026) 4 ILRA 55
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 20.04.2026

BEFORE
THE HON'BLE RAJNISH KUMAR, J.
THE HON'BLE ZAFEER AHMAD, J.

Criminal Appeal No. 522 of 1983

Ram Pratap
State of U.P.

...Appellants
Versus
...Respondent

Issue for consideration

Whether crucial ingredients u/s 210 IPC is duly established in the conviction order.

Headnotes

Indian Penal Code-sec. 201, 149-Ocular evidence clearly establishes the presence and participation of the accused-appellants in the commission of the offence- death of the deceased is established-the prosecution has failed to prove the crucial ingredient of "causing disappearance of evidence" by the accused persons-mere fact that the dead body was found at a place different from the alleged place of occurrence is not sufficient to hold that the accused had caused disappearance of evidence- in the absence of proof of such act and the requisite intention to screen themselves-charge under Section 201 I.P.C. is not made out-the prosecution has failed to establish the charge under Section 201 read with Section 149 I.P.C.-conviction under Sections 302 read with Section 149 I.P.C.; Section 147 I.P.C.; Section 325 read with Section 149 I.P.C.; and Section 323 read with 149 I.P.C. is affirmed-**Appeal partly allowed.** (E-9)

Case Law Cited

1. Sukhram v. State of Maharashtra; (2007) 7 SCC 502
2. Palvinder Kaur v. State of Punjab; (1952) 2 SCC 177
3. Vinubhai Ranchhodbhai Patel v. Rajivbhai Dudabhai Patel, (2018) 7 SCC 743

List of Acts

Indian Penal Code, 1860

List of Keywords

Overt act; ocular version; recovered; facilitated the commission of the offence; intention to screen the offender; causing disappearance of evidence; disappearance of evidence.

Appearances of parties

Counsel for Appellant(s) : S/Shri K.P. Singh, Santosh Kumar Tripathi, Shiv S.E. Chitambar

Counsel for Respondent(s) : Ld. Govt. Advocate, S/Shri Abhishek Awasthi, Abhishek Ranjan, Purnendu Chakravarty

(Delivered by Hon'ble Zafeer Ahmad, J.)

1. Heard, Sri Nagendra Mohan learned Senior counsel assisted by Sri Shiv S.E. Chitambar, learned counsel for the appellants, Sri Purnendu Chakravarty learned Senior counsel assisted by Sri Pranjal Jain, learned counsel for the complainant and learned A.G.A. for the State. Perused the records.

2. The aforesaid criminal appeals arises out of the common judgment and order dated 18.07.1983 passed by IIIrd Additional District & Session Judge, Pratapgarh in Session Trial No. 227 of 1982 (State v. Rama Pati Misra & Ors.) arising out of case crime no. 146 of 1982, Police Station Badhrai, Sub-District Kunda, District Pratapgarh, whereby the appellants have been convicted and sentenced under Section 302 of Indian Penal Code (in short I.P.C.) r/w Section 149 I.P.C. for life imprisonment, under Section 325 I.P.C. r/w Section 149 I.P.C for one year of rigorous imprisonment, under Section 323 I.P.C r/w Section 149 I.P.C for six months rigorous imprisonment, under Section 201 I.P.C r/w 149 I.P.C for five years rigorous imprisonment. It has further been provided that appellant Ram Pratap has to undergo further sentence for one year rigorous imprisonment under Section 148 I.P.C..

3. Since all the aforesaid criminal appeals arise out of a common judgment and order dated 18.07.1983, as such same have been heard together and decided by a common order.

Prosecution Story in Nutshell:

4. The prosecution story, in brief, is that on 05.09.1982 complainant Shyam Shankar Tripathi s/o Surya Narayan r/o Gogaur, Police Station Badhrai, District Pratapgarh submitted a written report stating therein that a land dispute was pending between the informant's uncle, Chandra Prakash Tiwari, son of Mewalal Tiwari, and Ramapati and Salik Ram Agayara of his village, on account of which the accused persons were harbouring enmity against the deceased. On 05.09.1982 at around 6:00 P.M., while the deceased was sitting at his door and talking to Salik Ram Pradhan and Pati Ram Upadhyay, Radhe Krishna s/o Ram Khelawan came and called him on the pretext that a peon from the Tehsil was calling for him. Thereafter when he reached the southern road near the house of Ram Khelawan, he was surrounded by Ramapati Mishra, Salik Ram Misra, Ram Khelawan, and Triveni Prasad Mishra (sons of Devata Din), Ram Khelawan (son of Suraj Din), Ram Asray Radhe Shyam, Radhey Mohan and Randhey Krishna (sons of Ram Khelawan), Mithlesh Kumar, Dharendra Kumar and Rakesh Kumar (sons of Salik Ram) and Om Prakash (son of Triveni Prasad), who caught hold of him and started assaulting him with lathis. On hearing the cries of the deceased, the complainant along with his father Suryanarayan, Dhruv Prakash, Satya Prakash, Salik Ram (Pradhan), Pati Ram Upadhyay, Jagan, Jagdev, his two aunts (chachi) and one paternal aunt (bua) reached the spot and attempted to intervene but the accused persons threatened them of dire consequences and prevented them from rescuing the deceased. It is alleged that even the women, who tried to shield the deceased, were assaulted and forcibly pushed aside. It is further stated that Ram Pratap, brother-in-law of Ram Asrey, who was present at the spot with other associates, threatened the witnesses with firearms, due to which they could not come near. The accused persons continued to beat the deceased with lathis in the presence of the witnesses, as a result of which he succumbed to the injuries. It is also alleged that the accused persons attempted to conceal the dead body.

5. On the basis of the written report, an F.I.R was registered by Head Moharrir Irshad Ahmad and the corresponding GD entry was also made. The investigation of the case was entrusted to S.I. Raj Deo Yadav, who proceeded to the place of occurrence and reached there at around 1:45 A.M. on 06.09.1982. Upon arrival, the dead body was not found at the alleged place of occurrence; however, after a brief search, the same was recovered from the field of Gaya Prasad. Owing to insufficient light, the inquest proceedings could not be conducted at that time and a constable along with a chaukidar was deputed to guard the dead body. Thereafter, information was received that some of the accused persons were hiding in the house of Ram Khelawan, whereupon S.I. Shyam Mani Singh along with police personnel was deputed to keep surveillance. On the morning of 06.09.1982 at about 6:00 A.M., the Investigating Officer conducted the inquest proceedings and prepared the panchayatnama (Ext. Ka-18), along with relevant papers including challan lash, photo lash, and sample seal, and sealed the dead body, which was sent for post-mortem to District Hospital, Pratapgarh in the custody of Constable Satyendra Yadav and Constable Kanhaiya Lal.

6. Upon completion of investigation, charge-sheet was submitted under Sections 147, 148, 149, 323, 325, 302 and 201 IPC against accused Ram Khelawan, Salik Ram, Triveni Prasad, Ram

Asrey, Rakesh Kumar, Radhey Krishna, Dharendra Kumar, Ramapati, Radhey Mohan, Radhey Shyam, Mithilesh Kumar, Om Prakash and Ram Pratap. The trial court framed charges under Sections 148, 302/149, 325/149, 323/149 and 201/149 IPC against accused Ram Pratap, while separate charges under Sections 147, 302/149, 325/149, 323/149 and 201/149 IPC were framed against the remaining twelve (Ram Khelawan, Rakesh Kumar, Rmapati Misra, Salik Ram Misra, Triveni Prasad Misra, Mithilesh Kumar, Dharendra Kumar, Om Prakash, Ram Asray, Radhey Shyam, Radhey Mohan and Radehy Krishna) accused persons.

7. In order to prove its case, the prosecution examined Shyam Shankar Tripathi (P.W.-1), Jagannath @ Jagan (P.W.-2), Smt. Susheela Devi (P.W.-3), Dr. D.C. Srivastava (P.W.-4), Dr. Sampurna Nand (P.W.-5), Constable Lallan Singh (P.W.-6), Constable Indra Bahadur Singh (P.W.-7), Constable Satyendra Yadav (P.W.-8) and S.I. Raj Deo Yadav (P.W.-9).

8. Following exhibits were produced and proved before the Trial Court by prosecution:

Exhibit	Particular
Ext. Ka 1	Written Report
Ext. Ka 2	Post Mortem Report of deceased Chandra Prakash Tewari
Ext. Ka 3	Injury Report of Sushila Devi
Ext. Ka 4	Injury Report of Savitri Devi
Ext. Ka 5	Injury Report of Krishna Kali
Ext. Ka 6	Copy of F.I.R and copy of Written Report
Ext. Ka 7	Copy of General Diary Entry
Ext. Ka 8	Recovery Memo of one country made pistol (katta 12 bore)
Ext. Ka 9	Copy of Report containing details of goods to be sent to Sadar Hospital with Constable Lallan Singh
Ext. Ka 10	Copy of Report containing details of return of Constable Lallan Singh after delivery of goods
Ext. Ka 11	Recovery Memo of blood stained grass from the route from which deceased body was dragged
Ext. Ka 12	Recovery Memo of bloodstained and plain soil, blood stained leaves of urad and arhar plants leaves near the body of deceased Chandra Prakash
Ext. Ka 13	Recovery Memo of House Search of Salikram s/o Devatadeen
Ext. Ka 14	Recovery Memo of House Search of Rama Pati s/o Devatadeen
Ext. Ka 15	Sample seal
Ext. Ka 16	Letter to CMO
Ext. Ka 17	Letter to CMO
Ext. Ka 18	Panchayatnama
Ext. Ka 19	Police Form No. 13

Ext. Ka 20	Sketch of Dead body (photo naash)
Ext. Ka 21	Copy of F.I.R
Ext. Ka 22	Recovery Memo of a license gun BSA A/946 SBBL and 10 cartridges of 5 and 5.2 number in a plastic bag from house of Ram Pratap
Ext. Ka 23	X-ray Report and Plate of the injury in hand of Sushila Devi
Ext. Ka 24	Receipt of animals kept in animal shed (maveshikhaana)
Ext. Ka 25	Recovery Memo of Blood Stained Shirt found in the garbage of house of Radhey Shyam and Radhey Mohan
Ext. Ka 26	Attachment order of accused Radhey Shyam
Ext. Ka 27	Attachment order of accused Radhey Mohan
Ext. Ka 28	Auction Memo of movable property of accused Radhey Shyam, Radhey Mohan s/o Ram Khelawan
Ext. Ka 29	Receipt of animals kept in animal shed (maveshikhaana)
Ext. Ka 30	Auction memo of movable property of accused Mithilesh Kumar
Ext. Ka 31	Receipt of animals kept in animal shed (maveshikhaana)
Ext. Ka 32	Arrest warrant of accused Rama Pati
Ext. Ka 33	Auction Memo of movable property of accused Rama Pati
Ext. Ka 34	Receipt of animals kept in animal shed (maveshikhaana)
Ext. Ka 35	Arrest warrant of accused Om Prakash
Ext. Ka 36	Attachment order of accused Om Prakash
Ext. Ka 37	Auction Memo of movable property of accused Om Prakash
Ext. Ka 38	Receipt of animals kept in animal shed (maveshikhaana)
Ext. Ka 39	Attachment order of accused Ram Pratap
Ext. Ka 40	Site Plan
Ext. Ka 41	Recovery memo of blood stained and plain soil taken into possession at the place of incident
Ext. Ka 42	Recovery Memo of blood stained doorframe (beniya-chaukhat) from house of Ram Khelawan
Ext. Ka 43	Recovery Memo of house search of accused Triveni Prasad
Ext. Ka 44	Copy of Report
Ext. Ka 45	Attachment order of accused Rama Pati
Ext. Ka 46	Attachment order of accused Ram Pratap
Ext. Ka 47	Charge sheet
Ext. Ka 48	Charge sheet
Ext. Ka 49	Copy of Munsif's Court order (Satya Prakash v. Ramapati and Ors.)

Ext. Ka 50	Copy of Decree (Satya Prakash v. Ramapati and Ors.)
Ext. Ka 51	Copy of application of Criminal Revision (Criminal Revision No. 87/1982, Surya Naryan v. Salik Ram and Ors.)
Ext. Ka 52	Copy of Munsif's Court order (Ram Asray v. Satya Prakash)
Ext. Ka 53	Report of SHO Badhrai
Ext. Ka 54	Copy of Execution Court Order
Ext. Ka 55	Copy of Order in appeal no. 1991/1057
Ext. Ka 56	Forensic Serology Report of Material Exhibits 1 to 8
Ext. Ka 57	Letter from Assistant Chemical Analyser to Chief Judicial Magistrate (Miscellaneous Form No. 5-F)
Ext. Ka 58	Auction Memo of movable property of accused Mithilesh Kumar

9. In order to prove its case, the defence examined D.K. Sahu (DW-1) and proved following exhibits in their defence:

Exhibit	Particular
Ext. Kha 1	Part of Jagannath's (PW-2) testimony
Ext. Kha 2	Part of Jagannath's (PW-2) testimony
Ext. Kha 2A	Part of Sushila Devi's (PW-3) testimony
Ext. Kha 3	Copy of Jagannath's (PW-2) testimony
Ext. Kha 5	Copy of Jagannath's (PW-2) testimony
Ext. Kha 6	Copy of Injury Report of Salikram
Ext. Kha 7	Copy of Injury Report of Ram Asrey
Ext. Kha 8	Copy of Injury Report of Triveni Prasad
Ext. Kha 9	Copy of Injury Report of Radhey Krishna
Ext. Kha 10	Copy of Injury Report of Ram Khelawan

10. Following material exhibits were produced and proved before the Trial Court:

Material Exhibit	Particular
Material Ext.-1	Plain earth from the place where the assault occurred
Material Ext.-2	Blood-stained earth from the place where the assault occurred
Material Ext.-3	Door frame (Beniya)
Material Ext.-4	Grass (the alleged route from which the deceased body was dragged from the eastern house of Ram Khelawan upto the Guru Prasad's field)

Material Exhibit	Particular
Material Ext.-5	Blood-stained earth from the field of Guru Prasad (place where the dead body was discovered)
Material Ext.-6	Plain earth from the field of Guru Prasad (Place where the dead body was discovered)
Material Ext.-7	Leaves from the agricultural field of Guru Prasad (Place where the dead body was discovered)
Material Ext.-8	Blood-stained white shirt
Material Ext.-9	Lungi (traditional cloth draped by men around their waist)
Material Ext.-10	Underwear

11. The statements of the accused persons were recorded under Section 313 Cr.P.C., wherein they denied the prosecution case and pleaded false implication on account of prior enmity. Accused Ram Pratap stated that accused Ram Khelawan is his relative and that the brother of Ram Pratap, namely Sheo Prasad, had earlier deposed against the deceased Chandra Prakash in a case relating to a sale deed, thereby indicating pre-existing enmity. The other accused persons, namely Radhey Krishna, Dharendra Kumar, Ram Asrey, Triveni Prasad, Salik Ram and Rakesh Kumar stated that they came to know about the incident only in the morning and when they reached near the dead body, the police personnel, particularly the Investigating Officer, subjected them to beating and pressurized them to disclose as to who had committed the murder, with a threat that otherwise the entire family would be falsely implicated in the case. Accused Ram Khelawan further stated that Radhey Krishna was not present at the place of occurrence and had gone to Allahabad for admission in B.A. classes; Radhey Mohan was also at Allahabad in connection with his service and Radhey Shyam was accompanying him there. It was further stated that Mithilesh Kumar was at Banaras pursuing L.T. studies, Om Prakash was a student and was not present at the house at the relevant time due to flood conditions in the river, and that accused Ram Pratap himself was not present at the place of occurrence and was at his village at the relevant time. Accused Radhey Mohan specifically stated that he was not absconding and that he was serving at Allahabad, and upon gaining knowledge of the case, he voluntarily appeared before the Court.

12. In defence, the accused persons produced portions of the statements of prosecution witnesses, namely Jagan and Smt. Susheela Devi, as well as injury reports of Salik Ram, Ram Asrey, Triveni Prasad, Radhey Krishna and Ram Khelawan. They also filed certain documents comprising copies of judicial records to establish prior enmity with the complainant. Additionally, Dr. A.K. Sahoo was examined as D.W.-1 in defence.

13. For convenience and clarity, the accused-appellants shall hereinafter be referred to, as per their array before the Trial Court, namely: A1 Ram Pratap; A2 Ram Khelawan; A3 Rakesh Kumar ; A4 Ramapati Misra; A5 Salik Ram Misra ; A6 Triveni Prasad Misra; A7 Mithilesh Kumar; A8 Dharendra Kumar; A9 Om Prakash; A10 Ram Asray; A11 Radhey Shyam; A12 Radhey Mohan; and A13 Radhey Krishna.

14. During the pendency of these appeals, it has been reported that accused-appellants A2 (Ram Khelawan), A5 (Salik Ram Misra), A6 (Triveni Prasad Misra), A9 (Om Prakash), A10 (Ram Asray) and A13 (Radhey Krishna) have died. Accordingly, the appeals on the behalf of the aforesaid accused-appellants stands abated. Thus, the appeal survives on behalf of A1 (Ram Pratap), A3 (Rakesh Kumar), A4 (Ramapati Misra), A7 (Mithilesh Kumar), A8 (Dhirendra Kumar), A11 (Radhey Shyam) and A12 (Radhey Mohan). It has also been brought on record that accused-appellant A3 (Rakesh Kumar) has been declared a juvenile at the time of occurrence.

Submissions made by learned counsel for the accused-appellants:-

15. Learned counsel for the accused-appellants has assailed the impugned judgment on the ground that the same is contrary to the evidence on record and suffers from serious legal and factual infirmities. It is contended that so far as accused-appellant A1 (Ram Pratap) is concerned, no overt act has been attributed to him in the commission of the offence. As per the prosecution case itself, his role is limited to that of an alleged instigator, and he is stated to have been present at the spot armed with a firearm. It is submitted that in the absence of any specific act of assault, his conviction with the aid of Section 149 I.P.C. is unsustainable. It is further submitted that the testimony of PW-3 Smt. Sushila Devi creates doubt regarding the prosecution version, inasmuch as while the incident is alleged to have occurred in the evening, the dead body was recovered in the morning from the field of Guru Prasad. According to the learned counsel, this circumstance renders the place and manner of occurrence doubtful. Learned counsel has further contended that the F.I.R and other related documents are ante-timed and have been prepared after deliberation, as is evident from the inconsistencies between the version in the FIR and the testimonies of PW-1 and PW-2. It is submitted that such discrepancies go to the root of the prosecution case. It is also argued that there exist material contradictions between the ocular version and the medical evidence. According to the learned counsel, the nature of injuries as reflected in the post-mortem report does not fully support the manner of assault as alleged by the prosecution witnesses. It is further contended that although the prosecution case suggests that the dead body was dragged from the place of occurrence to the field where, it was recovered, but there is no clear medical evidence indicating injuries consistent with such dragging, thereby creating doubt in the prosecution story. Lastly, it is submitted that though several blood-stained articles, soil and grass were allegedly recovered during investigation, no conclusive forensic analysis has been brought on record to establish that the blood found on such articles belonged to the deceased. This omission, according to the learned counsel, weakens the chain of circumstances sought to be established by the prosecution.

Submissions made by learned A.G.A : -

16. Per contra, learned A.G.A. has supported the impugned judgment and submitted that the prosecution has successfully established the guilt of the accused-appellants beyond reasonable doubt and no interference is warranted. It is contended that the presence and participation of the accused-appellants in the occurrence stand proved from the consistent and reliable testimonies of the prosecution witnesses, and so far as accused-appellant A1 is concerned, his liability is clearly attracted with the aid of Section 149 I.P.C., being a member of the unlawful assembly. It is further submitted that the alleged discrepancies regarding the time of occurrence and recovery of the dead body are minor in nature and do not affect the substratum of the prosecution case. The contention

regarding ante-timing of the F.I.R. is also denied, it being submitted that the F.I.R. was promptly lodged and duly proved. It is further argued that there is no material contradiction between the ocular and medical evidence, rather the same are in consonance with each other. The absence of specific injuries suggestive of dragging of the dead body, as well as the non-conducting of forensic examination of certain articles, are not fatal to the prosecution case, particularly when the ocular version is cogent and trustworthy.

Oral Testimonies:

In order to appreciate the issues arising in the present appeal, it is appropriate to examine, in brief, the oral evidence adduced by the prosecution.

17. PW-1 Shyam Shankar Tripathi, in his examination-in-chief, deposed that prior enmity existed between the parties. He further deposed that on the date of occurrence at about 6:00 P.M., the deceased Chandra Prakash was taken by A13 towards the house of A2, where the other accused persons were already present. He further deposed that when the deceased reached near the said place, the accused persons caught hold of him and dragged him towards the house of A2. Upon hearing his cries, PW-1 along with other family members and villagers reached the spot and saw the accused persons assaulting the deceased with lathis, while A1 was standing armed with a gun and threatening them from intervening. He further deposed that when the women of the family attempted to intervene, they were pushed aside and PW-3 sustained injury. He further deposed that due to fear, no one could intervene and the accused continued the assault, resulting in the death of the deceased. He proved the written report (Ext. Ka-1) and further deposed that the dead body was subsequently recovered from the field of Guru Prasad.

18. During cross-examination, he admitted that he saw the accused persons present near the dead body while going to lodge the report, but he did not state that he had seen them removing the body. He also admitted that certain facts regarding the injury to Smt. Sushila Devi were not stated in the written report. He denied the suggestion of false implication and reiterated the presence of A1 at the spot armed with a firearm.

19. PW-2 Jagannath, a neighbour of the deceased, deposed that on the date of occurrence at about 6:00 P.M., while he was sitting at his door, he heard cries of the deceased shouting for help. Upon looking towards the place of occurrence near the house of A2, he saw about 12-13 accused persons, including A1, assaulting the deceased with lathis. He further deposed that A1 was armed with a gun and was threatening that anyone who came forward would be killed. He further deposed that upon hearing the cries, other witnesses including PW-1 and family members reached the spot, but due to threats extended by A1, no one could intervene. He further deposed that when the women attempted to rescue the deceased, they were pushed back by the accused persons.

20. During cross-examination, he deposed that his house is situated at a distance of about 80 steps from the place of occurrence and that the spot was visible from where he was sitting. He admitted that he had not seen the events prior to the cries and reached the occurrence only upon hearing the alarm. He further deposed that he had not seen the accused removing or concealing the dead body and denied the suggestion of false implication.

21. PW-3 Smt. Sushila Devi, wife of Dhruv Prakash, deposed that on the date of occurrence at about 6:00 P.M., upon hearing cries of the deceased, she, along with other family members, rushed outside and saw the accused persons taking the deceased towards the house of A2. She further deposed that the accused persons thereafter assaulted the deceased with lathis near the house of A2, while A1 was armed with a gun and was threatening that anyone who came forward would be shot. She further deposed that when she and other women attempted to intervene, A5 caught hold of her hand, twisted and assaulted it, due to which she fell down and sustained injuries, including fracture. She further deposed that the deceased died on the spot due to the assault and that she was medically examined subsequently, where her hand was X-rayed.

22. During cross-examination, she deposed that she had seen the accused persons taking the deceased prior to the assault and that all accused were armed with lathis. She admitted that though she stated that the accused had taken away the dead body, she had not seen them concealing it. She also admitted certain omissions in her statement under Section 161 Cr.P.C. regarding the role of some accused. She denied the suggestion of false implication and maintained that she had sustained injuries in the same incident.

23. PW-4 Dr. D.C. Srivastava, Surgeon, District Hospital, Pratapgarh, deposed that on 07.09.1982 at about 12:30 P.M., he conducted the post-mortem examination of the deceased Chandra Prakash Tiwari and found the following ante-mortem injuries:

- Injury No. 1: Lacerated wound measuring $1\frac{1}{2}$ " $\times$ $\frac{1}{2}$ " $\times$ scalp deep on the right side of the forehead, 1 inch above the eyebrow.
- Injury No. 2: Contusion measuring $2"$ $\times$ $\frac{3}{4}"$ $\times$ scalp deep on the left side of the face below the eyelid.
- Injury No. 3: Lacerated wound measuring $\frac{3}{4}"$ $\times$ ear lobule involving the entire thickness of the ear pinna, 1 inch above the ear lobule on the right ear.
- Injury No. 4: Lacerated wound measuring $2"$ $\times$ $\frac{1}{2}"$ $\times$ scalp deep on the right side of the head, $1\frac{1}{2}"$ above the ear.
- Injury No. 5: Lacerated wound measuring $2"$ $\times$ $\frac{1}{2}"$ $\times$ scalp deep on the right side of the head, 4 inches above the corner.
- Injury No. 6: Lacerated wound measuring $1"$ $\times$ $\frac{1}{2}"$ $\times$ cranial cavity deep on the right side of the head, exactly behind injury no. 4, and brain matter was oozing out from the wound.
- Injury No. 7: Lacerated wound measuring $2"$ $\times$ $1"$ $\times$ cranial cavity deep on the back of the head towards the right; brain matter was oozing out from this wound.

- Injury No. 8: Lacerated wound measuring 1" × ½ " × scalp deep on the back of the head in the midline, exactly above the occipital.
- Injury No. 9: Several contusions on the left arm, on the front and outer side, 2 inches below the shoulder in an area of 5"×4".
- Injury No. 10: Lacerated wound measuring 1" × ½ " × muscle deep on the left arm, on the back side, exactly above the elbow.
- Injury No. 11: Lacerated wound measuring ½ " × ¼ " × skin deep on the front of the left ring finger on the last phalanx; the finger bone was fractured.
- Injury No. 12: Abrasion measuring 7"×3" on the left side of the lower part of the chest, 3" below the nipple.
- Injury No. 14: Abrasion measuring 5 "×3" on the right side of the lower chest and abdomen, 3 ½ " below the nipple.
- Injury No. 15: Contusion measuring 2 "× ¾" on the inner side of the right elbow.
- Injury No. 16: Several contusions on the left side of the back in an area measuring 1"×6", starting from the lower part of the shoulder blade, in downward directions.
- Injury No. 17: Contusion measuring 5 "×2 " on the right side of the back, 2 " below the lower edge of the shoulder blade.

He further deposed that on internal examination, multiple skull fractures were present beneath injury nos. 4 to 8, with brain matter oozing out. He opined that the cause of death was coma resulting from head injuries, and that the injuries were sufficient in the ordinary course of nature to cause death. He further stated that all injuries could have been caused by a lathi at about 6:00 P.M. on 05.09.1982. He proved the post-mortem report (Ext. Ka-2).

24. No cross-examination of PW-4 was conducted.

25. PW-5 Dr. Sampurnanand, Pathologist, District Hospital, Pratapgarh, deposed that on 07.09.1982 he was posted as Medical Officer at District Hospital, Pratapgarh. He stated that on the same day at about 10:10 A.M., he medically examined Smt. Sushila Devi and found a traumatic swelling measuring 3 inches □ 1 □ inches on the front and back of the right wrist, though there was no visible external mark of injury. He further deposed that Smt. Sushila Devi complained of pain in her back, though no visible injury was found there. He further deposed that the above injury was kept under observation and X-ray was advised. He further deposed that the duration of injury could

not be ascertained due to absence of visible marks. He proved the Ext. Ka-3 and opined that the above injury could be caused if the hand is forcibly caught, twisted or jerked.

26. During cross-examination, he deposed that he could not definitively comment on flexibility of bones at the age of 25□30 years, as the same would fall within the domain of a bone specialist. He further deposed that if the above stated injury had been caused by a blow of a lathi (stick) resulting in fracture, there would ordinarily be visible external signs. He further clarified that fracture in the above injury depends upon the force applied in catching and jerking the hand, and that such fracture could occur either by forceful twisting or even by comparatively lesser jerking force. He further deposed that he could not determine whether the injury was 24 hours or 3-4 days old. He denied the suggestion that he was deposing under tutoring or that such injury could not occur by a simple jerk.

27. P.W-6 Lallan Singh, Constable, deposed that on 20.10.1982 he was posted as Constable in Police Station, Badhrai and on the same day he brought the articles recovered in S.T. No 227/82, Case Crime No. 46/82, from Police Station, Badhrai to Sadar Hospital, Pratapgarh so that the same can be sent to Agra for chemical test. He confirmed that articles remained in a sealed condition and none was allowed to tamper with the same. He further deposed that on 14.02.83, the articles of the above case after being produced before the court of CJM Pratapgarh were then deposited in Sadar Malkhana, Pratapgarh. He further deposed that after chemical testing, these goods came to the court of CJM from Agra.

28. No cross-examination of PW- 6 was conducted.

29. PW-7 Indra Bahadur Singh, Constable, Sadar Maal Khana Pratapgarh deposed that on 14.02.1983, he was posted as Assistant Malkhana Moharrir. He further deposed that the articles recovered in this case were brought and submitted CP Lallan Singh from Police Station Badhrai. He confirmed that articles remained in a sealed condition and none was allowed to tamper with the same.

30. No cross-examination of PW-7 was conducted.

31. P.W-8 Satyendra Yadav, CP 76, Police Station Badhrai, District Pratapgarh deposed that on 09.08.1982 he was posted as constable in Police Station Badhrai. He further deposed that in case no. 146/82 dated 06.09.82, he along with CP Kanhaiya Lal were handover the sealed dead body of deceased Chandra Prakash for the purpose of taking the same for post-mortem examination at Sadar Mal Hospital. He confirmed that the dead body remained in a sealed condition and none was allowed to tamper with the same. He further deposed that after the post mortem of the deceased was completed, he took a copy of the post mortem report in a sealed envelope along with a sealed bundle containing clothes, etc. and submitted the same in the police station.

32. No cross-examination of PW-7 was conducted.

33. PW-9 Rajdev Yadav, Sub-Inspector, deposed that the FIR was lodged in his presence and the investigation was entrusted to him. He stated that after recording the statement of the

complainant, he proceeded to the place of occurrence, where he did not find the dead body at the place of assault. Thereafter, upon receiving information, he reached the field of Guru Prasad, where the dead body was found. He conducted the inquest proceedings and proved the same (Ext. Ka-18) along with related documents. He further deposed that he inspected the place of occurrence and prepared the site plan (Ext. Ka-40). He collected blood-stained and plain soil from the place of occurrence (Ext. Ka-41), seized the blood-stained benia (door frame) from the house of A2 (Ext. Ka-42), collected blood-stained grass from the alleged dragging path (Ext. Ka-11), and also collected blood-stained and plain soil along with leaves from the field, where the dead body was found (Ext. Ka-12). He further proved recovery of a country-made pistol from A10 (Ext. Ka-8), seizure of gun of A1, and recovery of a blood-stained shirt from the house of A11 and A12 (Ext. Ka-25). He also proved seizure of the clothes of the deceased (Ext. Ka-9 and Ext. Ka-10). He further deposed that some of the accused persons were arrested during investigation, while others absconded, whereupon attachment proceedings were initiated and properties of such absconding accused persons were attached on different dates.

34. During cross-examination, he admitted that although signs of dragging were noticed, he did not ascertain as to who had dragged the body and no direct evidence in that regard was collected. He further stated that certain statements recorded during investigation regarding dragging and concealment were not fully supported by witnesses in Court. He denied the suggestion that the investigation or recoveries were fabricated.

35. DW-1 A.K. Sahu, AMO District Jail Pratapgarh, deposed that on 06.09.1982 he was posted as Medical Officer in the District Jail and on the same day at around 5:05 PM he examined and recorded the injuries of A5 and also proved Exhibit Ka-6. He further deposed that on 07.09.1982 at around 8:05 AM he examined and recorded the injuries of A2, at around 8:20 AM the injuries of A6, at 8:35 AM the injuries of A13 and at around 10:30 AM the injuries of A2. Thus, proving Exhibit Kha-7 to Kha-10. He opined that such injury could occur by lathi blows and could have been inflicted at around 6:00 PM. He further deposed that injury to the above-mentioned people could have occurred on 06.09.1982 at around 8:00 or 9:00 A.M. and such injury could have been caused if they were arrested in a violent manner.

36. No cross-examination of DW-1 was conducted.

Court Analysis:

Credibility and reliability of ocular evidence

37. The prosecution case rests substantially upon the ocular testimonies of PW-1 Shyam Shankar Tripathi, PW-2 Jagannath and PW-3 Smt. Sushila Devi. It is a well settled principle of criminal jurisprudence that conviction can be based solely on ocular evidence, provided the same is found to be cogent, reliable and trustworthy. The Court is required to assess such evidence on the touchstone of its intrinsic worth, consistency, probability and natural conduct of the witnesses. Minor discrepancies or omissions which do not go to the root of the matter are to be ignored, as they are but natural consequences of human fallibility.

38. In the present case, PW-1 and PW-2 are natural witnesses, whose presence at the place of occurrence at the relevant time stands duly established. PW-1 has given a vivid account of the incident, stating that the deceased was called out and thereafter surrounded and assaulted by the accused persons with lathis, while A1 stood armed with a firearm and extended threats to prevent intervention. PW-2, who is an independent witness, has corroborated the version of PW-1 and has categorically deposed that upon hearing the cries, he reached the spot and saw the accused persons assaulting the deceased, while A1 was threatening the onlookers. Their testimonies are consistent on material particulars, namely the presence of the accused, the manner of assault and the role played by A1.

39. The argument of the appellant that these witnesses are interested or not wholly reliable does not merit acceptance. It is well settled that the evidence of a related witness cannot be discarded merely on the ground of relationship, if it is otherwise credible and trustworthy. In the present case, the testimony of PW-1 stands corroborated by PW-2, who is an independent witness and has no reason to falsely implicate the accused. The law does not require a particular number of witnesses to prove a fact, and the quality of evidence is of paramount importance.

40. The learned counsel for the accused-appellants has further contended that PW-2 Jagannath could not have witnessed the incident from his house inasmuch as, as per the site plan, there existed structures obstructing his view and therefore his presence as an eyewitness is doubtful. This Court has carefully examined the said contention in light of the site plan (Ext. Ka-40) as well as the evidence on record.

41. A perusal of the site plan and the deposition of PW-2 indicates that the place marked as point □B□, lies in direct line of sight of the place of assault. The Trial Court, has recorded a finding that the place of occurrence was visible from the position of PW-2. This finding is borne out from the material on record and does not suffer from any perversity.

42. PW-2 has consistently stated in his testimony that upon hearing the cries, he looked towards the place marked as point B on the site plan and saw the accused persons taking the deceased towards the house of A2. His presence at his door at the relevant time is natural and has not been seriously disputed. Merely because certain portions of the area may have been partially obstructed does not render his entire testimony unreliable, particularly when the core of his version regarding the assault and presence of the accused remains intact and finds corroboration from other prosecution witnesses. In such cases, we are of the view that unless the defense proves a physical impossibility of observation, minor variations in visibility or vantage point shall not be fatal to the prosecution. Since the appellants have failed to establish any such impossibility in the present case, the ocular evidence remains unshaken.

43. Moreover, PW-3 Smt. Sushila Devi, being an injured witness, lends further assurance to the prosecution case. The testimony of an injured witness is accorded a higher degree of credibility, as such a witness is a natural witness to the occurrence and ordinarily would not falsely implicate innocent persons. PW-3 has clearly deposed that she witnessed the accused persons assaulting the deceased and that when she intervened, she was also assaulted and sustained injuries. Her presence

at the place of occurrence is thus beyond doubt and stands corroborated by the medical evidence relating to her injuries.

44. Upon careful scrutiny of the evidence of these witnesses, this Court finds that their testimonies are natural, consistent and inspire confidence. No material contradiction or infirmity has been brought on record which may render their evidence unreliable. The minor discrepancies pointed out by the defence are inconsequential and do not affect the substratum of the prosecution case.

45. Thus, the ocular evidence on record clearly establishes the presence and participation of the accused-appellants in the commission of the offence. The role of A1, though not of direct assault, is clearly brought out inasmuch as he was present armed with a firearm and facilitated the commission of the offence by extending threats, thereby attracting liability under Section 149 I.P.C. The evidence of PW-1, PW-2 and PW-3, therefore, forms a reliable and credible foundation for the prosecution case.

Charge under Section 201 I.P.C.

46. The learned counsel for the accused-appellants has contended that the conviction under Section 201 I.P.C. is unsustainable inasmuch as the prosecution has failed to establish that the accused persons had caused disappearance of evidence or had attempted to screen themselves from legal punishment.

47. For convenience Section 201 I.P.C. is being reproduced as under:

201. Causing disappearance of evidence of offence, or giving false information to screen offender. Whoever, knowing or having reason to believe that an offence has been committed, causes any evidence of the commission of that offence to disappear, with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false,

if a capital offence shall, if the offence which he knows or believes to have been committed is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

if punishable with imprisonment for life and if the offence is punishable with imprisonment for life, or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

if punishable with less than ten years' imprisonment and if the offence is punishable with imprisonment for any term not extending to ten years, shall be punished with imprisonment of the description provided for the offence, for a term which may extend to one-fourth part of the longest term of the imprisonment provided for the offence, or with fine, or with both.

48. The Supreme Court, in *Sukhram v. State of Maharashtra*; (2007) 7 SCC 502, has, in paragraph 18, explained the essential ingredients required to constitute an offence under Section 201 I.P.C. as follows:

(i) committal of an offence;

(ii) person charged with the offence under Section 201 must have the knowledge or reason to believe that an offence has been committed;

(iii) person charged with the said offence should have caused disappearance of evidence; and

(iv) the act should have been done with the intention of screening the offender from legal punishment or with that intention he should have given information respecting the offence, which he knew or believed to be false. It is plain that the intent to screen the offender committing an offence must be the primary and sole aim of the accused. It hardly needs any emphasis that in order to bring home an offence under Section 201 IPC, a mere suspicion is not sufficient. There must be on record cogent evidence to prove that the accused knew or had information sufficient to lead him to believe that the offence had been committed and that the accused has caused the evidence to disappear in order to screen the offender, known or unknown.

49. Furthermore, in *Palvinder Kaur v. State of Punjab*; (1952) 2 SCC 177, the Supreme Court has cautioned that while considering a charge under Section 201 I.P.C., the Court must guard against basing its conclusions on suspicion, however strong, and that the prosecution must prove all necessary ingredients including the intention to screen the offender.

50. Applying the aforesaid settled principles to the facts of the present case, this Court finds that although the death of the deceased is established, the prosecution has failed to prove the crucial ingredient of causing disappearance of evidence by the accused persons.

51. PW-1 has deposed that after the incident, he went to lodge the report and on the way he saw the accused persons standing near the dead body. Significantly, he has not stated that he had seen the accused persons removing or dragging the dead body from the place of occurrence to the field, where it was ultimately found.

52. Similarly, PW-3 Smt. Sushila Devi has also deposed that when they reached, the accused persons were standing near the dead body. She too has not stated that she had witnessed the accused persons taking or shifting the body.

53. Thus, none of the material witnesses has seen the accused persons causing disappearance of evidence. There is no direct evidence nor any cogent circumstantial evidence to show that it was the accused who had removed the dead body from the place of occurrence.

54. Further, the post-mortem report does not indicate any injury which could be attributed to dragging of the dead body. In absence of any ocular or circumstantial evidence regarding removal of the body, this aspect assumes significance.

55. The mere fact that the dead body was found at a place different from the alleged place of occurrence is not sufficient to hold that the accused had caused disappearance of evidence, in the absence of proof of such act and the requisite intention to screen themselves.

56. In view of the law laid down in Sukhram (supra) and Palvinder Kaur (supra), it is clear that suspicion, however strong, cannot take the place of proof. The prosecution has failed to establish by cogent evidence that the accused persons had caused disappearance of evidence with the intention of screening themselves from punishment.

57. Accordingly, this Court is of the considered view that the charge under Section 201 I.P.C. is not made out against the accused-appellants, and the conviction recorded under the said provision is liable to be set aside

Role of accused-appellant A1 and applicability of Section 149 I.P.C.

58. Learned counsel for the accused-appellants has contended that so far as accused-appellant A1 (Ram Pratap) is concerned, no overt act of assault has been attributed to him and his role is confined merely to instigation; therefore, his conviction with the aid of Section 149 I.P.C. is unsustainable. Before examining the individual role of A1, it is necessary to first determine whether the prosecution has been able to establish the existence of an unlawful assembly within the meaning of Sections 141-149 I.P.C.

59. The Supreme Court, in Vinubhai Ranchhodbhai Patel v. Rajivbhai Dudabhai Patel, (2018) 7 SCC 743, has elaborately explained the scheme of unlawful assembly. In paragraph 31 and 33, it has been held:

31. The concept of an unlawful assembly as can be seen from Section 141 has two elements:

(i) The assembly should consist of at least five persons; and

(ii) They should have a common object to commit an offence or achieve any one of the objects enumerated therein.

33. The common object of assembly is normally to be gathered from the circumstances of each case such as the time and place of the gathering of the assembly, the conduct of the gathering as distinguished from the conduct of the individual members are indicative of the common object of the gathering. Assessing the common object of an assembly only on the basis of the overt acts committed by such individual members of the assembly, in our opinion is impermissible. For example, if more than five people gather together and attack another person with deadly weapons eventually resulting in the death of the victim, it is wrong to conclude that one or some of the members of such assembly did not share the common object with those who had inflicted the fatal injuries (as proved by medical evidence); merely on the ground that the injuries inflicted by such members are relatively less serious and non-fatal.

60. In the present case, from the consistent testimonies of PW-1, PW-2 and PW-3, it stands clearly established that:

- a. as many as 12-13 accused persons assembled together,
- b. they surrounded the deceased,
- c. collectively caught hold of him,
- d. and assaulted him with lathis, while
- e. A1 stood armed with a firearm, preventing intervention.

61. The conduct of the accused persons clearly demonstrates that they were acting in concert and shared a common object to commit an offence, namely to assault the deceased.

62. Applying the above principle, the common object in the present case is evident from:

- a. the number of persons assembled,
- b. the manner of assault,
- c. the weapons carried, and
- d. the collective conduct during the occurrence.

63. Thus, the existence of an unlawful assembly stands fully established. Once the existence of unlawful assembly is established, the next question is the applicability of Section 149 I.P.C. It would be apposite to refer paragraph 28 and 34 of Vinubhai (supra) in this reference:

28. Section 149 propounds a vicarious liability in two contingencies by declaring that (i) if a member of an unlawful assembly commits an offence in prosecution of the common object of that assembly, then every member of such unlawful assembly is guilty of the offence committed by the other members of the unlawful assembly, and (ii) even in cases where all the members of the unlawful assembly do not share the same common object to commit a particular offence, if they had the knowledge of the fact that some of the other members of the assembly are likely to commit that particular offence in prosecution of the common object.

34. For mulcting liability on the members of an unlawful assembly under Section 149, it is not necessary that every member of the unlawful assembly should commit the offence in prosecution of the common object of the assembly. Mere knowledge of the likelihood of commission of such an offence by the members of the assembly is sufficient. For example, if five or more members carrying AK 47 rifles collectively attack a victim and cause his death by gunshot injuries, the fact that one or two of the members of the assembly did not in fact fire their weapons does not mean

that they did not have the knowledge of the fact that the offence of murder is likely to be committed.

64. In the present case, the evidence on record clearly establishes that A1:

- a. was present at the place of occurrence,
- b. was armed with a firearm (country made pistol),
- c. was threatening the witnesses, and
- d. facilitated the assault by preventing intervention.

Though A1 did not inflict any injury, his role was crucial in ensuring that the other accused persons could carry out the assault without resistance. In view of the law laid down in Vinubhai (supra), it is not necessary that A1 must have caused any injury. His presence and active facilitation clearly bring him within the fold of Section 149 I.P.C.

65. Moreover, the charge under Section 147 I.P.C. (rioting) with respect to all the appellants is also fully made out. In paragraph 26 of Vinubhai (supra), it has been held:

26. If force or violence is used by an unlawful assembly or any member thereof in prosecution of the common objective of such assembly, every member of such assembly is declared under Section 146 to be guilty of the offence of rioting punishable with two years' imprisonment under Section 147. To constitute the offence of rioting under Section 146, the use of force or violence need not necessarily result in the achievement of the common object. In other words, the employment of force or violence need not result in the commission of a crime or the achievement of any one of the five enumerated common objects under Section 141.

66. In the present case:

- a. the assembly consisted of more than five persons,
- b. force and violence were used,
- c. the act was committed in prosecution of the common object.

67. Therefore, all ingredients of Sections 141, 146 and 147 I.P.C. stand satisfied. In view of the aforesaid discussion, this Court holds that, the prosecution has successfully established the existence of an unlawful assembly; the accused persons, including A1, were members of such assembly; the offence was committed in prosecution of the common object; A1, though not an assailant, actively facilitated the offence and therefore, his liability under Section 149 I.P.C. is clearly attracted. The conviction of A1 cannot be faulted merely on the ground that no specific injury has been attributed to him.

Alleged Contradiction between Ocular and Medical Evidence

68. Learned counsel for the accused-appellants has urged that the testimony of PW-3 Smt. Sushila Devi is unreliable on account of an alleged inconsistency between her ocular version and the medical evidence, particularly with regard to the injury sustained by her wrist. It is contended that while PW-3 has stated that her hand was forcefully caught and twisted, the absence of visible external injury at the initial stage renders her version doubtful.

69. This Court has carefully examined the said submission in the light of the evidence on record and finds no substance in the same. PW-3, an injured witness, has consistently deposed that when she intervened to save the deceased, one of the accused caught hold of her hand and twisted it with force, causing her to fall and sustain injury. Her testimony, read as a whole, clearly establishes that the injury was sustained in the course of the same transaction as the assault on the deceased. Her presence at the place of occurrence is thus natural and stands firmly corroborated.

70. The version of PW-3 finds assurance from the testimonies of other prosecution witnesses. PW-1 and PW-2 have both deposed about the presence of PW-3 at the place of occurrence and the fact that she attempted to intervene during the assault. Their evidence lends corroboration to the assertion that PW-3 sustained injuries during the incident while trying to rescue the deceased.

71. The medical evidence further supports the ocular account. PW-5, the doctor who examined PW-3, found traumatic swelling on the wrist and opined that such injury could be caused by catching hold of the hand and twisting or jerking it. The injury was kept under observation and X-ray examination was advised. It has come on record that the X-ray subsequently revealed fracture, thereby confirming the seriousness of the injury. Furthermore, in cross-examination, the doctor has categorically stated that fracture can occur due to twisting or jerking of the hand and that the absence of visible external injury does not negate the possibility of such fracture. He has also clarified that the nature of injury described by PW-3 is medically possible.

72. Thus, the inconsistency pointed out by the defence is more apparent than real. The absence of an external mark at the initial stage does not contradict the ocular testimony when the internal injury (fracture) stands established through X-ray and medical opinion. On the contrary, the medical evidence lends assurance to the version of PW-3.

73. It is well settled that medical evidence is corroborative in nature and unless it completely rules out the prosecution version, the ocular testimony, if found credible, must prevail. In the present case, the medical evidence does not in any manner negate the version of PW-3; rather, it supports the mechanism of injury as narrated by her.

74. It is also trite that the testimony of an injured witness carries great evidentiary value. The fact that PW-3 sustained injury during the occurrence is an inbuilt guarantee of her presence at the scene and ordinarily such a witness would not falsely implicate the accused while sparing the real offenders.

75. Upon a cumulative appreciation of the ocular and medical evidence, this Court finds that there is no material contradiction between the two. The testimony of PW-3 stands corroborated not only by medical evidence but also by the evidence of other witnesses regarding her presence and participation in the incident.

Juvenility of Accused A3

76. The issue of juvenility of accused A3 falls for consideration in the present appeal. From the material available on record, it stands established that on the date of occurrence, A3 was approximately 14 years of age and, therefore, was a juvenile in conflict with law at the relevant time. This factual position is not in dispute, having been fairly conceded by the learned counsel for the accused-appellant as well as by the learned AGA.

77. It is a settled principle that the age of the accused has to be reckoned on the date of commission of the offence. Once it is found that the accused was a juvenile on the date of occurrence, he cannot be subjected to the rigors of a regular criminal trial or punishment in the same manner as an adult offender.

78. However, the peculiar facts of the present case warrant careful consideration. The occurrence in question pertains to a period more than four decades prior, and as of now, A3 has long since attained majority and is presently an adult. In such a situation, the question arises as to the appropriate course to be adopted by this Court at this stage.

79. In the considered view of this Court, directing A3 to be sent to any correctional or reformatory institution at this belated stage would neither be practicable nor serve the ends of justice, as such institutions are intended for children and adolescents and not for persons, who have already crossed the age of majority by a considerable margin. Equally, subjecting A3 to any sentence as an adult would be impermissible in law, in view of his established status as a juvenile on the date of occurrence.

80. It is also borne out from the record that A3 has already undergone incarceration for a period of approximately eleven months during the course of investigation, trial and pendency of the appeal.

81. Having regard to the totality of facts and circumstances, particularly the long passage of time, the present age of A3, and the period of custody already undergone by him, this Court is of the opinion that no useful purpose would be served by directing any further proceedings in respect of sentence.

82. Accordingly, while sustaining the finding regarding the involvement of A3 in the occurrence, it is directed that the period of detention already undergone by him shall be treated as sufficient.

Conclusion

83. In view of the foregoing discussion and upon a comprehensive re-appreciation of the entire evidence on record, this Court finds that the prosecution has successfully established the formation of an unlawful assembly and the participation of the accused persons therein. The involvement of the accused in the occurrence stands proved beyond reasonable doubt, and the findings of the learned Trial Court to that extent call for no interference.

84. Accordingly, all the appeals are partly allowed, the conviction of the accused-appellants (A1, A3, A4, A7, A8, A11, A12) under Sections 302 read with Section 149 I.P.C.; Section 147 I.P.C.; Section 325 read with Section 149 I.P.C.; and Section 323 read with 149 I.P.C. is affirmed. The conviction of accused A1 (Ram Pratap) under Section 148 I.P.C. is also affirmed. However, for the reasons recorded hereinabove, the prosecution has failed to establish the charge under Section 201 read with Section 149 I.P.C. beyond reasonable doubt. The conviction of the accused-appellants (A1, A3, A4, A7, A8, A11, A12) under the said provision is, therefore, set aside.

85. Insofar as accused A3 (Rakesh Kumar) is concerned, having been found to be a juvenile on the date of occurrence and having already undergone a period of incarceration, it is directed that the period already undergone by him shall be treated as sufficient.

86. Accused-appellants A1(Ram Pratap) , A4 (Ramapati Misra) , A7 (Mithilesh Kumar), A8 (Dhirendra Kumar) , A11 (Radhey Shyam) and A12 (Radhey Mohan) are on bail. They shall surrender within 15 days from today before the court concerned and shall be sent to jail to serve out the sentence imposed upon them, failing which the concerned court shall take appropriate action in this regard. The bail bond is cancelled and sureties are discharged.

87. Let a copy of this judgment, along with the trial court record, be transmitted forthwith and in any case within one week from today to the court concerned for necessary compliance.

(2026) 4 ILRA 76
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 20.04.2026

BEFORE

THE HON'BLE RAJNISH KUMAR, J.
THE HON'BLE ZAFEER AHMAD, J.

Criminal Appeal No. 666 of 1986

Raj Narain (died)

...Appellants

Versus

State of U.P.

...Respondent

Issue for consideration

Matter pertains to legality of conviction order in case motive is proved.

Headnotes

Appellants had come prepared with arms and instrument for cutting and changing course of water -cut the water of deceased and opened towards them - after committing crime fled away from the spot- opened fire on the deceased-sustained injuries and died- motive for the crime stands proved- crime has been committed in furtherance of the common intention. **Appeal dismissed.** (E-9)

Case Law Cited

1. Pandurang and others Vs. State of Hyderabad; AIR 1955 SC 216 (Vol. 42, C.N. 37)
2. Babu Alias Balasubramaniam and Another Vs. State of Tamil Nadu; (2013) 8 SCC 60.
3. Parshuram Singh Vs. State of Bihar; AIR Online 2002 SC 189
4. State of Uttar Pradesh Vs. Farid Khan; 2004 AIR SCW 5746
5. Vijayanti Vs. State of Maharashtra; AIR Online 2005 SC 29
6. Nagaraja Vs. State of Karnataka; AIR 2009 SC 1522
7. Anand Mohan Vs. State of Bihar; 2013 AIR SCW 2613
8. Garib Singh and others Vs. The State of Punjab; 1972 Cri. L.J. 1286
9. Jainul Haque Vs. State of Bihar; AIR 1974 SC 45
10. Vijai @ Babban Vs. State of U.P.; Neutral Citation No.2025:AHC:134249-DB (Criminal Appeal No. 2977 of 1984, decided on 08.08.2025).
11. State of Bihar; AIR Online 2002 SC 189
12. State of Uttar Pradesh Vs. Farid Khan; 2004 AIR SCW 5746
13. Vijayanti Vs. State of Maharashtra; AIR Online 2005 SC 29
14. Nagaraja Vs. State of Karnataka; AIR 2009 SC 1522
15. Anand Mohan Vs. State of Bihar; 2013 AIR SCW 2613
16. Garib Singh and others Vs. The State of Punjab; 1972 Cri. L.J. 1286
17. Jainul Haque Vs. State of Bihar; AIR 1974 SC 45 and Vijai @ Babban Vs. State of U.P.; Neutral Citation No. 2025:AHC:134249-DB (Criminal Appeal No. 2977 of 1984, decided on 08.08.2025).
18. Mahbub Shah v. Emperor; AIR 1945 PC 118
19. Nachhattar Singh Vs. State of Punjab; 1976 S.C.C.(Cri.) Page 182
20. State of Uttar Pradesh Vs. Sudhir Kumar Singh and Others; (2021) 19 SCC 706
21. Mahbub Shah v. Emperor; AIR 1945 PC 118

List of Acts

1. Indian Penal Code, 1860
2. Indian Evidence Act, 1872
3. Code of Criminal Procedure, 1973
4. The General Clauses Act, 1897

List of Keywords

Exhortation; motive; Section 34 I.P.C; common intention.

Appearances of parties

Counsel for Appellant (s) : K.P. Tripathi, M.B. Singh, O.P. Singh, R B S Rathore, Rajendra Prasad Mishra, Rishad Murtaza

Counsel for Respondent(s) : Govt. Advocate

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

(1) The instant criminal appeal under Section 374 (2) of the Code of Criminal Procedure, 1973 (here-in-after referred to as Cr.P.C.) has been filed by the convicts/appellants, Raj Narain, Kamlesh and Rajendra Prasad, assailing the judgment and order dated 03.10.1986 passed by learned Sessions Judge, Pratapgarh in Sessions Trial No. 52 of 1985; State Versus Raj Narain and two others, emanating from Case Crime No. 141 of 1984, under Sections 302 and 504 of the Indian

Penal Code, 1860 (here-in-after referred to as I.P.C.), Police Station Baghrai, District Pratapgarh, by means of which the appellant No.1, Raj Narain (died) has been convicted under Section 302 I.P.C. and the appellant No.2, Kamlesh and the appellant No.3, Rajendra Prasad have been convicted under Section 302 I.P.C. read with Section 34 I.P.C. and they have been sentenced with life imprisonment.

FACTS

(2) The prosecution case, in brief, is that on 09.06.1984, the complainant, Santosh Kumar Pandey, had submitted a written report (Ext. Ka.1) at police station Baghrai, district Pratapgarh, stating therein that on 09.06.1984, at 08:00 in the morning, watering the field from the drain of orchard of Satya Narain Dwivedi located on west of the house and looking after the water with a spade (फावड़ा), his uncle, Raj Narain Pandey son of Bechu Ram Pandey armed with single barrel gun and one box cartridge and Kamlesh Kumar Pandey son of Raj Narain Pandey armed with lathi and Rajendra Prasad Pandey son of Sarda Prasad Pandey armed with spade (QkoMk) and lathi came and cut their water course and diverted it towards their field. His father, Sri Jagat Narain Pandey son of late Bechu Ram Pandey prevented them from taking away the water, upon which Kamlesh Kumar Pandey and Rajendra Prasad Pandey exhorted that $\square$ vkt lkys dks tku ls ekj Mkyks ns[k yxsxsa $\square$ (Today, bastard be killed, they would saw them). On their exhortation, Raj Narain Pandey fired from his gun at his father, which stuck his father on the right side of his chest and his father fell down there and died. During this quarrel, he and his brother-in-law Shri Shiv Prakash Mishra son of Shri Sitla Prasad Mishra resident of Chetaoo-Ka-Poora (Post Kasinpur) police station Holagarh, Allahabad and Kailash Narain Dwivedi son of Shri Badri Prasad Dwivedi, resident of Dubepur, Post Sakardaha ran and reached the spot. By that time, accused Raj Narain Pandey after firing shot, all the three persons fled towards north. On hue and cry, villagers came there but as the accused persons had gun, no one chased them on account of fear. The dead body of his father is lying at the place of occurrence. He gave information and requested that necessary legal action be taken.

(3) On the basis of the aforesaid written report (Ext. Ka.1), check F.I.R., bearing Case Crime No. 141 of 1984, under Sections 302 and 504 I.P.C. was prepared and registered on 09.06.1984 at 12:10 P.M. at Police Station Baghrai, District Pratapgarh, by Head Moharrir Rameshwar (P.W.5) against accused Raj Narain, Kamlesh Kumar and Rajendra Prasad, in the presence of S.I. Syed Maqsood Ahmad (P.W.6), who, after taking up the investigation, copying F.I.R., G.D., recording the statement of complainant at the police station, reached the place of occurrence, where he prepared the inquest report of the body of the deceased Jagat Narain Pandey, photo nash, challan lash, letter to Chief Medical Officer, sample of seal, Thereafter, he sealed the dead body of the deceased and sent it to District Hospital, Pratapgarh through Constable Kaji Mohd. Layak and Kamleshwar Chowidar for post-mortem. He recovered blood stained soil and plain soil from the place of occurrence in separate containers and prepared the recovery memo. He also recovered one live cartridge and spade (QkoMk) from the spot and prepared the recovery memos. He also prepared site plan.

(4) The postmortem of the dead body of the deceased Jagat Narain Pandey was conducted by Dr. R.B. Pandey (P.W.3) on 10.06.1984 at 12:30 P.M. The doctor found the age of the deceased

about 35 years and probable time of death was about 28 hours; the deceased was of strong built; both eyes were closed and rigor mortis passed on in upper limbs but present in the lower limbs. He found following ante-mortem injuries on the body of the deceased Jagat Narain Pandey:-

1. Fire arm injury $1\frac{1}{2} \times 1\frac{1}{2}$ x cavity deep on the Rt. side of chest $1\frac{1}{2}$ above from Rt. nipple at 1 O'clock position. Margins inverted, charring present. Wound of entry.

2. Fire arm injury $1\frac{1}{2} \times 1\frac{1}{2}$ x cavity deep on right side of the chest. 1" from Rt. nipple at 3.30 O'clock position. Charring present.

On internal examination, Dr. R.B. Pandey found five big pellets and one piece of wad from the body of the deceased; 3rd, 4th and 5th ribs of right side were found fractured; right lung was ruptured and cavity containing two litres of blood; 250 C.C. semi-digested food was also found.

As per the opinion of Dr. R.B. Pandey, the cause of death was due to shock and haemorrhage due to inflicted fire arm injury.

(5) The Investigating Officer, Syed Maqsood Ahmad (P.W.6), after taking the statements of the witnesses and after completion of due investigation, submitted the charge-sheet against the accused persons, Raj Narain, Kamlesh Kumar and Rajendra Prasad, under Sections 302 and 504 I.P.C. on 19.06.1984.

(6) The Chief Judicial Magistrate, Pratapgarh, took the cognizance on the charge-sheet on 28.06.1984 and after making compliance of Section 207 Cr.P.C., committed the case to the Court of Sessions by means of order dated 08.05.1985, where the case was registered as Sessions Trial No. 52 of 1985 and on 18.07.1985, accused Kamlesh Kumar Pandey and Rajendra Prasad Pandey were charged for the offence punishable under Section 302 read with Section 34 I.P.C., whereas accused Raj Narain Pandey was charged under Section 302 I.P.C. Accused persons pleaded not guilty and claimed to be tried.

(7) In support of its case, the prosecution examined the following six witnesses :-

Witness No.	Name	Description
P.W.1	Santosh Kumar Pandey	Complainant / son of deceased / eye witness
P.W.2	Shiv Prakash Misra	Son-in-law of deceased / brother-in-law of complainant / eye witness
P.W.3	Dr. R.B. Pandey	Conducted the autopsy on the dead body of the deceased and prepared the post-mortem report
P.W.4	Kailash Narain	Independent eye-witness / Hostile
P.W.5	Rameshwar	Prepared check F.I.R. and G.D. on the basis of written report

Witness No.	Name	Description
	(Constable)	submitted by the complainant
P.W.6	Syed Maqsood Ahmad	Investigating Officer
P.W.7	Kamleshwar Chowkidar	Filed affidavit that he carried the dead body to District Hospital Pratapgarh

(8) Learned Counsel appearing on behalf of the accused persons made an endorsement on the affidavit of P.W.7 that no cross-examination is to be done.

(9) The prosecution has produced and proved the following material exhibits :-

Exhibit No.	Particulars
Ext.1	Plain soil; proved by P.W.6
Ext.2	Blood stained soil; proved by P.W.6
Ext.3	Cartridge; proved by P.W.6
Ext.4	Spade; proved by P.W.6
Ext.5	Pellets and wads; proved by P.W.6
Ext.6	Ring, a set of artificial teeth (denture), Janeu, Kanthi, two Rudraksh, Munga; proved by P.W.6

(10) The prosecution has also produced and proved the following documentary evidence :-

Exhibit No.	Particulars
Ext. Ka.1	Written Report
Ext. Ka.2	Post-mortem Report
Ext. Ka.3	Chik F.I.R.
Ext. Ka.4	Copy of G.D. No. 19
Ext. Ka.5	Inquest Report
Ext. Ka.6	Photo Nash
Ext. Ka.7	Challan Nash
Ext. Ka.8	Letter to Chief Medical Officer
Ext. Ka.9	Sample of Seal
Ext. Ka.10	Site plan

Exhibit No.	Particulars
Ext. Ka.11	Recovery Memo of plain soil
Ext. Ka.12	Recovery Memo of blood stained soil
Ext. Ka.13	Recovery Memo of one live cartridge 12 bore
Ext. Ka.14	Recovery Memo of one spade
Ext. Ka.15	Charge-sheet
Ext. Ka.16	Application dated 22.11.1985 written by the complainant to Tehsildar, Kunda, requesting to give the details of the name of the persons who irrigated Plot No. 2023 in 1390 F and 1391 F (Rabi).
Ext. Ka.17	The report of the Tehsildar, Kunda on the aforesaid application dated 22.11.1985, indicating that in Rabi 1390 F and 1391 F (as a whole), Plot No. 2023 was irrigated by accused Raj Narain son of Bechu Ram.
Ext. Ka.18	Signature of the Tehsildar
Ext. Ka.19	Certified copy of 'Will' executed by one Smt. Mahdei widow of Mata Bheekh Misra, resident of Dubepur dated 02.09.1981
Ext. Ka.20	C.H. Form No. 23

(11) After completion of the oral evidence, the statements of the accused/appellants under Section 313 of Cr.P.C. were recorded, in which they stated that they were innocent and have been falsely implicated on account of enmity.

Accused Raj Narain had also stated that he has no field at the place of occurrence. In connection with the murder of the son of Babu Lal, namely, Guruddin, help was sought, which was not made, on account of which he has been falsely implicated. He further stated that neither he had a licence of gun nor had a gun nor has a gun. The character of Jagat Narain was bad. Some unknown person killed him at night and they have falsely been implicated.

Accused Kamlesh Kumar Pandey had also stated that in the case of murder of the son of Babu Lal, namely, Guruddin, help and money were sought, which were not made, on account of which he has falsely been implicated. He also stated that there is no field at the place of occurrence. The character of Jagat Narain was bad. Some unknown person killed him at night and when they went for call of nature in the morning, Jagat Narain Pandey fell down and on raising alarm by the persons, they have falsely been implicated.

Accused Rajendra Prasad Pandey had also stated that he has a relation with Babu Lal and in the matter of murder of his son Guruddin, he was frequently doing pairvi, which was objected by Santosh Pandey but he was doing pairvi, on account of which, he has falsely been implicated.

(12) The defense has examined Prayag Dutt, Lekhpal as D.W.1 and also produced following defense exhibits :-

Exhibit No.	Particulars
Ext. Kha.1	Application of Kailash Narain
Ext. Kha.2	Affidavit of Kailash Narain
Ext. Kha.3	Vakalatnama
Ext. Kha.4	Affidavit of Purshottam Prasad filed in High Court

(13) The learned Trial Court, after hearing learned Counsel for the parties, by means of impugned judgment and order dated 03.10.1986, convicted the accused/ appellant Raj Narain for the offence under Section 302 I.P.C. simpliciter and accused Kamlesh Kumar and Rajendra Prasad under Section 302 I.P.C. read with Section 34 I.P.C. and sentenced them to undergo life imprisonment.

(14) Being aggrieved, the accused/appellants have come up before this Court with the present appeal.

(15) It is pertinent to mention that during pendency of the instant appeal, convict/appellant no.1-Raj Narain died and as such, the instant appeal filed on his behalf stood abated by means of order dated 18.11.2023. Hence the instant appeal survives only on behalf of convict/appellant no.2-Kamlesh and convict/ appellant No. 3-Rajendra Prasad.

ARGUMENTS

(16) Heard, Shri R.B.S. Rathore, learned Counsel for the appellant no.2, Shri Rajendra Prasad Mishra, learned Counsel for the appellant no.3 and Shri Umesh Verma, learned A.G.A. for the State.

(17) Learned Counsel appearing on behalf of the convict/appellant no.2 submitted that appellant No.2 has wrongly and illegally been convicted by means of the impugned judgment and order. He submitted that none has seen the occurrence and the investigation has also not been conducted in proper manner and the Investigating Officer had not made any effort to recover the gun used in the crime. Thus, he submitted that the investigation was tainted. Even otherwise, he submitted that the F.I.R. is ante-time because semi-digested food was found in the post- mortem report, therefore, the alleged occurrence could not have been of 08:00 in the morning and the deceased may have been murdered any time in the night but on account of enmity, the appellants have been implicated in the case and there is no F.S.L. report. He further submitted that there was only one gun fire as stated by the P.W.-1, whereas the doctor has given opinion that there may have

been two fires. He further submitted that the appellant No.1 has been shown the main assailant but all ingredients of crime could not be proved and the evidence on record does not show that the alleged crime was committed by the common intention of all and there was no involvement of appellant No.2 in the crime, therefore, he could not have been convicted.

(18) On the basis of above, learned Counsel for the appellant no.2 submitted that the impugned judgment and order is not sustainable in the eyes of law and the same is liable to be set-aside and the appellant no.2 is liable to be acquitted. He relied upon Pandurang and others Vs. State of Hyderabad; AIR 1955 SC 216 (Vol. 42, C.N. 37) and Babu Alias Balasubramaniam and Another Vs. State of Tamil Nadu; (2013) 8 SCC 60.

(19) Sri Rajendra Prasad Mishra, learned counsel for the appellant No.3 submitted that the F.I.R. is ante-time because semi-digested food was found in the post mortem report and it is not possible that the deceased would have taken food at 06:00 in the morning. Even otherwise, he submitted that in the village, the food is not taken at such an early hour. He further submitted that it is not disputed that two injuries are not possible from one fire but the doctor has opined that the injuries may be of two fires and the fire has been said to have been made from 10 steps, whereas charring has been found, which is not possible from such a distance and is possible only in the case of firing from three to four feet, therefore, the medical report does not support the prosecution case. He further submitted that there was no meeting of mind between the appellants because they live separately, therefore, the conviction with the aid of Section 34 I.P.C. is not sustainable. He also submitted that admittedly there was no enmity between the parties, therefore, the question of murder of the deceased by the appellants does not arise. He also submitted that the P.W.-2 is a chance witness, therefore, unless his presence on the spot could have been proved by cogent evidence, his testimony is not reliable. He also submitted that there was no overt act of the appellant No.3 and it was a case of sudden fight, therefore, Section 34 I.P.C. will not apply. Thus, Counsel for the appellant no.3 submitted that since there was no prior meeting of mind, therefore, it can not be said that the crime has been committed with common intention of all and the appellant no.3 has been falsely implicated. Even otherwise, his submission is that it may have been a case of sudden fight, in case the Court comes to the conclusion that the appellant No.3 was involved in the occurrence. He also submitted that statement under Section 313 Cr.P.C. was recorded on proforma under old Cr.P.C., therefore, the trial itself vitiated and judgment passed in pursuance thereof is liable to be set aside. He relied on Parshuram Singh Vs. State of Bihar; AIR Online 2002 SC 189, State of Uttar Pradesh Vs. Farid Khan; 2004 AIR SCW 5746, Vaijayanti Vs. State of Maharashtra; AIR Online 2005 SC 29, Nagaraja Vs. State of Karnataka; AIR 2009 SC 1522, Anand Mohan Vs. State of Bihar; 2013 AIR SCW 2613, Garib Singh and others Vs. The State of Punjab; 1972 Cri. L.J. 1286, Jainul Haque Vs. State of Bihar; AIR 1974 SC 45 and Vijai @ Babban Vs. State of U.P.; Neutral Citation No. 2025:AHC:134249-DB (Criminal Appeal No. 2977 of 1984, decided on 08.08.2025).

(20) Per contra, Shri Umesh Verma, learned A.G.A. for the State submitted that impugned judgment and order has rightly been passed in accordance with law and there is no illegality or infirmity in the impugned order. He further submitted that the conviction of the appellant Nos.2 and 3 with the aid of Section 34 I.P.C. has rightly been made in accordance with law because the appellants had committed the crime with common intention and in furtherance thereof, which is

apparent from the fact that they came together on the spot armed with weapons and deliberately cut water of the field of the deceased and diverted it towards their field and on being confronted, the appellant Nos.2 and 3 exhorted to kill the deceased and in pursuance thereof, the appellant No.1 killed the deceased by gun, which he was carrying and, thereafter, all ran away from the scene of occurrence. He further submitted that the intention remains locked in the mind of the accused persons and it can be perceived only with previous conduct, conduct at the time of incident and subsequent conduct and the aforesaid conduct of the appellants clearly indicates their common intention and the crime in furtherance thereof. He further submitted that though on the suggestion of the defence, the doctor has stated that two fires may be possible but no evidence in this regard has been adduced, therefore, the appellants are not entitled for any benefit of it. He further submitted that even in the statement under Section 313 Cr.P.C., nothing substantive could be disclosed or adduced in evidence. He further submitted that the defence had tried to create a doubt on the incident making question regarding illicit relation of the deceased, which has been specifically denied by the P.W.-1. He further submitted that it is a constant case of the prosecution that the appellant No.1 had come with a gun and a bandolier (belt of cartridges) but there is no cross-examination on the said point, therefore, non recovery of gun is not fatal to the case of prosecution. He further submitted that the prosecution case, as disclosed in the first information report, has been proved by the post mortem report also, which has been proved by the doctor and the evidence adduced during the trial, which is covered under the Clause 3 of Section 300 I.P.C. and proved by the evidence in accordance with Section 137 of the Indian Evidence Act, 1872 and nothing could be extracted contrary to the manner of assault proved by the prosecution, therefore, even if there may be any negligence in the investigation, it is of no benefit to the appellants. He also submitted that merely by recording statement on the proforma under old Cr.P.C., the trial cannot be said to be vitiated. Thus, learned A.G.A. submitted that the impugned judgment and order has rightly been passed in accordance with law and there is no illegality or error in it, which may call for any interference by this Court.

(21) He relied on *Leela Ram (Dead) Through Duli Chand Vs. State of Haryana and Another*; 2000 SCC (Cri) 222, *State of Madhya Pradesh Vs. Ramesh and Another*; (2011) 2 SCC (Cri) 493, *Shivaji Sahebrao Bobade and Another Vs. State of Maharashtra*; AIR 1973 SC 2622, *Aejaz Ahmad Sheikh Vs. State of U.P. and Another*; 2025(3) JIC 840 (SC), *Ramesh Singh Alias Photti Vs. State of A.P.*; 2004 SCC (Cri) Supp 70, *Patai @ Krishna Kumar Vs. State of U.P.*; 2010(2) JIC 286 (SC) and *Virendra Singh Vs. State of Madhya Pradesh*; 2011 Cri. L.J. 952.

(22) We have considered the submissions of learned counsel for the parties and perused the records.

(23) The prosecution case, as emerged from the first information report, indicates that on 09.06.1984 at 08:00 in the morning, the father of the complainant was watering the field from drainage of orchard of Satya Narain Tiwari in the west of house and looking after the water with a spade, when his uncle Raj Narain Pandey armed with single barrel gun and a bandolier and Kamlesh Kumar Pandey having lathi and Rajendra Prasad having spade and lathi came on the spot and cut the water course and diverted it towards their field, which shows that the convicted appellants have come on the spot armed with weapons and cut the course of water to the field of the complainant and diverted it to their field and when his father Jagat Narain Pandey confronted them

from taking away the water, the appellant No.2, Kamlesh Kumar Pandey and the appellant No.3, Rajendra Prasad exhorted आज सले को जान से मार डालो देख लेंगे and on their exhortation, Raj Narain Pandey fired from his gun at his father, which hit his father on the right side of his chest and he fell down and died. During this quarrel, the complainant, his brother-in-law, Shiv Prakash Mishra and Kailash Narain Dwivedi ran and reached on the spot but by that time, after firing shot, all the three persons fled away towards the north. In view of above, the conduct prior to the occurrence, at the time of occurrence and subsequent conduct of the appellants shows that they had come on spot armed with weapons and prepared to cut the course of water to the field of the complainant and to divert it to their field and on being confronted, the appellant Nos.2 and 3 exhorted to kill, on which, the appellant No.1 killed, thereafter, when the complainant and other witnesses ran and reached near the deceased, the accused persons fled away.

(24) The complainant appeared as P.W.-1, who proved the prosecution case, as disclosed in the F.I.R. He also stated that alongwith him, his brother-in-law, Shiv Prakash Mishra was also present on the spot. He also stated that Kailash Narain Dwivedi has also seen the incident but he has been win over and not ready to give the impartial evidence. He proved the written report as Ex. Ka-1 and also stated that his statement was recorded by the Inspector at the police station and the Inspector visited the place of occurrence in his presence. In the cross-examination, nothing could be extracted, which may created any doubt on the testimony of P.W.-1 given in the examination-in-chief. The cross-examination also indicates that no cross-examination has been made in regard to the presence of the accused appellants, about the manner in which the crime was committed as well as exhortation by the appellant Nos.2 and 3, in pursuance of which, the appellant No.1 had fired from his gun and killed the deceased.

(25) The brother-in-law of the complainant, Shiv Prakash Mishra appeared as P.W.-2, who is also an eye witness and proved the prosecution case. The cross-examination made from him also could not extract anything, which may create any doubt about his testimony, rather he reiterated the evidence given in the examination-in-chief and the fact that the appellant Nos.2 and 3, Kamlesh and Rajendra had exhorted. He also stated that he had come a day before to his in-laws' house and accompanied them to field on the said day. His presence on spot has been proved by P.W.-1 and P.W.-4, an independent eye witness, therefore, his evidence cannot be discarded on the ground of chance witness. Thus, the prosecution case has been proved by two eye witnesses, who appeared as P.W.-1 and P.W.-2.

(26) The post mortem of the deceased was conducted on the next day i.e. on 10.06.1984 at 12:30 PM by Dr. R.B. Pandey, who appeared as P.W.-3 and proved the post mortem report as Ex. Ka-2 as well as the injuries recorded therein. He also stated that the deceased could have died on 09.06.1984 at 08:00 in the morning. He also disclosed that the cause of death was shock and hemorrhage due to inflicted fire arm injuries. He also stated that ante-mortem injuries were sufficient for death in normal course. In the cross-examination, he stated that 250 C.C. semi-digested food was found in the stomach of the deceased, therefore, he would have eaten about two or two and half hours before the death. He also disclosed that the firing would have been done from a distance of 3 - 4 feet and he is in agreement with the opinion of Dr. Modi. He also stated that it is possible that the injuries may have been caused by one or two fires and there may be difference of 6 - 7 hours in the time of death on either side. On the written request, he was further cross-

examined by the defence, in which, he stated that the injury Nos.1 and 2 are possible to have come by one fire. Thus, the post-mortem and the injuries have also supported the prosecution case except for the doubt, which has been tried to be created as to how two injuries could have been caused by one fire and the doctor has opined that both the injuries could have been caused by one fire, though he stated there may have been two fires, however, it was merely an opinion on suggestion and no evidence has been adduced in this regard, therefore, the appellants are not entitled for any benefit of it. However, time of death and duration, after which the post-mortem was done, remained un rebutted.

(27) Kailash Narain Dwivedi has been shown as an eye witness in the F.I.R. He filed an application dated 09.07.1985 alongwith an affidavit stating therein that he was not present on the place of spot and had gone to Agra near the son of his brother in connection with a job and he does not want to give false evidence to implicate an innocent person, thus, he may be relieved from giving evidence. However, he appeared during trial as P.W.-4. In the examination-in-chief, he stated that at the time of murder of Jagat Narain, he was at home and he has not seen the incident and the Inspector had not taken his statement. He was declared hostile and cross-examined by the prosecution. In the cross-examination, he stated that it is wrong to say that he has collided with the accused persons and does not want to state the correct things. He further stated that upon hearing hue and cry, he reached on the spot and at that time 2 - 3 hours have been passed on opening of the day, when he reached there, where Jagat Narain was lying on the east of the drainage. Thus, he supported the time of incident at about 08:00 in the morning. He also stated that when he reached on the spot, son of Jagat Narain i.e. Santosh Kumar Pandey and brother-in-law of Santosh i.e. Shiv Prakash Mishra and other villagers were present and on reaching the spot, he asked as to what has happened. Then Santosh and his brother-in-law informed that the accused persons, who are present in the Court, have killed the Jagat Narain. He also stated that he had seen two persons fleeing away in east from the spot, where Jagat Narain was lying, out of which, one was having gun in his hand and other was having lathi. He also stated that he was told that on account of change of course of water, the quarrel took place. He also stated that he had seen water flowing in the drainage. He also stated that the Inspector had come at about 02:00 and prepared the inquest, in which, he is a witness. He also proved his signatures on the inquest. Thus, his presence on the spot can not be doubted and he supported the prosecution case.

(28) The P.W.-4 also stated that it is true that he is being pressurized in the village as to why Raj Narain would be got hanged by giving the evidence because the deceased and Raj Narain were real brothers. He also stated that it is true that on account of it, he is not giving any evidence against Raj Narain. In the cross-examination by the defence, he accepted his signatures on paper Nos. 6 Kha, 7 Kha and 8 Kha and that they were made in the premises of Court. However, he stated that he had made signatures without reading the affidavit because he is illiterate. He further stated that the accused Kamlesh and father-in-law of his sister were with him when he had made the said signatures. He also stated that they had brought him for the affidavit and the said affidavit was neither read before him nor typed before him nor it was told to him in the village that the affidavit is to be given in regard to seeing or not seeing the incident and he had also not asked before proceeding from the village as to what is to be written in the affidavit. He also stated that he does not dispute that his nephew is residing in Agra and he had gone to Agra in search of a job but he specifically stated that he had not got written any paper Nos.7 Kha and 8 Kha mentioning that he

had not seen any incident and he was not present on the spot, while truth is that the aforesaid persons stated that give the evidence because who knows that he was in Agra or not and it has wrongly been written and he was only told that he would not have to give any evidence and he had come to know it on the date of affidavit. He denied the suggestion to have given the affidavit i.e. paper No. 7 Kha correctly and he is deviating from the affidavit under the pressure of the brother-in-law of the Santosh and police.

(29) The aforesaid evidence of P.W.-4 indicates that though he has been declared hostile and may have not seen the incident but he has proved the place of occurrence and the persons, who were present on the spot at the time of occurrence. He has also proved the presence of P.W.-1 and P.W.-2 and also the evidence given by them, which was told to him upon his reaching on the spot. He has also proved that at least two persons were fleeing away from the spot, out of which, one was having a gun and another lathi, which were with the appellants. The evidence of P.W.-4 also shows the conduct of the appellants subsequent to the incident, i.e. running away from the place of incident and particularly that of the appellant No.2, Kamlesh, who got a false affidavit of P.W.-2 prepared in favour of the appellants and to show that he was neither present in the village nor on the place of occurrence, whereas the P.W.-4 has discarded the statements made in the affidavit, therefore, he had not gone to Agra on the date of incident. It also shows that the false affidavit was got prepared by misleading the P.W.-4 on the ground that he would not have to come to the Court to adduce the evidence, so that the correct position may not come before Court. The swearing of affidavit by P.W.-4 with a view that he may not have to appear in evidence cannot be disbelieved, firstly, because nothing could be extracted from him in the cross-examination and, secondly, it is a natural human conduct that normally the persons, who have seen the incident, avoid to give any evidence in Court of law because they remain afraid of the questions, which may be asked in the cross-examination and they or their family may have any difficulty in future.

(30) The main thrust of the arguments of learned counsel for the appellants was that there was no meeting of mind of the appellant Nos.1, 2 and 3, therefore, their conviction has wrongly and illegally been made. It was also argued that the charge against the appellant No.1 was made under Section 302 I.P.C., whereas charge against the appellant Nos.2 and 3 was made under Section 302 I.P.C. read with Section 34 I.P.C., therefore, since the charge against the appellant No.1 was not made under Section 302 I.P.C. read with Section 34 I.P.C., therefore, the appellant Nos.2 and 3 could not have been convicted with the appellant No.1 with the aid of Section 34 I.P.C. on the basis of constructive liability.

(31) Section 34 of I.P.C. provides that when a criminal act is done by several persons with a pre-meditated mind of committing crime, each of them is liable for the said criminal act in the same manner as if it was done by him alone. Section 34 I.P.C. is extracted here-in-below:-

"34. Acts done by several persons in furtherance of common intention. - When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone."

(32) The Hon'ble Supreme Court, in the case of Ramesh Singh @ Photti Vs. State of A.P. (Supra), held that essence of the liability under Section 34 I.P.C. is to be found in the existence of a

common intention connecting the accused leading to the doing of a criminal act in furtherance of such intention and the inference can be gathered by the manner in which the accused arrived at the scene, mounted the attack, determination and concert with which the attack was made, from the nature of injury caused by one or some of them. It has further been held in this regard that an illegal omission on the part of such accused can indicate the sharing of common intention. Thus, the totality of circumstances is to be taken into consideration in each case. The relevant paragraph 12 is extracted here-in-below:-

"12. To appreciate the arguments advanced on behalf of the appellants it is necessary to understand the object of incorporating Section 34 in the Indian Penal Code. As a general principle in a case of criminal liability it is the primary responsibility of the person who actually commits the offence and only that person who has committed the crime can be held to guilty. By introducing Section 34 in the penal code the Legislature laid down the principle of joint liability in doing a criminal act. The essence of that liability is to be found in the existence of a common intention connecting the accused leading to the doing of a criminal act in furtherance of such intention. Thus, if the act is the result of a common intention then every person who did the criminal act with that common intention would be responsible for the offence committed irrespective of the share which he had in its perpetration. Section 34 IPC embodies the principles of joint liability in doing the criminal act based on a common intention. Common intention essentially being a state of mind it is very difficult to procure direct evidence to prove such intention. Therefore, in most cases it has to be inferred from the act like, the conduct of the accused or other relevant circumstances of the case. The inference can be gathered by the manner in which the accused arrived at the scene, mounted the attack, determination and concert with which the attack was made, from the nature of injury caused by one or some of them. The contributory acts of the persons who are not responsible for the injury can further be inferred from the subsequent conduct after the attack. In this regard even an illegal omission on the part of such accused can indicate the sharing of common intention. In other words, the totality of circumstances must be taken into consideration in arriving at the conclusion whether the accused had the common intention to commit an offence of which they could be convicted."

(33) The Hon'ble Supreme Court, in the case of Pandurang and others Vs. State of Hyderabad (Supra), has held that it is well established that a common intention presupposes prior concert. It requires a pre-arranged plan because before a man can be vicariously convicted for the criminal act of another, the act must have been done in furtherance of the common intention of them all:- 'Mahbub Shah v. Emperor; AIR 1945 PC 118 at pp. 120 & 121 (B). Accordingly there must have been a prior meeting of minds. It has further been held that the plan need not be elaborate, nor is long interval of time required, it could arise and be formed suddenly either by their words or their acts. It has further been held that prior concert and arrangement can, and indeed often must, be determined from subsequent conduct.

(34) The Hon'ble Supreme Court, in the case of Vijayanti Vs. State of Maharashtra (Supra), has held that common intention can be formed even on the spot but for the said purpose, it is essential to consider the role played by the accused.

(35) The Hon'ble Supreme Court, in the case of Virendra Singh Vs. State of Madhya Pradesh (Supra), considered the scope of Section 34 I.P.C. and observed that the vicarious or constructive liability under section 34 I.P.C. can arise only when two conditions stand fulfilled, i.e., the mental element or the intention to commit the criminal act conjointly with another or others; and the other is the actual participation in one form or the other in the commission of the crime. This participation need not in all cases be by physical presence. Section 34 I.P.C. does not create any distinct offence but it lays down the principle of constructive liability. The relevant paragraph 47 is extracted herein below:-

"47. Section 34 IPC does not create any distinct offence, but it lays down the principle of constructive liability. Section 34 IPC stipulates that the act must have been done in furtherance of the common intention. In order to incur joint liability for an offence there must be a pre-arranged and pre- meditated concert between the accused persons for doing the act actually done, though there might not be long interval between the act and the pre-meditation and though the plan may be formed suddenly. In order that section 34 IPC may apply, it is not necessary that the prosecution must prove that the act was done by a particular or a specified person. In fact, the section is intended to cover a case where a number of persons act together and on the facts of the case it is not possible for the prosecution to prove as to which of the persons who acted together actually committed the crime. Little or no distinction exists between a charge for an offence under a particular section and a charge under that section read with section 34."

(36) A division Bench of this Court, in the case of Vijai @ Babban Vs. State of U.P. (Supra), relied on several reports of the Hon'ble Supreme Court and has held that in general, principle of criminal law is that the person who commits the offence be held guilty. Yet, Section 34 I.P.C. introduces joint liability. The relevant paragraph 29 is extracted herein below:-

"29. In general, principle of criminal law is that the person who commits the offence be held guilty. Yet, section 34 of Indian Penal Code introduces joint liability. The essence of joint liability is in existence of a common intention connecting all the accused to the doing of a criminal act, in furtherance of such common intention. Upon existence of common intention being established, individual acts of the principal offenders, in the actual occurrence, loses relevance. All participants who may act with that common intention would become equally liable for the offence committed. Common intention essentially is a state of mind. Therefore, it is very difficult to procure direct evidence to prove its existence. Hence, in majority of cases it has to be inferred from the overt or covert act, other relevant circumstances of the case and conduct of the accused in the totality of circumstances of the case. In this regard gainfully, para 12 of the judgment of apex court in the case of Ramesh Singh @ Photti VS State Of A. P. AIR 2004 (SC) 4545, is reads as under:"

"12."

(37) In view of above, a person can be held liable for the offence, which he may not have committed directly but the crime has been committed in furtherance of the common intention of the said person also and he also had intention to commit the crime, which has been committed and in case it may not have been committed by the person, who committed, he may have committed that

crime and on proof of the fact that there was a joint meeting of mind, which may be prior to the incident or on the spot or may be even if he was not present on the spot, he can be convicted in the same manner, in which the person who has committed the crime. Thus, Section 34 I.P.C. is only an enabling provision for convicting a person, who is not directly connected with the crime, but participated in any manner in commission of crime and even if the charge of offence with the aid of said Section 34 I.P.C. has not been framed, he may be convicted. Thus, the contention of learned counsel for the appellants that since charge against the appellant No.1 has been made only under Section 302 I.P.C. and the appellant Nos.2 and 3 under Sections 302 I.P.C. read with Section 34 I.P.C., therefore, they could not have been convicted with the appellant No.1 as it cannot be said that they had meeting of mind or common intention of committing the crime i.e. murder in the instant case and the appellant No.1 has committed the crime in furtherance thereof, which is misconceived and not tenable because even if the charge under Section 302 I.P.C. read with Section 34 I.P.C. would not have been made against the appellant Nos.2 and 3 and they would have been found to have common intention of committing the crime, which has been committed by the appellant No.1 and the appellant No.1 has committed the crime in furtherance thereof, they would have been convicted with the aid of Section 34 I.P.C. because it only provides the condition, in which the persons, who have common intention to commit the crime, are liable to be convicted and separate living and no enmity cannot be grounds of escape, if it is otherwise proved.

(38) Adverting to the facts of the present case, the common intention and meeting of mind of the appellant Nos.1, 2 and 3 is apparent from the prior conduct of the appellants of reaching on the spot armed with single barrel gun, bandolier, lathi and spade for the purpose of stopping the course of water towards the complainant and for opening it towards their field and it shows that they had come with intention that in case they are stopped from doing it, they may use the weapons, which they had brought and they used the deadly weapons, which they had brought. The conduct at the time of incident discloses that they had all meeting of mind to commit the crime either since prior to the incident or it was on the spot because on being prevented from changing the course of water from opening the course of water towards their field by stopping it towards the complainant's field, the appellant Nos.2 and 3 exhorted for opening the course of water towards their field and also exhorted to kill the deceased and upon their exhortation, the appellant No.1, who was on the other side of the drainage, fired on the deceased, who was standing on the south of the appellant No.1. The subsequent conduct of fleeing away from the sight, when the complainant and other witnesses ran towards the deceased also shows that they had accomplished their motive, therefore, left the spot and the appellant No.2 made an attempt also to prevent P.W.-4 from giving evidence.

(39) The learned Trial Court, after considering the evidence and material on record, has recorded a finding that the statements of P.W.-1 and P.W.-2 that the accused Raj Narain, Kamlesh and Rajendra Prasad were present on the spot is trustworthy and Kamlesh and Rajendra Prasad exhorted and on their exhortation, Raj Narain made fire, which hit deceased and he died. Thus, these two accused persons are guilty of offence of murder with the aid of Section 34 I.P.C., although they have not caused any injury to the deceased by the lathi or legs and fists. It has further been recorded that the statements of aforesaid two witnesses found corroboration with the F.I.R. and cutting of the water and diverting it from the drain is not possible unless there is instrument like spade (fawda) with the accused. The F.I.R. narrates that accused Rajendra Prasad had a fawda alongwith lathi and others also had lathi and gun and this fact is proved by the evidence of P.W.-1

and P.W.-2. It has also been recorded that the aforesaid evidence of P.W.-1 and P.W.-2 are corroborated with the statement of P.W.-4 on the point of their presence on the spot, running of water in the drain, time and place. The statement of P.W.-4 is relevant under Section 8 of the Indian Evidence Act, 1872. The evidence of the witnesses has been recorded in accordance with Section 137 of the Indian Evidence Act, 1872. The learned Trial Court has relied upon a judgment of the Hon'ble Supreme Court rendered in the case of Nachhattar Singh Vs. State of Punjab; 1976 S.C.C.(Cri.) Page 182, in which their Lordships of the Hon'ble Supreme Court have held that one could find all the appellants guilty with the aid of Section 34 I.P.C.

(40) The Hon'ble Supreme Court, in the case of Patai @ Krishna Kumar Vs. State of U.P. (Supra), has held that Section 34 I.P.C. lays down that when a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.

(41) The judgment rendered in the case of Babu Alias Balasubramaniam and Another Vs. State of Tamil Nadu (Supra) is not applicable in the facts and circumstances of the present case because in the said case the accused was charged for the offence punishable under Section 302 I.P.C. read with Section 34 I.P.C. and there was no charge under Section 109 I.P.C., which by itself is an independent offence though punishable in the context of other offence, therefore, the Hon'ble Supreme Court has held that she cannot, therefore, be convicted for offence punishable under Section 304 Part I of the I.P.C. with the aid of Section 109 of the I.P.C.

(42) A contention was raised that at the most, it can be said to be an incident occurred on sudden provocation, which has no legs to stand and liable to be repelled only in view of Section 300 (thirdly) and Exception 1 (first) of the I.P.C. for the reason that the appellants had come prepared with arms and instrument for cutting and changing course of water and cut the water of deceased and opened towards them and on being confronted, after committing crime fled away from the spot leaving the deceased real brother of appellant No.1. The site plan, Ex. Ka-10, prepared by the Investigating Officer on the pointing out of the complainant, clearly discloses the position of the place of closing of drainage and opening of drainage as well as the places of the deceased, the appellant No.1 and the appellant Nos.2 and 3 and their way of fleeing away from the spot and witnesses, which could not be disputed in the trial or before this Court in any manner.

(43) The incident had occurred on account of a dispute over diverting of water by the accused persons forcibly and the deceased asked the accused not to do so, on account of which, the appellant Nos.2 and 3 exhorted and the appellant No.1 opened fire on the deceased, on account of which, he sustained injuries and died. Thus, the motive for the crime also stands proved. The appellant Nos.1 and 2 have also alleged that the deceased was a man of loose character and some unknown persons have murdered him and when the accused, Kamlesh went for natural call, some persons raised hue and cry and he has been falsely implicated in the case. Besides it, he and his father did not help P.W.-1 in Gurudin's murder case, therefore, they have been falsely implicated in the case. However, neither it could be proved nor this enmity, which is too remote and can be said to have a call for false implication of appellant Nos.2 and 3. The learned Trial Court, after considering it, has recorded a finding that there is no reason why the real nephew would involve his real uncle and would spare the real assailants and it further recorded a finding that contention of

learned counsel for the accused persons that the motive has not been proved or they had no motive to commit the murder is of no help to the defence. Thus, this Court finds no illegality or error in the findings recorded by the learned Trial Court in this regard.

(44) It has also been submitted that there is discrepancy between the medical evidence and the statements of P.W.-1 and P.W.-2 as only single fire has been shown, whereas two injuries were found on the body of the deceased and the fire has been shown to have been made from a distance of about 10 steps, therefore, the blackening and charring are not possible. The P.W.-3, Dr. R.B. Pandey has stated that these injuries may also be caused by one fire and the learned Trial Court has found it to be correct because if one injury either injury No.1 or No.2 is caused first, second injury in this close range is not possible as the person would fall down after receiving any injury, out of the two injuries first, therefore, injury No.2 is nothing but a part of injury No.1, which is on account of dispersal of pellets. The learned Trial Court has also recorded that the cartridge did not appear to be of standard size and it was a self loaded cartridge. The wadding piece is of extra-ordinary width and appears to be of polyster or of some very hard substance. In a standard weapon, the wadding piece is of cardboard. It also appears that the wadding piece recovered from the body of the deceased also worked as a pellet and in case if a cartridge is self loaded the material or the powder which was used cannot be ascertained. From Ex. Ka-2, it is apparent that charring was present in injury No.1 as well as in injury No.2. Nowhere it is written that charring was present on the wound of entry only as the distance between the two wounds is very less, therefore, charring all around these two injuries is most probable. It is also noticed that country made pistol was used, therefore, principles of medical jurisprudence of Dr. Modi in regard to standard weapon and bullet may not of much help. On internal examination, third, fourth and fifth ribs were found fractured and right lung was also found ruptured, which shows that fire was very heavy and some extra-ordinary material i.e. gun powder or blastic powder was used.

(45) The learned Trial Court has also recorded a finding that during the course of argument, it has come that the accused Raj Narain is compulsory retired police personnel but evidence to this effect is not there on the record but this fact that he was in police department is not denied, therefore, he being a police personnel was considered to have a licensed gun. Thereafter, the learned Trial Court, after considering the evidence of P.W.-1, P.W.-2 and P.W.-4 and the circumstances of the incident, has recorded a finding that the alleged conflict between the direct and medical evidence are not applicable on the facts of the present case.

(46) An argument was also raised on the basis of post-mortem report that 250 C.C. semi-digested food was found inside the body of the deceased, therefore, he could not have been murdered at 08:00 in the morning because it is highly improbable that he would have taken the food at 06:00 in the morning. The contention of learned counsel for the appellants is misconceived and not tenable for the reason that in natural course once the person leaves the home for work, he normally takes something and in the villages, people before going to the field usually eat something. The learned Trial Court has recorded that if a person takes a cup of tea and biscuits, it would be 250 C.C. in the measurement and it is just possible that before leaving the house in the morning, the deceased might have taken a glass of milk or half glass of tea or some other liquid and a piece of bread and, therefore, the contention of learned counsel for the accused is of no help to the accused and it cannot be said that F.I.R. was ante-time. This Court does not find any illegality or

error in the aforesaid findings recorded by the learned Trial Court on the point of alleged conflict between the medical and the oral testimony and is in agreement with the findings recorded by the learned Trial Court.

(47) The judgments rendered in the case of Parshuram Singh Vs. State of Bihar (Supra), State of Uttar Pradesh Vs. Farid Khan (Supra), Nagaraja Vs. State of Karnataka (Supra), Anand Mohan Vs. State of Bihar (Supra), Garib Singh and others Vs. The State of Punjab (Supra) and Jainul Haque Vs. State of Bihar (Supra) relied by learned counsel for the appellant No.3 are of no assistance to his case as the same have been passed in the facts and circumstances of those cases and are distinguishable on the facts and circumstances of the present case.

(48) One of the grounds urged by learned counsel for the appellant No.3 was that the investigation was tainted and was not done in proper manner, therefore, the appellants could not have been convicted. However, merely on account of some discrepancy in the investigation and fault on the part of Investigating Officer, it could not be a ground for acquittal if the charge is otherwise proved beyond reasonable doubt during the trial. Our view is supported by judgment of the Hon'ble Supreme Court, rendered in the case of Leela Ram (Dead) Through Duli Chand Vs. State of Haryana and Another (Supra), in which the Hon'ble Supreme Court has held that it is now a well settled principle that any irregularity or even an illegality during investigation ought not to be treated as a ground to reject the prosecution case.

(49) One of the grounds raised by learned counsel for the appellant No.2 was that the learned Trial Court recorded the statements of the appellants under the old Act i.e. Section 364 of the Code of Criminal Procedure, 1898 on the proforma prescribed for the same, which was repealed by Section 484 of the Code of Criminal Procedure, 1973, which came into force w.e.f. 01.04.1974, therefore, the entire proceedings are vitiated and liable to be quashed. The Code of Criminal Procedure, 1898 was repealed by Section 484 but, by means of the Section 484(2)(b) Cr.P.C., 1973, all forms prescribed alongwith others, which were enforced immediately before commencement of the said Code, have been deemed respectively to have been published, issued, conferred, prescribed defined, passed or made under the corresponding provisions of this Code, which is extracted here-in-below:-

"all notifications published, proclamations issued, powers conferred, forms prescribed, local jurisdictions defined, sentences passed and orders, rules and appointments, not being appointments as Special Magistrates, made under the Old Code and which are in force immediately before the commencement of this Code, shall be deemed, respectively, to have been published, issued, conferred, prescribed, defined, passed or made under the corresponding provisions of this Code;

(50) Section 8 of The General Clauses Act, 1897 provides Construction of references to repealed enactments. It provides that where this Act, or any Central Act or Regulation made after the commencement of this Act, repeals and re-enacts, with or without modification, any provision of a former enactment, then references in any other enactment or in any instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provision so re-enacted. In view of above, the object of the provision is that where any act is repealed and re-

enacted, references in any other enactment or instrument to provisions of the repealed former enactment must be read and construed as references to the corresponding provision of re-enacted new provision, unless a different intention appears. Thus, the reference to the provision in the format, on which the statement under Section 364 Cr.P.C., 1898 was recorded, would be referable to Section 313 Cr.P.C., 1973.

(51) In view of above, the forms prescribed under the old Act have been deemed to have been prescribed under the corresponding provisions of Code of Criminal Procedure, 1973. Perusal of the records indicates that though the statement under Section 313 Cr.P.C. of the accused/appellants were recorded, but it started on the proforma prescribed for statement under Section 364 of the Criminal Procedure Code, 1898, whereas it is mentioned in the order dated 06.08.1986 passed by the learned Trial Court that the case is fixed on the next date i.e. on 13.08.1986 for statement of accused under Section 313 Cr.P.C.

(52) Learned counsel for the appellants failed to point out any discrepancy, illegality or error in the statements of the appellants under Section 313 Cr.P.C. except above. This Court is of the view that it may be an irregularity and cannot be said to an illegality affecting the trial or merit of case in itself, on account of which the whole trial may be said to have vitiated. Even otherwise, learned counsel for the appellants has failed to point out any discrepancy or illegality in the statements of the appellants recorded under Section 313 Cr.P.C., as referred in the order sheet of the said date, in any manner or it may have caused any prejudice to the appellants in any manner. It is also settled in law that merely by mentioning of wrong provision, the order or any proceeding etc. cannot be said to be vitiated and set aside. Even otherwise, it may have been a procedural violation only, therefore, the appellants have to show that on account of it, they could not get proper opportunity to defend them and it prejudiced them in any manner, but they failed to do so. Thus, the contention in this regard is wholly misconceived and not tenable and liable to be repelled, repelled accordingly.

(53) The Hon'ble Supreme Court, in the case of State of Uttar Pradesh Vs. Sudhir Kumar Singh and Others; (2021) 19 SCC 706, held that breach of the audi alteram partem rule cannot by itself, without more, lead to the conclusion that prejudice is thereby caused. Where procedural and/or substantive provisions of law embody the principles of natural justice, their infraction per se does not lead to invalidity of the orders passed.

(54) The Hon'ble Supreme Court, in the case of State of Madhya Pradesh Vs. Ramesh and Another (Supra), has held that statement of the accused made under Section 313 Cr.P.C. can be taken into consideration to appreciate the truthfulness or otherwise of the prosecution case. The relevant paragraph No.28 is extracted herein below:-

"28. Statement of the accused made under Section 313 Cr.P.C. can be taken into consideration to appreciate the truthfulness or otherwise of the prosecution case. However, as such a statement is not recorded after administration of oath and the accused cannot be cross-examined, his statement so recorded under Section 313 Cr.P.C. can not be treated to be evidence within the meaning of Section 3 of the Evidence Act, 1872. Section 315 Cr.P.C. enables an accused to give evidence on his own behalf to disprove the charges made against him. However, for such a course, the accused

has to offer in writing to give his evidence in defence. Thus, the accused becomes ready to enter into the witness box, to take oath and to be cross-examined on behalf of the prosecution and/or of the accomplice, if it is so required. (Vide: *Tukaram G. Gaokar v. R.N. Shukla & Ors.*, AIR 1968 SC 1050; and *Dehal Singh v. State of Himachal Pradesh*, (2010) 9 SCC 85). In such a fact-situation, the accused being a competent witness, can depose in his defence and his evidence can be considered and relied upon while deciding the case."

(55) The Hon'ble Supreme Court, in the case of *Shivaji Sahebrao Bobade and Another Vs. State of Maharashtra* (Supra), has held that it is trite law, nevertheless fundamental that the prisoner's attention should be drawn to every inculpatory material so as to enable him to explain it. This is the basic fairness of a criminal trial and failures in this area many gravely imperil the validity of the trial itself, if consequential miscarriage of justice has flowed. However, where such an omission has occurred it does not ipso facto vitiate the proceedings and prejudice occasioned by such defect must be established by the accused. In the event of evidentiary material not being put to the accused, the court must ordinarily eschew such material from consideration. The relevant portion of paragraph 16 is extracted herein below:-

"16. It is trite law, nevertheless fundamental that the prisoner's attention should be drawn to every inculpatory material so as to enable him to explain it. This is the basic fairness of a criminal trial and failures in this area many gravely imperil the validity of the trial itself, if consequential miscarriage of justice has flowed. However, where such an omission has occurred it does not ipso facto vitiate the proceedings and- prejudice occasioned by such defect must be established by the accused. In the event of evidentiary material not being put to the accused, the court must ordinarily eschew such material from consideration. it is also open to the appellate court to call has as regards the circumstances established against him but not put to him and if the accused is unable to offer the appellate court any plausible or reasonable explanation of Such circumstances, the court may assume that no acceptable answer exists and that even if the accused had been questioned at the proper time in the trial court he would not have been able to furnish any good ground to get out of the circumstances on which the trial court had relied for its conviction. In such a case, the court proceeds on the footing that though a grave irregularity has occurred as regards compliance with section 342, Cr. P.C., the omission has not been shown to have caused prejudice to the accused....."

(56) Similar view has been taken by the Hon'ble Supreme Court in the case of *Aejaz Ahmad Sheikh Vs. State of U.P. and Another* (Supra).

(57) In view of above and considering the over all facts and circumstances of the case, this Court does not find any illegality or error in the impugned judgment and order passed by the learned Trial Court, which has been passed by a reasoned and speaking order after considering the evidence and material on record appropriately as the charge under Section 302 I.P.C. read with Section 34 I.P.C. has rightly and in accordance with law been found proved against the appellants. The appeal has been filed on misconceived and baseless grounds, which lacks merit.

(58) The appeal is, accordingly dismissed, upholding the impugned judgment and order passed by the learned Trial Court. The conviction of the appellants for the offence punishable under Section 302 I.P.C. read with Section 34 I.P.C. is upheld and the sentence awarded is confirmed.

(59) The appellant No.1, Raj Narain has died and the appeal on his behalf has abated, whereas the appellant No.2, Kamlesh and the appellant No.3, Rajendra Prasad are on bail. The appellant No.2, Kamlesh and the appellant No.3, Rajendra Prasad are directed to surrender within a period of two weeks from today before the Chief Judicial Magistrate, Pratapgarh, who shall send them to jail to serve out the sentence, failing which, the Chief Judicial Magistrate, Pratapgarh shall take appropriate steps in accordance with law for their arrest to serve out the sentence.

(60) Let a copy of this judgment alongwith Trial Court's Record be transmitted to the Court concerned forthwith and in any case within a period of one week from today for compliance.

(2026) 4 ILRA 96
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 21.04.2026

BEFORE

THE HON'BLE SIDDHARTHA VARMA, J.
THE HON'BLE JAI KRISHNA UPADHYAY, J.

Criminal Appeal No. 2473 of 1987

Jagdish & Anr.

...Appellants

Versus

State of U.P.

...Respondent

Issue for consideration.

Matter pertains to whether conviction order is passed after the prosecution case is established beyond reasonable doubt.

Headnotes

Indian Penal Code-Section 302- deep-rooted enmity- presence of the eyewitnesses at the crime scene is surrounded by serious doubt- evidence of PW-1 and PW-2 is filled with the discrepancies/contradictory versions- eyewitnesses claimed that only three shots were fired from a distance of about 7 to 10 steps- however, the Dr. R.J. Khare, PW5, found injuries caused by four separate shots- conflict between medical and oral evidence- prosecution has failed to establish its case beyond the reasonable doubt- benefit of doubt would have to be extended-**Appeal allowed.** (E-9)

Case Law Cited

1. S.Govindaraju vs State Of Karnataka (2013) 15 SCC 315
2. Pankaj v. State of Rajasthan,(2016) 16 SCC 192
3. Solanki Chimanbhai Ukabhai v. State of Gujarat AIR 1983 SC 484
4. State of U.P. v. Hari Chand (2009) 13 SCC 542

List of Acts

The Indian Penal Code, 1860

List of Keywords

Contradictions; beyond reasonable doubt; medical and oral evidence; recovered; eye-witness.

Appearances of parties

Counsel for Appellant(s) : R.B. Sahai, Raj Kumar Sharma, Sunil Kumar **Counsel for Respondent(s):** A.G.A.

(Delivered by Hon'ble Jai Krishna Upadhyay, J.)

1. Heard Sri Raj Kumar Sharma, learned counsel for the appellants, the learned AGA for the State, and perused the material available on record and the judgment of the trial court.

2. The present criminal appeal has been preferred against the judgment and order dated 01.09.1987 passed by the Vth Additional Sessions Judge, Fatehpur, in Sessions Trial No. 173 of 1987 (State vs. Bachan Singh and others) u/s 302/34 IPC, Police Station - Khaga, District Fatehpur.

3. During the pendency of this appeal, accused-appellant no. 2 Ram Kumar died and, therefore, appeal against him is abated vide order dated 02.02.2026.

4. A brief narrative of the prosecution story, as discernible from the F.I.R., is that the informant is the son of the deceased. He stated that the deceased, Kunjal Prasad, accompanied by his son and one Udaibhan, R/o village Bharkhana, were going to call for labourers for planting their paddy crop. In the meantime, they decided to call labourers from village Sangrampur. As soon as they reached nearby a pond known as 'Gaviyan Talab', they saw that the accused persons, namely Bachan Singh, Jageshwar, Jagdish, and Ram Kumar, were surrounding the deceased. The accused Bachan Singh and Jagdish were armed with guns, Jageshwar was with a lathi, and Ram Kumar was with a 'tamanchha' in their hands. It was about 8:00 am when Jageshwar challenged them to kill the deceased, shouting that he must not be allowed them to escape. Upon the exhortation, accused Bachan Singh opened fire with an intention to kill the deceased Kunjal Prasad. The other accused persons also started firing by their 'tamanchhas' and guns from a very close distance. The deceased received gunshot injuries and fell down on the ground. Upon hearing the sound of the gunshots, Sukhlal and Ram Prasad came there and also saw the entire incident. The accused persons, after opening fire, ran away. Thereafter, the FIR was lodged on 18.07.1986 at 8:00 am under Section 154 Cr.P.C. at police station - Khaga, District-Fatehpur.

5. During the course of investigation, the Investigating Officer prepared the site plan and inquest report of the dead body, recorded the statements of witnesses, and thereafter submitted the charge sheet on which cognizance was taken, and the case was committed to the Court of Sessions Judge.

6. The accused persons Bachan Singh, Jagdish, and Ram Kumar were charged by the Vth Additional Sessions Judge, Fatehpur, for an offence punishable under section 302 IPC on 01.05.1987. They denied the charges and claimed to be tried.

7. To prove the prosecution case, the prosecution examined a total of 5 witnesses: P.W.-1, Shiv Sahai @ Khoonti; P.W.-2, Udai Bhan; P.W.-3, Ram Deen Tiwari; P.W.-4, Shrinath Pathak; and P.W.-5, Dr. R.J. Khare. The accused persons were examined under Section 313 Cr.P.C. No evidence in defence was led by the accused persons.

8. PW-1, Shiv Sahai @Khunti, has stated that Kunjal Prasad was his father and he was killed 11 months ago. On the date of the incident, the witness and his father Kunjal Prasad, along with Udai Bhan, were going to call for labourers from village Sangrampur and when they reached near 'Gaviyan Talab'; there, the witness and Udai Bhan stopped to urinate. While they were urinating, they saw the accused persons Bachan, Jageshwar, Jagdish, and Ram Kumar surrounding the witness's father. The accused Bachan Singh and Jagdish were armed with guns, Jageshwar was with a lathi, and Ram Kumar was with a tamanchha. It was about 8:00 am when Jageshwar exhorted the other accused persons to kill the deceased. He was shouting that the deceased must not be allowed to escape, Hearing this the accused Bachan Singh opened fire with an intention to kill the deceased Kunjal Prasad. Thereafter, the other accused persons also started opening fire by tamanchha and gun while they had from a very close distance. His father received gunshot injuries and fell down on the ground.

Hearing the sound of the gunshots, Sukhlal and Ram Prasad came there and also saw the entire incident. After coming to know about the incident, the witness's younger brother Pappu also came there. He got a report written by Jagannath and on that basis, the FIR was registered. There were some existing agricultural disputes between Dwarika Pandit and the accused persons, and because the witness's father was doing pairavi on behalf of Dwarika Pandit and he had won the case, the accused persons were inimical with his father. Due to that rivalry Bachan Singh had lodged a false report against them, and for making a false complaint against them, the witness's father was having a personal grudge with Bachan Singh. His grandfather's son is Nanga alias Ram Sahai. was the accused in the murder case of Kedar and Lallu. The accused Bachan Singh was a witness in that case. Nanga was also a named accused in the robbery that took place in Kanhai Lal's house and was also an accused in the murder case of Badlu Chamar. The witness stated that he did not know whether Nanga was an accused in the 325 case of Sangrampur. It is wrong to say that Nanga used to misbehave because of the influence of his father's position as Pradhan and hence people were angry with his father. Village Sangrampur was 22 or 23 furlongs away from his village to the west. Gabiyan pond is located somewhere near his village. People from his village went to Gabiyan pond for nature's call.

In cross examination, he had stated that, Ram Kumar's village, Tesahi Pur, was 2 to 2 1/2 kms away from his village. Accused Jageshwar's village was 6-7 kms away. He knew Jageshwar from before the incident. There were many residents of his village who worked as labourers. They also worked at his house. But whenever there was a shortage, they had to go to Sangrampur, which was a larger village with lots of workers available. Udai Bhan came on the 17th. He also needed some labourers. He had taken many available workers with him so that they could work in his fields. The witness did not write this in the report and could not tell any reason for not writing the same. It is wrong to say that they did not go to call any labourer. He had left and thereafter had again come back on the 18th. He came back as soon as the sun rose on the 18th. He drank tea and ate paan and had left. Pradhan had gargled; that is why he left at 8 o'clock. He did not have breakfast with tea.

He never came to his place for the people before the 17th. It is wrong to say that Udai Bhan was a close friend of his father and hence his name was falsely written in the report. There were a total of 4-5 fires shot and his father got injured by three of them. Sukhlal and Ram Prasad were present at the place of occurrence before the incident. He rightly wrote the name of Udai Bhan and Ram Prasad. The accused persons ran away when several other persons gathered there. It is wrong to say that he, due to enmity with Ram Gopal Tripathi, had implicated him. It is true that he implicated Jageshwar because there were talks of a marriage relation between Bachan Singh's brother and the house of Jageshwar.

9. PW-2, Udai Bhan, has submitted that this incident occurred approximately 11 months ago. It was around 8:00 am when Kunjal Pradhan, the witness, and the elder son of the deceased were traveling to village Sangrampur to hire labourers. The witness stated that he and the son of the deceased both started urinating near a mango tree on the way. After urinating, they observed two men emerging from the bushes on both sides of the road and they stood in front of Kunjal Prasad. Jageshwar, who was armed with a lathi, shouted, "Kill the bastard." Following this exhortation, Bachan fired his gun, and Ram Kumar and Jagdish also fired their weapons at Kunjal Prasad. Kunjal Prasad was struck, wounded, and fell to the ground. The witness and Khunti shouted, after which the accused fired again and fled from the spot. Other villagers arrived thereafter. After the accused left, they saw that Kunjal Prasad was dead. Khunti prepared a report and went to the police station while the other villagers remained near the body. The Inspector subsequently took the witness's statement regarding the incident.

The witness further submits that although some people in his own village are labourers, they were going to call additional labour from village Sangrampur. He states that he had met the Pradhan by chance and did not go to his home initially. On the 18th, he reached the Pradhan's house at 7:30 am; the Pradhan had tea but did not have breakfast, as he had already attended to nature's call. The witness denies that the 'roos' tree is higher than one and a half feet. He sat down to urinate near a mango tree about 15?20 paces from the edge of the orchard. A Sirsa tree was located about 7?8 paces west of that spot, and it was near this tree that Kunjal Prasad was shot. Bachan fired the first shot, which had hit Kunjal Prasad in the chest. The other two accused were standing next to him and also fired. In total, five shots were fired. The witness does not remember whether he specifically mentioned the number of shots to the police. He states that he studied up to class 8th and did not instruct Khunti on how to write the report. He denies that Kunjal Prasad was his friend and claims he did not know why the Inspector recorded in his statement that his friends had surrounded Kunjal Prasad.

10. PW-3, Ram Deen Tiwari, Head Constable at Police Station Khaga, District Fatehpur, had submitted that on 18-07-1986, he was posted as Head Constable at the Khaga Police Station. On that day, based on the complaint provided by Shiv Sahay alias Khunti, he prepared the Chik F.I.R. He had stated that the document, marked as Ex-Ka-2, was in his own handwriting and bore his signature. Following the preparation of the Chik F.I.R., the case was formally registered as G.D. No. 17 at 10:00 am. The witness confirmed that the carbon copy of the General Diary (G.D.), marked as Ex-Ka-3, was prepared in his handwriting and carried his signature. He denied the suggestion that the report was written several days later after consultation with others.

11. PW-4, Shri Nath Pathak, had submitted that on 18-07-1986, he was posted as the SSI at Police Station Khaga, District Fatehpur. He had stated that the case was filed in his presence and he commenced the investigation on the same day. After recording the statement of Head Mohrir Ram Deen Tiwari, he proceeded to the scene of the incident, arriving at approximately 14:30 hours. Upon arrival, he prepared the Panchayatnama (inquest report) of the deceased and, acting on the opinion of the Panchan, sent the body for post-mortem. After reviewing the Shamil Misil, he identified the Panchayatnama (Ex-Ka-5) as being in his own handwriting and signature. He further confirmed that the Challan of the dead body, the photo of the dead body, the letter to the CMO, the letter to the R.I., and the sample seal stamp were all prepared in his handwriting and signature and they were all marked as Exhibits Ex-Ka-6 to Ex-Ka-9.

On the same day, the witness inspected the spot and prepared a Nazri map (Ex-Ka-10). He confirmed its accuracy and his signature. He recorded the statements of eyewitnesses Sukhlal, Udai Bhan, and Ram Prasad. He also collected samples of blood-stained and plain soil from the spot, which were sealed in separate boxes and marked as Ex-Ka-11. Additionally, he took possession of pellets, Tikli, blood-stained clothes, and shoes, documenting the recovery in a Fard (Ex-Ka-12). During the proceedings, various sealed bundles were opened containing plain soil (Ex-1), blood-soaked soil (Ex-2), six ticklies (Ex-3/1 to 3/6), two empty cartridges (Ex-4/1 to 4/2), and one pellet (Ex-5). He also identified the shoes, towel, and pyjama recovered from the deceased (Ex-Ka-6, 7, and 8).

The witness submitted that after searching for the accused without success, the police returned to the station at night. He recorded the statement of accused Jageshwar on 30-07-1986 and the statements of accused Bachan, Jagdish, and Ram Kumar on 02-08-1986. The investigation concluded with the submission of the charge sheet (Ex-Ka-13) on 03-08-1986. He denied that the informant failed to come to the station. He noted that witness Udai Bhan did not mention going to call labour, nor did he mention that two shots were fired in the air; instead, Udai Bhan stated that his friend Kunjal Pradhan was surrounded from the front. The witness clarified that he prepared the Panchayatnama after observing the injuries, though the photo was later destroyed. He noted that Sukhlal was first seen at place 'C' outside the road, arriving from Sangrampur. Finally, he stated that he recovered six bullets from the seven paces north of the body, though he could not specify the number of pellets typically found in a 12-bore cartridge.

12. PW-5, Dr. R.J. Khare, has submitted that on 19-07-1986, he was posted as a Medical Officer at District Hospital, Fatehpur. On that day, he conducted the post-mortem examination on the body of Shri Kunjal Prasad, which was brought by Constable Mahadev Prasad. The witness stated that the post-mortem report, marked as Ex-Ka-14, was in his handwriting and bore his signature. Upon external examination, the deceased was identified as a 65-year-old male of average built and wheatish complexion. Rigor mortis had set in from both sides of the body at the time of the examination.

The witness found the following ante-mortem injuries on the body of the deceased:

(i) Gunshot wound of entrance 1 cm x 1 cm bone deep, on the inner side of the middle part of the right ear, on the temple of the right ear. The edges of the wound were cut and turned inwards. There was lichen and charring around the wound.

(ii) Bullet wound 5 cm x 2 cm deep up to the bone on the right side of the lower lip. The edges of the wound were torn and irregular and there was no blackness or burn in it. There was a fracture on the right side of the jaw up and down. On examining this wound I found that the bullet entered from the lower lip and went up to the throat cavity, breaking the jaw and went down to the throat. The exit wound of this bullet is 4 cm from the right ear in an area of 8 cm x 8 cm, from here the bullet came out. The edges of the wound were crushed and irregular.

(iii) Bullet intrusion wound 3 cm x 2 cm deep up to the flesh, 3 cm above the nipple, the edges of the wound were torn and irregular. The bullet entered the throat cavity and ruptured the internal organs. The exit wound of the bullet that entered from this wound is 4 cm x 3 cm, 5 cm downwards from the left nipple. The edges of the wound were crushed and irregular.

(iv) Bullet entry wound measuring 8 cm x 8 cm on the root of the penis, each measuring 1 cm x 1 cm deep into the flesh on the left thigh. There were six bullet exit wounds, each measuring 2 cm x 2 cm, just near injury No. 4, with irregular and crushed margins

On internal examination, the witness noted that the right upper and lower jaws and the right temple bone were fractured. The brain and both lungs were congested with blood, the heart was empty, and the stomach cavity contained blood. While the stomach and small intestine were empty, the large intestine was filled with faeces. The liver, pancreas, spleen, and kidneys were all found to be congested.

The witness expressed the opinion that the deceased died from shock and haemorrhage resulting from these gunshot wounds. At the time of the autopsy, the deceased had been dead for approximately one and a half days, placing the time of death around 8:00 am on 18-07-1986, though he noted it could potentially have been between 3:00 am and 4:00 am. He clarified that all injuries were caused by firearms. He further explained that "lacerated" and "contused" described the nature of wounds found in injuries No. 2 to 4. He stated that while entry wounds typically have inverted margins and exit wounds have everted margins, he found the margins in injuries No. 2, 3, and 4 to be irregular or similar. He maintained that he recorded these observations after direct inspection and noted that the absence of clean-cut margins ruled out the use of sharp-edged weapons.

13. Learned counsel for the appellant submits that:

The F.I.R. is the result of consultation with police officials in collusion with each other. There was every occasion for the false implication of the accused-appellant by the informant. In a previous incident, one Ram Dulare was murdered in which the accused Bachan Singh was an eye-witness, which ended in conviction. Further, about three months prior to this incident, the father of accused Bachan Singh was beaten, and an F.I.R. was lodged by Bachan Singh against PW1 Shiv

Sahai @ Khunti and his brother Har Sahai. The father of accused Bachan Singh died one month after that incident, and the present incident took place one month after his death.

There was no clear motive to commit the murder of the father of the informant, and had there been any existing grudge the informant (PW1) would have been forgotten instead. Furthermore, it was highly improbable that the accused would have spared the informant if he was actually present at the scene as claimed. The prosecution has failed to establish that the deceased, the informant, and Udai Bhan (PW2) were going to arrange labor for planting the paddy crop in their field.

PW1 is an interested witness, and his presence at the time of occurrence is doubtful. The claim that PW1 accompanied the deceased and PW2 while they were leaving for another village appears unnatural. PW2 Udai Bhan is a chance witness, and his testimony is also not reliable.

There are material contradictions between the oral testimony and the medical evidence. The post-mortem report shows that the lower large intestine was full of fecal matter. This contradicts the circumstances of the case because the prosecution claims the deceased was going to village Sangrampur after relieving himself. The deceased must have been killed in the morning when he had gone to relieve himself in the field by unknown persons who were not seen by anyone, and the accused persons have been falsely implicated by the informant due to enmity.

PW5 Dr. R. J. Khare has accepted that the injuries could be the result of four fires, but both eye-witnesses have stated that only three shots were fired. Both eye-witnesses stated that the firing took place from 7 to 10 steps away. However, the doctor has opined that Injury No. 1 was inflicted from close range specifically from within four feet.

14. On the other hand, learned AGA for the State supporting the impugned judgment, has submitted that there is no infirmity or illegality in the impugned order. He vehemently opposed the appeal, contending that the first informant was an eyewitness whose testimony cannot be easily brushed aside, and argued that minor discrepancies should not be allowed to vitiate the prosecution's case. The trial court has rightly convicted the accused persons. It was further submitted that prosecution has proved its case beyond reasonable doubt, therefore, this appeal lacks merit and is liable to be dismissed.

15. Having considered the rival submissions of the parties and perused the material available on record we find that the case of the prosecution primarily rests on the testimony of two eyewitnesses, PW1 (the informant) and PW2 (Udai Bhan) and on the medical evidence. . The learned counsel for the appellants has strongly argued that the entire story was created after the incident had occurred previously in consultation with police officials. A look at the history between the parties reveals a deep-rooted enmity. The accused, Bachan Singh, was an eyewitness in a previous murder case involving one Ram Dulare, which resulted in a conviction against the informant's side. Furthermore, just three months before this incident, Bachan Singh had lodged an F.I.R. against PW1 and his brother for assaulting his father. In criminal law, motive is a double-edged weapon, while enmity can provide a motive for a crime, it also provides a very strong motive for the false implication of innocent persons. We find the story hard to believe because if the

accused truly wanted to take revenge against PW1, it made no sense that they would short his father and left PW1 completely untouched even when he was standing right there.

16. The presence of the eyewitnesses at the crime scene is surrounded by serious doubt as PW2 admitted that his own village had a population of 100- 150 people including women and children, who work as labourers and in such circumstance his explanation of going to another village to hire labourers appeared to be suspicious. Moreover, there is a direct contradiction between the two witnesses: PW1 in his testimony had stated that PW2, Udai Bhan came to his house, while PW2 had stated that they met suddenly on the road while he was going to Ranipur to hire labourers. These inconsistencies, combined with the fact that PW1 is an "interested witness" makes it dangerous to rely on their testimony alone without strong supporting evidence. This doubt is further strengthened by PW1's admission during cross-examination that one of the accused, Jageshwar, was falsely implicated in this matter because of a family marriage dispute. The Hon'ble Apex Court in the case of S.Govindaraju vs State Of Karnataka (2013) 15 SCC 315 stated that:

23. It is well settled legal proposition that while appreciating the evidence, the court has to take into consideration whether the contradictions/omissions were of such magnitude so as to materially affect the trial. Minor contradictions, inconsistencies, embellishments or improvements in relation to trivial matters, which do not effect the core of the case of the prosecution, must not be made a ground for rejection of evidence in its entirety. The trial court, after going through the entire evidence available, must form an opinion about the credibility of the witnesses, and the appellate court in the normal course of action, would not be justified in reviewing the same, without providing justifiable reasons for doing so. Where the omission(s) amount to a contradiction, creating a serious doubt regarding the truthfulness of a witness, and the other witnesses also make material improvements before the court in order to make the evidence acceptable, it would not be safe to rely upon such evidence. The discrepancies in the evidence of eyewitnesses, if found not to be minor in nature, may be a ground for disbelieving and discrediting their evidence. In such circumstances, the witnesses may not inspire confidence and if their evidence is found to be in conflict and contradiction with other evidence available or with a statement that has already been recorded, then in such a case, it cannot be held that the prosecution has proved its case beyond reasonable doubt.

17. While discrepancies in the witness evidence often occur in criminal cases, if these contradictions create such serious doubt in the mind of the Court about truthfulness of the witness, then these contradiction go to the root of the matter and in such a case the accused get the benefit of doubt. As such evidence of PW-1 and PW-2 is filled with the discrepancies/contradictory versions, it leads to the irresistible conclusion that evidence of witness cannot be a base to convict the accused-appellant.

18. In this regard, reference may be made to the decision of Hon'ble Apex Court in Pankaj v. State of Rajasthan,(2016) 16 SCC 192 wherein it was emphasised that when the genesis and manner of the incident itself are doubtful, conviction cannot be sustained. The Court held as under:

25. It is a well-settled principle of law that when the genesis and the manner of the incident is doubtful, the accused cannot be convicted. Inasmuch as the prosecution has failed to establish the

circumstances in which the appellant was alleged to have fired at the deceased, the entire story deserves to be rejected. When the evidence produced by the prosecution has neither quality nor credibility, it would be unsafe to rest conviction upon such evidence. After having considered the matter thoughtfully, we find that the evidence on record in the case is not sufficient to bring home the guilt of the appellant. In such circumstances, the appellant is entitled to the benefit of doubt.

19. Another most significant evidence that casts a shadow on the prosecution's case is the direct conflict between the testimony of ocular witnesses and of the medical evidence. The eyewitnesses claimed that only three shots were fired from a distance of about 7 to 10 steps. However, the Dr. R.J. Khare, PW5, found injuries caused by four separate shots. More importantly, the doctor stated that Injury No. 1 was a "close-range" shot, fired from within four feet. The Prosecution witnesses also stated the accused fired from the front, but the post-mortem report shows the entry wound was on the right side of the head near the ear. This means the accused had to be standing to the right of the deceased, not in front of him. These contradictions that go to the very root of the case.

20. Further, the medical condition of the deceased's body reveals circumstances that are inconsistent with the account given by the prosecution witnesses. The prosecution claimed the deceased was killed while traveling to another village after having already relieved himself. However, the post-mortem report clearly shows that his large intestine was full of fecal matter. This strongly suggests that the deceased was killed very early in the morning, perhaps while he was out in the fields to relieve himself, and was likely attacked by unknown persons when no one else was around. It appears the informant discovered the body later and used the opportunity to name his enemies as the killers.

21. It is true that where there is a conflict between medical and oral evidence, preference is often given to oral evidence as medical evidence is simply an opinion. However, this principle is not applicable in the instant case because the oral evidence and medical evidence are poles apart and do not reconcile with each other. It cannot be said that there is only a minor discrepancy between the oral and medical evidence; under these circumstances, preference cannot be given to the oral testimony.

22. In *Solanki Chimanbhai Ukabhai v. State of Gujarat* AIR 1983 SC 484, Hon'ble Court observed,

Ordinarily, the value of medical evidence is only corroborative. It proves that the injuries could have been caused in the manner alleged and nothing more. The use which the defence can make of the medical evidence is to prove that the injuries could not possibly have been caused in the manner alleged and thereby discredit the eye-witnesses. Unless, however the medical evidence in its turn goes so far that it completely rules out all possibilities whatsoever of injuries taking place in the manner alleged by eyewitnesses, the testimony of the eye-witnesses cannot be thrown out on the ground of alleged inconsistency between it and the medical evidence.

23. In State of U.P. v. Hari Chand (2009) 13 SCC 542, Hon'ble Apex Court re-iterated the aforementioned position of law and stated that, "In any event unless the oral evidence is totally irreconcilable with the medical evidence, it has primacy.

Thus, the position of law in cases where there is a contradiction between medical evidence and ocular evidence can be crystallized to the effect that though the ocular testimony of a witness has greater evidentiary value vis-a-vis medical evidence, when medical evidence makes the ocular testimony improbable, that becomes a relevant factor in the process of the evaluation of evidence. However, where the medical evidence goes so far that it completely rules out all possibility of the ocular evidence being true, the ocular evidence may be disbelieved.

24. In the view of the facts and circumstances discussed above, we are of the opinion that the prosecution has failed to establish its case beyond the reasonable doubt. Hence, the benefit of doubt would have to be extended to the accused-appellant no. 1, Jagdish. The appeal deserves to be allowed.

25. Accordingly, the appeal is allowed qua appellant no. 1, Jagdish.

26. Appellant no. 1, Jagdish, is on bail. His bail bonds are cancelled and sureties are discharged. .

27. Let a certified copy of the judgment alongwith trial court record be sent to the concerned Chief Judicial Magistrate/Trial Court for compliance.

(2026) 4 ILRA 105
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 02.04.2026

BEFORE

THE HON'BLE CHANDRA DHARI SINGH, J.
THE HON'BLE DEVENDRA SINGH-I, J.

Criminal Appeal No. 4964 of 2015

Vinod

...Appellant
Versus

State of U.P.

...Respondent

Issue for consideration

Matter pertains to legality of conviction order in case of no evidence.

Headnotes

Indian Penal Code-Section 302- Trial Court convicted Appellant to life imprisonment- by the same judgement co-accused Omkar is acquitted u/s302/201 IPC and appellant Vinod acquitted u/s 201 IPC- admitted facts-all the prosecution witnesses are related to each other- evidences are full of discrepancies -can

be termed as wholly unreliable witnesses- case of no evidence- evidence has been fabricated in piecemeal to drag the appellant in the present case-impugned conviction order set aside. **Appeal allowed.** (E-9)

Case Law Cited

1. Masalti Vs. State of U.P. (1964) 8 SCR 133
2. Raju Vs. State of Tamil Nadu (2012) 4 SCC (Cri) 184
3. Edakkandi Dineshan alias P. Dineshan and others Vs. State of Kerala, (2025) 3 SCC 273
4. Chhote Lal Vs. Rohtash and others- Criminal Appeal No. 2490 of 2014 decided on 14.12.2023
5. Vadivelu Thevar Vs. State of Madras, AIR 1957 SC 614

List of Acts

Indian Penal Code, 1860

List of Keywords

Asphyxia; strangulation; discrepancies; unreliable witnesses.

Appearances of parties

Counsel for Appellant(s) : Ajay Kumar Mishra, Bhavya Sahai, Ram Babu Sharma, Sandeep Kumar Rai, Vikrant Rana

Counsel for Respondent(s) : Adesh Kumar, G.A.

(Delivered by Hon'ble Chandra Dhari Singh, J.)

1. This criminal appeal has been filed against judgement dated 07.10.2015 and order dated 08.10.2015 passed by the Additional Sessions Judge/Special Judge (E.C. Act), Meerut in Sessions Trial No. 207 of 2010, arising out of Case Crime No. 170 of 2009, under Section 302/201 IPC, Police Station Saroorpur, district Meerut whereby the learned Judge convicted and sentenced the appellant to life imprisonment and a fine of Rs. 20,000/- and in case of default in payment of fine, the appellant shall further undergo rigorous imprisonment for two years.

2. However, by the same judgement, the learned Judge acquitted co-accused Omkar under Section 302/201 IPC and appellant Vinod under Section 201 IPC.

Facts of the case

3. The facts that formed the bedrock of the present criminal appeal are that a written report was given by Kartar Singh (hereinafter referred to as the first informant) at the police outpost Khiwai of police station Saroorpur mentioning therein that the applicant is the resident of village and post Sarauli, district Ghaziabad. His daughter Chanchal (hereinafter referred to as the deceased) aged about 13 years was living with Rati Ram, uncle (Phupha) of his wife since her birth. On 06.06.2009, Rati Ram informed him on telephone that he sustained injuries in his leg due to fall from cart. On that information, when the first informant along with his brother and uncle reached there, enquired Rati Ram about his injury, then he told the first informant that his daughter is missing since 4 O'clock. The first informant asked Rati Ram to accompany him to get the first information report lodged and when the brother of Rati Ram went to his house to wear Kurta, he found the dead body of Chanchal lying at his door.

4. On the basis of the aforesaid report, a case was registered at case crime No. 53 of 2009, under Section 302 IPC at the police outpost Khiwai, police station Saroorpur, district Meerut. However, the case was renumbered as case crime No. 170 of 2009, at Police Station Saroorpur, which was entered in GD vide report No. 31 at 18:35 hours.

5. On the next day, the first informant submitted another written report Paper No. Aa 10/1, which was not proved before the Court, alleging therein that in addition to previous written report that his daughter was murdered on 6th June, 2009 between 04:00 PM and 1:10 AM, after the post-mortem examination, when he took the dead body of her daughter to his village, his cousin Pradeep, son of Vijendra and Jalindra, son of Rajbir also reached his village and told him that on 06.06.2009, they had gone to village Kinauni at the house of Rati Ram and met their niece Chanchal. They remained at the house of Rati from 4 to 5 PM and in their presence Vinod, son of Chandru called Chanchal to prepare 2-3 cup of tea stating that her aunt is not at home and his friend has come. At about 5:00 PM Chanchal went there with tea. Thereafter, both of them had left for village Maharampur. The first informant has made a suspicion that Vinod, son of Chandru had killed her.

6. On 12.06.2009, the first informant had submitted another application Paper No. Aa 10/3 mentioning therein that his brother-in-law Sube Singh and Kadam, resident of Mukeem Pura, district Baghpat had come to his house and told him that on the date of incident when they went to make water, they saw that Vinod and Omkar alias Suda, son of Chandru throwing the dead body of Chanchal at the door of Yashpal taking from the house of Vinod. This paper has also not been proved before the Court.

7. After registration of the case, the law set into motion and investigation of the case was entrusted to PW-8, Pramod Kumar Sharma. PW-7, SI Tej Singh Yadav, who was present at the police station rushed to the spot and conducted the inquest on the dead body of the deceased and prepared inquest report and other papers, Ext. Ka-3 to 7, sealed the dead body and sent it for post-mortem through Constables Ramesh Chand and Surendrapal Singh.

8. PW-8, SHO Pramod Kumar Sharma, in his evidence has stated that on 07.6.2009, he was posted as Station House Officer at police station Saroorpur. On that day, he started the investigation of case crime No. 53/170 of 2009, which was registered at reporting out post Khiwai. After receiving the post mortem report of the deceased, he converted the case to one under section 302 IPC. He recorded the statement of Clerk Constable Sukhbir Singh and left for the house of the deceased, but no one was present. On 08.6.2009, he recorded the statement of the first informant and also copied the post-mortem report and inquest report in the CD. On the pointing out of Rati Ram he inspected the spot and prepared site plan. He also recorded the statement of the witnesses. On 15.6.2009, the first informant made another application, on the basis whereof Section 201 was added and name of Omkar has been added in the array of accused. After culmination of investigation and completing necessary formalities, the investigating officer submitted charge sheet No. 153 of 2009, Ext. Ka-10 on 16.8.2009.

9. As the case was exclusively triable by the Court of Sessions, the learned Magistrate committed the case to the Court of Sessions where case was registered as Sessions Trial No. 207 of

2010. Learned Additional Sessions Judge, Court No. 5, Meerut framed the charges against the appellant-Vinod and co-accused Omkar under Section 302/34 and 201 IPC, which were read over and explained to them. The accused pleaded not guilty and claimed to be tried.

10. To bring home guilt of the appellant, the prosecution has examined as many as 11 witnesses. PW-1, Kartar Singh, PW-2, Rati Ram, PW-3 Dr. Ravi Prakash, PW-4, Jalindra Singh, PW-5, Pradeep, PW-6, Sube Singh, PW-7, SI Tej Singh yadav, PW-8, Inspector Pramod Kumar Sharma, PW-9, Premo Devi, PW-10, Dr. Rakesh Chandra, PW-11, Yashpal.

11. PW-1, Kartar Singh is father of the deceased and first informant of the case. He reiterated the versions given in the first information report. He further deposed that on 08.6.2009 and 12.06.2009 he also made application to the police.

12. PW-2, Rati Ram in his examination-in-chief deposed that he knows accused Vinod and Omkar. Accused-Vinod is his nephew. He also stated that since he has no issue, the deceased was living with him when she was aged about 2 years. At the time of incident she was aged about 13-14. She also looks him after as well as his wife. The house of accused-Vinod is adjacent to his house. At the time of incident, the family of Vinod was not at home. Omkar and Vinod were at the house. On the date of occurrence at about 05:00 PM, accused-Vinod called the deceased to his house for making tea as his wife was not at home. At that time, Pradeep, Jalendra and his wife were also present there. Chanchal went to the house of Vinod. When Chanchal did not come back, they made a search in the neighbourhood. He also went at the house of Vinod, but the house was locked and Omkar and Vinod were not at home. Thereafter, he informed the relatives as well as father of the deceased. Kartar, Jalendra and Pradeep reached at about 1-1/2 hours to whom he told about the missing of the deceased. He further deposed that when the first informant asked him to accompany him to get the first information report lodged and when Yashpal, brother of Rati Ram went to his house to wear Dhoti, he found the dead body of Chanchal lying at the brick kiln near the house of Yashpal. There was mark of dragging from the house of Vinod up to brick kiln. The house of Vinod was locked. The door of southern side of the house was opened and green paint which was on the room, was also also got on the clothes of the deceased.

13. PW-3, Dr. Ravi Prakash has stated on oath that he was posted at P.L. Sharma Hospital, Meerut and on 07.6.2009, he was on post mortem duty. On that date at about 03:30 PM, he conducted the post-mortem on the body of the deceased and found the following ante-mortem injuries:

1. An abrasion in an area of 4 cm c 2 cm in front of left right ankle.
2. Multiple abrasion in an area of 8 cm x 4 cm on the posterior area of left ankle just 15 cm above the heel.
3. A lacerated wound in the shape of 1 cm x 0.5 cm on upper portion of second finger of right hand.
4. A lacerated wound in an area of 2 cm x 1 cm just above nail of left hand.

5. A Ligature mark horizontal size 28 cm x 4.0 cm on the front of neck below the thyroid cartilage, 7 cm below the chin, 5 cm below left ear and 6 cm below right ear, thyroid base was brown.

14. In the opinion of the Doctor, the cause of death of the deceased was asphyxia due to strangulation.

15. PW-4, Jalindra Singh has stated in his examination-in-chief that the deceased was his niece and she was living with Rati Ram. He had gone to village Kinauni on 06.6.2009 with his cousin Pradeep at about 3:45 PM. When he reached Kinauni, Rati Ram, deceased and his Mausī Premo were present there. They stayed there for 30-45 minutes. During their stay, Vinod called the deceased to prepare tea because her aunt was not at home. House of Vinod is attached to the house of Rati Ram. The deceased went to the house of Vinod. After that he stayed there and returned to his village. The deceased did not return. On 07.6.2009 at about 07:00 AM, they reached Sirauli where people were gathered and dead body of Chanchal was lying. This fact was informed to Kartar Singh by him. On the next day, Kartar Singh informed the police in writing about the said fact.

16. PW-5, Pradeep in his examination-in-chief stated that on the date of incident he went to village Kanauni at about 3:45-04:00 PM. Thereafter his cousin Jalendra has also come. He met Rati Ram, Smt Premo and the deceased-Chanchal in the village. At that time accused-Vinod called the deceased for preparing tea. Deceased-Chanchal went to the house of Vinod from roof. He left the village about 10-15 minutes thereafter and by that time the deceased did not return. He received the information about the death of the deceased on 07.6.2009. Thereafter, he met Kartar Singh and told him about the said fact.

17. PW-6, Sube Singh in this examination-in-chief stated that on 06.6.2009 at about 09:30 PM, he received a call from Kartar Singh to go and find out about the injury of Rati Ram. When he along with Kadam Singh went to village Kanauni, they came to know that every body was searching the deceased. They also started searching the deceased. When they were searching the deceased they saw accused Omkar and Vinod going with long stride at about 12:30 in the night. He told the said fact to Kartar Singh on 12.06.2009.

18. PW-7, SI Tej Singh Yadav conducted the inquest on the dead body of the deceased and prepared inquest report and other papers, Ext. Ka-3 to 7, sealed the dead body and sent it for post-mortem through Constables Ramesh Chand and Surendrapal Singh.

19. PW-8, Pramod Kumar Sharma was the investigating officer of the case. He conducted investigation and submitted charge sheet against the accused, Ext. Ka-10.

20. PW-9, Smt. Premo is the wife of Rati Ram. She has almost stated the facts, which have been stated by PW-2, Rati Ram.

21. PW-10, Dr. Rakesh Chandra in his examination-in-chief deposed that on 13.06.2009, he was posted at Health Centre Saroorpur as In-charge Medical Officer. On that date at 1:45 PM, he

examined accused-Vinod Kumar, son of Chandru, aged about 24 years, who was brought by Clerk Constable Jagvir Gautam and found the following Injury on his person:

Linear abrasion 4.5 cm into vertically on the right side of face 5 cm away from right ear.

22. In the opinion of the doctor the injury was simple and caused by friction agent sharp surface. The injury was about one week old, which he proved as Ext. Ka-15.

23. PW-11, Yashpal, in his examination-in-chief has stated that on 06.6.2009 at about 2-2-1/2 PM, he had gone to water the field and came back to his house at about 1:00 in the night. When he came to village, he saw 10-15 persons sitting at the door of Rati Ram and were talking to each other that Chanchal was missing. Out of the persons who gathered there, Rajbir, Kartar and Pratap were his relative. When the deceased could not be found, they decided to lodge a report. Thereafter, when he was coming to his house to wear clothes, he saw the dead body of the deceased in the heap of bricks lying in the lane of Vinod. Thereafter, he came back to told the persons gathered there about the dead body.

24. After the closure of prosecution evidence, the statements of the accused were recorded under Section 313 Cr.P.C. in which they denied the circumstances appearing against them and claimed to be tried.

25. Learned Additional Sessions Judge/Special Judge (EC Act), Meerut after hearing the learned counsel for the parties and assessing, evaluating and scrutinizing the evidence on record, convicted and sentenced the accused-appellant as indicated herein above.

26. Hence this appeal.

Submissions on behalf of the appellant

27. Learned counsel for the appellant submitted that all the witnesses are close relatives and that the testimony of the said witnesses falls in the category of wholly unreliable witnesses and as such, the conviction cannot be sustained.

28. Learned counsel for the appellant also submitted that on the same evidence, co-accused Omkar has been exonerated by the learned Trial Court. The appellant has also been acquitted under Section 201 IPC.

Submission on behalf of State

29. Per contra Shri S.K. Ojha, learned Additional Government Advocate-I supported the findings of the learned trial court by stating that the learned trial court has correctly martialled the evidence and considered each and every aspect of the case while convicting the appellant and that the prosecution has proved its case beyond all reasonable doubt.

Analysis and conclusion

30. Heard Shri Sandeep Kumar Rai, learned counsel for the appellant and Shri S.K. Ojha, learned Additional Government Advocate-I, representing the State of U.P.

31. A witness in a crime is a vital component in the administration of justice. By providing evidence related to the allegation of the offence, the witness fulfils a holy obligation of aiding the court in discovering the truth or rather facts. That is why before presenting testimony, a witness takes an oath in the name of God or makes a solemn statement that he/she will narrate the truth, the entire truth and nothing but the truth. In our justice system, witnesses play a critical role in assisting courts in making effective judgements, ensuring that justice is given to those who need it the most.

32. In the instant case, the first information report has been lodged by PW-1, Kartar Singh on 07.6.20209 at 07.00 AM in respect of the death of his daughter (deceased). On this application, case crime No. 53 of 2009, under Section 302 IPC was registered at outpost Khiwai of Police Station Saroorpur, district Meerut. However, the case was renumbered as case crime No. 170 of 2009, at Police Station Saroorpur, which was entered in GD vide report No. 31 at 18:35 hours. In the first information report, no one was made as accused.

33. On the next day (08.6.2009) the first informant submitted another written report Paper No. Aa 10/1 alleging therein that in addition to previous written report that his daughter was murdered on 6th June, 2009 between 04:00 PM and 1:10 AM, after the post-mortem examination, when he took the dead body of her daughter to his village, his cousin Pradeep, son of Vijendra and Jalindra, son of Rajbir also reached his village and told him that on 06.06.2009, they had gone to village Kinauni at the house of Rati Ram and met their niece Chanchal. They remained at the house of Rati from from 4 to 5 PM and in their presence Vinod, son of Chandru called Chanchal to prepare 2-3 cup of tea stating that her aunt is not at home and his friend has come. At about 5 PM Chanchal went there with tea. The first informant has made a suspicion that Vinod, son of Chandru had killed her.

34. Again on 12.06.2009, the first informant had submitted third application Paper No. A 10/3 mentioning therein that his brother-in-law Sube Singh and Kadam, resident of Mukeem Pura, district Baghpat told him that on the date of incident when they went to make water, they saw that Vinod and Omkar alias Suda, son of Chandru throwing the dead body of Chanchal at the door of Yashpal taking from the house of Vinod.

35. From the perusal of all the applications submitted by Kartar Singh, the first informant of the case, it is clear that he has nominated the accused on the basis of information gathered in piecemeal from his relatives and friends.

36. It is admitted facts that all the prosecution witnesses are related to each other. The rule of prudence of the point of related and interested witnesses is that their evidence should be meticulously and carefully examined. Before discussing the evidence prosecution witnesses, it would be useful to refer to certain pronouncement of Hon'ble Supreme Court on the point of related witnesses.

37. In Masalti Vs. State of U.P. (1964) 8 SCR 133 the Supreme Court observed:

"But it would, we think, be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses. The mechanical rejection of such evidence on the sole ground that it is partisan, would invariably lead to failure of justice. No hard and fast rule can be laid down as to how much evidence should be appreciated. Judicial approach has to be cautious in dealing with such evidence; but the plea that such evidence should be rejected because it is partisan cannot be accepted as correct."

38. In *Raju Vs. State of Tamil Nadu* (2012)4 SCC (Cri) 184, Hon'ble Supreme Court held as under:

The sum and substance is that the evidence of a related or interested witness should be meticulously and carefully examined. In a case where the related and interested witness may have some enmity with the assailant, the bar would need to be raised and the evidence of the witness would have to be examined by applying a standard of discerning scrutiny.

39. The aforesaid decision in *Raju* (Supra) was followed by Hon'ble Supreme Court in *Edakkandi Dineshan alias P. Dineshan and others Vs. State of Kerala*, (2025) 3 SCC 273.

40. In *Criminal Appeal No. 2490 of 2014 (Chhote Lal Vs. Rohtash and others)*, decided on 14.12.2023, Hon'ble Supreme Court held as under:

It may not be out of context to mention that the appellant/complainant, a sole eyewitness, happens to be the most interested witness being the father of the deceased and having long enmity with the group to which the accused persons belong, therefore, his testimony was to be examined with great caution and the High Court was justified in doing so and in doubting it so as to uphold the conviction on his solitary evidence.

41. It would also be apt to refer certain pronouncement of Hon'ble Supreme Court on the point of reliability of witnesses.

42. In *Vadivelu Thevar Vs. State of Madras*, AIR 1957 SC 614, is the celebrated judgement of Hon'ble Supreme Court, in which it has been held as under:

Hence, in our opinion, it is a sound and well-established rule of law that the court is concerned with the quality and not with the quantity of the evidence necessary for proving or disproving a fact. Generally speaking, oral testimony in this context may be classified into three categories, namely:

- (1) Wholly reliable.
- (2) Wholly unreliable.
- (3) Neither wholly reliable nor wholly unreliable.

In the first category of proof, the court should have no difficulty in coming to its conclusion either way - it may convict or may acquit on the testimony of a single witness, if it is found to be above reproach or suspicion of interestedness, incompetence or subornation. In the second category, the court equally has no difficulty in coming to its conclusion. It is in the third category of cases, that the court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial. There is another danger in insisting on plurality of witnesses. Irrespective of the quality of the oral evidence of a single witness, if courts were to insist on plurality of witnesses in proof of any fact, they will be indirectly encouraging subornation of witnesses. Situations may arise and do arise where only a single person is available to give evidence in support of a disputed fact. The court naturally has to weigh carefully such a testimony and if it is satisfied that the evidence is reliable and free from all taints which tend to render oral testimony open to suspicion, it becomes its duty to act upon such testimony. The law reports contain many precedents where the court had to depend and act upon the testimony of a single witness in support of the prosecution. There are exceptions to this rule, for example, in cases of sexual offences or of the testimony of an approver; both these are cases in which the oral testimony is, by its very nature, suspect, being that of a participator in crime. But, where there are no such exceptional reasons operating, it becomes the duty of the court to convict, if it is satisfied that the testimony of a single witness is entirely reliable. We have therefore, no reasons to refuse to act upon the testimony of the first witness, which is the only reliable evidence in support of the prosecution.

43. Keeping in view the observations of Hon'ble Supreme Court in the judgements referred to above, we shall now proceed to discuss the evidence of prosecution witnesses.

44. PW-1, Kartar Singh is the father of the deceased and he lodged the first information report and made applications dated 08.6.2009 and 12.06.2009 on the information furnished by the witnesses. He was not the eyewitness of the case.

45. PW-2, Rati Ram, in whose house, the deceased was living, in his evidence PW-2, Rati Ram has stated that on the date of occurrence at about 05:00 PM, accused-Vinod called the deceased to his house for making tea as his wife was not at home. At that time, Pradeep, Jalendra and his wife were also present there. Chanchal went to the house of Vinod. When Chanchal did not come back, they made a search in the neighbourhood. He also went at the house of Vinod, but the house was locked and Omkar and Vinod were not at home. Thereafter on receiving the phone call, Kartar (PW-1), Jalendra (PW-4), Rajvir and Pradeep (PW-5) rushed to the spot at about 01:30 AM. The dead body of Chanchal was lying at the brick kiln near the house of Yashpal. There was mark of dragging from the house of Vinod up to brick kiln. The house of Vinod was locked. The door of southern side of the house was opened and green paint which was on the room, was also got on the clothes of the deceased. In his cross examination, PW-2 has stated that when he started search, first of all, he went to the house of Tejpal and thereafter he went to the house of Jhunde, Satpal and Bhukhan and in last he went to the house of Vinod.

46. From the perusal of evidence of PW-2, it transpires that when he had the knowledge about dragging of the deceased from the house of Vinod up to the brick kiln before lodging the first information report as well as going of the deceased to the house of Vinod, this Court failed to

understand as to why he has not told this fact to PW-1, Kartar Singh and why he had not gone to the house of Vinod first when he was sure that the deceased had gone to the house of Vinod. Further, as per the examination-in-chief of PW-2, at about 01:30 in the night Jalendra (PW-4), Rajvir and Pradeep (PW-5) reached his house along with first informant Kartar Singh, whereas in the application given to the police by the first informant on 08.6.2009, paper No. Aa 10/1 has stated that he received information from PW-4 Jalendra that Vinod called the deceased for preparing tea at 05:00 PM on 06.6.2009.

47. PW-4, Jalendra Singh claims himself to be uncle of the deceased. In this case the incident in question took place at about 05:00 PM on 06.06.2009 and the dead body of the deceased was recovered at about 01:30 AM in the night intervening 06/07.6.2009 and the first information report of the incident was lodged at 07:00 in the morning of 07.6.2009. In his cross-examination, PW-4, Jalendra Singh has stated he did not receive any information by 07:00 PM on 07.6.2009 that Chanchal has been killed and that he has not received any information from the house of Rati Ram about the death of the deceased. Whereas PW-2, Rati Ram in his evidence has stated that PW-4 Jalendra Singh reached the spot in the night intervening 6/7.6.2009 at about 01:30. It is unlikely that PW-4, Jalendra Singh, who is uncle of the deceased had no knowledge about the death of the deceased, who was his niece even after recovery of the dead body. Further, there is contradiction in the statement of PW-2 Rati Ram and PW-4, Jalendra Singh.

48. PW-5, In his cross-examination, which was recorded on 06.1.2012, has stated that on the date of incident he went to the house of Rati Ram alone on motorcycle, which belonged to his neighbour Robi. He does not have any motorcycle. He further stated that on the date of incident he went to the house of Rati Ram on the motorcycle, which belongs to the friend of Jalendra. On the date of incident (06.06.2009) before going to village Kinauni, he met Kartar Singh, who asked him to visit Kinauni. However, at other place of his cross-examination, he stated that till 07:00 PM on 07.6.2009, he did not have any conversation with Kartar Singh. In view of the above discrepancies in his evidence, it can safely be inferred that he is totally unreliable witness.

49. PW-6, Sube Singh is the brother-in-law (Sala) of the first informant. In this examination-in-chief, he stated that on 06.6.2009 at about 09:30 PM, he received a call from Kartar Singh to go and find out about the injury of Rati Ram. When he along with Kadam Singh went to village Kanauni, they came to know that every body was searching the deceased. They also started searching the deceased. When they were searching the deceased they saw accused Omkar and Vinod going with long stride at about 12:30 in the night. He told the said fact to Kartar Singh on 12.06.2009. The aforesaid statement of PW-6, Sube Singh, who is brother-in-law (Sala) of the first informant is too hard to swallow inasmuch as he has informed the first informant about the said fact only on 12.06.2009.

50. PW-9, Premo, wife of Rati Ram in her evidence has stated that when it was discovered that the body of the deceased was lying at the heap of bricks, every body went to see the dead body. There was mark of dragging from the house of Vinod up to brick kiln/heap of bricks.

51. From the perusal of evidence of PW-9 also, it transpires that she had got the knowledge about dragging of the deceased from the house of Vinod up to the brick kiln before lodging the first

information report as well as going of the deceased to the house of Vinod, but this Court failed to understand as to why s has not told this fact to PW-1, Kartar Singh.

52. PW-11, Yashpal is the brother of PW-2, Rati Ram. He has only seen the dead body lying beside his house on the heap of bricks.

53. From the perusal of the above evidence of the witnesses, it can be safely be inferred that their evidences are full of discrepancies and they can be termed as wholly unreliable witnesses. It can also be held that this is a case of no evidence and the evidence has been fabricated in piecemeal to drag the appellant in the present case.

54. In view of the above, the judgement dated 07.10.2015 and order dated 08.10.2015 passed by the Additional Sessions Judge/Special Judge (E.C. Act), Meerut in Sessions Trial No. 207 of 2010, arising out of Case Crime No. 170 of 2009, under Section 302/201 IPC, Police Station Saroorpur, district Meerut are set aside. The appellant-Vinod is acquitted of the charge levelled against him.

55. The appeal is allowed.

56. The appellant is on bail. His bail bond is cancelled and sureties are discharged.

57. Office is directed to send a copy of this order to the court concerned for compliance and compliance report be submitted to this Court within two months.

(2026) 4 ILRA 115
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 29.01.2026

BEFORE

THE HON'BLE SANDEEP JAIN, J.

Criminal Misc. Writ Petition No. 10039 of 2022

Merino Industries Ltd.

...Petitioner

Versus

State of U.P. & Ors.

...Respondents

Issue for Consideration

Issue pertains to whether the order passed by the Magistrate u/s 133 Cr.P.C. directing immediate closure of boiler installed in the petitioner's factory was legally sustainable when the petitioner had filed objections to the show cause notice, but no opportunity was afforded to adduce evidence and the mandatory procedure prescribed u/s 138 Cr.P.C. had not been followed.

Headnotes

Code of Criminal Procedure, 1973 - ss. 133(1), 138 - Public nuisance - Closure of factory boiler - Magistrate - Not considered evidence - No opportunity of hearing - Statutory compliance -

Impugned order - Set aside - Remand for fresh decision - The petitioner-company, Merino Industries Ltd., has been operating its factory since 1981 - Subsequently, land adjoining the factory was allotted by the Hapur-Pilkhua Development Authority for establishment of Delhi Public School, which came into existence in 2005 - During inspection conducted for renewal of school's No Objection Certificate from the Fire Department, apprehensions were expressed regarding the possibility of an accident on account of boiler installed in petitioner's factory - Consequently, proceedings u/s 133(1) Cr.P.C. were initiated and a show cause notice was issued directing removal of boiler - The petitioner submitted detailed replies asserting that the boiler was duly certified, maintained in accordance with law and operated with all requisite statutory compliances - Notwithstanding the pendency of proceedings and without considering the petitioner's objections or affording an opportunity to lead evidence, the Magistrate passed an order directing immediate closure of boiler - Aggrieved thereby, the petitioner invoked the writ jurisdiction of High Court seeking quashing of notice, the closure order and proceedings initiated u/s 133 Cr.P.C.

Held: In the instant case, it is apparent that the Magistrate has failed to comply with the mandatory provisions of s. 138 Cr.P.C - The impugned order has been passed without affording opportunity to the parties to adduce evidence - Such action is contrary to the statutory mandate as well as the settled legal position - Accordingly, the impugned order dated 28.07.2022 is legally unsustainable and is hereby set aside - The writ petition allowed - The matter is remanded to the concerned Magistrate to decide afresh, after affording due opportunity to the parties to adduce evidence in support of their respective contentions, in accordance with law, within a period of three months. [Paras 17 to 20] (E-13)

Case Law Cited

M/s Hindustan Glue and Gelatin Factory v. State of Uttar Pradesh **1997 SCC OnLine All 1085**; *Jagdamba Prasad Tewari & Another v. State of U.P. & Others* **1990 SCC OnLine All 723**; *Mool Chandra and others v. State of UP and another* **2005 SCC OnLine All 1476**; *Krishan Lal Bhutani v. Municipal Corporation Rohtak and Another* **2024 SCC OnLine P&H 4649** - referred to

List of Acts

Code of Criminal Procedure, 1973

List of Keywords

Writ Petition; ss. 133(1), 138 Cr.P.C.; Factory; Hapur-Pilkhua Development Authority; Establishment of school; Renewal; No objection certificate; Fire department; Possibility of accident; Explosion of boiler; Show cause notice; Public safety; Chief Fire Officer; School management was aware about existence of factory; Precautions; Statutory compliances; Certificates; Magistrate failed to consider material on record and ordered closure of boiler; Appropriate location; Boiler is maintained in accordance with law and necessary certifications have been obtained from time to time - Opportunity of hearing; Impugned order set aside; Writ petition allowed; Remanded; Decide afresh.

Case Arising From

ORIGINAL JURISDICTION: Criminal Misc. Writ Petition No. - 10039 of 2022

From the Order dated 28.07.2022 passed by the Magistrate in Case No. 3217 of 2022.

Appearances for Parties

Advs. for the Petitioner(s):

Raghav Dev Garg, Senior Advocate

Adv. for the Respondent(s):

G.A.

(Delivered by Hon'ble Sandeep Jain, J.)

1. The instant writ petition has been filed by the petitioner for the following reliefs:-

"(i) Issue writ, order or direction in the nature of Certiorari quashing the impugned notice dated 14.07.2022 issued by the respondent no.2;

(ii) Issue writ, order or direction in the nature of Certiorari quashing the impugned order dated 28.07.2022 passed by the respondent no.2;

(iii) Issue writ, order or direction in the nature of Certiorari quashing the entire proceedings initiated and registered as Case No.3217/2022 under Section 133(1) of Cr.P.C. against the petitioner by the respondent no.2;

(iv) Issue writ, order or direction in the nature of Mandamus directing the respondent no.2 to refrain from taking any coercive action and from interfering in the day to day functioning of the petitioner company;

(v) Issue any other writ, order or direction as this Hon'ble court may deem fit and necessary;

(vi) Award cost of the petition to the petitioner."

2. The factual matrix of the case is that the petitioner has been operating a factory, namely Merino Industries Ltd., since 1981. Adjacent to the said factory, after a lapse of about 25 years, land was allotted by the Hapur-Pilkhua Development Authority for establishment of a school, upon which Delhi Public School was subsequently established.

3. During the process of renewal of the No Objection Certificate from the Fire Department, the school premises were inspected, and it was opined that since the school is adjoining the petitioner's factory, there exists a possibility of an accident due to explosion of the boiler installed in the petitioner's factory.

4. In view thereof, a notice dated 14.07.2022 under Section 133(1) Cr.P.C. was issued to the petitioner directing removal of the boiler by 18.07.2022 and to show cause.

5. The petitioner submitted replies to the show cause notice on 25.07.2022, and 01.09.2022 was fixed as the next date in the proceedings under Section 133 Cr.P.C. However, in the meantime, on 28.07.2022, considering the alleged threat to public safety and based on the report of the Chief Fire Officer, Hapur, the petitioner was directed to immediately shut down the operation of the boiler. The said order has been impugned in the present writ petition.

6. Learned counsel for the petitioner submitted that the factory has been operational since 1981, whereas the school was established much later. It was contended that the school management was fully aware of the existence of the factory at the time of establishing the institution.

7. It was further submitted that the boiler installed in the petitioner's factory is duly certified and all necessary precautions and statutory compliances have been undertaken for its operation. All requisite certificates have been annexed with the writ petition. Despite this, the Magistrate failed to consider the material on record and abruptly ordered closure of the boiler, which is illegal and unsustainable.

8. It was also argued that since the factory existed prior to the establishment of the school, it was incumbent upon the school authorities to select an appropriate location. Further, the impugned order was passed without affording adequate opportunity of hearing and without proper appreciation of the evidence, rendering it legally unsustainable.

9. Learned AGA could not advance any substantial argument in defence of the impugned order.

10. I have heard learned counsel for the parties and perused the impugned order as well as the material on record.

11. The record indicates that the petitioner's factory has been functional since 1981, whereas Delhi Public School was established in the year 2005. It is also evident that the petitioner has placed on record documents demonstrating that the boiler is maintained in accordance with law and that all necessary certifications have been obtained from time to time.

12. It further appears that although the petitioner submitted replies to the show cause notice dated 14.07.2022, the same were not considered, and the order directing closure of the boiler was passed abruptly on 28.07.2022.

13. The Division Bench of this Court in *M/s Hindustan Glue and Gelatin Factory vs. State of Uttar Pradesh* 1997 SCC OnLine All 1085, has held that where a person appears before the Magistrate and submits a reply to the show cause notice under Section 133 Cr.P.C., it is incumbent upon the Magistrate to take evidence in the manner prescribed for summons cases under Section 138(1) Cr.P.C. It was further held that an order made absolute under Section 138(2) Cr.P.C. without affording opportunity to lead evidence is erroneous.

14. Similarly, in *Jagdamba Prasad Tewari & Another vs. State of U.P. & Others* 1990 SCC OnLine All 723, this Court held that the provisions of Section 138(1) Cr.P.C. are mandatory in nature, and before making an order absolute under sub-section (2), it is imperative for the Magistrate to take evidence in the manner as required in summons case.

15. This Court again in the case of *Mool Chandra and others vs. State of UP and another* 2005 SCC OnLine All 1476, held as under:-

"8. Whilst at the initial stage under Section 133(1) when a conditional order for removing of nuisance is passed, (in this case the said order was passed on 21-10-2000), it may not be necessary to take oral evidence of the parties because the relevant requirement at that stage is only for the Magistrate to take such evidence (if any) as he thinks fit for passing the conditional order

requiring the person to remove the obstruction or nuisance or if he objects to do so, to appear before the Magistrate to show cause why the order be not made absolute.

9. In this connection, the first clause of Section 133 of the Code reads as under:

133(1) Whenever a District Magistrate or a Sub-divisional Magistrate or any other Executive Magistrate specially, empowered in this behalf by the State Government, on receiving the report of a police officer or other information and on taking such evidence (if any) as he thinks fit.

10. However, after the person has shown cause as has been done in this case, then the procedure of Section 138 has to be followed where the Magistrate is required to take evidence in the matter as in a summons case and if he satisfies that the order as originally made or subject to such modification was proper, then he may make the same absolute on such terms as he deems proper or drop the proceedings if he is not satisfied that the order should be made absolute. In this connection, Section 138(1) of the Code reads as follows:

If the person against whom an order under Section 133 is made appears and shows cause against the order, the Magistrate shall take evidence in the matter as in a summons case.

16. The High Court of Punjab and Haryana in the case of Krishan Lal Bhutani vs. Municipal Corporation Rohtak and Another 2024 SCC OnLine P&H 4649, held as under:-

"5. Challenging the aforesaid orders, the sole submission made before this Court by ld. counsel is that since the petitioner had raised objection against the conditional order, so opportunity to produce evidence was required to be given to him under Section 138 CrPC, which was not afforded to him...

6. Ld. counsel for the respondents could not refute the aforesaid contention to the effect that opportunity under Section 138 CrPC was not afforded to the petitioner to produce his evidence.

9. Bare perusal of above provisions would make it clear that Section 133 Cr. P.C. provides for issuance of conditional order only for removal of the nuisance. By way of the conditional order, the opposite party is asked to show cause as to why the said order should not be made absolute. Once such a conditional order is passed, Section 138 of the Code of Criminal Procedure clearly provides that upon appearance of the person, against whom conditional order has been passed under Section 133 Cr. P.C. and who show causes against the order, the Magistrate is required to take evidence in the matter as in summons case.

10. In the present case, conditional order had been passed against the petitioner. He had appeared before the SDM, Rohtak against the said show cause. He had filed his objections. Despite the same, opportunity of producing evidence was not given to him as required under Section 138 CrPC.

11. Consequently, impugned order dated 17.02.2012 (Annexure P4) passed by Id. Additional Sessions Judge/Fast Track Court, Rohtak dismissing the revision against the order dated 05.09.2011 (Annexure P3), passed by Id. Sub Divisional Magistrate, Rohtak, whereby petitioner was directed to close down his shop of fodder cutting machine under Section 133 CrPC, is hereby set aside. The matter is remanded back to the Court of SDM, Rohtak with the direction to provide opportunity to the parties, so as to produce evidence as per Section 138 CrPC and then dispose of the matter in accordance with law."

17. In the present case, it is apparent that the Magistrate has failed to comply with the mandatory provisions of Section 138 Cr.P.C. The impugned order has been passed without affording opportunity to the parties to adduce evidence. Such action is contrary to the statutory mandate as well as the settled legal position.

18. Accordingly, the impugned order dated 28.07.2022 is legally unsustainable and is hereby set aside.

19. The writ petition is allowed.

20. The matter is remanded to the concerned Magistrate to decide afresh, after affording due opportunity to the parties to adduce evidence in support of their respective contentions, in accordance with law, within a period of three months from the date of production of a certified copy of this order.

(2026) 4 ILRA 120
APPELLATE JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 10.04.2026

BEFORE

THE HON'BLE SANDEEP JAIN, J.

First Appeal No. 387 of 2026

State of U.P. & Ors.

...Appellants

Versus

Iftekhar Ahmad & Anr.

...Respondents

ISSUE FOR CONSIDERATION

Whether the Reference Court, while deciding a reference under the Act of 2013, has jurisdiction to set aside the award of the Collector and remand the matter for fresh determination of compensation?

HEADNOTES

Civil Law – Land Acquisition Act, 1894 – Section 4(1), 6, 17, 18, - Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 – Section 74:- First Appeal filed under Section 74 of the Act, 2013 – for seeking quashing of the judgment of the Reference Court, whereby the Collector's award was set-aside and matter was remanded back - Land acquired in 2010 - compensation awarded in 2019 - challenged by landowners in reference court - reference Court exceeded its

jurisdiction by setting-aside and remanding instead of determining compensation itself – court finds that, Reference Court is a court of original jurisdiction, not appellate, hence cannot exercise remand powers – Power of remand is not vested in Reference Court under Land Acquisition Act, 1894 or Act of 2013 – held - Reference Court can only affirm or enhance compensation, not set-aside Collector's award – hence, impugned judgment is unsustainable in law, accordingly, Appeal allowed – with direction to the Reference Court to decide reference on merits within six months, without unnecessary adjournments.

(Para – 8, 12, 13, 14)

First Appeal Allowed. (E-11)

CASE LAW CITED

Rahmullah case (First Appeal No.670 of 1992, decided on 23.07.2013, Allahabad High Court)
Chimmanlal Hargovind Das v. SLAO, Puna and another, (1988) 3 SCC 751 (Supreme Court)
Special Tahsildar, LA Railways, Vishakhapatnam v. Sri Varabalakshmi Narasimhaswamivaru, 1973 SCC OnLine AP 44 (Andhra Pradesh High Court)
Gabbar Singh and Ors. v. Collector, Gwalior and Ors., 2007 SCC OnLine MP 55 (Madhya Pradesh High Court)

LIST OF ACTS

Land Acquisition Act, 1894
Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013

LIST OF KEYWORDS

Areca nuts - Customs Seizure - Indian Origin - Arbitrary and Mala fide - Reason to Believe - Govt Lab Reports - Inconclusive Findings – coordinate bench – Food Safety – fairly good – fit for human consumption - CRCL Test Report - ARDF Report - Jurisdictional Error - Writ Tax – dispose of.

CASE ARISING FROM

Appeal filed under Section 74 of the 2013 Act against judgment dated 25.03.2023 in L.A.R. No.1 of 2021 (Iftekhar Ahmad & another v. State of U.P. & others), passed by Presiding Officer, Land Acquisition, Rehabilitation and Resettlement Authority, Basti.

APPEARANCE OF PARTIES

Counsel for Appellant(s): Shri Amit Manohar.

Counsel for Respondent(s): Shri Indrakesh Kumar Sharma (brief held by Sri Anirudh Singh)

(Delivered by Hon'ble Sandeep Jain, J.)

1. The instant appeal has been filed by the State under Section 74 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 against the impugned judgment and award dated 25.03.2023 passed by the Presiding Officer, Land Acquisition, Rehabilitation and Resettlement Authority, Basti in Land Acquisition Case No.1 of 2021 (Iftekhar Ahmad and another vs. State of U.P. and others), whereby the Reference Court has partly allowed the reference and has set aside the award of the Collector dated 13.11.2019 and remanded the matter to the Collector for determining the compensation in accordance with the observations made in the judgment.

2. Learned counsel for the appellant-State submitted that in the instant case, land for construction of the Maina Rajwaha in village Tenua Grunt, Pargana Bansi West, Tehsil Itwa, District Siddharth Nagar was acquired through notification under Section 4(1) of the Land Acquisition Act 1894 dated 27.01.2010, declaration under Section 6 was made on 09.08.2010 and the possession of the land was taken under urgency clause under Section 17 of the above Act on

28.09.2010 and the award of the Collector was made on 13.11.2019, whereby compensation of Rs.1,14,39,264/- was awarded to the claimants on the basis of exemplar on record.

3. Learned counsel further submitted that the award of the Collector was challenged by the land owners for enhancement of compensation by filing reference, which has been allowed by the impugned judgment by the Reference Court on the ground that the Collector should have determined compensation under the Act of 2013, which came into effect from 01.01.2014. On this ground, the award of the Collector dated 13.11.2019 was set aside and the matter was remanded to the Collector for determination of compensation afresh in accordance with the observations made by the Reference Court.

4. Learned counsel further submitted that in no circumstances, the Reference Court could have set aside the award of the Collector and remanded the matter to the Collector for determining the compensation afresh. It was further submitted that either the Collector could have affirmed the award or enhanced the compensation payable to the land owners, but in no circumstances the award of the Collector could have been set aside. In support of his submission, learned counsel has relied upon the judgment of this Court passed in First Appeal No.670 of 1992 (State of UP and others vs. Rahmullah) decided on 23.07.2013.

5. Learned counsel for the landlord-respondent also very fairly accepts that the Reference Court has exceeded its jurisdiction in setting aside the award of the Collector and remanding the matter to him for determining the compensation afresh. Learned counsel further submitted that the Reference Court should have itself determined the compensation as per the provisions of the Act of 2013, if it was applicable in the facts and circumstances of the case.

6. I have heard Sri Amit Manohar, learned counsel for the appellants and Sri Anirudh Singh holding brief of Sri Indrakesh Kumar Sharma and perused the impugned judgment and documents submitted with the appeal. Appeal is admitted.

7. From the above facts, it is evident that the Reference Court has set aside the award of the Collector dated 13.11.2019 on the ground that the Collector has determined the compensation in accordance with the provisions of Land Acquisition Act, 1894, whereas the compensation should have been determined under the Act of 2013, which came into effect from 01.01.2014 and on this basis the Reference Court has set aside the award of the Collector and remanded the matter to the Collector for deciding the compensation afresh.

8. The Land Acquisition Act, 1894, in a complete Code in itself, containing provisions as to how the land is to be acquired and how the award is to be made by the Collector as well as how the award of the Collector can be challenged and what are the factors, which are to be considered for determining the compensation. The Land Acquisition Act only mentions that if the land owner is not satisfied with the amount of compensation awarded by the Collector, then it can get the matter referred by the Collector to the Reference Court, which will then determine the compensation in accordance with law. The Act does not vest the Reference Court with the power to set aside the award of the Collector and remand back the matter for determining the compensation afresh. It is apparent that the power of remand is only exercised by an appellate court, but it is well settled that

the Reference Court is not an appellate court and is only an original court for determining the compensation in land acquisition cases. In view of this, the power of remand could not have been exercised by the Reference Court.

9. This Court in the case of Rahmullah (supra) has precisely dealt this controversy and after relying upon the judgment of the Apex Court in the case of Chimmanlal Hargovinddas vs. SLAO, Puna and another, (1988) 3 SCC 751, has held that the reference under Section 18 of the Act is not an appeal against the award of the SLAO. It is in the nature of original proceedings, wherein the claimant is in the position of a plaintiff, who is supposed to establish that the price offered for his acquired land is inadequate by producing material evidence before the Reference Court. It was specifically held by this Court that the Reference Court acts as a court of original jurisdiction, which does not exercise appellate powers while deciding references under Section 18 of the Land Acquisition Act, as such, it is denuded of any power to remand the matter.

10. Similarly, the High Court of Andhra Pradesh in the case of Special Tahsildar, Land Acquisition Railways, Vishakhapatnam vs. Sri Varabalakshmi Narasimhaswamivaru the deity of Simachalam, represented by the hereditary trustee the Rajah of Vizianagaram 1973 SCC OnLine AP 44, held as under:-

"I have no doubt that a court to which a reference is made under section 18 of the Land Acquisition Act has no power to remand the matter to the Land Acquisition Officer. The jurisdiction given to the court under section 18 of the Land Acquisition Act and the subsequent provisions is a special jurisdiction and the power of remand, if any, must be found within the statute. There is no such power to be discovered in any of the provisions. Nor is there any inherent power of remand such as an Appellate Court might have since the Court functioning under the Land Acquisition Act does not function as an appellate Court, If authority is necessary for the proposition that a Court to which, a reference is made under section 18 of the Land Acquisition Act has no power of remand, it is to be found in the case of Revenue Divisional Officer v. Villa Raja [AIR 1944 Mad 539.] In that case Wadsworth, J., held that the Act did not empower the Court to remand the case to the Collector for fresh enquiry and for a further award.

In the present case the reference was properly made. All that the lower Court said was that compensation for the land should have been determined first and then-apportioned between the melwaram-dar and kudiwaramdar instead of compensation for the melwaram and kudiwaram interests being separately determined as was supposed to have been done by the Land Acquisition Officer. If the lower Court thought that the Land Acquisition Officer went wrong in determining the value of the melwaram and kudiwaram interests separately then it was upto the lower Court to value the land as such and apportion the compensation towards the two interests. The learned Subordinate Judge had no jurisdiction to remand the case for that purpose." (emphasis supplied)

11. The High Court of Madhya Pradesh in the case of Gabbar Singh and Ors. vs. Collector, Gwalior and Ors. 2007 SCC OnLine MP 55, held as under:-

‘10. After hearing parties and perusing the award I find that the Land Acquisition Officer has passed the award in respect of the land only, so that the claimants can get compensation without

any delay. He has specifically mentioned that he is not passing award in respect of crops and trees standing on the land, as it will delay the matter of passing the award in respect of the land and therefore he reserved his rights to pass supplementary award in respect of the trees and the crops standing on the land.

11. Even otherwise if the District Court come to the conclusion that it was incumbent on the Land Acquisition Officer to pass award in respect of the trees and crops then he could have to be passed award for the trees and crops standing on the land as he has already recorded evidence on this point. Therefore, he has committed error in remanding the matter. Thus, I find that the District Court has committed error in treating the award as interim award.

12. Moreover, as per the provisions of law, discussed above the District Court has no power of remand while hearing the application under section 18 of the Land Acquisition Act because it is a reference Court and not an appellate Court. (emphasis supplied)

12. Similarly, in the Act of 2013, the Reference Court can only affirm the award of the Collector or enhance the compensation awarded by it, but it cannot set aside the award of the Collector and remand the matter to the Collector for deciding it afresh.

13. It is apparent that the Reference Court has acted beyond its jurisdiction by setting aside the award of the Collector and remanding the matter to it for deciding it afresh, which is contrary to the provisions of the Land Acquisition Act, 1894 as well as the Act of 2013. In no circumstances whatsoever, the Reference Court could have passed the impugned order, which is unsustainable in law.

14. Accordingly, the appeal is allowed. Consequently, the impugned judgment and award dated 25.03.2023 is set aside and L.A.R. No.1 of 2021 stands restored on its original number before the Reference Court.

15. The Reference Court is directed to decide the reference on merits in accordance with law after hearing the parties within a period of six months from the date of production of certified copy of this order, without affording any unnecessary adjournments to either of the parties.

(2026) 4 ILRA 124
APPELLATE JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 10.04.2026

BEFORE

THE HON'BLE SAURABH SHYAM SHAMSHERY, J.

Second Appeal No. 1905 of 1978

Smt. Qamrunnisa & Ors.

...Appellants

Versus

Smt. Tamizan & Ors.

...Respondents

ISSUE FOR CONSIDERATION

Whether the First Appellate Court was justified in dismissing the first appeal without framing points for determination under Order XLI Rule 31 CPC; and whether the appeal involved any substantial question of law warranting interference under Section 100 CPC.

HEADNOTE

Code of Civil Procedure, 1908 – s.100 – Order XLI Rule 31 – Second appeal admitted on grounds treated as substantial questions of law – Challenge on the ground that First Appellate Court had not framed points for determination and that trial court lacked pecuniary jurisdiction – Maintainability of second appeal.

Held: Section 100 CPC provides appeals from appellate decrees and it shall lie only if the High Court is satisfied that the case involves a substantial question of law – To be “substantial”, a question of law must be debatable, not previously settled by law of the land or a binding precedent, and must have a material bearing on the decision of the case, if answered either way, insofar as the rights of the parties before it are concerned – The High Court should be satisfied that the case involves a substantial question of law, and not a mere question of law. It is settled law that findings of fact howsoever erroneous cannot be reopened and disturbed in second appeal which is required to be adjudicated only upon a substantial question of law, if any, arisen therein – Once the Court found that no substantial question of law or even a question of law worth consideration arose in the second appeal, there is no occasion to re-appreciate the evidence so as to come to a different conclusion.

It is not always mandatory to frame points for determination and it would depend how the judgment was written – Whether in a particular case there has been substantial compliance with Order XLI Rule 31 CPC should be determined on the nature of the judgment delivered in each case – Non-compliance with the provisions, by itself, may not vitiate the judgment and make it wholly void and may be ignored if there has been substantial compliance with it. If First Appellate Court has display conscious application of mind and record findings supported by reasons on all issues and contentions, the object of Section 96 CPC got satisfied. In the instant case the First Appellate Court considered the order passed in suit whereby it was decreed and rejected all grounds – It was a judgment where there was no necessity to frame points for determination since it were not involved – Issue regarding valuation and court fee was corrected after amendment of plaint and deficiency was made good – It was held that suit was not under valued – No such issue was pressed in first appeal . **Second appeal dismissed.** (E-5)

CASE LAW CITED

R. Nagaraj (Dead) Through Lrs. and another v. Rajmani and others, 2025 INSC 478.
Chandrabhan (deceased) through Lrs. and others v. Saraswati and others, 2022 SCC OnLine SC 1273.
Nafees Ahmad and another v. Soinuddin and others, 2025 INSC 520.
Malluru Mallappa (D) Thru. Lrs. v. Kuruvathappa and others, 2020 INSC 173.
Rusi Fisheries Pvt. Ltd. and another v. Bhavna Seth and others, 2026 INSC 339.

List of Acts

Code of Civil Procedure, 1908.

List of Keywords

Second Appeal; Section 100 CPC; Substantial Question of Law; Order XLI Rule 31 CPC; Points for Determination; First Appellate Court; Findings of Fact; Re-appreciation of Evidence; Pecuniary Jurisdiction; Court Fee; Valuation of Suit.

CASE ARISING FROM

Judgment and decree of the Trial Court dated **18.08.1973**, affirmed by the judgment of the First Appellate Court dismissing the defendants' first appeal.

Appearances for Parties

Advs. for the Petitioner: R.U. Ansari

Advs. for the Respondents: Hari Narayan Singh, Pankaj Kumar Mishra, Rajendra Kumar Srivastava

(Delivered by Hon'ble Saurabh Shyam Shamshery, J.)

1. Heard Sri R.U. Ansari, learned counsel for appellants. None appeared on behalf of respondents.

2. This is a defendants' second appeal of the year 1978 and pending for last more than 48 years.

3. Present second appeal was admitted vide order dated 07.04.1979 on substantial questions of law as stated in Grounds No. 1 and 6 of memo of appeal, which are reproduced hereinafter:

'i) Because the provisions of Order 41 Rule 31 C.P.C. are mandatory, the Court below has acted illegally and in excess of its jurisdiction in completely violating the provisions of aforesaid Rule, therefore, the judgment and decree passed by the court below is not sustainable in law.

vi) Because the Valuation of the suit for the purpose of the jurisdiction was fixed Rs. 19,500/-, the learned Munsif where the suit was instituted by the plaintiff could entertain the suit upto valuation of Rs. 5000/- only. The suit was instituted by the plaintiffs in a court which had no pecuniary jurisdiction to entertain the suit. The defect of institution could not be cured by transfer of case to the court of S.C.C. under Section 24 C.P.C., the view taken to the contrary by the trial court and the finding recorded on issue no. 5 was wholly illegal, the court below has acted illegally in completely ignoring this aspect of the matter in spite of the fact that the same was pressed before him.

4. Section 100 CPC provides appeals from appellate decrees and it shall lie only if the High Court is satisfied that the case involves a substantial question of law. Sub-clause 3 of Section 100 CPC further provides that memorandum of appeal shall precisely state substantial question of law involve in appeal, whereas in present case in memorandum of appeal only grounds were mentioned and no substantial question of law was even mentioned therein. Therefore, the way this second appeal was admitted on basis of grounds treating them to be substantial questions of law was not

appropriate (See, R. Nagaraj (Dead) Through Lrs. and another vs. Rajmani and others, 2025 INSC 478).

5. Still considering that this second appeal is pending for last more than 48 years, the Court proceed that above grounds are deemed to be substantial questions of law mentioned in memo of appeal but one consideration is still left that, whether said questions are substantial questions of law or not in terms of a judgment passed by Supreme Court in the case of Chandraban (deceased) through Lrs. and others vs. Saraswati and others, 2022 SCC OnLine SC 1273 wherein the law with regard to ‘what is the substantial question of law’ was discussed and relevant part of the judgment is reproduced hereinafter:

‘31. To be ‘substantial’, a question of law must be debatable, not previously settled by law of the land or a binding precedent, and must have a material bearing on the decision of the case, if answered either way, insofar as the rights of the parties before it are concerned. To be a question of law ‘involving in the case’ there must be first, a foundation for it laid in the pleadings and the question should emerge from the sustainable findings of fact arrived at by court of facts and it must be necessary to decide that question of law for a just and proper decision of the case. An entirely new point raised for the first time before the High Court is not a question involved in the case unless it goes to the root of the matter. It will, therefore, depend on the facts and circumstances of each case whether a question of law is a substantial one and involved in the case or not, the paramount overall consideration being the need for striking a judicious balance between the indispensable obligation to do justice at all stages and impelling necessity of avoiding prolongation in the life of any lis. (See Santosh Hazari v. Purushottam Tiwari [Santosh Hazari v. Purushottam Tiwari, (2001) 3 SCC 179] .)

32. The principles relating to Section 100CPC relevant for this case may be summarised thus:

32.1. An inference of fact from the recitals or contents of a document is a question of fact. But the legal effect of the terms of a document is a question of law. Construction of a document involving the application of any principle of law, is also a question of law. Therefore, when there is misconstruction of a document or wrong application of a principle of law in construing a document, it gives rise to a question of law.

32.2. The High Court should be satisfied that the case involves a substantial question of law, and not a mere question of law. A question of law having a material bearing on the decision of the case (that is, a question, answer to which affects the rights of parties to the suit) will be a substantial question of law, if it is not covered by any specific provisions of law or settled legal principle emerging from binding precedents and involves a debatable legal issue. A substantial question of law will also arise in a contrary situation, where the legal position is clear, either on account of express provisions of law or binding precedents, but the court below has decided the matter, either ignoring or acting contrary to such legal principle. In the second type of cases, the substantial question of law arises not because the law is still debatable, but because the decision rendered on a material question, violates the settled position of law.

32.3. The general rule is that the High Court will not interfere with findings of facts arrived at by the courts below. But it is not an absolute rule. Some of the well-recognised exceptions are where (i) the courts below have ignored material evidence or acted on no evidence; (ii) the courts have drawn wrong inferences from proved facts by applying the law erroneously; or (iii) the courts have wrongly cast the burden of proof. When we refer to □decision based on no evidence□, it not only refers to cases where there is a total dearth of evidence, but also refers to any case, where the evidence, taken as a whole, is not reasonably capable of supporting the finding.

33. In this case, it cannot be said that the first appellate court acted on no evidence. The respondents in their second appeal before the High Court did not advert to any material evidence that had been ignored by the first appellate court. The respondents also could not show that any wrong inference had been drawn by the first appellate court from proved facts by applying the law erroneously.

6. Learned counsel for appellants vehemently pressed the first purported question of law, i.e., whether First Appellate Court was justified in dismissing first appeal without framing points for determination and has placed reliance on a judgment passed by Supreme Court in the case of Nafees Ahmad and another vs. Soinuddin and others, 2025 INSC 520, however, the Court finds that said judgment is in fact against the submission of counsel for appellants.

7. In Nafees Ahmad (supra) the High Court while considering a second appeal has formulated a similar nature of question of law and held that since First Appellate Court has not framed points for determination, therefore, appeal was returned back for fresh consideration. However, a challenge to it before Supreme Court was allowed and it was held that it is not always mandatory to frame points for determination and it would depend how the judgment was written. For reference entire judgment passed by Supreme Court in Nafees Ahmad (supra) is quoted hereinafter:

‘1. Leave granted.

2. This appeal arises from the judgment and order passed by the High Court of Judicature at Allahabad, Lucknow Bench dated 4-9-2017 in Second Appeal No.69/2008, by which the Second Appeal filed by the respondents □ herein came to be partly allowed and the matter was remitted to the First Appellate Court on the ground that the First Appellate Court failed to comply with the provisions of Order 41 Rule 31 of the Code of Civil Procedure (CPC).

3. The High Court, while deciding the Second Appeal, formulated the following substantial question of law:-

‘Whether it is incumbent upon the Appellate Court to frame the point of determination as per the provisions of Order 41 Rule 31 CPC while deciding the first appeal or not?

4. Order 41 Rule 31 CPC reads thus:

‘Rule 31. Contents, date and signature of judgment.—

The judgment of the Appellate Court shall be in writing and shall state —

- (a) the points for determination;
- (b) the decision thereon;
- (c) the reasons for the decision; and

(d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled, and shall at the time that it is pronounced be signed and dated by the Judge or by the Judges concurring therein.

5. It appears that the High Court relying upon few decisions took the view that Order 41 Rule 31 CPC is mandatory and the failure on the part of the Appellate Court to frame the points for determination as per the provisions of Order 41 Rule 31 CPC would vitiate the entire judgment and make it wholly void.

6. Having heard the learned counsel appearing for the parties and having gone through the materials on record, we are in complete disagreement with the view taken by the High Court.

7. We propose to follow the dictum as laid by this Court in the case of ‘G. Amalorpavam And Others v. R.C. Diocese of Madurai And Others’ reported in (2006) 3 SCC 224, wherein this Court observed that whether in a particular case, there has been substantial compliance, with the provisions of Order 41 Rule 31 CPC should be determined on the nature of the judgment delivered in each case. Non-compliance with the provisions, by itself, may not vitiate the judgment and make it wholly void and may be ignored if there has been a substantial compliance with it.

8. We may elaborate the issue a little further from a different angle.

9. The Privy Council observed in ‘Mt. Fakrunisa v. Moulvi Izarus’ reported in AIR 1921 PC 55, at p. 56, as under:

‘In every appeal it is incumbent upon the appellants to show reason why the judgment appealed from should be disturbed; there must be some balance in their favour when all the circumstances are considered, to justify the alteration of the judgment that stands. Their Lordships are unable to find that this duty has been discharged.

10. The Privy Council decision referred to above was looked into by a three-Judge Bench in the case of ‘Thakur Sukhpal Singh v. Thakur Kalyan Singh and Anr.’ reported in (1963) 2 SCR 733, wherein this Court observed as under:

‘With respect, we agree with this and hold that it is the duty of the appellant to show that the judgment under appeal is erroneous for certain reasons and it is only after the appellant has shown this that the appellate court would call upon the respondent to reply to the contention. It is only then

that the judgment of the appellate court can fully contain all the various matters mentioned in Ruel 31, Order 41.

11. This Court observed in ‘Sangram Singh v. Election Tribunal, Kotah, Bhurey Lal Baya’ reported in (1955) 2 SCR 1, at page 8: ‘Now a code of procedure must be regarded as such. It is procedure, something designed to facilitate justice and further its ends: ... Too technical construction of sections that leaves no room for reasonable elasticity of interpretation should therefore be guarded against (provided always that justice is done to both sides) lest the very means designed for the furtherance of justice be used to frustrate it.

12. The provisions of Rule 31 should therefore be reasonably construed and should be held to require the various particulars to be mentioned in the judgment only when the appellant has actually raised certain points for determination by the Appellate Court, and not when no such points are raised.

13. We must also look into the provisions of Rule 30 of Order 41 for the purpose of fortifying our interpretation of Rule 31. Order 41 Rule 30 CPC reads thus:

‘30. Judgment when and where pronounced.— (1) The Appellate Court, after hearing the parties or their pleaders and referring to any part of the proceedings, whether on appeal or in the court from whose decree the appeal is preferred, to which reference may be considered necessary, shall pronounce judgment in open Court, either at once or on some future day of which notice shall be given to the parties or their pleaders.

(2) Where a written judgment is to be pronounced, it shall be sufficient if the points for determination, the decision thereon and the final order passed in the appeal are read out and it shall not be necessary for the Court to read out the whole judgment, but a copy of the whole judgment shall be made available for the perusal of the parties or their pleaders immediately after the judgment is pronounced.

14. Thus, this Rule does not make it incumbent on the Appellate Court to refer to any part of the proceedings in the court from whose decree the appeal is preferred. The Appellate Court can refer, after hearing the parties and their pleaders, to any part of these proceedings to which reference be considered necessary. It is in the discretion of the Appellate Court to refer to the proceedings. It is competent to pronounce judgment after hearing what the parties or their pleaders submit to it for consideration.

It follows therefore that if the appellant submits nothing for its consideration, the Appellate Court can decide the appeal without any reference to any proceedings of the courts below and, in doing so, it can simply say that the appellants have not urged anything which would tend to show that the judgment and decree under appeal were wrong. [See : ‘Thakur Sukhpal Singh’ (supra)]

15. In the aforesaid view of the matter, we allow this appeal.

16. The impugned judgment and order of the High Court is set aside.

17. Pending applications, if any, also stand disposed of.

8. In order to consider above submissions including a submission that Trial Court has returned a perverse finding and has not appreciated the evidence on record, Court also takes note of judgment passed by First Appellate Court which has considered the order passed in suit whereby it was decreed and has rejected all grounds, as such, it was a judgment where there was no necessity to frame points for determination since it were not involved.

9. In above background Court also takes note of a judgment passed by Supreme Court in Malluru Mallappa (D) Thru. Lrs. vs. Kuruvathappa and others, 2020 INSC 173 that if First Appellate Court has display conscious application of mind and record findings supported by reasons on all issues and contentions, the object of Section 96 CPC got satisfied.

10. So far as second purported ground/ question of law is concerned that the suit was decided by Trial Court vide order dated 18.08.1973, that concerned issue in suit was under valued and Court fee paid was insufficient, however, later on plaintiffs have amended suit and thereby corrected valuation and also made good deficiency, therefore, it was held that suit was not under valued. No such issue was pressed in first appeal. Memo of First Appeal is not on record. Otherwise also, it cannot be considered as a substantial question of law.

11. The Court also takes note of a very recent judgment passed by Supreme Court in the case of Rusi Fisheries Pvt. Ltd. and another vs. Bhavna Seth and others, 2026 INSC 339 that it is settled law that findings of fact howsoever erroneous cannot be reopened and disturbed in second appeal which is required to be adjudicated only upon a substantial question of law, if any, arisen therein. Therefore, once this Court has found that no substantial question of law or even a question of law worth consideration in present second appeal, there is no occasion for this Court to re-appreciate the evidence so as to come to a different conclusion.

12. In aforesaid circumstances, this second appeal is dismissed, since it does not involve substantial question of law purportedly framed when present second appeal was admitted. Interim order, if any, is vacated.

(2026) 4 ILRA 131
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 22.04.2026

BEFORE
THE HON'BLE IRSHAD ALI, J.

Writ A No. 5764 of 2015

Ram Laut Yadav & Anr.

State of U.P. & Ors.

...Petitioners
Versus
...Respondents

ISSUE FOR CONSIDERATION

Whether non-teaching employees of an affiliated college of a State University are entitled to the benefit of leave encashment admissible to similarly placed Government servants.

HEADNOTE

U.P. State Universities Act, 1973, s.50 – First Statutes, Cl.36.01 – Fundamental Rules – r.81(b) – Leave encashment – Petitioners initially appointed as Routine Grade Clerks and subsequently promoted to the posts of Junior Assistant and Senior Assistant – Petitioners retired from service and were granted all post-retiral benefits except amount payable towards leave encashment – Clause 36.01 of the First Statutes provided that leave rules applicable to Government servants from time to time shall mutatis mutandis apply to employees of like status – Respondents denied the benefit on the ground that no specific approval of the State Government existed for extending leave encashment to non-teaching employees – Justification:

Held: Clause 36.01 of the First Statutes provides that leave rules applicable to Government servants from time to time shall mutatis mutandis apply to employees of like status – Rule 81(b) of the Fundamental Rules, which provides that leave shall be admissible to Government servants and if such Government servant surrenders such leave he shall be entitled to encashment of leave - the phrase "mutatis mutandis" implies that a provision contained in other part of the statute or other statutes would have application as it is with certain changes in points of detail – Applicability of leave rules upon non-teaching staff of the University concerned would, therefore, be such as are meant for Government servants from time to time of like status – In absence of any provision excluding applicability of leave rules or provisions of leave encashment admissible to similar employees of the State Government, respondents would not be justified in denying the benefit of leave encashment to the petitioners.

Court further held that specific approval of the State Government is not required for grant of leave benefits as the Statutes themselves specifically apply leave rules to non-teaching employees mutatis mutandis – Petitioners held to be entitled to all benefits otherwise admissible to similarly placed Government employees regarding grant of leave – Fundamental Rule 81(b), which provides that a Government servant surrendering earned leave shall be entitled to encashment thereof, held to be applicable – Law is settled that in the hierarchy of laws, a provision contained in the Statute stands on a higher pedestal and in the event of conflict with a Government Order, the provision of the Statute would prevail – Respondents were not justified in denying petitioners the benefit of leave encashment – Writ petition allowed – Writ of mandamus issued directing respondents to extend benefit of leave rules including benefit of leave encashment in accordance with Rule 81(b) of the Fundamental Rules as available to similarly placed Government employees and to disburse consequential benefits within the stipulated period. (E-5)
[Paras 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25]

CASE LAW CITED

Rajasthan State Industrial Development and Investment Corporation and another v. Diamond & Gem Development Corporation Limited and another, (2013) 5 SCC 470.

List of Acts

U.P. State Universities Act, 1973;
Fundamental Rules.

List of Keywords

Leave encashment; Non-teaching staff; Affiliated college; State University; Clause 36.01; Mutatis mutandis; Fundamental Rule 81(b); Conditions of service; Retiral benefits; Government servant; Executive Council; Finance Committee; State Government approval; Hierarchy of laws; Statutory entitlement.

CASE ARISING FROM

For grant of leave encashment to retired non-teaching staff of colleges affiliated to the State University

Appearances for Parties

Advs. for the Petitioner: Rakesh Kumar Srivastava, Mrs. Seema Srivastava, Pankaj Verma

Advs. for the Respondents: C.S.C., Savitra Vardhan Singh

(Delivered by Hon'ble Irshad Ali, J.)

CMA No.95359 of 2018 - Application for substitution

1. Heard learned counsel for the the parties.

2. In paragraph 3 of the affidavit filed in support of the application, it has been stated that wife of the petitioner is legal heir, who has to be substituted on the place of petitioner No.2.

3. In view of reasons assigned in the affidavit filed in support of the application, the application is allowed.

4. Learned counsel for the applicant is permitted to carry out necessary incorporation in the array of parties during course of the day.

Order on Writ Petition

1. Heard learned counsel for the petitioners and learned Additional CSC for the respondent - State.

2. In the year 1978 the petitioners were initially appointed on the posts of Routine Grade Clerk in the office of the Registrar of the respondent No.3 w.e.f. 29.05.1978 and 24.07.1978 respectively and their services were confirmed w.e.f. 01.05.1981. On 01.08.1988 petitioner No.1 was granted promotion to the post of Junior Assistant and petitioner No.2 was granted promotion to the post of Junior Assistant w.e.f. 1.1.1990 and they were further granted promotion to the posts of Senior Assistant w.e.f. 25.6.1998 and 17.3.1990 respectively and on the post of Senior Assistant they were confirmed w.e.f. 25.6.1999 and 31.12.1992 respectively.

3. On 30.09.2012 petitioner No.1 retired from service while working on the posts of Senior Assistant and petitioner No.2 was retired as such w.e.f. 30.6.2011 and after their retirement the petitioners were granted all the post retiral benefits including pension, gratuity, group insurance and

amount of G.P.F. except the amount payable to the petitioners in lieu of the benefit of leave encashment.

4. On 19.02.1974 respondent No.5 issued circular that service rules as applicable to the government employees shall be implemented till framing of service rules for the employees of the respondent No.3. However, no service rule has been framed for regulating the services of non teaching staff of the University and as such the service rules as applicable to the Government employee are still being implemented in respect of them.

5. On 01.07.1999 a Government Order was issued for granting leave encashment of 300 days (maximum) in place of 240 days (maximum) on the basis of the recommendations of Pay Committee, 1997. On 03.07.2000 another Government Order was issued whereby power to grant leave encashment for 300 days (maximum) in place of 240 days (maximum) was delegated to the head of departments of the State Government and the said benefit was made effective w.e.f. 1.7.1999.

6. On 31.08.2006 the Executive Council of the University held meeting wherein it was decided that the benefit of leave encashment of 300 days be made available to the non teaching staff of the University w.e.f. 1.7.1999 in accordance with Government Order dated 3.7.2000 mentioned above.

7. On 20.06.2007 the Finance Committee of the University held meeting in presence of the respondent N^o.2 wherein also the proposal of grant of leave encashment for 300 days in accordance with Government Order dated 3.7.2000 to the non teaching staff of the University was approved.

8. On 21.04.2012, petitioner No.1 submitted an application before the respondent No.5 thereby making prayer that he may be granted benefit of leave encashment after his retirement. On 03.07.2012, the Executive Council of the University held meeting wherein the matter of grant of benefits of leave encashment towards 25 employees who had retired prior to the date of meeting were considered.

9. On 19.07.2012, the Executive Council of the University further held another meeting in which matter of grant of benefit of leave encashment towards 10 employees who retired prior to 31.7.2012 was also considered. However, consideration in respect of petitioner No.1 was postponed for future as he was not retired prior to 31.07.2014. Moreover, in furtherance of the aforesaid meetings held on 3.7.2012 and 19.7.2012 several persons were granted benefits of leave encashment.

10. On 22.08.2012, respondent No.1 issued a Government Order with a direction for recovery of the amount of leave encashment given to the employees of the State Universities after initiating departmental inquiry against the erring officers/employees as the same was said to given in absence of any order passed by the State Government and as such the Uttar Pradesh Rajya Vishwavidhyalay Karmchari Mahasangh raised agitation.

11. On 21.08.2014, respondent No.1 issued another Government Order, whereby the implementation of the previous Government Order dated 22.8.2012 mentioned above was stayed till further orders. On 17.11.2014, a meeting of respondent No.4 and Karmchari Parishad of respondent No.3 was held in which it was decided that the proceedings for grant of leave encashment would be initiated and the same would be granted in accordance with law after making review of the same within a period of one month.

12. In the year 2014, another meeting of Registrars/Finance Officers of all State Universities U.P. in the Chairmanship of the Special Secretary State Government of U.P. was held in which it was directed that all those Universities who make payment of leave encashment from their sources and those who can not make payment will submit a resolution to the State Government after getting approval from their Executive Council.

13. On 15.12.2014, the meeting of Executive Council of respondent No.3 was held in pursuance of the aforesaid direction of the State Government in which it was decided that the previous arrangement of leave encashment be made applicable in respect of the non teaching staff of respondent No.3 and the State Government may be informed accordingly and matter be referred to the State Government that the University is running in loss and the matter may also be placed before the Finance Committee of the University for examining as to whether the University is competent to bear the expense in question. Moreover it was decided that status quo be maintained for leave encashment as it was earlier. However, till date no action whatsoever has been taken regarding payment of amount of leave encashment to the petitioners despite the repeated representations made by them, though the petitioners have a legal right of being paid amount of leave encashment for 300 days consequent upon their retirement. Hence, the present writ petition has been filed.

14. In a similar matter in the case of Vidyotma Dwivedi and Another Vs. State of U.P. and others, was subject matter of challenge in Special Appeal (Defective) No.43 of 2022 by the State, which has been dismissed against which Special Leave to Appeal (C) No.20622 of 2022; State of U.P. and others Vs. Vidyotma Dwivedi and another, was filed which has also been dismissed vide judgment and order dated 20.11.2025.

15. It would be worth noticing that Statutes 22 to 38 forms part of Chapter XXII, which deals with qualification and conditions of service of non-teaching staff of the affiliated colleges. Clause 36.01 clearly provides that leave rules applicable to the Government servants from time to time shall *mutatis mutandis* apply to the employees of like status. The First Statutes of the University have been framed by the State Government itself in exercise of its power under Section 50 of the U.P. State Universities Act, 1973. Clause 36.01 of the Statutes of University is not shown to have been amended or modified later in point of time. The expression '*mutatis mutandis*' has been interpreted by the Apex Court in Rajasthan State Industrial Development and Investment Corporation and another Vs. Diamond & Gem Development Corporation Limited and another, reported in (2013) 5 SCC 470. Paragraphs 17 and 18 of the report are relevant for the present purposes, and therefore, are reproduced hereinafter:-

"17. In *Ashok Service Centre v. State of Orissa*, AIR 1983 SC 394, this court held as under:(SCCp. 93, para 17)

"17. Earl Jowitt's 'The Dictionary of English Law (1959)' defines 'mutatis mutandis' as 'with the necessary changes in points of detail'. Black's Law Dictionary (Revised 4th Edn.1968) defines 'mutatis mutandis' as:

'With the necessary changes in points of detail, meaning that matters or things are generally the same, but to be altered when necessary, as to names, offices, and the like.'

... Extension of an earlier Act 'mutatis mutandis' to a later Act brings in the idea of adaptation, but so far only as it is necessary for the purpose, making a change without altering the essential nature of the things changed, subject of course to express provisions made in the later Act.... In the circumstances the conclusion reached by the High Court that the two Acts were independent of each other was wrong. We are of the view that it is necessary to read and to construe the two Acts together as if the two Acts are one, and while doing so to give effect to the provisions of the Act which is a later one in preference to the provisions of the Principal Act wherever the Act has manifested an intention to modify the Principal Act."

Similarly, in *Prahlad Sharma v. State of U.P.*, (2004) 4 SCC 113, the phrase "mutatis mutandis" has been explained as under: (SCCp. 120, para 11)

"11. The expression 'mutatis mutandis' itself implies applicability of any provision with necessary changes in points of detail." (See also: *Mariyappa v. State of Karnataka*, AIR 1998 SC 1334; and *Janba (dead) thr. Lrs. v. Gopikabai (Smt.)*, AIR 2000 SC 1771).

18. Thus, the phrase "mutatis mutandis" implies that a provision contained in other part of the statute or other statutes would have application as it is with certain changes in points of detail."

16. The applicability of leave rules upon the non-teaching staff of the University concerned would, therefore, be such as are meant for the Government Servant, from time to time, of like status. It would, however, be subject to any changes that may have been introduced under the Statutes or the Act of 1973 or any other applicable provision in law. Attention of the Court has not been invited to any provision in the Act of 1973 or the Statutes or Ordinances, which limits the applicability of leave rules meant for State Government employees of like status, upon the non-teaching staff of colleges affiliated to the State University in question.

17. The respondents stand throughout has been that the retiral benefits, which are admissible to such employees, do not include provision of leave rules, so as to extend the benefit of leave encashment to the employees concerned. This argument cannot be accepted inasmuch as grant of retiral benefits would be a separate and distinct aspect from the admissibility of leave rules applicable upon the employees concerned. The grant of retiral benefits to employee of the institution concerned would be in accordance with Section 33 of the Act of 1973 as well as any other provision contained in the Statutes or the Government Order issued in that regard.

18. So far as leave rules are concerned they constitute a separate aspect relating to conditions of service and would not, by necessary implication, be included in the retiral benefits due and payable to an employee concerned. It is otherwise not in issue that benefit of leave encashment has been extended to employees of the State Government, who are of similar status as that of the present petitioners. Clause 36.01 otherwise is clearly applicable in the facts of the present case. In absence of any other provision which excludes the applicability of leave rules or the provisions of leave encashment admissible to similar employees of the State Government, the respondents would not be justified in denying benefit of leave encashment or other benefits of leave rules to the present petitioners.

19. So far as argument of learned Additional CSC, with reference to Section 21(3) and 21(4) of the Act of 1973 is concerned, it would be worth noticing that Sub-clause (3) of Section 21 merely provides that no expenditure in respect of which approval of the State Government is required by this Act or the Statutes or Ordinances shall be incurred except with such approval previously obtained, and no post shall be created either in the University or in any Institute or constituent college maintained by the University except with the prior approval of the State Government. Sub-clause (3), therefore, would have no applicability, inasmuch as the Act, Statutes or Ordinances do not require any specific approval of the State Government for grant of approval to leave rules upon the employees. Sub-clause (4) of Section 21 also deals with the pay and other allowances to various categories of the employees, as may be approved by the State Government. The respondents would have been justified in resisting petitioners' claim in case a provision like Clause 36.01 was not in existence in the First Statutes and no approval was granted by the State in that regard. The provisions of sub-clause (4) of Section 21 cannot be pressed into service to deny petitioners' entitlement once the Statutes of the University are specific in applying provisions of leave rules upon non-teaching employees *mutatis mutandis*.

20. Applicability of leave rules, therefore, cannot be denied or disputed by the respondents, in so far as non-teaching staff of affiliated colleges are concerned. Leave rules otherwise are not shown to have been modified in its applicability to such class of employees by virtue of any provisions contained in the Statutes or any other applicable provisions of law. In that circumstances petitioners would clearly be entitled to all benefits which are otherwise admissible to similarly placed employees of the Government regarding grant of leave. The applicable provisions of the financial rules contained in Financial Handbook in Volume 2 Part 4 under Fundamental Rules 58 to 104 including Sub-rule (1)(12) of Rule 81(b) of the Fundamental Rules, which provides that leave shall be admissible to Government servants and if such Government servant surrenders such leave he shall be entitled to encashment of leave, would be applicable in the facts of the present case also.

21. So far as respondents' objection with reference to Government Order is concerned, a perusal thereof would go to show that a specific approval of the State has been found to be wanting for the purpose of extending benefit of leave rules to non-teaching staff of the University. This Government Order apparently would have no applicability in the facts of the present case, inasmuch as service conditions of non-teaching staff of the University are governed by a separate set of rules contained in Chapter 34 of the Ordinances framed for the University, wherein no such provision is shown to exist as is contained under Clause 36.01, meant for non-teaching staff of the affiliated college. Law is otherwise settled that in hierarchy of laws a provision contained in Statute

would stand on a higher pedestal and in the event of conflict with the Government Order, the provision of the Statute would prevail. This Government Order, therefore, cannot be relied upon to deny consideration to petitioners' claim.

22. In view of the discussions aforesaid, this writ petition succeeds and is allowed.

23. A writ of mandamus is issued to the respondents including State of U.P. to extend benefit of leave rules to the petitioners including the benefit of leave encashment in accordance with Rule 81(b) of the Fundamental Rules as are available to similarly placed employees of the Government.

24. A specific order would be passed in that regard and the benefits due thereunder would be disbursed to petitioners, within a period of four months from the date of presentation of certified copy of this order.

25. The respondents while calculating the benefits due and payable to petitioners would take note of any subsequent modification, which may have been made in leave rules or the Government Orders, which may have been issued specifying the entitlement in that regard including Government Orders.

26. No order is passed as to costs.

(2026) 4 ILRA 138
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 09.04.2026

BEFORE

THE HON'BLE SAURABH SHYAM SHAMSHERY, J.

Writ A No. 8001 of 2025

Satyaverat

...Petitioner

Versus

State of U.P. & Ors.

...Respondents

ISSUE FOR CONSIDERATION

Whether, when the only charge proved against the petitioner was that he was not diligent in procuring information from earlier Accountants and failed to pursue recovery proceedings initiated about six years prior to his posting, he could be held entirely responsible for the outstanding dues of Rs. 214.87 lakhs and subjected to recovery of the entire amount by way of punishment; and whether such punishment was shockingly disproportionate.

HEADNOTE

U.P. Government Electrical Undertakings (Dues Recovery) Act, 1958 – ss.3, 5 – Departmental proceedings – Punishment – Petitioner while working as Accountant at Electricity Distribution

Division-III, Shamli during the period 31.07.2016 to 19.07.2021 was chargesheeted on the allegation that he failed to pursue recovery proceedings in respect of outstanding electricity dues of Rs. 214.87 lakhs against M/s Sikka Papers Ltd. and also failed to pursue claim in insolvency proceedings initiated against the consumer – Temporary Inquiry Committee exonerated petitioner from both charges – Disciplinary Authority disagreed with exoneration in respect of charge no.1 and held the same partly proved – Punishment of 'Censure', stoppage of one annual increment with cumulative effect and recovery of Rs. 214.87 lakhs imposed upon petitioner – Challenge in writ jurisdiction :

Held: Maximum proved charge against petitioner was that he was not diligent in procuring information from earlier Accountants and failed to pursue recovery proceedings initiated about six years prior to his posting – Though charge no.1 was partly proved, there was no finding that petitioner's conduct resulted in the financial loss or that he was solely responsible therefor – No responsibility was fixed upon earlier Accountants or higher authorities – There was no charge that the department had suffered financial loss and no finding that petitioner had gained any monetary or other benefit – Punishment of censure and stoppage of one annual increment with cumulative effect could be treated as proportionate punishment – However, recovery of the entire outstanding amount of Rs. 214.87 lakhs from petitioner alone, without any reason, basis or charge to that effect, was shockingly disproportionate – Impugned order set aside to the extent it directed recovery of Rs. 214.87 lakhs from petitioner. (E-5)
[Paras 15, 16, 17, 18, 19, 20]

CASE LAW CITED

Punjab & Sind Bank v. Raj Kumar, 2026 INSC 313.

List of Acts

U.P. Government Electrical Undertakings (Dues Recovery) Act, 1958.

List of Keywords

Departmental proceedings; Accountant; Electricity dues; Recovery proceedings; Demand notice; Insolvency proceedings; Disagreement notice; Partial proof of charge; Censure; Stoppage of increment; Recovery from employee; Financial loss; Shockingly disproportionate punishment; Judicial review of punishment.

CASE ARISING FROM

From the punishment order dated 02.05.2025 imposing punishment of censure, stoppage of one annual increment with cumulative effect and recovery of Rs. 214.87 lakhs from the petitioner.

Appearances for Parties

Advs. for the Petitioner: Pranesh Kumar Mishra

Advs. for the Respondents: **C.S.C., Kartikeya Saran, Krishna Agrawal.**

(Delivered by Hon'ble Saurabh Shyam Shamshery, J.)

1. Petitioner before this Court was initially appointed on the post of Assistant Accountant in U.P. Power Corporation Ltd. on 28.02.2008 and till 22.02.2013 he was posted at Electricity

Distribution Division-I, Muzaffarnagar. Petitioner thereafter was promoted on the post of Accountant on 23.02.2013 and was transferred and posted at Electricity Distribution Division-I, Baraut, Baghpat and he remained there till 31.07.2016.

2. Later on petitioner was transferred on 31.07.2016 at Electricity Distribution Division-III, Shamli and he remained there till 19.07.2021 and subsequently transferred at Electricity Urban Distribution Division Town Hall, Muzaffarnagar and presently he is working there as an Accountant.

3. Petitioner has suffered with a disciplinary proceeding for an alleged misconduct when he was posted at Electricity Distribution Division-III Shamli from 31.07.2016 to 19.07.2021 and present case is arising of a punishment order passed in pursuance of said disciplinary proceeding.

4. Few facts which are not disputed so far as charges are concerned, are that in 2009-10 a huge electricity bill remained outstanding against a consumer, namely, M/s Sikka Papers Ltd. and its connection was disconnected on 01.11.2009. Subsequently notices for recovery as required under Sections 3 and 5 of Uttar Pradesh Government Electrical Undertakings (Dues Recovery) Act, 1958 (hereinafter referred to as Act, 1958) were issued to realize the electricity dues of Rs. 214.87 lacs. Demand notice under Section 3 was issued on 13.11.2009 and under Section 5 was issued on 14.12.2009 however, it appears that recovery was not executed and nothing happened thereafter.

5. At later stage, M/s Sikka Papers Ltd. approached National Company Law Tribunal under I.B. Code 2016 to declare it insolvent. Accordingly vide order dated 22.05.2019 a Resolution Professional was appointed and a notice was published in a newspaper, namely, "The Pioneer" on 26.04.2019, however, the Electricity Department does not participate in it in the capacity of Financial Creditor, as such a loss was occurred.

6. In aforesaid circumstances, a disciplinary proceeding was initiated against petitioner, the then Accountant at Shamli that when he was working at Shamli between 2016 to 2021, he was not diligent to pursue the huge recovery of Rs. 214.87 lacs since neither he pursued the demand notices issued under Sections 3 and 5 of Act, 1958 nor he pursued the remedy to file claim in insolvency proceeding, despite a notice was published on 26.04.2019 when petitioner was Accountant at Shamli.

7. Petitioner submitted his reply to charge sheet and a Temporary Inquiry Committee-5 considered the charges and reply to it and finally submitted an inquiry report dated 16.10.2024 whereby petitioner was exonerated from both charges. Relevant part of inquiry report, so far as charges no. 1 and 2 is concerned, is reproduced hereinafter:

विवेचना आरोप संख्या 01-

आरोपी ने निम्नवत् संज्ञानित किया है:-

आरोपी की तैनाती विद्युत वितरण खण्ड-तृतीय शामली में अवधि 31.07.2016 से 19.07.2021 तक रही थी।

उपभोक्ता मैसर्स सिक्का पेपर्स लि० वृहद एवं भारी उपभोक्ता है जिसके बकाया धनराशि रू0 214.87 लाख के विषय में आरोप पत्र जारी हैं। उक्त बकाया धनराशि आरोपी के कार्यकाल से 07 वर्ष पूर्व के हैं एवं बकाया वसूली हेतु तत्कालीन कार्मिक / लेखाकार, अधिशासी अभियन्ता द्वारा कृत कार्यवाही आरोपी के कार्यभार ग्रहण करने से पूर्व ही संपादित की जा चुकी थी।

उपभोक्ता पर बकाया धनराशि माह 01/2009 से सृजित हुई है जबकि आरोपी की तैनाती 31.07.2016 को हुई है। अतः आरोप के कार्यकाल से पूर्व की घटना है।

उपभोक्ता का संयोजन बकाया धनराशि पर दिनांक 01.11.2009 को विच्छेदित किया गया था (आरोपी के कार्यभार ग्रहण करने से पूर्व)।

उपभोक्ता को दिनांक 13.11.2009 को धारा-03 एवं दिनांक 14.12.2009 को धारा-05 का नोटिस जारी किया गया था, उल्लेखनीय है कि नियमानुसार संयोजन विच्छेदन के उपरान्त ही धारा-03 एवं धारा-05 के नोटिस जारी किये जाते हैं (आरोपी के कार्यभार ग्रहण करने से पूर्व)।

विशेष:- उपरोक्त बिन्दुओं के साक्ष्य में अधिशासी अभियन्ता, विद्युत वितरण खण्ड-प्रथम, शामली के टिप्पणी आदेश / वि०वि०ख० शामली / दिनांक 28.04.2010 जो मुख्य अभियन्ता, (स्तर-1) सहारनपुर क्षेत्र, सहारनपुर को सम्बोधित है तथा धारा-03 एवं धारा-05 के प्रपत्र की छायाप्रति संलग्न हैं।

उक्त के संबंध में आरोपी ने स्पष्ट किया है कि उसके कार्यकाल से पूर्व ही धारा-03 एवं धारा-05 के नोटिस जारी किये जा चुके थे एवं आरोपी के कार्यकाल में धारा-05 का नोटिस बिना वसूली अथवा वसूली/आंशिक वसूली के उपरांत वापस नहीं आया था। साक्ष्य स्वरूप तहसीलदार शामली का पत्रांक 320/वा0वा0न0 दिनांक 19.04.2023 एवं अधिशासी अभियन्ता विद्युत वितरण खण्ड तृतीय, शामली का जिलाधिकारी शामली को जारी पत्र संख्या 1596 वि०वि०ख०तृ० शामली दिनांक 12.04.2023 संलग्न हैं। इसके अतिरिक्त व्यक्तिगत सुनवाई में प्रस्तुत अभिकथन में उक्त एच.वी. उपभोक्ता का नाम आनलाईन बिलिंग डाटा में भी प्रदर्शित ना होना अंकित किया है।

समिति का मतव्य है कि आरोपी ने अपने अभिकथन एवं साक्ष्यों के आधार पर यह अंकित किया है कि उसकी तैनाती अवधि के पूर्व में ही संबंधित उपभोक्ता का संयोजन विच्छेदित करते हुए विद्युत राजस्व बकाया के सापेक्ष धारा 03 एवं धारा 05 निर्गत की जा चुकी थी साथ ही उक्त उपभोक्ता के संबंध में अधिशासी अभियन्ता, विद्युत वितरण खण्ड-प्रथम, शामली के टिप्पणी एवं आदेश दिनांक 28.04.2010 जोकि मुख्य अभियन्ता (स्तर-1), सहारनपुर क्षेत्र, सहारनपुर को संबोधित है जिसमें धारा 03 एवं धारा 05 की प्रति संलग्न की गयी है। आरोपी द्वारा प्रस्तुत स्वहस्ताक्षरित एच.वी. उपभोक्ताओं की बिलिंग डाटा सूची के अनुसार उपभोक्ता का विद्युत बकाया प्रदर्शित ना होने के स्वरूप राजस्व वसूली की कार्यवाही नहीं की जा सकी। उक्त कथन स्वीकार योग्य एवं उचित प्रतीत होता है। अतः आरोपी को दोषमुक्त पाया जाता है।

विवेचना आरोप संख्या 02:-

आरोपी का निम्नवत् कहना है कि:-

अखबार में प्रकाशित विज्ञप्ति जो आरोप पत्र के साथ संलग्न है। आरोपी को उसके कार्यकाल में संज्ञानित / उपलब्ध नहीं करायी गयी।

निगम आदेश सं० 1653 / जी०सी०ए०ओ० दिनांक 10.04.1997 के अनुसार आरोपी का उत्तरदायित्व बकायेदार उपभोक्ता के विरुद्ध मात्र धारा - 03 एवं धारा-05 का प्रपत्र जारी करने तक है। जो आरोपी के कार्यभार ग्रहण करने से पूर्व ही जारी हो चुका था।

निगम आदेश सं० 87 / प्र०सु० / 01 / णकालि / 2002-20- प्र०से / 2000 दिनांक 25.02.2002 की कणिका 3क- 4, के अनुसार राजस्व वसूली हेतु प्रारम्भिक उत्तरदायित्व उपखण्ड अधिकारी, पर्यवेक्षणीय उत्तरदायित्व अधिशासी अभियन्ता एवं प्रशासनिक उत्तरदायित्व अधीक्षण अभियन्ता का है।

पूर्ववर्ती परिषद आदेश सं०-334 - विनियम - 23 / राविट - 97 - 5 विनियम / 90 (टी०सी०) 11 दिनांक 30.11.1997 का कणिका 1.36 के अनुसार धारा - 05 का प्रपत्र जारी होने के उपरान्त जिलाधिकारी से वसूली हेतु अनुस्मरण करना तथा धारा -05 की आपत्तियों के निस्तारण करने का उत्तरदायित्व अधिशासी अभियन्ता का है।

पूर्ववर्ती परिषद आदेश सं० 924 - वी०एस०वी० / राविट उन्तीस - 22 वी०एस०वी० / 91 दिनांक 30.07.1999 के अनुसार अधिशासी अभियन्ता, अधीनस्थों के कार्यों हेतु उत्तरदायी हैं। अधिशासी अभियन्ता, का उत्तरदायित्व था कि वे जिलाधिकारी को अपने अधीनस्थ कार्यालय सहायकों से पत्राचार कराना चाहिए था।

निगमादेश सं० 555 - ज०श० एवं प्र०मु०-01 / 41 कराने / 2017-29- प्र०मु० / 2001 दिनांक 30.06.2017 की कणिका 01 के अनुसार राजस्व संग्रह का प्रशासनिक उत्तरदायित्व अधिशासी अभियन्ता, पर्यवेक्षणीय उत्तरदायित्व, अधीक्षण अभियन्ता तथा डिस्कॉम स्तर पर निदेशक वाणिज्य का है। उल्लेखनीय है कि वृहद एवं भारी उपभोक्ता के रु० 100 लाख से अधिक से बकाया की धनराशि की सूचना प्रत्येक माह डिस्कॉम स्तर तक प्रेषित की जाती है। अतः सभी उच्च अधिकारी उपभोक्ता पर बकाया राशि से संज्ञानित थे एवं उनका उत्तरदायित्व दिशा निर्देशन का था।

रेगुलेशन ऑफ़ Insolvency and Bankruptcy के अनुसार Interim Resolution Professional विद्युत विभाग को सूचना देने का प्रावधान नहीं है। अतः विद्युत विभाग में सूचना प्राप्त नहीं है और ना तदनुसार अधिशासी अभियन्ता द्वारा इस संबंध में आरोपी को कोई निर्देश जारी किये गये।

उपरोक्त बिन्दुओं के सन्दर्भ में उल्लेखनीय है कि Interim Resolution Professional द्वारा सम्बन्धित जिलाधिकारी को सूचना प्रेषित की जानी है। चूंकि उक्त प्रकरण में धारा-05 प्रपत्र जारी हो चुका था। अतः लम्बित राजस्व बकाया की कार्यवाही खण्ड स्तर पर धारा-05 के लम्बित रहने तक नहीं की जा सकती है। उक्त कार्यवाही जिलाधिकारी के स्तर पर संपादित होनी थी। अतः आरोपी के स्तर पर कोई कार्यवाही वांछित नहीं थी। आरोपी को Interim Resolution Professional के यहाँ दावा प्रस्तुत करने हेतु किसी भी स्तर से कोई आदेश जारी नहीं किये गये थे। उक्त से स्पष्ट है कि धारा-03 एवं धारा-05 जारी होने के उपरान्त आरोपी के स्तर पर कोई भी कार्यवाही वांछित नहीं थी एवं आरोपी के कार्यकाल में धारा 05 की नोटिस किसी आपत्ति के साथ जिलाधिकारी कार्यालय से वापस प्राप्त नहीं हुआ।

समिति का मतव्य है कि संबंधित उपभोक्ता के विरुद्ध बकाया राजस्व धनराशि की वसूली हेतु दावा प्रस्तुत करने हेतु आरोपी ने अपने अभिकथन में स्पष्ट किया है कि धारा 03 एवं धारा 05 के नोटिस पूर्व में ही निर्गत किये गये थे। निगमादेश के अनुसार राजस्व वसूली का दायित्व अन्य अधिकारियों का है। धारा 05 निर्गत होने पर वसूली जिलाधिकारी द्वारा किया जाना है। एन.सी.एल.टी. द्वारा विद्युत विभाग को उपभोक्ता के संयोजन के विरुद्ध बकाया राजस्व की वसूली के दावे हेतु कोई सूचना ना प्राप्त होना, दिल्ली से प्रकाशित समाचार पत्र का शामिली कस्बे में उपलब्ध ना होना भी अंकित किया है जो कि स्वीकार योग्य है। अतः आरोपी को दोषमुक्त पाया जाता है।

निष्कर्ष

अधीक्षण अभियन्ता (डी०पी०), पविनिनिलि, मेरठ के कार्यालय पत्रांक 427/पविनिनिलि/मे./डी.पी./1775 दिनांक 23.01.2024 से प्राप्त पत्रावली, आरोप पत्र, आरोपित सेवक का लिखित अभिकथन तथा उपलब्ध पत्र/साक्ष्यों की गहन विवेचना एवं परीक्षण/प्रकरण के सम्यक जांचोपरान्त यह पाया गया कि श्री सत्यवृत्त के विरुद्ध लगाये गये आरोप संख्या 01 एवं 02 के लिये दोषमुक्त पाया जाता है।"

8. Inquiry report of Temporary Inquiry Committee-5 was submitted to Managing Director, who disagreed with exoneration so far as charge no. 1 is concerned and held that it was proved in part and, therefore, a notice dated 28.12.2024 was issued to petitioner, to which petitioner submitted reply dated 10.01.2025 and again denied charge and specifically stated that it was not sole responsibility of him to pursue the notices issued under Sections 3 and 5 of Act, 1958 and notices were issued much prior to when petitioner remained posted as Accountant at Shamli.

9. In aforesaid circumstances, impugned order dated 02.05.2025 was passed by way of an Office Memorandum, whereby petitioner was found partly guilty of charge no. 1 that when he was working between 2016 to 2021, i.e., for five years as an Accountant at Shamli, he did not notice the huge outstanding of Rs. 214.87 lacs of a consumer namely, M/s Sikka Paper Ltd. and has not pursued thereafter. However, no reference was made so far as proceeding under Insolvency Act is concerned. By means of impugned order not only punishment of "Censure" and "withholding of one financial increment with cumulative effect" was passed but a punishment to recover Rs. 214.87 lacs was also imposed on petitioner. Relevant part of impugned order is mentioned hereinafter:

प्राप्त जांच आख्या के उपरान्त की गयी कार्यालय समीक्षा

आरोप संख्या-01 :- आरोपी की तैनाती 31.07.2016 से 19.07.2021 तक 05 वर्षों तक रही। परन्तु इतने बड़े बकाया रु 214.87 लाख के सम्बन्ध में कोई जानकारी नहीं थी, ऐसा सम्भव नहीं है। यदि नहीं थी, तो घोर लापरवाही है। लगातार Pursuance करना तथा जिला प्रशासन से सम्पर्क करके वसूली की कार्यवाही किया जाना था। धारा-05 निर्गत करने के उपरान्त उसकी Monitoring करना लेखाकार का प्रथम दायित्व है। पूर्व में निर्गत धारा-03 एवं धारा-05 का अनुश्रवण करना लेखाकार (राजस्व) की पूर्ण जिम्मेदारी है। बड़े बकायेदारों उपभोक्ता एच0वी0-02 श्रेणी कू सूचना पूर्ववर्ती अधिशासी अभियन्ता से भी प्राप्त करना आवश्यक था। संलग्न सूची में Inoperative श्रेणी के उपभोक्ता का विवरण नहीं है। लेखाकार (राजस्व) सभी आरोपों से अपने को मुक्त करवाने हैं। जैसे इनकी किसी प्रकार की जिम्मेदारी नहीं है। अतः आरोपी को आरोप संख्या-01 के लिए आंशिक दोषी पाया जाता है।

आरोप संख्या:-02 :- उपभोक्ता के विरुद्ध बकाया राजस्व धनराशि की वसूली के धारा 03 तथा धारा 05 का नोटिस आरोपी की तैनाती अवधि से पूर्व ही निर्गत कराया जा चुका था। धारा 05 निर्गत होने पर वसूली जिलाधिकारी द्वारा की जाती है। एन.सी.एल.टी. द्वारा विद्युत विभाग को उपभोक्ता के संयोजन के विरुद्ध बकाया राजस्व की वसूली के दावे हेतु कोई सूचना ना प्राप्त होना, दिल्ली से प्रकाशित समाचार पत्र का शामली कस्बे में उपलब्ध ना होना भी अंकित किया है जो कि उचित प्रतीत होता है।

अतः कार्यालय समीक्षा में जांच समिति के निष्कर्ष से सहमति की स्थिति पायी जाती है। तथा आरोपी आरोप संख्या-02 के लिए दोषमुक्त पाया जाता है।

आरोपी श्री सत्यवृत्त (सैम आई0डी0-14700047) तत्कालीन लेखाकार अन्तर्गत, विद्युत वितरण खण्ड-तृतीय, शामली सम्प्रति लेखाकार, अन्तर्गत विद्युत नगरीय वितरण खण्ड-प्रथम, मुजफ्फरनगर के विरुद्ध प्रकरण में अस्थायी जांच समिति-पंचम से प्राप्त जांच आख्या एवं निष्कर्ष का कार्यालय स्तर पर की समीक्षोपरान्त आरोप सं0-01 आंशिक सिद्ध पाये जाने के दृष्टिगत निगमिय पत्रांक 6518/प०वि०वि०नि०लि०/मे०/डी०पी०/1775 दिनांक 28.12.2024 द्वारा अभ्यावेदन निर्गत किया गया। जिसके संदर्भ में प्रतिउत्तर आरोपी द्वारा पत्रांक शून्य दिनांक 10.01.2025 के माध्यम से प्रेषित किया गया। जोकि निम्नवत् है:-

"उपरोक्त विषयक अवगत कराना है कि अभ्यावेदक की तैनाती अवधि 31.07.2016 से 19.07.2021 में वि०वि०ख० तृतीय, शामली में थी, वृहद उपभोक्ता की राजस्व बकाया के सम्बन्ध में जांच समिति (अस्थायी) प०वि०वि०नि०लि०, मुरादाबाद के पत्र सं० 9003-मु०अ०मु०क्षे०/अस्थायी जांच समिति-5 दिनांक 26.09.2024 के द्वारा आरोप-पत्र जारी किया गया था, जिसमें 2 नग आरोप से आरोपित किया गया था। अभ्यावेदक द्वारा प्रति उत्तर प्रस्तुत करने एवं व्यक्तिगत सुनवाई के उपरान्त जांच समिति द्वारा जांच विवेचना प्रस्तुत की गई। जांच में अपनी जांच विवेचना में अभ्यावेदक को दोनों आरोपों से मुक्त पाया था अनुशासनात्मक समीक्षा में निम्न आधार पर अभ्यावेदक को आरोप सं0-1 में आंशिक दोषी मान लिया गया।"

आरोप सं०-1 आरोपी की तैनाती 31.07.2016 से 19.07.2021 तक 05 वर्षों तक रही परन्तु इतने बड़े बकाया रु० 214.87 लाख के सम्बन्ध में कोई जानकारी नहीं थी, ऐसा सम्भव नहीं है। यदि नहीं थी, तो घोर लापरवाही है। लगातार Pursuance करना तथा जिला प्रशासन से सम्पर्क करके वसूली की कार्यवाही किया जाना था। धारा-05 निर्गत करने के उपरान्त उसकी Monitoring करना लेखाकार का प्रथम दायित्व है। पूर्व में निर्गत धारा-03 एवं धारा-05 का अनुश्रवण करना लेखाकार (राजस्व) की पूर्ण जिम्मेदारी है। बड़े बकायेदारों उपभोक्ता एच०वी०-02 श्रेणी की सूचना पूर्ववर्ती अधिशासी अभियन्ता एवं पूर्ववर्ती लेखाकार (राजस्व) से भी प्राप्त करना आवश्यक था। जो कि आरोपी द्वारा नहीं किया गया। अतः आरोप संख्या-01 आंशिक सिद्ध पाया गया है।

उपरोक्त अनुशासनात्मक समीक्षा निम्न प्रकार अस्वीकार्य है, क्योंकि अनुशासनात्मक समीक्षा में लेखाकार के पदेन कर्तव्य एवं अभ्यावेदक के प्रति उत्तर तथा जांच समिति की विवेचना स्वतः बोलते आदेशों से नहीं की गयी है एवं अनुशासनात्मक समीक्षा काल्पनिक तथा दोषपूर्ण हो गयी है। अतः अनुरोध है कि निम्न बिन्दुओं पर पुनः विवेचना कर स्वतः बोलते आदेशों से समीक्षा की जानी चाहिए।

अनुशासनात्मक समीक्षा का अंश:- "अभ्यावेदक की तैनाती 31.07.2016 से 19.07.2021 तक 5 वर्षों तक रही, परन्तु इतने बड़े बकायेदार रु० 214.87 लाख के विरुद्ध बकाया की कोई जानकारी नहीं थी। ऐसा सम्भव नहीं है यदि नहीं थी तो घोर लापरवाही है।"

अनुशासनात्मक समीक्षा का उक्त अंश पूर्ण रूपेण अस्वीकार्य है तथा खंडित किये जाने योग्य है, जो निम्न से स्पष्ट है:-

(i) प्रश्रगत उपभोक्ता विद्युत वितरण खण्ड प्रथम, शामली से सम्बन्धित था एवं जैसा कि प्रत्यावेदन में वर्णित किया जा चुका है। उपभोक्ता पर बकाया राशि के विरुद्ध में विद्युत वितरण खण्ड-प्रथम, शामली के स्तर पर कार्यवाही हो चुकी थी, जो निम्न हैं-

(ii) धारा-3 के प्रपत्र की छायाप्रति।

(iii) धारा-5 के प्रपत्र व बिना वसूल प्रपत्र की छायाप्रति।

(iv) अधिशासी अभियन्ता, विद्युत वितरण खण्ड-प्रथम, शामली एवं अधीक्षण अभियन्ता, विद्युत वितरण मण्डल, शामली की टिप्पणी एवं आदेश दिनांक 28.11.2010 (छायाप्रति)।

(v) अधिशासी अभियन्ता, विद्युत वितरण खण्ड-प्रथम, शामली के पत्र सं० 291/वि०वि०-प्र०/शामली, दिनांक 08.07.2010 (छायाप्रति)।

(vi) विद्युत वितरण खण्ड-प्रथम, शामली का कुछ क्षेत्र दिनांक 25.05.2012 को हस्तांतरित कर विद्युत वितरण खण्ड-तृतीय, शामली में पुनर्गठित किया गया जबकि अभ्यावेदक की तैनाती 31.07.2016 से 19.07.2021 तक रही है। उल्लेखनीय है कि उक्त प्रश्रगत उपभोक्ता का संयोजन स्थल विद्युत वितरण खण्ड-तृतीय, शामली में पुनर्गठन के फलस्वरूप आया था, परन्तु उपभोक्ता का स्थायी विच्छेदन एवं धारा-5 आदि का प्रपत्र विद्युत वितरण खण्ड-प्रथम, शामली से ही दिया जा चुका था। अतः उक्त बकाया धनराशि विद्युत वितरण खण्ड-प्रथम, शामली के अभिलेखों में ही वर्णित रही एवं बकाया धनराशि तथा उपभोक्ता का प्रकरण विद्युत वितरण खण्ड-तृतीय, शामली को हस्तान्तरित नहीं हुआ। अतः अनुशासनात्मक समीक्षा का उक्त अंश भी लेखाकार (राजस्व) को संज्ञानित होना चाहिए था सम्भव ही नहीं है एवं अस्वीकार्य है।

(vii) अनुशासनात्मक समीक्षा का अंश लगातार Pursuance करना तथा जिला प्रशासन से सम्पर्क करके वसूली की कार्यवाही किया जाना था।

उक्त अंश भी अस्वीकार्य है क्योंकि उपभोक्ता की बकाया राशि के धारा-3 एवं धारा-5 विद्युत वितरण खण्ड-प्रथम, शामली द्वारा जारी थे एवं स्थायी विच्छेदन के कारण उक्त बकाया विद्युत वितरण खण्ड-तृतीय, शामली को हस्तान्तरित नहीं थे। अतः अभ्यावेदक की विद्युत वितरण खण्ड-तृतीय, शामली में तैनाती होने के कारण उक्त कार्यवाही विद्युत वितरण खण्ड-तृतीय, शामली के स्तर पर सम्पादित नहीं होनी थी।

(viii) अनुशासनात्मक समीक्षा का अन्य अंश भी अस्वीकार्य है क्योंकि बकाया धनराशि का प्रकरण विद्युत वितरण खण्ड-प्रथम, शामली में था, जब कि अभ्यावेदक की तैनाती विद्युत वितरण खण्ड-तृतीय, शामली में थी।

अभ्यावेदक द्वारा उक्त तथ्यों को व्यक्तिगत सुनवाई के समय भी अवगत कराया गया था। परन्तु जांच समिति ने अपनी विवेचना में सम्मिलित नहीं किया और न ही अनुशासनात्मक समीक्षा में संज्ञानित किया गया जिस कारण अनुशासनात्मक समीक्षा त्रुटि पूर्ण हो गयी।

अतः स्पष्ट है कि उपभोक्ता की बकाया राशि विद्युत वितरण खण्ड-प्रथम, शामली में वांछित थी एवं सभी अभिलेख विद्युत वितरण खण्ड-प्रथम, शामली में थे जबकि अभ्यावेदक की तैनाती विद्युत वितरण खण्ड-तृतीय, शामली में थी।

(IX) यह भी उल्लेख करना अनिवार्य है कि विद्युत वितरण खण्ड-तृतीय, शामली के गठन के समय (जो अभ्यावेदक के कार्यभार से पूर्व हुआ है) वृहद एवं भारी उपभोक्ता जो कार्यशील थे एवं विद्युत वितरण खण्ड-तृतीय, शामली के कार्य क्षेत्र में आते थे हस्तान्तरित किये गये थे जबकि प्रश्रुत उपभोक्ता का स्थायी विच्छेदन एवं धारा 5 आदि की कार्यवाही विद्युत वितरण खण्ड-प्रथम, शामली में हो चुकी थी एवं अभिलेख तथा उपभोक्ता विद्युत वितरण खण्ड-तृतीय, शामली में हस्तान्तरित नहीं था। साक्ष्य में वृहद एवं भारी उपभोक्ता के वर्ष-2019 व वर्तमान की संगणक डाटा की छायाप्रति संलग्न हैं।

अतः उक्त प्रकरण अभ्यावेदक से सम्बन्धित नहीं हैं अभ्यावेदक पर आरोप तथा अनुशासनात्मक समीक्षा सिद्ध नहीं हैं।"

प्राप्त अभ्यावेदन की कार्यालय समीक्षा

प्राप्त अभ्यावेदन के विश्लेषण से संज्ञानित है कि विद्युत वितरण खण्ड-तृतीय, शामली के अन्तर्गत दिनांक 31.07.2016 से 19.07.2021 तक 05 वर्षों की तैनाती की समयवधि के दौरान आरोपी श्री सत्यवृत्त, लेखाकार के द्वारा उपभोक्ता मैसर्स सिक्का पेपर्स लि०, सिक्का से धनराशि 214.87 लाख की राजस्व वसूली सम्बन्धी प्रकरण में कार्यभार ग्रहण करते समय पूर्ववर्ती लेखाकार से खण्ड के अन्तर्गत बड़े बकायेदारों (HV-2) की जानकारी प्राप्त कर उचित कार्यवाही करने में असमर्थ रहने के दृष्टिगत विभागीय कार्यों एवं दायित्वों के प्रति लापरवाही/शिथिलता प्रदर्शित होती है।

यद्यपि उक्त उपभोक्ता से राजस्व वसूली हेतु धारा-3 व धारा-5 आरोपी की तैनाती अवधि से पूर्व विद्युत वितरण खण्ड-प्रथम, शामली से निर्गत किया गया था, परन्तु आरोपी द्वारा उक्त उपभोक्ता से सम्बन्धित अभिलेखों को विद्युत वितरण खण्ड-तृतीय, शामली में हस्तान्तरित कराकर एवं उसकी वसूली हेतु लगातार अनुसरण करने का उल्लेख अभ्यावेदन में नहीं किया गया।

उपरोक्त वर्णित तथ्यों के आलोक में अभ्यावेदक द्वारा प्रेषित अभ्यावेदन की कार्यालय समीक्षा में आरोप सं0-01 आंशिक सिद्ध पाया गया है।

अतः प्रबन्ध निदेशक, पश्चिमांचल विद्युत वितरण निगम लि०, मेरठ के उक्त प्रकरण में सक्षम अधिकारी होने के नाते श्री सत्यवृत्त (सैम आई0डी0-14700047) तत्कालीन लेखाकार अन्तर्गत, विद्युत वितरण खण्ड-तृतीय, शामली सम्प्रति लेखाकार, अन्तर्गत विद्युत नगरीय वितरण खण्ड-प्रथम, मुजफ्फरनगर के विरुद्ध आरोप सं0-01 आंशिक सिद्ध पाये जाने के दृष्टिगत "परिनिन्दा एवं संचयी प्रभाव से एक वार्षिक वेतन वृद्धि पर रोक तथा धनराशि ₹0 214.87 लाख विविध अग्रिम के रूप में प्रत्याप्ति" का दण्ड प्रदत्त करते हुए उनके विरुद्ध आरोप पत्र के माध्यम से प्रचलित प्रकरण को एतद्द्वारा "समाप्त" किया जाता है।

10. Sri Pranesh Kumar Mishra, learned counsel for petitioner has submitted that demand notices against consumer under Sections 3 and 5 of Act, 1958 were issued on 13.11.2009 and 14.12.2009 whereas petitioner took charge as an Accountant at Shamli on 31.07.2016, i.e., notices were issued about more than six years ago. No allegation was made against earlier posted Accountants. Impugned order was passed mainly on a premise that petitioner was not careful and diligent to identify the huge outstanding and to inform it to Higher Authorities and failed to pursue it. However, an Accountant cannot be held entirely responsible that he was not able to point out a recovery for which demand notices were issued more than six years back when he took charge. The Higher Authorities have also not taken note of any huge outstanding or call for record from Accountant, i.e., petitioner during his tenure of about five years at Shamli. A reason was assigned in impugned order that billing data list was not published, however, it was not the entire responsibility of petitioner.

11. Learned counsel for petitioner further submitted that so far insolvency proceeding is concerned, notice was published in a nationalized newspaper which does not has much circulation at Shamli and otherwise also it cannot be entire responsibility of petitioner to take note of notice published in newspaper.

12. Learned counsel further submitted that the charge was partially proved and without any specific finding about loss the punishment of recovery of entire amount, i.e., Rs. 214.87 lacs, from petitioner alone is a punishment which is shockingly disproportionate.

13. Per contra, Sri Krishna Agrawal, Advocate and Sri Vinayak Ranjan, Advocate holding brief of Sri Kartikeya Saran, Advocate for respondents, have supported the impugned order that petitioner was granted opportunity not only before Temporary Inquiry Committee but before Disciplinary Authority also. He was put on notice of disagreement and after considering his reply, it was held that petitioner was required to be more diligent towards recovery and it was his duty to procure information of consumers having huge outstanding, i.e., under HV-02 category, from his earlier Accountants or Executive Engineer, however, he was failed to take requisite information. Due procedure was followed and punishment is not shockingly disproportionate.

14. Heard learned counsel for parties and perused the material on record.

15. In the present case, admitted position of facts, as already mentioned in earlier paragraphs, are that demand notices against a consumer for demand of Rs. 214.87 lacs was issued in the year 2009, however, it was not pursued either by earlier Accountants or by Higher Authorities or by petitioner when he was posted between 2016 to 2021. Similarly, no application was filed in insolvency proceeding of consumer. The Temporary Inquiry Committee has exonerated petitioner from both charges, however, Disciplinary Authority put a disagreement so far as charge no. 1 is concerned that it was proved in part and notice was issued to petitioner, which was replied by him and finally impugned order was passed. Therefore, the Court is of the view that principle of natural justice and due procedure was complied with.

16. Now the only question is, whether charge is proved in part on a perverse finding and in case charge is found to be partly proved, whether punishments, specifically the punishment of recovery of amount of Rs. 214.87 lacs from petitioner, is shockingly disproportionate.

17. First charge was proved in part and for that the Court takes note of impugned order that during tenure of five years between 2016 to 2021 petitioner was required to get information from his earlier Accountants, specifically about the consumers having huge outstanding under HV-02 category, however, petitioner remained careless since he has not sought information.

18. Therefore, if impugned order is taken on face of it, the maximum proved charge against petitioner is that he was not diligent to procure information from his earlier Accountants and failed to pursue recovery process initiated about six years ago. It may be a case that petitioner was not diligent enough but whether it would be sufficient to hold that he was entirely responsible so much as that a recovery of entire outstanding amount of Rs. 214.87 lacs be recovered from petitioner by way of punishment. For that the Court takes note of a judgment passed by Supreme Court in the case of Punjab & Sind Bank vs. Sh. Raj Kumar, 2026 INSC 313 and relevant paras 9 and 10 of the judgment are reproduced hereinafter:

9. What follows from the precedents noted above is that courts should exercise restraint while interdicting orders of punishment. Normally, no court in exercise of its power of judicial review should interfere with an order of punishment imposed on a delinquent as a measure of disciplinary action by the competent authority and substitute its own judgment for that of the former. This is premised on the reason that the disciplinary authority is the best judge of the situation, and the requirements of maintaining discipline within the work force. While it is not the law that the courts should invariably stay at a distance when legality and/or propriety of a particular punishment is questioned, judicial scrutiny of the disciplinary action by way of punishment could arise only if the circumstances are such that no reasonable person would impose the punishment which is questioned and/or such punishment has the effect of shocking the conscience of the court. To put in simpler words, interference could be warranted if it appears to the court that the disciplinary authority has 'used a sledgehammer for cracking a nut'. A punishment, which is strikingly or shockingly disproportionate and is not commensurate with the gravity of misconduct, proved to have been committed in course of inquiry or otherwise, would border on arbitrariness and offend Article 14 of the Constitution.

10. Where a court, upon due consideration, arrives at the conclusion that the punishment imposed is disproportionate, its intervention is circumscribed in nature. Judicial scrutiny and interference, if at all, has to be based on reasons in support of the court's ultimate satisfaction that the disciplinary authority has faltered in the exercise of his discretion. In such a situation, the court may adopt one of two courses: it may remit the matter to the competent authority for reconsideration of the punishment; or, in the rarest of cases, it may substitute the punishment while supporting such a course with cogent reasons.

19. The Court finds that though charge no. 1 is found to be proved in part but there is no reason assigned why punishment of recovery of entire amount is imposed only against petitioner. There is no finding that petitioner does not remain diligent so much as it resulted into aforesaid

financial loss and for that petitioner was solely responsible. No responsibility was imposed on earlier Accountants and Higher Authorities. There was no charge that department has suffered financial loss. There is no finding that due to misconduct petitioner has gained monetary or any other benefit. Therefore, the Court finds that punishment of Censure and stoppage of one financial increment with cumulative effect might have proportionate punishment but punishment of recovery of Rs. 214.87 lacs only from petitioner without any reason and without even a charge to this effect, the Court is of the view that this punishment is shockingly disproportionate.

20. In view of above, though in normal circumstances matter can be remanded for consideration afresh but on consideration of above reason, punishment of recovery of a huge amount, being without any reason or basis, cannot sustain. Accordingly, impugned order dated 02.05.2025, to the extent of recovery of Rs. 214.87 lacs from petitioner, is hereby set aside, without interfering with other two punishments.

21. The writ petition is accordingly disposed of.

(2026) 4 ILRA 148
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 22.04.2026

BEFORE

THE HON'BLE KARUNESH SINGH PAWAR, J.

Writ A No. 9054 of 2025

Raj Kumar Sangam

...Petitioner

Versus

State of U.P. & Ors.

...Respondents

ISSUE FOR CONSIDERATION

Whether disciplinary proceedings could be initiated after an inordinate and unexplained delay of about ten years; and whether such proceedings could be initiated without any independent subjective satisfaction, preliminary inquiry or fact-finding exercise by the disciplinary authority to connect the petitioner with the alleged misconduct.

HEADNOTE

U.P. Government Servant (Discipline and Appeal) Rules, 1999 – r.7 – Civil Service Regulations – Art.351-A – On the eve of retirement on 30.06.2025, disciplinary proceedings initiated against petitioner under Rule 7 of the U.P. Government Servant (Discipline and Appeal) Rules, 1999 on allegation that he had forged recovery notice dated 22.10.2016 – Petitioner contended that alleged incident pertained to year 2015 and proceedings had been initiated after inordinate and unexplained delay of about ten years – Further contended that at relevant time he was not posted in District Saharanpur and had neither authority nor occasion to issue alleged recovery notice – Challenge in writ jurisdiction – Justification:

Held: On the eve of retirement on 30.06.2025, disciplinary proceedings were initiated against the petitioner under Rule 7 of the U.P. Government Servant (Discipline and Appeal) Rules, 1999 on the allegation that he had forged recovery notice dated 22.10.2016 – Court held that the impugned order had been issued after an inordinate delay of about ten years from the date of the alleged incident and such extraordinary delay in initiating departmental proceedings had not been explained at all in the counter affidavit – Unexplained delay in initiation of disciplinary proceedings makes it virtually impossible for an employee to gather relevant documents and evidence in his defence – Inordinate and unexplained delay in initiating disciplinary proceedings can be a ground for quashing such proceedings even at the stage of charge-sheet.

Court further held that no independent subjective satisfaction, preliminary inquiry or fact-finding exercise was conducted by the disciplinary authority to arrive at a conclusion that the petitioner had forged or issued the alleged recovery notice dated 22.10.2016 – Disciplinary authority had not independently applied its mind nor recorded any satisfaction to connect the petitioner with the alleged forgery – There was no explanation in the counter affidavit as to how the petitioner could have issued or fabricated the recovery notice when, he was not posted in District Saharanpur at the relevant time and was serving elsewhere – Impugned order set aside – Writ petition allowed – Liberty granted to the petitioner to move representation regarding claim for notional promotion to the post of Senior Mining Officer.(E-5)

[Paras 6, 7, 8, 9]

CASE LAW CITED

Amresh Shrivastava v. State of Madhya Pradesh and others, 2025 SCC OnLine SC 693;
State of Madhya Pradesh v. Bani Singh and another, AIR 1990 SC 1308;
State of Andhra Pradesh v. N. Radhakrishnan, (1998) 4 SCC 154;
Rakesh Kumar Nayak v. State of U.P. and others, Writ-A No. 9033 of 2024

List of Acts

Constitution of India;

U.P. Government Servant (Discipline and Appeal) Rules, 1999;
Civil Service Regulations

List of Keywords

Disciplinary proceedings; Inordinate delay; Unexplained delay; Charge-sheet; Mining Officer; Forged recovery notice; Subjective satisfaction; Preliminary inquiry; Fact-finding inquiry; Independent application of mind; Cogent material; Departmental proceedings; Prejudice to delinquent employee; Post-retiral benefits; Eve of retirement; Notional promotion.

CASE ARISING FROM

From the order dated 30.06.2025 passed by respondent no.2 initiating disciplinary proceedings against the petitioner under Rule 7 of the U.P. Government Servant (Discipline and Appeal) Rules, 1999 read with Article 351-A of the Civil Service Regulations.

Appearances for Parties

Advs. for the Petitioner: Anand Dubey, Saurabh Verma.

Advs. for the Respondents: C.S.C.

(Delivered by Hon'ble Karunesh Singh Pawar, J.)

Heard Shri Anand Dubey, learned counsel for the petitioner, and Shri Sandeep Sharma, learned Standing Counsel.

Challenge in this writ petition

By means of this petition, the petitioner has assailed the impugned order dated 30.06.2025, as contained in Annexure-1 to the writ petition, passed by respondent no. 2.

Brief Facts of the Case

The brief facts of the case are that the petitioner was initially appointed to the post of Mining Inspector on 02.03.1993 and was subsequently promoted to the post of Mining Officer on 01.07.1998. While working as Mining Officer in Districts Mainpuri and Kannauj, the petitioner was transferred to District Saharanpur vide order dated 05.06.2015, and in compliance thereof, he joined at District Saharanpur.

During his posting at Saharanpur, one Manipal Singh made a complaint to the District Magistrate, Saharanpur, regarding illegal mining in the Yamuna River in villages Allaharpur and Panchkuwan, pursuant to which an order dated 05.07.2015 was passed. The District Magistrate, Saharanpur, vide letter dated 08.07.2015, directed the petitioner to inspect and verify the genuineness of the complaint on the spot.

In compliance with the said direction, the petitioner conducted an inspection at villages Allaharpur and Panchkuwan and found that one Ranvir Singh was engaged in illegal mining. Consequently, the petitioner addressed a letter to the Station House Officer, Police Station Chilkana, District Saharanpur, for lodging an FIR against the said Ranvir Singh.

In the meantime, the petitioner was transferred from District Saharanpur to District Jalaun vide order dated 19.05.2016. Thereafter, on 29.09.2016, the petitioner was again transferred from District Jalaun to District Saharanpur; however, before he could join at Saharanpur, the said transfer order was cancelled vide order dated 07.10.2016. Both the aforesaid orders are on record as Annexure-6 and Annexure-7 to the writ petition.

Subsequently, on a complaint made by one Maniram, the District Magistrate passed an order of recovery dated 22.10.2016, which is contained in Annexure-10 to the writ petition.

Submissions on Behalf of the Petitioner

Learned counsel for the petitioner submits that the petitioner, after attaining the age of superannuation, retired on 30.06.2025 from the post of Mining Officer in District Azamgarh. On the eve of his retirement, the impugned order dated 30.06.2025 (contained in Annexure-1 to the writ petition) was passed by opposite party no. 2, whereby disciplinary proceedings have been

initiated against the petitioner under Rule 7 of the U.P. Government Servant (Discipline and Appeal) Rules, 1999.

It is further submitted that the said proceedings have been initiated in relation to an alleged incident of the year 2015, i.e., after an inordinate and unexplained delay. While passing the impugned order, opposite party no. 2 has recorded a finding that the petitioner had forged a recovery notice dated 22.10.2016 (Annexure-10 to the writ petition).

It is further submitted that no proper inquiry or exercise was conducted by respondent no. 2 before arriving at the conclusion that the alleged recovery notice was forged. The impugned order has been passed in a mechanical and arbitrary manner without any cogent material on record.

It is also submitted that the impugned action has been taken only with a view to wreak vengeance against the petitioner. The petitioner had earlier filed Writ-A No. 8131 of 2024, which was allowed by this Court vide order dated 15.4.2025, and while allowing the said writ petition, certain adverse observations were made against the opposite parties in paragraph 7 of the judgment. Being aggrieved and annoyed by the said observations, respondent no. 2 has maliciously initiated disciplinary proceedings against the petitioner vide impugned order (Annexure-1).

It is, thus, evident that the disciplinary proceedings have been initiated with a mala fide intention to harass the petitioner and to ensure that he is deprived of his rightful post-retiral dues. As such, the petitioner is being illegally prevented from receiving his post-retiral benefits.

Learned counsel for the petitioner has placed reliance upon the judgment of the Hon'ble Supreme Court in *Amresh Shrivastava vs. State of Madhya Pradesh and others*, reported in 2025 SCC OnLine SC 693 (paragraph 17), wherein it has been held that initiation of disciplinary proceedings after an inordinate delay, particularly at the verge of retirement or post-retirement, is liable to be interfered with, especially when no satisfactory explanation for such delay is forthcoming.

Reliance has also been placed upon the judgment passed by this Hon'ble Court in Writ-A No. 9033 of 2024, *Rakesh Kumar Nayak vs. State of U.P. and others* (paragraphs 18, 19 and 20), wherein it has been held that belated initiation of disciplinary proceedings and withholding of post-retiral dues without due justification is arbitrary and unsustainable in law.

Although the impugned order alleges that the petitioner committed forgery while issuing the recovery notice, the said allegation is wholly misconceived and unsupported by the record. A perusal of the recovery notice itself clearly demonstrates that the same was not issued by the petitioner, but by the competent authority.

It is further submitted that, at the relevant point of time, the petitioner was not posted in District Saharanpur and, therefore, had neither the authority nor any occasion to issue the alleged recovery notice addressed to the District Magistrate. In absence of any role, authority, or connection with the issuance of the said notice, the allegation of forgery levelled against the petitioner is patently arbitrary and unsustainable.

It is further submitted that even in the counter affidavit filed on behalf of the State Government, there is no specific pleading or averment to the effect that the recovery certificate dated 22.10.2016 was forged by the petitioner. In absence of any such categorical assertion in the pleadings, the allegation of forgery levelled against the petitioner is wholly unsubstantiated and liable to be rejected.

On the strength of the aforesaid judgments, it is contended that there was no occasion or justification for opposite party no. 2 to initiate disciplinary proceedings against the petitioner in respect of an alleged incident of the year 2015, particularly on the eve of his retirement on 30.06.2025.

It is submitted that initiation of disciplinary proceedings after an inordinate delay of more than ten years is wholly arbitrary, unreasonable, and bad in law. Such belated action has been consistently deprecated by the Hon'ble Supreme Court, especially in cases where no plausible explanation for the delay is forthcoming.

Submissions on Behalf of the Respondents

Learned Standing Counsel, while rebutting the submissions advanced on behalf of the petitioner, submits that an FIR bearing No. 587 of 2019 has been registered against the petitioner under Sections 420, 467, 468, 471, 167 and 120-B IPC, and pursuant thereto, a charge-sheet has already been filed by the police.

It is further submitted that the petitioner had prepared a forged recovery memo and used the same for unlawful purposes, and thus, the allegations against him are of grave misconduct, warranting imposition of a major penalty.

It has also been submitted that a charge-sheet in the departmental proceedings has been duly served upon the petitioner in March, 2026, wherein five charges have been levelled against him.

Lastly, it is contended that a writ petition challenging the initiation of departmental proceedings is not maintainable at this stage, and therefore, the present writ petition is liable to be dismissed.

Rejoinder Submissions

In reply to the submissions advanced by the learned Standing Counsel, learned counsel for the petitioner submits that the Hon'ble Supreme Court, in *Amresh Shrivastava vs State of Madhya Pradesh and others*, has categorically held that inordinate and unexplained delay in initiating departmental proceedings, particularly where the alleged misconduct was within the knowledge of the department, constitutes a valid ground for interference by the Court even at the stage of issuance of the charge-sheet.

It is submitted that where the proceedings are vitiated on account of gross delay, mala fide, or lack of jurisdiction, the writ petition is clearly maintainable, notwithstanding the stage of the

proceedings. Therefore, the contention of the respondents that the writ petition is not maintainable is misconceived and liable to be rejected.

On a specific query made by this Court, learned Standing Counsel has fairly admitted that no independent subjective satisfaction, preliminary inquiry, or fact-finding exercise was conducted by the disciplinary authority to arrive at a conclusion that the petitioner had forged or issued the alleged recovery notice dated 22.10.2016 (Annexure-10 to the writ petition). It has also not been clarified as to who, in fact, issued or prepared the said recovery notice, which forms the very basis of the impugned order dated 30.06.2025.

A perusal of the counter affidavit further reveals that there is no specific and categorical denial or pleading to the effect that the petitioner himself had forged the recovery notice dated 22.10.2016. The stand of the State primarily rests upon the investigation conducted in Case Crime No. 587 of 2019 under Sections 420, 467, 468, 471, 167 and 120-B IPC, wherein the Investigating Officer is stated to have found the charges to be proved and, on that basis, the matter was referred by the Directorate of Geology and Mining to the State Government, culminating in the initiation of disciplinary proceedings under Rule 7 of the U.P. Government Servant (Discipline and Appeal) Rules, 1999, read with Article 351-A of the Civil Service Regulations.

However, this Court finds that the disciplinary authority has not independently applied its mind nor recorded any satisfaction on the basis of cogent material to connect the petitioner with the alleged forgery. Furthermore, there is no explanation in the counter affidavit as to how the petitioner could have issued or fabricated the recovery notice when, admittedly, he was not posted in District Saharanpur at the relevant time and was serving elsewhere, namely in District Jalaun.

Conclusion on Delay and Merits

The issue of inordinate delay in initiating departmental proceedings is also of significance. The proceedings have been initiated in the year 2025 in respect of an alleged incident of the year 2015, i.e., after a lapse of about ten years, without any satisfactory explanation.

In this regard, the Hon'ble Supreme Court in *Amresh Shrivastava vs. State of Madhya Pradesh and others* (supra) has categorically held that inordinate and unexplained delay in initiating disciplinary proceedings can be a ground for quashing such proceedings even at the stage of charge-sheet. Paragraph 17 of the said judgment, being relevant, is extracted below:- "As to the second question, regarding whether delay is a ground for stopping the departmental proceedings at the stage of the chargesheet itself, suffice it to say that this varies from case to case. However, in the instant case where there is unexplained inordinate delay in initiating departmental proceedings despite the alleged misconduct being within the knowledge of the department, but still no departmental proceedings are initiated, the answer must go in favour of the employee. However, there may be cases where the department was not even aware of such irregularities or the misconduct, which is of such a nature that it is indicative, based on material considerations of factors other than merit, such as extraneous influences and gratifications. In such cases, such a delay, by

itself would not be a valid ground to scuttle the initiation of the process of departmental proceedings."

A Coordinate Bench of this Court, while relying upon the judgments of the Hon'ble Supreme Court in *State of Madhya Pradesh vs. Bani Singh and another*, AIR 1990 SC 1308, as well as *State of Andhra Pradesh vs. N. Radhakrishnan*, reported in (1998) 4 SCC 154, has held that in cases involving inordinate and unexplained delay in initiation of disciplinary proceedings, prejudice to the delinquent employee is writ large on the face of the record. It has further been observed that such delay makes it virtually impossible for the employee to gather relevant documents and evidence in his defence.

In the present case, it is an admitted position that the petitioner was not posted in District Saharanpur at the time when the alleged recovery notice dated 22.10.2016 (Annexure-10) was issued; rather, he was posted in District Jalaun. This factual aspect is not in dispute, as fairly conceded by the learned Standing Counsel.

Further, it is evident that while issuing the impugned order, no subjective satisfaction has been recorded by the competent authority, nor has any preliminary or fact-finding inquiry been conducted to arrive at even a prima facie conclusion that it was the petitioner who was involved in the alleged forgery of the recovery notice dated 22.10.2016.

Coupled with the aforesaid, the impugned order (Annexure-1) has been issued after an inordinate delay of about ten years from the date of the alleged incident, that too on the eve of the petitioner's retirement on 30.06.2025. Such extraordinary delay in initiating the departmental proceedings has not been explained at all in the counter affidavit.

Final order

Thus, in view of the aforesaid judgments and the discussion made herein-above, the writ petition is allowed and this Court has no hesitation in holding that the impugned order dated 30.6.2025 contained in Annexure-1 to the writ petition cannot be sustained in the eyes of law and is hereby set aside.

So far as the second relief prayed for by the petitioner is concerned, it is evident that a specific pleading has been made in paragraph 22 of the writ petition. However, in the counter affidavit filed by the State dated 28.11.2025, there is virtually no reply to the averments made in the said paragraph, and the same remains unrebutted.

Liberty is granted to the petitioner to move a representation before the competent authority/opposite parties for consideration of his claim for notional promotion to the post of Senior Mining Officer, in case his juniors have been promoted to the said post.

In the event such a representation is filed, the competent authority shall consider and decide the same, strictly in accordance with law, by passing a reasoned and speaking order, within a period of three months from the date of production of a certified copy of this order.

(2026) 4 ILRA 155
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 20.04.2026

BEFORE

THE HON'BLE AJIT KUMAR, J.

Writ B No. 5074 of 1987

Shankar & Ors. ...Petitioners
Versus
Deputy Director Of Consolidation Sultanpur & Ors. ...Respondents

ISSUE FOR CONSIDERATION

Whether a compromise recorded under Rule 25-A of the U.P. Consolidation of Holdings Rules, 1954 could be held binding upon tenure holders who were not parties to the compromise and whose objections under Section 9-A(2) of the U.P. Consolidation of Holdings Act, 1953 were pending consideration; and Whether a compromise disputed by affected parties and alleged to have been obtained on blank papers without notice could be sustained in law.

HEADNOTE

U.P. Consolidation of Holdings Act, 1953, s.9-A(2), s.11 – U.P. Consolidation of Holdings Rules, 1954 – r.25-A – Petitioners, Shanker and Jagdish, filed objections under Section 9-A(2) claiming co-tenure rights in disputed holdings – Chunni, father of petitioners along with Pancham and Ram Ghulam, filed separate objections claiming rights as co-tenure holders and further sought deletion of the names of Ram Prasad, Ram Dev and Sukh Dev from the record of rights – Assistant Consolidation Officer recorded a compromise and decided the objections in terms thereof – Petitioners challenged the compromise on the ground that they were not parties to such compromise, nor had they any notice of such compromise being reached between one set of objectors and the opposite parties and hence the direction issued for recording the names of Ram Prasad, Ram Dev and Sukh Dev as co-tenure holders was illegal – It was further pleaded that signatures/thumb impressions had been obtained on blank papers on the representation that the matter would be referred to a higher authority – Gram Pradhan filed an affidavit disputing the compromise and stating that no compromise had been recorded in his presence – Appeals and revision dismissed by the consolidation authorities – Challenge in writ jurisdiction – Justification:

Held: Rule 25-A contemplates that the terms of conciliation shall be reduced into writing in the presence of at least two members of the Consolidation Committee, shall be read over to the parties concerned and thereafter their signatures or thumb impressions shall be obtained – No ex parte order or order in default can be passed by the Assistant Consolidation Officer.

Admittedly, there were no signatures or thumb impressions of petitioners, Shanker and Jagdish, on the compromise document though their objections in respect of the same holdings were pending consideration – Such compromise could not be binding upon Shanker and Jagdish – Gram Pradhan stated in his affidavit that the alleged agreement was a forged document and that no compromise terms were read out and explained – Compromise was not the one as contemplated under Rule 25-A because two petitioners, Shanker and Jagdish,

were not parties to the compromise and as such the compromise order could not have brushed aside their objections. If there are parties who have filed their objections, then in law all such parties have to be signatories to the compromise, to claim a valid enforceable conciliation. Merely because the father had signed the document of compromise, though he disputed it, the sons cannot be held to be bound by the same. Court held that the findings based upon the document, the veracity of which was disputed by the parties, could not have been arrived at unless and until the document stood proved – If the parties said that they had signed blank sheets of paper, and were given the impression that those papers shall be used to make a reference and in the event, instead of making a reference to a higher authority, those papers formed a compromise, it would be presumable that their hands did not accompany their minds, to wit, they had never intended to reach a compromise. The Settlement Officer, Consolidation could not have presumed the terms and conditions to be justified only in order to uphold a compromise, once the compromise itself stood seriously disputed – Also, Settlement Officer, Consolidation did not record any finding regarding service of notice and also did not record any finding as to how, when there was no service of notice, a compromise could be taken to have been read out to the parties – Findings regarding the factum of co-tenure holdership could have been reached by the Settlement Officer only after discussing the case and hearing the parties on merits afresh instead of resting his findings on a disputed compromise document – Orders passed by the Settlement Officer, Consolidation and Deputy Director of Consolidation held unsustainable – Writ petition allowed – Orders dated 08.02.1982 and 13.04.1987 quashed – Objections restored for decision on merits after affording full opportunity of hearing to the parties. (E-5)
[Paras 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27]

CASE LAW CITED

Ram Deo and Others v. Deputy Director of Consolidation, Basti, 1996 (Suppl) RD 209;
Bhooley v. Anjeet, 2013 (121) RD 532;
Vijay Pal Singh @ Brija Raj Singh and Another v. Deputy Director of Consolidation, 2014 (122) RD 720;
Smt. Basmati v. Deputy Director of Consolidation and Others, 2019 (145) RD 832.

List of Acts

U.P. Consolidation of Holdings Act, 1953;
U.P. Consolidation of Holdings Rules, 1954.

List of Keywords

Compromise; Conciliation; Rule 25-A; Notice; Service of notice; Blank paper signatures; Valid compromise; Consolidation proceedings; Co-tenure holder; Objection under Section 9-A(2); Gram Pradhan affidavit; Binding effect of compromise; Minor's interest; Settlement Officer Consolidation; Deputy Director of Consolidation.

CASE ARISING FROM

From the orders dated 08.02.1982 passed by the Assistant Consolidation Officer, 31.08.1985 passed by the Settlement Officer, Consolidation and 13.04.1987 passed by the Deputy Director of Consolidation, Sultanpur upholding the compromise recorded in consolidation proceedings.

Appearances for Parties

Advs. for the Petitioner: S.K. Mehrotra, Balram Yadava, Purnima Upadhyay.

Advs. for the Respondents: Chief Standing Counsel, Bajrang Bahadur Singh, G.D. Pandey, Sunil Kumar Singh, Vivek Kumar Dwivedi.

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

1. Heard Sri Balram Yadava, learned counsel for the petitioner and Sri Bajrang Bahadur Singh, learned counsel for the respondent.

2. Petitioners before this Court have seriously questioned the orders passed by, Assistant Consolidation Officer dated 08.02.1982, Settlement Officer, Consolidation dated 31st August, 1985 as well as order passed by Deputy Director, Consolidation, Sultanpur dated 13th April, 1987 whereby their appeal as well as revision have come to be rejected upholding the compromise order passed by the Assistant Consolidation Officer dated 8th February, 1982.

3. Briefly stated facts of the case are that petitioner nos. 1 and 2, namely, Shanker and Jagdish had filed objections under Section 9A (2) of the U.P. Consolidation of Holdings Act, 1953 setting up their claim of share by virtue of sale deed executed by original tenure holder dated 30th December, 1978 in respect of plot nos. 727, 1046, 1093, 1094, 1095 and 1096 situate in village Hinduwabad, Pargana Aldemau, Tehsil Kadipur, District Sultanpur. Thus in short their names were to be recorded as co-tenure holder in respect of land in question.

4. Yet another objection was filed by one Chunni who happened to be father of Shanker and Jagdish, one Pancham and Ram Ghulam, petitioner nos. 3 and 4 respectively under Section 9A (2) of Consolidation of Holdings Act, 1953 and claimed to have right as a co tenure holders of Jagdish S/o Chunni and Suresh and so also Dalsingar and Shankar with further direction that respondent nos. 7 and 8, and 9 namely, Ram Prasad, Ram Dev, Sukh Dev, now represented by their heirs in this petition, to be deleted from the records of rights of the land in question .

5. Further Ram Prasad, Ram Dev and Sukh Dev were claimed to be not entitled to any right in respect of land in question . It was claimed by the original respondents now substituted by the heirs to have had reached between amongst Chunni, Ramghulam, Bansi Lal, Pancham, Ram Prasad, Ram Dev and Sukh Dev by virtue of which in respect of Khata No. 367 and 315, Ram Prasad Ram Dev and Sukh Dev, the original opposite parties in the objection were directed to be having 1/6th share each and 1/8th share of Chunni, Pancham, Ramghulam and Dalsingar each and objections of others were prayed to be rejected. This document of compromise allegedly reached between the parties on 8th February, 1982 was signed by Chunni Pancham, Dalsingar and Ramghulam, Ram Prasad Ram Dev and Sukh Dev, Gram Pradhan Mahabir Singh and Ram Ekbal, member of Consolidation Committee. The ACO passed the order in terms of compromise on 08th February, 1982 itself. However, said compromise came to be challenged in appeal by Ram Ghulam , Pancham Chunni on one hand under Section 11 of the Consolidation of Holding Act, 1953 and Shanker and Jagdish on the other hand under Section 11 of the Consolidation of Holdings Act, 1953. In both the appeals a common ground was taken that parties had never reached to any compromise whatsoever. In the circumstances plea was taken that Assistant Consolidation Officer had got signatures on blank-sheet of paper of the appellants that he would make a reference before higher Consolidation authority and they will get justice but wholly illegally he got Ram Prasad Ram Dev, Sukh Dev S/o Jiu Rakhan co-tenureholder in compromise got written on blanksheet paper in h appeal filed by Chunni.

6. In so far as the appeal filed by Shankar and Jagdish is concerned, a plea was taken that they were not party to such compromise, nor they had any notice of such compromise being reached between one set of objectors and opposite parties and hence direction issued for recording the name of three persons Ram Prasad, Ram Dev and Sukh Dev as co-tenure holder was absolutely unjustified illegal and void order . Both the appeals were tagged and heard together by Settlement Officer Consolidation .

7. The Pradhan Mahabir Singh also filed an affidavit in the Court of appeal before Settlement Officer, Consolidation on 16th August, 1982 that Assistant Consolidation Officer had obtained signatures on blank-sheet of paper with this understanding that he would refer the matter to higher consolidation authority and that he would have to appear before Consolidation Officer. It was stated in the affidavit that alleged agreement was forged document and unsustainable in law. He further claimed in the affidavit that no compromise terms were read out and explained. This affidavit is part of the record as annexure 7 to the petition. The Consolidation Officer proceeded to decide both the appeals by holding that Chunni could not deny his thumb impression on the compromise document and hence compromise cannot be disbelieved and since parties had agreed to accept Ram Prasad and others to be co-tenure holder, there was nothing passed in the order of Assistant Consolidation Officer on same terms and Deputy Director of Consolidation affirm and order of Settlement officer of and hence petitioners are before this Court.

8. Two fold arguments have been advanced by learned counsel for the petitioner that:

(i) one set of objectors under Section 9-A(2) of the U.p. Consolidation of Holdings Act, 1953, namely, Jagdish and Shanker wanted their objections to be heard and decided and were admittedly not party to the compromise, compromise reached between their father and other parties, respondents to the objectors could not have been held binding upon them.

(ii) Parties having claimed that they were not served with notice of the compromise and that they were not heard in the matter, Assistant Consolidation Officer was not justified in rejecting the objection filed by Shanker and Jagdish and thus Settlement Officer, Consolidation manifestly erred in rejecting the appeal without meeting the point regarding notice and the point of binding effect of compromise within petitioners Shanker and Jagdish being not party to the compromise.

9. Learned counsel for the petitioner further states that Deputy Director of Consolidation also fell in error of law in affirming the order of Settlement Officer Consolidation without meeting those very points, inasmuch as, findings returned by the Deputy Director of Consolidation are based on surmises and conjectures .

10. Learned counsel for the petitioner has placed reliance upon the judgment of this Court in the case of Ram Deo and Others v. Deputy Director of Consolidation, Basti 1996 (Suppl) 209, Bhooley v. Anjeet, 2013 (121) RD 532, Vijay Pal Singh @ Brij Raj Singh and Another v. DDC 2014(122) RD 720, and Smt. Basmati v. DDC and Others, 2019 (145) RD 832.

11. Meeting the above arguments, learned counsel for the authority/respondents submitted that there was no conflicting interest between petitioners Shanker and Jagdish where their father

Chunni, uncle Pancham and Ram Ghulam who were other objectors under Section 9-A(2) of the Act, 1953, they had reached to a compromise while Shanker was still minor and so merely for Jagdish was not heard in the matter, it would not vitiate compromise. It is further submitted that parties had full notice of the compromise being entered and so compromise having been reached in terms of Rule 25-A of the U.P. Consolidation of Holdings Rules, 1954, there was no occasion to prefer the appeal against compromise. He has also asserted that blank paper or paper or in black and white if bore signatures and thumb impression, then validity of document would be presumed, more especially in the circumstances when it bore signature of Assistant Consolidation Officer, the Pradhan of Village and a member of the Consolidation Committee.

12. He has taken the Court to the relevant finding part of the order of the Settlement Officer, Consolidation as well of the Deputy Director of Consolidation and asserted that findings are not vitiated in law, nor there is any manifest error of law or the fact. In the circumstances, therefore if there was no error apparent on the face of record, this Court may not issue a writ in the nature of certiorari exercising power under Article 226 of the Constitution. It is sought to be urged that once findings of fact have been arrived by Consolidation authorities in their respective orders, merely because, this Court may arrive at different conclusion reading down papers and appreciating them, it would not be proper to issue writ of certiorari.

13. Having heard learned counsel for the respective parties and having perused the records, the point that emerge for consideration of this Court is as to whether compromise reached amongst the parties in the court of Assistant Consolidation Officer was sustainable in the face of a fact that notice of which was absolutely disputed by the tenure holders who had stakes in the matter and who had denied the claim of sons of Jiu Rakhan and whether a mere format being fulfilled as prescribed by Rule 25-A would suffice to hold compromise to be valid even it is disputed by affected parties. In order to reach out to the conclusion to find answer to the above question, I proceed first to examine Rule 25A of Consolidation of Holding Rules, 1954. Rule 25A of 1954 Rules are reproduced hereunder:

[25A. Sections 9-A, 9-B and 9-C. - (1) The Assistant Consolidation Officer shall, as far as possible, deal with all the objections filed by a tenure holder with regard to matters referred to in clause (i) of sub-section (1) of Section 9-A and sub-section (1) of Section 9-B in village itself. In deciding disputes on the basis of conciliation in terms of sub-section (1) of Section 9-A, he shall record the terms of conciliation in the presence of at least two members of the Consolidation Committee of the village. These terms shall then be read over to the parties concerned and their signatures or thumb impressions obtained. The members of the Consolidation Committee present shall also sign the terms of conciliation. The Assistant Consolidation Officer shall then pass orders deciding the dispute in terms of conciliation specifying the precise entries to be made in the records. Details of the operative part of the orders passed by the Assistant Consolidation Officer shall be noted in the Misilbandregister. No ex parte order or orders in default shall be passed by the Assistant Consolidation Officer.

(2) In all cases in which the Assistant Consolidation Officer sends a report, under the provisions of sub-section (2) of Section 9-A, or sub-section (1) of Section 9-B to the Consolidation Officer for disposal, he may fix a date and place for the disposal of the cases by the Consolidation

Officer and communicate the same to the parties present before him and issue notices in C.H. Form 6-A to the parties not so present. The report of the Assistant Consolidation Officer in such cases clearly brings out the points in dispute between the parties and the efforts made by him to reconcile them.]

14. From a bare reading of the aforesaid Rules following legal position emerges to maintain compromise:

(i) The terms of conciliation in presence of at-least two members of the Consolidation Committee of village shall be reduced in writing.

(ii) The terms and conditions reached between /amongst the parties concerned shall be read out to the parties and then their thumb impression/signature shall be obtained .

(iii) Two members of Consolidation Committee would sign the terms of conciliation.

(iv) The Assistant Consolidation Officer then would be deciding the dispute in terms of Conciliation reached.

(v) No ex parte order or order in default shall be passed by ACO, the proposal made by ACO shall be in the form of the report of Consolidation Officer under Section 9A (2) and then Consolidation Officer will be passing final order on the basis of compromise.

15. Applying the above tests to the document of compromise, that has been brought on record as annexure 3 to the petition, I find that it clearly records the name of Chunni, Pancham, Dalsingar, Ramghulam, Ram Prasad, Sukh Dev, Ram Dev on one side as signatories while Gram Pradhan of the village Mahabir Singh of village and Ram Ekbal, member of Consolidation committee on the the other side.

16. Admittedly, there is no signatures/thumb impression of Shanker and Jagdish, who had filed their objection and that was also pending consideration in respect of same holdings with a prayer that they be recorded as a co-tenure holder . The compromise document states that other objections are dismissed ,so naturally this compromise cannot be binding under any circumstances upon Shanker and Jagdish. Still further, I notice that Gram Pradhan of village Mahabir Singh also denied his signatures by filing an affidavit before Settlement Officer Consolidation on 16.8.1982 and asserted that there was no such agreement reached between /amongst the parties and that compromise was forged document. So technically, compromise was not the one as contemplated under Rule 25-A because those two petitioners Shanker and Jagdish who were not parties to the compromise, so the compromise order could not have brushed aside their objections.

17. In paragraph 7 of the writ petition, it has been clearly averred that the Gram Pradhan denied of any compromise being reached between the parties and claimed that terms of compromise ever read out to him. There is not denial as such of these averments made in paragraph 10 to the petition. Paragraph 10 to the writ petition runs as under: " That before the appellate court an affidavit was also filed by Mahavir Singh, Pradhan of the Gaon Sabha stating that no

compromise had taken place regarding the above property in dispute and the Assistant Consolidation Officer had obtained signatures of the contesting parties on a blank paper telling them that the above dispute would be referred to the Consolidation Officer for decision and the parties will be informed about the date of the proceedings before the Consolidation Officer by notice. It was further stated that the above compromise was absolutely fictitious and no compromise had been recorded in his presence. A certified copy of the above affidavit is annexed here to Annexure No.7"

18. In the order passed Settlement Officer, Consolidation since Chunnu, Pancham, Ramghulam had stated in appeal that ACO got their signatures on the blank-sheet of paper, he arrived at conclusion that signatures had not been denied upon a compromise and hence compromise was valid. He has gone on merit to discuss the share of the respective parties to arrive at conclusion that compromise was correctly drawn and further held that Chunnu, Pancham, Dalsingar and Ramghulam having admitted co tenure-holdership of Ram Prashad etc. there was nothing wrong in the order.

19. In my considered view, the findings based upon the document, veracity of which was disputed by parties, could not have been arrived unless and until, the document stood proved. If the parties said that they had signed blank-sheet of paper, and were given the impression that those papers shall be used to make a reference and in the event instead of making reference to a higher authority, those papers formed a compromise, it would be presumable that their hands did not accompany their mind, to wit, they had never intended to reach to a compromise. The Settlement Officer, Consolidation could not have presumed the terms and conditions to be justified one only in order to uphold a compromise, once the compromise itself stood seriously disputed. There is no recital contained in the any part in the entire order of the Settlement Officer Consolidation that gram Pradhan had himself disputed the compromise and this statement Consolidation was not worth belief . The Settlement Officer, Consolidation has also not recorded any finding regarding service of notice and also failed to record any finding as to when there was no service of notice, how a compromise be taken to have been read out to the parties.

20. The conflict of interest or no conflict of interest , if there are parties who have filed their objections, then in law all such parties have to be signatories to the compromise, to claim a valid enforceable conciliation. Merely because father had signed the document of compromise though he disputed, son cannot be held to be bound by the same. A plea taken that Shanker and Jagdish had also only prayed that their names to be recorded as co-tenure holders could not have been taken to mean that they had accepted sons of Jiu Rakhan also as co-tenure holders. All these findings regarding factum of co-tenure-holdership could have been reached by Settlement Officer only after discussing the case and hearing the parties on merits afresh instead of resting his findings on a disputed compromise document.

21. In view of above, therefore, it is difficult to accept the findings arrived at by Settlement Officer , Consolidation in rejecting the appeals.

22. In the matter of Ram Deo and Others (supra) the Court held that merely because minor was a party, if no guardian was appointed to take care of his interest such compromise would not be held binding upon him. The two members of Consolidation Committee also required to sign the document, but Pradhan in this case having disputed the compromise, it was bound to be held not tenable in view of Rule 25-A of 1954 Rules.

23. In the case of Vijay Pal Singh @ Brij Raj Singh and Another (supra) the Court has categorically held that the father cannot enter into compromise on behalf of the minor son.

24. In the case of Bhooley (supra), it was held that notice to the parties was first to be made at the initial stage and then only any conciliation can be struck. Thus stage under Rule 25 A would come later but herein this case, there is no on record to demonstrate that notices were ever issued to the petitioners before compromise could be reduced to writing.

25. In the case of Smt. Basmati (supra), there was an issue of joint tenure holdership with certain shares and hence it was held that merely on the basis of compromise rights would not have been accepted were it did not accept in law. Herein this case rights since taken objection was that respondent no. 7 to 9 clearly heirs of Late Jio Lakhan, the same could not have been said to have been valid except in compromise, in the circumstances when it was pleaded that no such compromise was reached.

26. In view of above legal position, the order passed by Settlement Officer, Consolidation is held also unsustainable. Since I am not upholding the order of Settlement Officer Consolidation, there is no point in upholding the order of affirmation passed by the Deputy Director of Consolidation. However, since learned Advocate appearing for the respondent has placed finding part of the order of Deputy Director, Consolidation, I proceed to examine the same. I find that Deputy Director of Consolidation has affirmed the order of Settlement Officer, Consolidation also on the ground that father of the Shanker and Jagdish, namely, Chunni had signed the document of compromise. The Deputy Director Consolidation thus proceeded to assume that compromise was valid in view of findings returned by the Settlement Officer Consolidation. I have already held that order of Settlement Officer, Consolidation was unsustainable, and therefore, there is no reason to uphold the findings returned by the Deputy Director, Consolidation.

27. In view of above, writ petition succeeds and is allowed. The order passed by Assistant Consolidation Officer dated 8.2.1982 and the order of Deputy Director Consolidation dated 13.4.1987 are hereby quashed. The objections of the parties stands restored at the level of Consolidation Officer to be decided on merits. Since the matter is old one, parties may, if they so desire, reach to conciliation agreement or may contest the matter on merits. Parties are directed to appear before the Consolidation Officer within three weeks from today and the Consolidation Officer shall be disposing of the objections `after giving full opportunity of hearing to the parties within next three months.

(2026) 4 ILRA 163
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 13.04.2026

BEFORE

THE HON'BLE SHEKHAR B. SARAF, J.
THE HON'BLE ABDHESH KUMAR CHAUDHARY, J.

Writ C No. 1258 of 2026

M/s Adeeba Naaz Contractor

...Petitioner

Versus

State of U. P. & Ors.

...Respondents

ISSUE FOR CONSIDERATION

Whether blacklisting of the petitioner firm for an indefinite period without following the natural justice is legally sustainable?

HEADNOTES

Civil Law – Constitution of India – Article 226:- Writ Petition under Article 226 - seeking reliefs for quashing show-cause notices as well as for quashing the impugned order whereby the petitioner's contract was terminated and the firm was blacklisted indefinitely – Tender Notice - for construction of Government Girls Degree College – Termination of contract disputes - firm was blacklisted for an indefinite period - petitioner pleaded that no notice of termination or blacklisting was ever served and payments for completed work were withheld - respondents contended that notices were issued but refused by the petitioner - Court finds that contract termination and payment disputes are governed by tender terms and arbitration clause, but blacklisting for indefinite period without proper show-cause notice or opportunity of hearing is arbitrary and violative of principles of natural justice - relying on precedents including *Kulja Industries Ltd.*, *Gorkha Security Services*, and *UMC Technology Pvt. Ltd.*, the Court held that, indefinite blacklisting is impermissible and transparency at the stage of show-cause notice is mandatory – hence, the impugned order insofar as it relates to blacklisting is quashed and set aside - writ petition disposed of with liberty to petitioner to pursue contractual remedies under arbitration

(Para – 5, 10, 12, 13)

WP Disposed of. (E-11)

CASE LAW CITED

Kulja Industries Ltd. v. Chief General Manager, BSNL (2014) 14 SCC 731
M/s Hi Tech Pipe Ltd. v. State of U.P. & Others (Writ-C No. 11037 of 2024, Allahabad HC, 05.08.2024)
Ragunath Thakur v. State of Bihar & Others (1989) 1 SCC 229
Gorkha Security Services v. Govt. of NCT of Delhi & Others (2014) 9 SCC 105
UMC Technology Pvt. Ltd. v. Food Corporation of India AIR 2021 SC 166

LIST OF ACTS

Constitution of India.

LIST OF KEYWORDS

Writ Petition – Certiorari – Mandamus – Blacklisting – Indefinite period – Show-cause notice – Natural justice – Tender dispute – Arbitration clause – quashed and set-aside – dispose of.

CASE ARISING FROM

Arising from impugned order dated 08.01.2025 passed by Executive Engineer, U.P. Waqf Vikas Nigam Ltd., in connection with a tender notice No. 4715 for construction of Government Girls Degree College, Najibabad, District Bijnor.

APPEARANCE OF PARTIES

Counsel for Appellant(s): Shri Inam Uddin Ahmed, Gursimran Kaur,
Counsel for Respondent(s): Shri Diwakar Singh, CSC.

(Delivered by Hon'ble Shekhar B. Saraf, J.
& Hon'ble Abdhesh Kumar Chaudhary, J.)

1. Heard learned counsel appearing on behalf of the petitioner and the learned Standing Counsel appearing on behalf of the State.

2. This is a writ petition under Article 226 of the Constitution of India filed by the petitioner wherein the petitioner is seeking following main reliefs:-

"I. To issue a writ, order or direction, in the nature of Certiorari quashing the impugned Order dated 08.01.2025 passed by the Respondent No.3 Le. Executive Engineer. UP. Waqf Vikas Nigam Limited, in the interest of justice. (Annexure No.1).

II. To issue a writ, order or direction, in the nature of Certiorari quashing the show-cause notices dated 19.02.2024 and 20.08.2024 and 21.12.2024 [Annexure No. 2 (Colly)] and other communications issued by the Respondent No. 3 which were not served upon the Petitioner;

III. To issue a writ, order or direction, in the nature of Mandamus directing the Respondents to allow Petitioner to continue work allotted in pursuant to tender bearing Tender Notice No. 4715 for construction of the Government Girls Degree College at Najibabad. District Bijnor

IV. To issue a writ, order or direction, in the nature of Mandamus directing the Respondents to supply a copy of the tender bearing Tender Notice No. 4715 for construction of the Government Girls Degree College at Najibabad, District Bijnor and the contract entered into between the parties for the execution of work thereof."

3. Learned counsel for the petitioner submitted that no notice was received with regard to termination of contract and proposed blacklisting by the respondents-authorities. This assertion made by the petitioner has been controverted by learned counsel for the respondent-authorities by submitting that several notices were issued to the petitioner but the petitioner refused to accept any of the them. The impugned order dated January 8, 2025 does not indicate whether any notice was served upon the petitioner by the respondent-authorities and is silent on this aspect. By the impugned order, firstly the contract with the petitioner has been terminated and secondly, the petitioner has been blacklisted for an indefinite period.

4. Learned counsel for the petitioner further submitted that petitioner was made aware of the order dated January 8, 2025 only vide letter dated January 2, 2026, that is, after approximately one

year. Learned counsel for the petitioner submits that the respondents-authorities have not made payments to them with regard to the works that have been completed by the petitioner.

5. We are of the view that with regard to the first issue of termination of contract and alleged non payment of dues to the petitioner, the petitioner is at liberty to proceed as per the terms and conditions in the tender documents that includes an arbitration clause.

6. With regard to blacklisting for an indefinite period that has been issued by the respondents-authorities, we are of the view that such an action is not allowed and the Hon'ble Supreme Court in a catena of judgments has held that blacklisting for an indefinite period is not permissible in the eyes of law. The Hon'ble Supreme Court in the case of Kulja Industries Ltd. Vs. Chief General Manager, Western Telecom Project Bharat Sanchar Nigam Litimited & Others: (2014) 14 SCC 731; has held as under:-

“22. As regards the period for which the order of debarment will remain effective, the guidelines state that the same would depend upon the seriousness of the case leading to such debarment.

23. Similarly in England, Wales and Northern Ireland, there are statutory provisions that make operators ineligible on several grounds including fraud, fraudulent trading or conspiracy to defraud, bribery etc.

24. Suffice it to say that □debarment□ is recognised and often used as an effective method for disciplining deviant suppliers/contractors who may have committed acts of omission and commission or frauds including misrepresentations, falsification of records and other breaches of the regulations under which such contracts were allotted. What is notable is that the □debarment□ is never permanent and the period of debarment would invariably depend upon the nature of the offence committed by the erring contractor.

[Emphasis supplied by us]

7. We also find that in a Co-ordinate Bench Judgment of this Court dated August 5, 2024 in the case of M/s Hi Tech Pipe Limited Vs. State Of U.P. And 4 Others; (Writ-C No. 11037 of 2024); one of us (Hon'ble Shekhar B. Saraf,J.) held that debarment or blacklisting cannot be done for an indefinite period. The Court further held as follows:-

“5. We have considered the rival arguments advanced by the learned counsels appearing for the parties and we find that before passing the impugned order dated 23.1.2024 petitioner was issued a show cause notice, to which petitioner submitted a detailed reply and also made a request for re-testing of pipes supplied by the petitioner. The reply submitted by the petitioner has not been considered at all while passing the impugned order dated 23.1.2024 and only this much has been said that the reply submitted by the petitioner has not been found satisfactory. We are of the view that once proper reply was submitted, it was obligatory on the respondents to consider the entire reply and thereafter by recording reasons the order of blacklisting/debarment could have been passed. We also find that the impugned order dated 23.1.2024 proceeds to debar the petitioner firm

for an indefinite period as it is the routine phenomenon that the term of the Schemes/Missions is extended from time to time.

8. Furthermore, we are of the view that the respondent - authorities are not able to indicate as to whether a proper show cause notice was served upon the petitioner before passing of the impugned ex-parte order of blacklisting.

9. As to the significance of issuance of show cause notice, prior to an order of blacklisting and providing an opportunity of hearing, the Hon'ble Supreme Court in the case of Ragunath Thakur Vs. State of Bihar and others; reported in (1989) 1 SCC 229; has held as follows:-

“4. Indisputably, no notice had been given to the appellant of the proposal of blacklisting the appellant. It was contended on behalf of the State Government that there was no requirement in the rule of giving any prior notice before blacklisting any person. Insofar as the contention that there is no requirement specifically of giving any notice is concerned, the respondent is right. But it is an implied principle of the rule of law that any order having civil consequence should be passed only after following the principles of natural justice. It has to be realised that blacklisting any person in respect of business ventures has civil consequence for the future business of the person concerned in any event. Even if the rules do not express so, it is an elementary principle of natural justice that parties affected by any order should have right of being heard and making representations against the order. In that view of the matter, the last portion of the order insofar as it directs blacklisting of the appellant in respect of future contracts, cannot be sustained in law. In the premises, that portion of the order directing that the appellant be placed in the blacklist in respect of future contracts under the Collector is set aside. So far as the cancellation of the bid of the appellant is concerned, that is not affected. This order will, however, not prevent the State Government or the appropriate authorities from taking any future steps for blacklisting the appellant if the Government is so entitled to do in accordance with law i.e. after giving the appellant due notice and an opportunity of making representation. After hearing the appellant, the State Government will be at liberty to pass any order in accordance with law indicating the reasons therefor. We, however, make it quite clear that we are not expressing any opinion on the correctness of otherwise of the allegations made against the appellant. The appeal is thus disposed of.

10. Further this Court finds that not only the issuance of show cause notice is a condition precedent for any blacklisting order, even the mention of material and ground, necessitating the contemplated blacklisting has to be mentioned in the show cause notice. The Hon'ble Supreme Court in Gorkha Security Services vs Govt. Of NCT Of Delhi & Others; reported in (2014) 9 SCC 105; mandated the contents of the proposed show cause notice in the following words:-

“25) It is thus apparent that this sub-clause provides for various actions which can be taken and penalties which can be imposed by the Department. In such a situation which action the Department proposes to take, need to be specifically stated in the show cause notice. It becomes all the more important when the action of black listing and/ or forfeiture of earnest money/ security deposit is to be taken, as the clause stipulates that such an action can be taken, if so warranted. The words ‘if so warranted’, thus, assume great significance. It would show that it is not necessary for the Department to resort to penalty of black listing or forfeiture of earnest money/ security deposit

in all cases, even if there is such a power. It is left to the Department to inflict any such penalty or not depending upon as to whether circumstances in a particular case warrant such a penalty. There has to be due application of mind by the authority competent to impose the penalty, on these aspects. Therefore, merely because of the reason that clause 27 empowers the Department to impose such a penalty, would not mean that this specific penalty can be imposed, without putting the defaulting contractor to notice to this effect.

26) We are, therefore, of the opinion that it was incumbent on the part of the Department to state in the show cause notice that the competent authority intended to impose such a penalty of blacklisting, so as to provide adequate and meaningful opportunity to the appellant to show cause against the same. However, we may also add that even if it is not mentioned specifically but from the reading of the show cause notice, it can be clearly inferred that such an action was proposed, that would fulfill this requirement. In the present case, however, reading of the show cause notice does not suggest that noticee could find out that such an action could also be taken. We say so for the reasons that are recorded hereinafter.

11. In the same breath, the Hon'ble Supreme Court in the case of UMC Technology Pvt. Ltd. Vs. Food Corporation of India; reported in MANU/SC/0858/2020 : AIR 2021 SC 166; quashed a blacklisting order not on the ground of non-issuance of show cause notice or the show cause notice lacked any material ground but on the ground that it was silent on the proposed blacklisting actions.

12. Thus, this Court finds that the recent trend of this Court in blacklisting matter had been on transparency and clarity at the stage of issuance of show cause notice itself. As far as the present case is concerned, we do not find any cogent evidence of issuance of any show cause notice to the petitioner or any opportunity of hearing granted to the petitioners.

13. In light of the same, the impugned order dated January 8, 2025 so far as it relates to blacklisting of the petitioner-firm as being arbitrary and in violation of principal of natural justice cannot be sustained in the eyes of law and as such is hereby quashed and set-aside.

14. With the above directions, the writ petition is disposed of.

(2026) 4 ILRA 167
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 01.04.2026

BEFORE

THE HON'BLE SHEKHAR B. SARAF, J.
THE HON'BLE ABDHESH KUMAR CHAUDHARY, J.

Writ C No. 2067 of 2026

Vertel Digital Pvt. Ltd. & Anr.

...Petitioners

Versus

State of U.P. & Ors.

...Respondents

ISSUE FOR CONSIDERATION

Whether the suspension order passed by the Government of Maharashtra amounts to a blacklisting order. If not, whether the petitioner is entitled to relief in the present facts and circumstances?

HEADNOTES

Civil Law – Constitution of India – Article 226: -_Writ Petition under Article 226 – filed against rejection orders as well as for seeking relief of re-evaluation of technical/financial bid and participation in tender – petitioner participated in a Tender proceeding – disqualified, on the ground that, due to substandard supply, in a similar tender process, petitioner firm was suspended in another state – representation - rejected – however, against said suspension of another State, petitioner challenged in High Court later on in Supreme Court – Apex court clarified suspension confined to Maharashtra State only – legal question - Whether the suspension order passed by Government of Maharashtra amounts to a blacklisting order in State of UP - whether petitioner entitled to any relief – court finds that, (i) suspension cannot equal blacklisting – (ii) Blacklisting ion was bona fide, based on expert committee evaluation and public interest – judicial review in tender matters minimal – (ii) petitioner had not diligent in perusing his cause – (iii) petitioner approached this court only after approaching the first Bombay High Court than Supreme court against said order of suspension of another State – (iv) in the meantime tender in question has been finalized – held - rejection of technical bid and representation of the petitioner against which are upheld – however, writ petition disposed of with observation that State of UP shall not treat the suspension order of another State as blacklisting in future tenders – petitioner free to participate in future tenders, as per law.

(Para – 23, 24, 26)

WP Disposed of. (E-11)

CASE LAW CITED

Tata Cellular v. Union of India, (1994) 6 SCC 651
 Michigan Rubber (India) Ltd. v. State of Karnataka, (2012) 8 SCC 216
 Afcons Infrastructure Ltd. v. Nagpur Metro Rail Corporation Ltd., (2016) 16 SCC 818
 Montecarlo Ltd. v. NTPC Ltd., (2016) 15 SCC 272
 Tata Motors Ltd. v. BEST, (2023) 19 SCC 1
 M/s Steag Energy Services (India) Pvt. Ltd. v. GSPC Pipavav Power Company Ltd., 2026 SCC OnLine SC 478
 Municipal Corporation, Ujjain v. BVG India Ltd., (2018) 5 SCC 462

LIST OF ACTS

Constitution of India - Code of Civil Procedure, 1908 - GeM General Terms & Conditions.

LIST OF KEYWORDS

Writ Petition – Certiorari – Suspension order, Blacklisting, Tender rejection, technical evaluation, Judicial review, public interest, Bona fide decision, L-1 bidder, Police communication procurement – future tenders – disposed of.

CASE ARISING FROM

Order dated 23.01.2026, 28.01.2026 issued by the State Authorities of Uttar Pradesh.

APPEARANCE OF PARTIES

Counsel for Appellant(s): - Shri Jaideep Narain Mathur, Sr. Advocate assisted by Shri Anupras Singh,
 Counsel for Intervenor: - Ms. Anantika Singh, Shri Shantanu Sharma, Utkarsh Singh, Sukrit Singh, Siddharth Mishra,
 Counsel for Respondent(s): - Shri Shailendra Kumar Singh, Chief Standing Counsel assisted by Shri Pankaj Khare, Addl. C.S.C. and Shri Rahul Kapoor, State Counsel.

(Delivered by Hon'ble Shekhar B. Saraf, J.
 & Hon'ble Abdhesh Kumar Chaudhary, J.)

1. Objections to the application for vacation of interim order and objections to the application filed on behalf of intervenor- M/S Mobile Communications (India) Pvt. Ltd. are taken on record.
(Order on Intervention/Impleadment Application (IA) No.2 of 2026.

2. Heard learned counsel appearing on behalf of the parties.

3.. The present application seeking impleadment/intervention has been filed by the applicant/respondent-M/S Mobile Communications (India) Pvt. Ltd., who were declared as the successful L-1 bidder on 30.01.2026.

4. We have perused the affidavit accompanying the intervention/impleadment application and find that sufficient cause has been made out for allowing the same.

5. Since, any order passed by this Court would have an impact on the rights that may have accrued in favour of the applicant, this Court deems the applicant to be a necessary party to this lis.

6. Accordingly, application for intervention/impleadment is **allowed**.

(Order on Writ Petition)

1. Heard Shri Jaideep Narain Mathur, learned Senior Advocate assisted by Shri Anupras Singh, learned counsel appearing for the petitioners, Shri Shailendra Kumar Singh, learned Chief Standing Counsel assisted by Shri Pankaj Khare, Additional C.S.C. and Shri Rahul Kapoor, learned State Counsel as well as Ms. Anantika Singh, S/Shri Shantanu Sharma, Utkarsh Singh, Sukrit Singh and Siddharth Mishra, learned counsels appearing for the intervenor/respondent and perused the materials available on record.

2. This is a writ petition under Article 226 of the Constitution of India, wherein the petitioner is aggrieved by order dated 23.01.2026 and 28.01.2026 passed by the Respondents-State. Apparently, vide the first order dated 23.02.2026, the technical bid of the petitioner with respect to procurement of various wireless equipments viz digital VHF Base/Mobile Transceiver sets, digital handheld VHF transceiver etc. for the Uttar Pradesh Police department, has been rejected by the Technical Evaluation Committee and subsequently vide the second order dated 28.01.2026, the representation preferred by the petitioner against the first order of rejection i.e dated 23.01.2026 was also rejected. It is these two orders which has been sought to be interdicted by the petitioner and certain other consequential reliefs of seeking re-evaluation of their technical and financial bid as well as to permit them to participate in the tendering process has been prayed for in the present petition.

3. At the outset, it may be noted that admittedly, the tendering process has culminated with the declaration of M/s Mobile Communications (India) Pvt. Limited as the Lowest bidder (L-1) on 30.01.2026, however before a contract could be entered between the said successful bidder and the respondent, a coordinate bench of this court vide an interim order dated 24.02.2026 had restrained the respondent from entering into the contract, till the next date of hearing, that is, on 06.04.2026. However, in view of an Application (IA No. 5/2026), filed by the learned counsel for the

Respondent-State on 31.03.2026, the present matter was directed to be heard today i.e 01.04.2026 at 2:15 pm. and that is how the present matter has been taken up on board, and accordingly, with the consent of both the parties and keeping in view the urgency involved in the present Tender Matter, the present writ petition is being finally heard.

4. The facts of the present case relevant to the context lie in a narrow compass. Admittedly, the petitioner participated in the Tender, wherein the last date for submission of bid was 02.01.2026 and the date of opening of the technical bid was 13.01.2026, which came to be extended to 15.01.2026. Apparently before 13.01.2026, the petitioner was not encumbered in any manner in participating in the tendering process. However, vide an order dated 13.01.2026, the State of Maharashtra, wherein the petitioner had participated in a similar wireless equipment procurement tender for Police Commissionerate, Amravati City, Chattrapati Sambhajanagar City, Nashik City and Pimpri-Chinchwad Units floated by the Home Department, State of Maharashtra, suffered a suspension order with immediate effect, pending the enquiry, inter-alia on the alleged ground that the quality of the earlier supplied equipment of similar nature to Mumbai Railways, Ratnagiri and Sindhudurg Police units was found to be substandard and the response of the petitioner during the warranty period after supply of these equipments was unsatisfactory. The said suspension order having come to the knowledge of the respondents, the technical Evaluation committee disqualified the petitioners vide an order dated 23.01.2026, in the following words:

“With reference to the Home Department of the Government of Maharashtra, vide letter No. PEQ 0226 P.No.18 Pol 4 dated 13.01.2026, has mentioned that the VHF sets supplied by Ms Vertel Digital Pvt. Ltd. to Maharashtra Police units are of inferior quality, during the warranty period. The supplier response after supply of VHF Radio sets has been unsatisfactory. Accordingly, the Government of Maharashtra has suspended Ms Vertel Digital Pvt. Ltd. until completion of the inquiry, and the said suspension order has come into effect with immediate effect. Hence the bid has been technically disqualified.”

5. On the heels of their aforesaid rejection, the petitioner immediately made a representation dated 25.01.2026 as per the terms & conditions of the Bid Document, which however did not find any favour with the respondent as the same was also rejected on 28.01.2026 and the response stated the reasons for rejection as herein under:-

“3. M/s Vertel Digital has presented its case by citing the order issued by the Government of Maharashtra.”

4. The Home Department of the Government of Maharashtra, vide letter No. PEQ 0226/P.No.18/Pol-4 dated 13-01-2026, has stated that the quality of the equipment supplied by M/s Vertel Digital Pvt. Ltd. to Maharashtra Police units (VHF sets) was found to be of inferior standard and that the supplier's response during the warranty period after supply of the material was unsatisfactory. Accordingly, the Government of Maharashtra has suspended M/s Vertel Digital Pvt. Ltd. until completion of the inquiry, and the said suspended order has been made effective with immediate effect.

5. In the aforesaid order issued by the Government of Maharashtra, a question has arisen regarding the quality of the products of M/s Vertel Digital Pvt. Ltd, as well as the credibility of the firm's after-sales service and support following the supply of radio sets.

6. In such circumstances, allowing M/s Vertel Digital Pvt. Ltd, to participate in the bid, as against other participating firms whose credibility is not under question, would not be appropriate from the perspective of maintaining a level playing field.

7. In view of the doubts regarding the product quality of M/s Vertel Digital Pvt. Ltd, if the firm were to emerge as L-1, the transparency and fairness of the procurement would be adversely affected.

8. It is pertinent to note that under Point No. 04, Clause xiii, "e-Bidding and Reverse Auction (RA) on GeM", Point (e) of the GeM GTC, it is stipulated that: "The decision of the Buyer/GeM regarding technical/commercial eligibility of the individual Seller to be invited for e-Bidding/RA shall be final,

"In view of the above, the firm's bid was not found suitable for evaluation. Therefore, the firm's bid has not been found technically eligible."

6. After passing of the aforesaid rejection order dated 28.01.2026 by the respondent-State, the petitioner interestingly did not approach this Court and instead filed writ petition before the Bombay High Court, vide Writ Petition (L) No. 3038 of 2026 (Vertel Digital Private limited & Anr. V/s Union of India & Ors.), wherein a Division Bench of the said Court vide an order dated 29.01.2026 refused to pass any interim order in favour of the petitioner, so as to permit them to participate in the forthcoming tenders. Obviously, the petitioner was not happy with the said order of the Bombay High Court and as such the issue was further precipitated by them by way of a Special Leave Petition before the Hon'ble Supreme court. The said S.L.P. (Civil) No. 5508 of 2026 came to be decided by the Supreme Court vide an order dated 09.02.2026, which is being delineated as herein below:-

"1. Mr. Guru Krishna Kumar, learned senior counsel has brought to our notice the findings of the suspension order dated 13.01.2026 and has submitted that these findings will have adverse affect on the petitioner as well as its sister concerns in other tenders.

2. While we are not inclined to interfere with the judgment and order passed by the High Court, we clarify that the observations made in the suspension order dated 13.01.2026 will be confined to the present tender and will not have the bearing on other tenders issued by other States.

3. We make it clear that we have not expressed any opinion on the merits of the matter.

4. With these observations, the Special Leave Petition is disposed of.

5. Pending application(s), if any, shall stand disposed of.

7. In the interregnum, the tendering process of the Respondent-State came to be concluded with the declaration of M/s Mobile Communications (India) Pvt. Limited as the Lowest bidder (L-1) on 30.01.2026, as narrated herein above. However, the petitioner armed with the aforesaid order dated 09.02.2026 of the Hon'ble Supreme Court, filed the present Writ Petition, wherein a coordinate bench of this Court passed an order dated 24.02.2026 directing exchange of affidavits and restraining the State from entering into a contract with the said L-1 till the next date of listing. The relevant portion of the said order is being extracted as herein below:-

“xxx xxx ..xxx

8. Accordingly, it is from the aforesaid facts, a case for interference is made out. It is noticed that, firstly, there is no order of blacklisting passed by the State of Maharashtra and only certain deficiencies have led to the initiation of proceeding against the petitioner, due to which he has been suspended from participating in the said State. We further find that as per the terms and conditions of the bid, only an order of blacklisting has to be in existence before a person can be disqualified and lastly the Hon'ble Supreme Court has removed the embargo of the adverse effect of the order dated 13.01.2026 in its application to other States including the State of U.P.

9. Let a counter affidavit be filed by the State within next three weeks. Rejoinder affidavit, if any, may be filed by the petitioners within two weeks thereafter.

10. We have been informed that the bids have been finalised but the contract has not been entered into till date.

11. In light of the above, the State is restrained from entering into contract in furtherance of the advertisement dated 02.01.2026 till the next date of listing.

12. List this case on 06.04.2026.

13. The Office of the learned Standing Counsel shall inform the State Authorities about the order passed today.

“8. Having narrated the background, in which the present writ petition came to be filed and is being heard today, this court finds that the issue engaging the attention of this court in the present petition is twofold:

(A) Whether the order of suspension dated 13.01.2026 passed by the Home Department, Government of Maharashtra amounts to a blacklisting order

(B) If the answer to the above question is in the negative, can any relief be provided to the petitioner in the present facts & circumstances

9. It is to be noted that a perusal of the relevant clauses in the Bid Document would show that the word "suspension order" for cancellation of a bid is conspicuously absent and the said document merely mentions the word ☐blacklisting☐ and as such allows for cancellation of the bid

of an entity, if there is a blacklisting order against the said entity. Admittedly, the Government of Maharashtra has merely passed a suspension order, which has been made subject to further enquiry and thus technically one can argue that there is no blacklisting order. However, the fact remains that the suspension order has been made with immediate effect and in view of the supervening circumstances of unfavorable orders passed by the Bombay High Court and no interference by the Supreme Court, one can argue that the suspension order has the trappings of a Blacklisting order.

10. Moreover, upon reading the contents of the order dated 13.01.2026 passed by the Government of Maharashtra, wherein suspension has been made out with immediate effect, there is clearly a good case that would be made out against the petitioner with regard to standard of goods that had been supplied by the petitioner. Apparently, even the Bombay High Court and the Supreme Court have not interfered with the said suspension order owing to the alleged quality of equipment supplied to be substandard which technically has put on hold any participation of the petitioner in any forthcoming tender in the State of Maharashtra. However, it does appear that the Supreme Court has clarified that the suspension by the Government of Maharashtra would not apply to tenders issued by other States, which in effect meant that the Supreme Court has clarified that this suspension order should not be treated as a blacklisting order.

11. Having said so, one can also clearly understand the reasons why the respondent-authorities in U.P. treated the said suspension letter as an order of blacklisting, as the contents of the order suspending the petitioner prima facie make out a good case against the petitioner. This is the same reason as to why the Bombay High Court did not interfere against the said order of suspension and no interim relief was granted to the petitioner. Be that as it may, we need not go into this issue in more details at this point and in the present petition, as the same is subject to inquiry that is to be carried out by the Government of Maharashtra.

12. Further, this court finds that although in the present facts & circumstances, it can be well argued that a suspension order is a step before the blacklisting order, however this court has no hesitation in holding that any suspension order by itself may not amount to an order of blacklisting as normally the process of blacklisting has the principles of natural justice ingrained in it as held in a catena of Judgments passed by the Hon'ble Supreme Court and the High Courts. Apparently, the principle of natural Justice has not been followed before the passing of the suspension order by the Government of Maharashtra and as such this court fails to equate and place the suspension order and a Blacklisting order on an equal pedestal. Furthermore, a simpliciter order of suspension with regard to some work order could be a result of various reasons and the same may not amount to a blacklisting per se.

13. In our view, the order of suspension that is subject to inquiry does not amount to a blacklisting order, keeping in mind the long chain of precedents, which have held that any blacklisting order carries grave and serious consequences and at times has been even termed to be a civil death of an entity by the constitutional courts. Thus, any order of suspension, of the kind in the present matter, cannot be casually & liberally interpreted to also mean a blacklisting order, as is being sought to be done in the present case.

14. As a sequel to the above discussions, we hold that the order of suspension, subject to inquiry being carried out by the Government of Maharashtra, may not be equated to be an order of blacklisting, as has already been clarified by the Supreme Court.

15. It may further be noted that the Supreme Court also was not inclined to interfere with the Judgment and order passed by the Bombay High Court and only clarified that the observations made in the suspension order would be confined to the present tender and would not have bearing on tenders issued by other States. However, by the time the said clarification was passed by the Supreme Court on 09.02.2026, admittedly by that date M/S Mobile Communications (India) Pvt. Ltd. had been declared as L-1 bidder on 30.01.2026.

16. Thus, the action of the respondent-State in rejecting the technical bid of the petitioner is based on a bonafide assumption that the suspension order amounted to a blacklisting order and as such cannot be treated to be an arbitrary order or having been passed with any malafide intention. The authorities in the order dated 28.01.2026 have clearly observed that since the Government of Maharashtra has noted that the goods being supplied by the petitioner were substandard in nature and the fact that proper technical co-operation was not being provided by the petitioner during the warranty period in Maharashtra, did give rise to an apprehension and reasonable doubt in the mind of the Respondent authority that the petitioner may act in a similar manner in the State of Uttar Pradesh. We do not find any irrationality in the said decision-making process nor does the action smack of any malafide.

17. Further, it may also be mentioned that essentially the equipment being procured in the present tender is meant for police functioning in the State of Uttar Pradesh. Since police communication is a significant module from the perspective of maintaining law and order in an area as large as the State of Uttar Pradesh, the quality of the equipments and after supply service maintenance standard cannot be tweaked and/or compromised with in any circumstances. Further, time and again the Courts have held that there is a certain degree of latitude and freedom granted to the tenderer/owner in choosing its equipment and its supplier. The Courts have always taken a consistent stand that tender process should not be interfered with until and unless specific grounds of malafide, arbitrariness and irrationality has been pleaded and/or displayed by the party effected. We do not find any such grounds having been pleaded or demonstrated by the petitioner in the present petition.

18. We also find that the scope of judicial review in matters relating to tender is minimal. The threshold of malafide intention to favour someone or arbitrariness, irrationality or perversity must be met before the constitutional court interferes with the decision-making process or the decision. The Supreme Court in the celebrated judgment of *Montecarlo Ltd. vs. NTPC Ltd.* reported in (2016) 15 SCC 272, expressed a word of caution emphasizing that judicial review should be confined to ensuring that there is no arbitrariness or malafide in the process of tender evaluation. The relevant extracts of the judgment is reproduced herein below:

“26. We respectfully concur with the aforesaid statement of law. We have reasons to do so. In the present scenario, tenders are floated and offers are invited for highly complex technical subjects. It requires understanding and appreciation of the nature of work and the purpose it is

going to serve. It is common knowledge in the competitive commercial field that technical bids pursuant to the notice inviting tenders are scrutinised by the technical experts and sometimes third-party assistance from those unconnected with the owner's organisation is taken. This ensures objectivity. Bidder's expertise and technical capability and capacity must be assessed by the experts. In the matters of financial assessment, consultants are appointed. It is because to check and ascertain that technical ability and the financial feasibility have sanguinity and are workable and realistic. There is a multi-prong complex approach; highly technical in nature. The tenders where public largesse is put to auction stand on a different compartment. Tender with which we are concerned, is not comparable to any scheme for allotment. This arena which we have referred requires technical expertise. Parameters applied are different. Its aim is to achieve high degree of perfection in execution and adherence to the time schedule. But, that does not mean, these tenders will escape scrutiny of judicial review. Exercise of power of judicial review would be called for if the approach is arbitrary or mala fide or procedure adopted is meant to favour one. The decision-making process should clearly show that the said maladies are kept at bay. But where a decision is taken that is manifestly in consonance with the language of the tender document or subserves the purpose for which the tender is floated, the court should follow the principle of restraint. Technical evaluation or comparison by the court would be impermissible. The principle that is applied to scan and understand an ordinary instrument relatable to contract in other spheres has to be treated differently than interpreting and appreciating tender documents relating to technical works and projects requiring special skills. The owner should be allowed to carry out the purpose and there has to be allowance of free play in the joints.

19. Further, this Court finds that the rejection of the technical bid of the petitioner was not only actuated by the suspension order of the Government of Maharashtra but was also based on technical evaluation done by the Technical Evaluation Committee of the respondent-State. Apparently, the Committee being an expert body has taken a decision which best suited to them as a tenderer, who does not want any issues in maintenance service of the procured equipment nor does it wish to compromise on the quality in any manner. This Court is bereft of any expertise to step into the shoes of the committee and examine the specific needs and requirement of the tender.

20. In any case, this Court does not sit as a Court of Appeal but merely reviews the manner in which the decision was made. The Court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted, it will be substituting its own decision without the necessary expertise which itself may be fallible. The Supreme Court in a similar situation, when faced to exercise its power of judicial review in a technical issue involving a tender matter held in *Tata Motors Ltd. vs. Brihan Mumbai Electric Supply & Transport Undertaking (BEST)*, (2023) 19 SCC 1:

“50. (...) In contracts involving technical issues the courts should be even more reluctant because most of us in Judges' robes do not have the necessary expertise to adjudicate upon technical issues beyond our domain. The courts should not use a magnifying glass while scanning the tenders and make every small mistake appear like a big blunder. In fact, the courts must give □ fair play in the joints □ to the government and public sector undertakings in matters of contract. Courts must also not interfere where a magnifying glass while scanning the tenders and make every small mistake appear like a big blunder.

21. In any case, this Court is clear in its mind that it cannot set the clock back, which would not only amount to tweaking with the decision and choice of the tenderer/owner, but would also set at naught the entire tender process, forcing the authority to initiate a fresh tender process consuming more time and also loss to the public exchequer due to price rise etc. Recently, the Hon^{ble} Supreme Court in *M/S Steag Energy Services (India) Pvt. Ltd. vs. GSPC Pipavav Power Company Ltd. (GPPC)* and others reported in 2026 SCC OnLine SC 478; decided on March 25, 2026 evaluating such a situation, had been pleased to hold as inter-alia:-

“55. Ordinarily, a writ court should refrain itself from imposing its decision over the decision of the employer as to whether or not to accept the bid of a tenderer unless something very gross or palpable is pointed out. The court ordinarily should not interfere in matters relating to tender or contract. To set at naught the entire tender process at the stage when the contract is well underway, would not be in public interest. Initiating a fresh tender process at this stage may consume lot of time and also loss to the public exchequer to the tune of crores of rupees. The financial burden/implications on the public exchequer that the State may have to meet with if the Court directs issue of a fresh tender notice, should be one of the guiding factors that the Court should keep in mind. This is evident from a three-Judge Bench decision of this Court in *Assn. of Registration Plates v. Union of India* [*Assn. of Registration Plates v. Union of India*, (2005) 1 SCC 679]

56. (..) Even when some defect is found in the decision-making process, the court must exercise its discretionary powers under “Article 226” with great caution and should exercise it only in furtherance of public interest and not merely on the making out of a legal point. The court should always keep the larger public interest in mind in order to decide whether its intervention is called for or not. Only when it comes to a conclusion that overwhelming public interest requires interference, the court should interfere.

22. Faced with the aforesaid legal precedents, it has been vehemently argued as a last resort, by Shri J.N. Mathur, learned Senior Advocate for the petitioner that since there had been no independent analysis of the quality of the equipment to be supplied in the present tender and the Technical Evaluation Committee has merely relied on the alleged substandard material supplied in the Maharashtra tender to reject the technical bid, the petitioner should be at least given a chance to demonstrate their quality before the respondent-State. Although, the submission of Shri Mathur, seems to be attractive in the first blush, however, on a deep analysis of the facts, we are unable to subscribe to the views and submissions of the learned Senior Counsel for the simple reason that this Court has already held that it cannot substitute its view with the technical expertise of the Technical Evaluation Committee and it is too late in the day to grant any relief, when the entire tendering process has been completed. Further, as to the submission of Mr. Mathur, learned Sr. Counsel, that the Respondent-State has rejected the technical bid merely taking a cue of the non-performance in the Maharashtra tender is concerned, this Court finds that a similar argument of non-performance in another tender having been made a ground of rejection in the ongoing tender process was raised before the Supreme Court in the case of *Municipal Corporation, Ujjain and another vs. BVG India Limited* and others reported in (2018) 5 SCC 462, wherein the non-performance of the contractor on some other previous contract was made a basis for rejection in the ongoing tender. The Supreme Court in the said case recorded the issue in the following words: -

“Whether under the scope of judicial review, the High Court could ordinarily question the judgment of the expert consultant on the issue of technical qualifications of a bidder when the consultant takes into consideration various factors including the basis of non-performance of the bidder.

Thereafter, the Supreme Court tracing the entire precedent of cases on the said subject went on to hold and conclude as follows :-

“60. In the matter on hand, we do not find either the decision-making process or the decision to be arbitrary or irrational.

61. The authority concerned is in the best position to find out the best person or the best quotation depending on the work to be entrusted under the contract. If a bidder had faced a number of show-cause notices from various municipal corporations in the matter of non-performance of door-to-door collection of garbage, etc. the court cannot compel the authority to choose such undeserving person/company to carry out the work. Ultimately, the public interest must be safeguarded. The public would be directly interested in the timely fulfilment of the contract so that the services become available to the public expeditiously and effectively. The public would also be interested in the quality of work undertaken. Poor quality of work or goods can lead to tremendous public hardship and substantial financial outlay either in correcting mistakes or in rectifying defects or even at times in re-doing the entire work.

62. Lethargy or tardiness in collecting door-to-door garbage on a day-to-day basis would definitely lead to increased collection of garbage on the roads and public properties, which leads to health hazards and also reduces the cleanliness of the city. Since the public is directly interested and would be affected if the work entrusted is not carried out appropriately, and as the technical expert has found that Respondent 1 would not be a suitable company to be entrusted the work inasmuch as it had faced 73 show-cause notices from different municipal corporations, the High Court could not have interfered with the decision taken by the authority. In our considered opinion, the High Court has ignored the element of public interest involved in the matter.

63. As aforementioned, unless the Court concludes that the decision-making process or the decision taken by the authority bristles with mala fides, arbitrariness, or perversity, or that the authority has intended to favour someone, the constitutional court will not interfere with the decision-making process or the decision.

64. Thus, the questions to be decided in this appeal are answered as follows:

64.1. Under the scope of judicial review, the High Court could not ordinarily interfere with the judgment of the expert consultant on the issues of technical qualifications of a bidder when the consultant takes into consideration various factors including the basis of non-performance of the bidder;

64.2. A bidder who submits a bid expressly declaring that it is submitting the same independently and without any partners, consortium or joint venture, cannot rely upon the technical qualifications of any third party for its qualification.

64.3. It is not open to the court to independently evaluate the technical bids and financial bids of the parties as an appellate authority for coming to its conclusion inasmuch as unless the thresholds of mala fides, intention to favour someone or bias, arbitrariness, irrationality or perversity are met, where a decision is taken purely on public interest, the court ordinarily should exercise judicial restraint.

23. In any event, we would like to clarify that the petitioner had been not diligent in pursuing his cause as they having received the rejection order on their representation dated 28.01.2026 did not approach this Court instantaneously and only approached this Court on 24.02.2026 after going to the Bombay High Court and thereafter to the Supreme Court. By this time, a lot of water had flown under the bridge. Not only the L-1 bidder had been declared with the culmination of tendering process on 30.01.2026, but the appropriate permission, etc. had been obtained by the State Government, keeping in mind that the tender had been finalized, as submitted by learned counsel Shri Pankaj Khare appearing on behalf of the Respondent-State.

24. In view of the aforesaid analysis, the rejection of the technical bid of the petitioner and their subsequent representation in the present tender by the Respondent-State cannot be faulted with.

25. For all the aforesaid reasons, the writ petition is disposed of, with the aforesaid observations.

26. We make it clear that the State of U.P. shall not treat the suspension order of Government of Maharashtra dated 13.01.2026 as a blacklisting order in future tenders that they may issue and the petitioner shall be at liberty to participate in the same, in accordance with law, as also clarified by the Hon'ble Supreme Court.

27. Interim order, if any, stands vacated.

28. There would be no order as to cost(s).

(2026) 4 ILRA 178
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 16.04.2026

BEFORE

THE HON'BLE NEERAJ TIWARI, J.
THE HON'BLE GARIMA PRASHAD, J.

Writ C No. 6882 of 2026

M/s G. V. Construction and Supplier	...Petitioner
	Versus
State of U. P. & Ors.	...Respondents

ISSUE FOR CONSIDERATION

Whether the tender constituted the "second tender" within the meaning of Clause 2 of the Circular dated 30.09.2020, thereby obliging the respondents to open bids even if less than three were received?

HEADNOTES

Civil Law – Constitution of India – Article 226 : Writ Petition under Article 226 – filed against the impugned order passed by Chairman and Additional Chief Officer, Zila Panchayat, Pilibhit and for quashing of cancellation of 25 works and mandamus to open bids under e-tender – Tender notice - Initial tender was annulled due to serious irregularities - a fresh tender was issued, in which petitioner succeeded in 4 works but challenged cancellation of 25 works where less than three bids were received - The petitioner pleaded that the initial tender should be treated as the first tender, making the subsequent tender the second, thereby requiring opening of bids as per Clause 2 of Circular in question - respondents objected that the earlier tender was void ab initio and non est, hence the subsequent tender was the first valid tender - Court finds that, Clause 2 applies only when a tender fails due to insufficient bids, not when annulled for illegality, and therefore the subsequent tender was the first valid tender – held, judicial review in tender matters is limited and that interpretation by tendering authority deserves primacy - hence, cancellation of bids for 25 works was valid, not arbitrary or mala fide – consequently, writ petition dismissed.

(Para – 19, 20, 21, 22)

WP Dismissed. (E-11)

CASE LAW CITED

Tata Cellular v. Union of India, (1994) 6 SCC 651

Afcons Infrastructure Ltd. v. Nagpur Metro Rail Corporation Ltd., (2016) 16 SCC 818.

LIST OF ACTS

Constitution of India, Article 226,

Panchayati Raj Department Government Orders and Circulars (24.07.2020, 30.09.2020)

LIST OF KEYWORDS

E-tender, cancellation, irregularities, Clause 2 Circular 30.09.2020, adequate competition, judicial review, arbitrariness, mala fides, public procurement, Zila Panchayat Pilibhit, writ petition dismissed.

CASE ARISING FROM

Order dated 10.02.2026 passed by Chairman, Zila Panchayat, Pilibhit and Additional Chief Officer, Zila Panchayat, Pilibhit cancelling bids for 25 works and inviting fresh tender.

APPEARANCE OF PARTIES

Counsel for Appellant(s): - Shri Alok Kumar Yadav with Sri Rakesh Pathak.

Counsel for Respondent(s): - Shri Anil Kumar Baghel, Counsel for Respondent Nos. 3 & 4, C.S.C.

(Delivered by Hon'ble Garima Prashad, J.)

1. Heard Sri Alok Kumar Yadav with Sri Rakesh Pathak, learned counsel for the petitioner, learned Standing Counsel for the State respondents and Sri Anil Kumar Baghel, learned counsel for the respondent Nos. 3 & 4.

2. The present writ petition has been filed seeking the following reliefs:

“I. Issue a writ, order or direction in the nature of certiorari for quashing the order dated 10.02.2026 (Annexure No. 9) passed by Chairman, Zila Panchayat, Pilibhit (respondent no. 3) and Additional Chief Officer, Zila Panchayat, Pilibhit (respondent no. 4).

II. Issue a writ, order or direction in the nature of mandamus commanding the respondents to open the e-tender in pursuance of notification of e-tender dated 12.12.2025 for the works shown at serial nos. 17, 19, 20, 73, 79 and 144.

3. The facts, as borne out from the record, are that pursuant to the Government Order dated 24.07.2020 issued by the Panchayati Raj Department, Uttar Pradesh, an e-auction notice was published on 30.10.2025 by respondent no. 4 for execution of various works under the Zila Panchayat, Pilibhit. Though 95 works were advertised for online bidding, 112 works were tendered manually.

4. Complaints were received regarding irregularities in the said tender process. A specially constituted inquiry committee examined the matter and found that the entire tender process stood vitiated on account of serious irregularities in the online bidding mechanism. The committee recommended cancellation of the entire tender process and fresh invitation of bids. Acting upon the said report, the entire tender process was declared illegal and cancelled by order dated 09.12.2025.

5. Thereafter, a fresh e-tender notice dated 12.12.2025 was issued inviting bids for all 207 works, including those earlier advertised. The petitioner participated in the said tender process and submitted bids for approximately 10 works after depositing the requisite tender fee and security. It is undisputed that the petitioner was declared successful in 4 works out of the bids submitted by it and was accordingly allotted those works.

6. After completion of the online bidding process held on 28.12.2025, it was found that out of 207 works, bids in respect of 182 works satisfied the requirement of competition and were opened. However, in respect of 25 works, less than three bids were received. Consequently, by the impugned order dated 10.02.2026, the said 25 works were cancelled and a fresh e-tender was invited.

7. The grievance of the petitioner is confined to these 25 works. It is contended that since two rounds of tendering had already taken place, the respondents could not have issued a fresh (third) tender and were obliged to open the bids even if less than three bids were received, in view of Clause 2 of the Circular dated 30.09.2020.

8. Learned counsel for the petitioner submits that the tender dated 30.10.2025 constituted the first tender and the subsequent tender dated 12.12.2025 constituted the second tender. Therefore, in terms of Clause 2 of the Circular dated 30.09.2020, even a single technically qualified bid in the second tender ought to have been considered and opened.

9. Per contra, learned counsel for the respondents submits that the tender dated 30.10.2025 having been cancelled in entirety on account of illegality and irregularities cannot be treated as a valid tender at all. It is submitted that the tender dated 12.12.2025 was in fact the first valid tender process and the impugned notice dated 10.02.2026 constitutes the second tender in respect of the said 25 works.

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

11. The sole question which arises for consideration in the present case is as to whether the tender dated 12.12.2025 was the "second tender" within the meaning of Clause 2 of the Circular dated 30.09.2020. Clause 2 of the said Circular is reproduced hereunder:

"2. In this regard, it is clarified that adequate competition must be ensured in the tendering process, and ordinarily, there should be three or more technically qualified bidders. However, if upon inviting tenders for the second time only a single bid is received and the same is technically qualified, its financial bid may be opened. If the rates quoted in the financial bid are higher than those prescribed in the BOQ (Bill of Quantities) and DPR (Detailed Project Report), a decision shall be taken at the competent level after comparing such rates with prevailing market rates. (Translated from Hindi)

12. From the material on record, it is evident that the tender process initiated by notice dated 30.10.2025 was cancelled in its entirety not on account of lack of competition or insufficiency of bids, but on account of serious irregularities vitiating the entire process. The said process was thus rendered non est in the eyes of law. Once a tender process is annulled on the ground of illegality and foundational defects, it cannot be treated as a valid tender for the purposes of counting the number of tender attempts under Clause 2 of the Circular dated 30.09.2020.

13. Clause 2 operates in a situation where a tender process has failed on account of lack of adequate competition, i.e., where less than three bids are received. It is only such a tender which can be treated as the "first tender" for the purposes of applying Clause 2. A tender which is cancelled or rejected on any other ground, including illegality or procedural irregularity, cannot be reckoned as the first tender for the said purpose. It is, accordingly, held that only where the earlier tender has failed due to insufficient bids would the subsequent tender qualify as the "second tender" within the meaning of Clause 2.

14. In the present case, the tender dated 12.12.2025 was thus the first valid tender process undertaken by the respondents in accordance with law. Insofar as the 25 works in question are concerned, the bids received therein were less than three and, therefore, the same were not opened and were cancelled by the impugned order dated 10.02.2026.

15. It is evident that the decision of the respondents to cancel the bids in respect of 25 works and to issue a fresh tender does not suffer from any arbitrariness, mala fides or irrationality. The earlier tender dated 30.10.2025 having been cancelled in entirety on account of serious irregularities stood vitiated and rendered non est in the eyes of law. The tender dated 12.12.2025 was thus the first valid tender process, and the cancellation of bids for the said 25 works on account of lack of adequate competition constitutes a valid and recognized ground in public procurement.

16. Consequently, the impugned tender issued thereafter in respect of these 25 works would constitute the "second tender" within the meaning of Clause 2 of the Circular dated 30.09.2020.

17. In such circumstances, the submission of the petitioner that the earlier tender dated 30.10.2025 should be treated as the first tender cannot be accepted.

18. The law relating to judicial review in contractual and tender matters is now well settled. In *Tata Cellular v. Union of India*, (1994) 6 SCC 651, the Supreme Court has authoritatively held that the Court does not sit as a court of appeal over administrative decisions in contractual matters and that the scope of interference is confined to examining whether the decision-making process is vitiated by arbitrariness, irrationality or mala fides. It was further held that the terms of invitation to tender fall within the realm of contract and the Government must be allowed a fair degree of latitude in such matters.

19. Further, in *Afcons Infrastructure Ltd. v. Nagpur Metro Rail Corporation Ltd.*, (2016) 16 SCC 818, the Hon'ble Supreme Court has held that the interpretation of tender documents by the employer must be accorded due deference, and unless such interpretation is found to be perverse, arbitrary or actuated by mala fides, the Court ought not to interfere. The employer, being the author of the tender, is the best judge of the meaning, scope and intent of its conditions, and its understanding is entitled to primacy. It has further been held that even if two interpretations are possible, the Court should not substitute its own view in place of that of the tendering authority, so long as the interpretation adopted is a plausible and reasonable one.

20. Applying the aforesaid principle, this Court holds that even otherwise, the interpretation placed by the respondent authorities upon Clause 2 of the Circular dated 30.09.2020 does not warrant substitution. The said interpretation, namely that only such earlier tender which failed on account of lack of adequate bids can be treated as the first tender, is a reasonable and purposive interpretation.

21. In the absence of any material to demonstrate mala fides, favouritism, bias or violation of any statutory provision, this Court finds no ground to interfere in the tender process in exercise of jurisdiction under Article 226 of the Constitution of India.

22. The action of the respondents in cancelling the bids in respect of the aforesaid 25 works and issuing a fresh tender is in consonance with the settled principles governing public procurement and does not suffer from any illegality, arbitrariness or infirmity warranting interference by this Court. The tendering authority is entitled to ensure adequate competition and transparency in the bidding process, and such decision cannot be faulted in the facts of the present case.

23. Accordingly, the writ petition lacks merit and is dismissed. No order as to costs.

(2026) 4 ILRA 182
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 21.04.2026

BEFORE

THE HON'BLE SIDDHARTH NANDAN, J.

Writ C No. 10692 of 2026

Seema Padalia & Anr.

...Petitioners

Versus

State of U.P. & Ors.

...Respondents

ISSUE FOR CONSIDERATION

- i. Whether the conditions in relation to the time period prescribed under Rule 218, prior to the amendment dated 20.12.2017, shall be applicable or the amended Rule 218 will be applicable in the facts of the case.
- ii. Once this Court vide its judgment dated 06.03.2025, had specifically given the benefit of refund of the stamp duty, to the petitioner, whether it was open for the authorities to deny the claim of the petitioner on the ground of limitation having expired.

HEADNOTES

Civil Law – Constitution of India – Article 226 – Indian Stamp Act, 1899 - Sections 49, 49(d), 49(d)(4), 50, 50(3), 53 - U.P. Stamp Amendment Rules, 2017 & 2021 - Rule 218: - Writ Petition under Article 226 - filed against rejection order, seeking refund of stamp duty - petitioners purchased stamp in 2015 for tripartite agreement with developer and Noida Authority, but agreement remained incomplete due to builder's default and refusal of Noida Authority to sign - Refund of Stamp Duty – Limitation – Retrospective application of procedural amendments – Legitimate expectation – Builder's default – State Government's power to relax limitation - Rule 218 (U.P. Stamp Rules) – Amendments of 2017 & 2021 – Creation of new disability - Non-retrospective application - Binding effect of earlier Division Bench judgment between same parties - Petitioners pleaded that limitation law is procedural and cannot retrospectively create new disabilities - respondents countered with Sections 49 & 50 of Stamp Act - Court finds that amendments to Rule 218 created new disability and cannot apply retrospectively, especially when earlier judgment attained finality – court held that, rejection order unsustainable and hence the writ petition is disposed of, with directions to the respondents to refund stamp duty in question within two months.

(Para – 19, 20, 23, 24, 25, 26)

WP Disposed of. (E-11)

CASE LAW CITED

Harshit Harish Jain v. State of Maharashtra, 2025 LawSuit (SC) 105.
Hitendra Vishnu Thakur v. State of Maharashtra, (1994) 4 SCC 602.

LIST OF ACTS

Constitution of India - Indian Stamp Act, 1899 - U.P. Stamp Amendment Rules, 2017 - U.P. Stamp Amendment Rules, 2021.

LIST OF KEYWORDS

Writ Petition – Refund of stamp duty, limitation, retrospective application, legitimate expectation, procedural law, spoiled stamps, Rule 218, tripartite agreement, builder's default, Noida Authority.

CASE ARISING FROM

Rejection order dated 25.09.2025 denying refund of stamp duty as time-barred, despite earlier Division Bench judgment dated 06.03.2025 in Writ-C No.39180 of 2024 granting refund benefit.

APPEARANCE OF PARTIES

Counsel for Appellant(s): - Shri Rahul Sahai, Advocate,
Counsel for Respondent(s): - Shri Kaushalendra Nath Singh (for respondent no. 6), learned Standing Counsel.

(Delivered by Hon'ble Siddharth Nandan, J.)

1. Instructions dated 16.04.2026 has been filed by learned Additional Chief Standing Counsel. The same is taken on record.

2. Heard Shri Rahul Sahai, learned counsel for the petitioners, Shri Kaushalendra Nath Singh, learned counsel appearing on behalf of respondent no.6 and learned Standing Counsel for the State-respondents.

3. The petitioners have sought quashing of the order dated 25.09.2025, by way of which the claim for refund of the stamp has been rejected, being time barred while deciding the refund application of the petitioners, in pursuance of the order dated 06.03.2025 passed in Writ-C No.39180 of 2024. Learned counsel for the petitioner has placed reliance on para-9 of the said judgment dated 06.03.2025, to submit that this Court had given a positive finding in favour of the petitioners' claim, that the benefit of refund of the stamp duty would be applicable in the case of the petitioners. For ready reference para-9 is reproduced below:

"9. Upon perusal of the averments made, the documents annexed and after going through the ratio of Supreme Court in Harshit Harish Jain & Anr (supra), we are of the view that in the present case the impugned order rejecting the refund of the petitioners is passed on technical reasons only. From the facts, it is clear that the agreement between the parties has taken place prior to the amendment that has been carried in the stamp papers, and accordingly, following the ratio of the Supreme Court Judgment, it is crystal clear that the benefit of refund of the stamp duty would be applicable in the present case. "

4. Learned counsel for the petitioner has further placed reliance on the unamended Rule 218 to submit that the proviso provides that the State Government may irrespective of any time limit, disposed off the application for relief of refund of the stamp, even in cases in which period of 2 years has expired.

5. Per contra, learned Standing Counsel has submitted that Chapter-V of Indian Stamp Act, 1899 (herein after referred to as Act, 1899), provides for "allowance for stamp in certain cases".

6. Section 49(d)(4) of the Act states as under:

"49. Allowance for spoiled stamps: Subject to such rules as may be made by [the [State Government]] as to the evidence to be required, or the enquiry to be made, the Collector may, on application made within the period prescribed in section 50, and if he is satisfied as to the facts, make allowance for impressed stamps spoiled in the cases herein after mentioned, namely:

(d) the stamp used for an instrument executed by any party thereto which

(4) for want of the execution thereof by some material party, and his inability or refusal to sign the same, is in fact incomplete and insufficient for the purpose for which it was intended:""

7. Learned Standing Counsel has submitted that Collector may, on application made with the period prescribed in Section 50, and if he satisfied to make such allowances, for impressed stamps spoiled, in the cases mentioned under sub-clause (d); and in the facts of the present case, the Section 49(d) read with Section 50(3). For ready reference Section 50(3) is also reproduced below:

50. Application for relief under section 49 when to be made The application for relief under Section 49 shall be made within the following periods, that is to say –

(3) in the case of a stamped paper in which an instrument has been executed by any of the parties thereto, within six months after the date of the instrument, or, if it is not dated, within six months after the execution thereof by the person by whom it was first or alone executed: ""

8. It is not disputed between the parties that the stamp was purchased in the year 2015 and the same was done so with an expectation that the tripartite agreement which was contemplated after the deposit of the requisite fee, shall be executed between the petitioners, Noida Authority and the developer. But however, the respondent no.6 i.e. the Noida Authority had not signed the said agreement, though was executed between the petitioner and the developer, on the ground that the developer had not paid the dues to the development authority and also the completion certificate has not been issued.

9. From the aforesaid fact, it is evident that the act of purchase of the stamp was with a legitimate expectation that the tripartite agreement shall be executed but the same was not executed on account of the fact, that there was inaction on the part of the developer, for which the Noida Authority had refused to sign the agreement.

Issues :-

10. This Court has to examine the following issues:

i. Whether the conditions in relation to the time period prescribed under Rule 218, prior to the amendment dated 20.12.2017, shall be applicable or the amended Rule 218 will be applicable in the facts of the case.

ii. Once this Court vide its judgment dated 06.03.2025, had specifically given the benefit of refund of the stamp duty, to the petitioner, whether it was open for the authorities to deny the claim of the petitioner on the ground of limitation having expired.

Discussion :

Since the issues are co-related, the same are being jointly dealt with:-

11. Learned counsel for the petitioner has submitted that vide order dated 16.05.2024, the claim of the petitioner was rejected on the ground that vide notification dated 25.03.2021, [U.P. Stamp Amendment Rules, 2021], Rule 218 was amended; wherein, it was provided that from the date of purchase of the stamp, after 8 years the stamp shall not be returned; and the same was treated to be time barred.

12. He further submits that the order dated 16.05.2024 was challenged before this Court in Writ-C No.39180 of 2024 and this Court vide its order dated 06.03.2025 placing reliance on various decisions of this Court, as well as, the Apex Court had set aside the impugned order dated 16.05.2024

13. This Court had held that the order rejecting the refund of the stamp, being passed on technical reasons only, and the fact that the agreement between the parties had taken place prior to the amendment, that has been carried in the stamp papers, and accordingly, the ratio of the judgment of the Apex Court, in **Harshit Harish Jain vs. State of Maharashtra, reported in 2025 LawSuit (SC) 105**, is applicable.

14. At this juncture, it may be relevant to take note of the 2 amendments, which were made to Rule 218. For ready reference the amendment dated 20.12.2017 and 25.03.2021 is reproduced below:

"उपरोक्त नियम-218 में अधिसूचना संख्या-12/2017/1385/94 स्टा०नि०-2-2017-700(265)/2016 दिनांक 20.12.2017 द्वारा परिवर्तन किया गया जो निम्नवत् है-

Column-1	Column-2
Existing Rule	Rule as hereby substituted
218-The refund or renewal of the value of spoiled stamps shall be made strictly in accordance with Section 49 to 53, Chapter V of the Stamp Act and application must be made within the periods prescribed by Section 50. But in cases where the period allowed by the Act for the refund or renewal has operated as a serious hardship and the holders of piled or useless stamps, or stamps not required for immediate use are, without any fraudulent motive, unavoidably prevented from applying for relief within the prescribed period, the collector is authorized to allow refund or renewal of spoiled or useless stamps, or the repurchase of stamps not required: Provided that the application for refund or renewal is made within two years from the date of purchase of the stamps or within two years from the date on which the stamps were spoiled or rendered useless. Provided further that the State Government may irrespective of any time limit, dispose of applications for relief in the cases contemplated in the above proviso, in which the period of two years has expired.	218- The refund or renewal of the value of spoiled stamps shall be made in accordance with Section 49 to 53, Chapter V of the Stamp Act, 1899. The application for the refund or renewal should be presented before the Assistant Commissioner, Stamp. Assistant Commissioner, Stamp shall dispose the case of refund or renewal of spoiled or useless or such stamps which are not required, provided that the application for refund is presented within two years from the date of purchase of the stamp. However after the expiry of two years but within a period of four years from the date of purchase of such stamp, the approval for renewal or refund may be granted by The Deputy Commissioner Stamp. However after the expiry of four years but within eight years the renewal or refund may be done after the approval of the Government. There shall be no renewal or refund after the period of eight years from the date of purchase of the stamps. Provided further that no application shall be accepted after the period of one year from the date of amendment in this rule or its publication

	in government notification in cases as mentioned in above rule, where the period of two years has expired or where the stamp is purchased two years ago and after the expiry of two years the action was to be taken by the state government regarding refund of the value of such stamp or the stamps which are not required.

उक्त नियम-218 में पुन अधिसूचना संख्या-5/2021/398/94-स्टा०नि०-2-2021-700(265)/2016 दिनांक 25.03.2021 द्वारा निम्न परिवर्तन किये गये-

Column-1	Column-2
Existing Rule	Rule as hereby substituted
218.- The refund or renewal of the value of spoiled stamps shall be made in accordance with Section 49 to 53 Chapter V of the Stamp Act, 1899 The application for the refund or renewal should be presented before the Commissioner, Stamp Assistant Commissioner, Stamp shall dispose the case of refund or renewal of spoiled or useless or such stamps which are not required, provided that the application for refund is presented within two years from the date of purchase of the stamp However after the expiry of two years but within a period of four years from the date of purchase of such stamp, the approval for renewal or refund may be granted by The Deputy Commissioner Stamp However after the expiry of four years but within eight years the renewal or refund may be done after the approval of the Government There shall be no renewal or refund after the period of eight years from the date of purchase of the stamps. Provided further that no application shall be accepted after the period of one year from the date of amendment in this rule or its publication in government notification in cases as mentioned	218.- The refund or renewal of the value of spoiled stamps shall be made in accordance with Section 49 to 55, Chapter V of the Indian Stamp Act, 1899. The application for the refund or renewal should be presented before the Assistant Commissioner, Stamp. Assistant Commissioner, Stamp shall dispose the case of refund or renewal of spoiled or useless or such stamps which are not required, provided that the application for refund is presented within two years from the date of purchase of the stamp. However after the expiry of two years but within a period of four years from the date of purchase of such stamp, the approval for renewal or refund may be granted by the Deputy Commissioner Stamp. However after the expiry of four years but within eight years the renewal or refund may be done after the approval of the Commissioner Stamps Uttar Pradesh. There shall be no renewal or refund after the period of eight years from the date of purchase of the stamps.

in above rule, where the period of two years has expired or where the stamp is purchased two years ago and after the expiry of two years the action was to be taken by the state government regarding refund of the value of such stamp or the stamps which are not required.	

15. Learned counsel for the petitioner has fairly submitted, if the amendment dated 20.12.2017 and 25.03.2021 applies to the facts of the present case, the claim of the petitioner shall be ousted on the ground of limitation; but however, he submits placing reliance on Section 50 that the scheme of Act contemplates that the application for relief under Section 49 shall be made within a period, in case of a stamp paper in which an instrument has been executed by "any" of the parties thereto, of 6 months, after the date of instrument; and as such the cause of action accrues within 6 months from the date of the instrument.

16. He further refers to Rule 218 which provides that the refund shall be made strictly in accordance with Section 49 to 53 Chapter-V of the Act, 1899, and an application must be made within the period prescribed by Section 50. However, in cases where the period operates as a serious hardship and the holder of the stamp, without any fraudulent motive, is unavoidably prevented from applying for relief within the prescribed period, the Collector is authorized to allow refund and the period of 2 years provided therein can also be relaxed, at the instance of the State Government.

17. In view of the aforesaid, he submits that the scheme of Act, itself contemplates that the cause of action would arise within 6 months and once the cause of action has arisen, the law applicable on the said date shall be applicable i.e. the unamended Rule 218, as it existed prior to 20.12.2017.

18. Though at the first instance, the aforesaid argument seems to be attractive but in the facts of the case, admittedly, the application for refund was filed on 27.04.2024; and accordingly the said argument cannot be accepted, as the date of commencement of the cause of action and the initiation of proceedings are distinct.

19. However, this Court cannot lose sight of the fact that the situation, herein, clearly spells out that the petitioner with a legitimate expectation, for execution of the tripartite agreement, had purchased the stamp and the builder had also entered into an agreement; and only the signature of the representative of the Noida Authority was required to complete the tripartite agreement.

20. It is the specific case of the petitioner, that he was continuously pursuing with the Noida Authority and eventually when his claim was rejected on 16.05.2024, he had approached this Court; and this Court vide judgment dated 06.03.2025, had recorded a specific finding that "the benefit of refund of stamp duty would be applicable in the present case".

21. Now I come to the second issue. It has not been disputed by the parties that the Division Bench judgment of this Court, dated 06.03.2025 in Writ-C No.39180 of 2024, between the same

parties, has attained finality; and it is also trite law that the laws relating to forum and limitation is procedural in nature, and is presumed to be retrospective in its application, unless such a construction is textually impossible. However, a procedural statute should not generally speaking be applied retrospective, where the result would be to create new disabilities or obligations or the impose new duties in respect of transactions already accomplished (Reference: **Hitendra Vishnu Thakur vs. State of Maharashtra, reported in 1994 SCC (4) 602**).

22. In the case of Hitendra Vishnu Thakur (supra) the Hon'ble Apex Court held as follows in Paragraph No. 26:

26. The Designated Court has held that the amendment would operate retrospectively and would apply to the pending cases in which investigation was not complete on the date on which the Amendment Act came into force and the challan had not till then been filed in the court. From the law settled by this Court in various cases the illustrative though not exhaustive principles which emerge with regard to the ambit and scope of an Amending Act and its retrospective operation may be culled out as follows:

(i) A statute which affects substantive rights is presumed to be prospective in operation unless made retrospective, either expressly or by necessary intendment, whereas a statute which merely affects procedure, unless such a construction is textually impossible, is presumed to be retrospective in its application, should not be given an extended meaning and should be strictly confined to its clearly defined limits.

(ii) Law relating to forum and limitation is procedural in nature, whereas law relating to right of action and right of appeal even though remedial is substantive in nature.

(iii) Every litigant has a vested right in substantive law but no such right exists in procedural law.

(iv) A procedural statute should not generally speaking be applied retrospectively where the result would be to create new disabilities or obligations or to impose new duties in respect of transactions already accomplished.

(v) A statute which not only changes the procedure but also creates new rights and liabilities shall be construed to be prospective in operation, unless otherwise provided, either expressly or by necessary implication."

23. The question of limitation which was earlier available, now in cases where there was hardship and without any fraudulent motive, the purchaser of the stamp was prevented from applying for relief within the prescribed period, Rule 218 prescribed that the State Government may irrespective of any time limit, dispose off the application for relief, even in cases the 2 years had lapsed.

24. By way of the amendments dated 25.03.2021 and 20.12.2017, created a new disability, by virtue of which the said relaxation at the instance of the State Government, was confined eventually to a period of 8 years from the date of purchase of the stamp.

25. In view of the principles laid down by the Apex Court in the case of Hitendra Vishnu Thakur (supra) and the undisputed position that the judgment dated 06.03.2025 has attained finality, which in clear terms provided, that the petitioners' claim cannot be avoided for technical reasons and is entitled to the benefit of refund of the stamp duty, this Court is inclined to hold that the disability which is created by the amendment dated 20.12.2017 and 25.03.2021 cannot be applied, even retrospectively.

26. In the facts of the present case, though by the time the petitioner had moved their application for refund, the new amendments were already in place, but the time spent in pursuing the authorities to enter into a Tripartite Agreement and eventually being rejected, for no fault of their own but that of the builder, the disability which is created by the subsequent amendment, cannot be enforced, against the petitioners, in the facts of the present case, as also held by the Apex Court, in the case of Hitendra Vishnu Thakur (Supra); and for the reasons stated in the judgment dated 06.03.2025, more particularly in para-9 in Writ-C No.39180 of 2024, between the same parties, which has attained finality, the order dated 29.09.2025 is hereby set aside with a direction to the respondents to refund the stamp in terms of the application dated 27.04.2024 within a period of 2 months from the date of production of certified copy of this order.

27. With the aforesaid observations/directions, the writ petition stands disposed of.

(2026) 4 ILRA 190
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 08.04.2026

BEFORE

THE HON'BLE ARINDAM SINHA, J.
THE HON'BLE SATYA VEER SINGH, J.

Writ C No. 12311 of 2026

Smt. Sarita Singh

...Petitioner
Versus

State of U.P. & Ors.

...Respondents

ISSUE FOR CONSIDERATION

Whether cancellation of the petitioner's highest bid in e-auction for mining lease under Rule 28(3) of the U.P. Minor Minerals (Concession) Rules, 2021 was arbitrary?

HEADNOTES

Civil Law – Constitution of India - Articles 21, 226 – U.P. Minor Minerals (Concession) Rules, 2021 - Rules 23(4), 28(3): - Writ Petition under Article 226 - against order of the District Magistrate cancelling petitioner's highest bid in e-auction and subsequent notification for fresh auction, seeking quashing

of the cancellation as arbitrary - petitioner had bid Rs. 361/- per cubic meter against reserved price of Rs. 140/- for Arazi no. 12MI, which was more than double the reserve and higher than past bids in 2023-2025 - The authority cancelled auction relying on comparative higher bids in other plots - whether such cancellation under Rule 28(3) was arbitrary or justified - Petitioner pleaded arbitrariness and violation of Rule 23(4) - State countered relying on *Indore Vikas Praadhikaran* that highest bidder has no vested right - Court finds that, cancellation lacked nexus to rationale, as comparative bids were from dissimilar plots and no counter was filed to petitioner's factual averments - court emphasize that things were done in a proper manner - held, cancellation arbitrary and unsustainable - hence, impugned order and subsequent notification are quashed - writ petition, allowed with consequences to follow.

Leading WP – Allowed & Connected WP – Dismissed. (E-11)

CASE LAW CITED

Indore Vikas Praadhikaran v. Shri Humud Jain Samaj Trust, AIR 2025 SC 322

Golden Food Products India v. State of U.P., AIR 2026 SC 335

LIST OF ACTS

Constitution of India - U.P. Minor Minerals (Concession) Rules, 2021

LIST OF KEYWORDS

Writ Petition, Auction cancellation, highest bidder, vested right, arbitrariness, public revenue, reserved price, judicial review, mining lease, certiorari, Allowed.

CASE ARISING FROM

Cancellation of petitioner's highest bid in e-auction dated 17.02.2026 for mining lease in Arazi no. 12MI, Village Chakalathia, Tehsil Chunar, District Mirzapur.

Impugned order dated 19.03.2026 by District Magistrate cancelling auction and fresh notification dated 20.03.2026.

APPEARANCE OF PARTIES

Counsel for Appellant(s): - Shri Ashok Khare, Sr. Advocate assisted by Mr. Vijay Kumar Srivastava,

Counsel for Respondent(s): - Dr. Rajeshwar Tripathi, Chief Standing Counsel.

(Delivered by Hon'ble Arindam Sinha, J.)

1. Petitioner has challenged order dated 19th March, 2026 made by respondent no.2 (the District Magistrate) under rule 28(3) in Uttar Pradesh Minor Minerals (Concession) Rules, 2021 as well as subsequent notification for e-tender-cum-auction dated 20th March, 2026. Petitioner says, she was highest bidder in the auction for mining lease in respect of area under serial no. 15 in e-auction notice dated 17th February, 2026. Reserved price was Rs. 140/- per cubic meter. She had made bid of Rs. 361/- per cubic meter. The entire process was cancelled, purportedly based on opinion formed by the authority. Arbitrariness is contended. Mr. Ashok Khare, learned senior advocate assisted by Mr. Vijay Kumar Srivastava, learned advocate appear on behalf of petitioner. Dr. Rajeshwar Tripathi, learned advocate, Chief Standing Counsel appears on behalf of State.

2. The writ petition was moved on 1st April, 2026. Paragraphs 2 to 4 from order made that day are reproduced below.

"2. Dr. Rajeshwar Tripathi, learned advocate, Chief Standing Counsel appears on behalf of State and submits, petitioner can put in her bid against the fresh tender. He opposes interference.

3. There are requisites for putting in bids. Petitioner has already complied with the requisitions in putting her earlier bid against the cancelled tender. Furthermore, on query we have ascertained that reserved price was fixed. After fixation of reserved price and getting petitioner's bid declared highest at more than double of it, State needs to explain basis of its opinion.

4. The fresh tender process will remain stayed till next date of hearing. State will be heard on adjourned date."

Today, Dr. Tripathi submits, contention of his client is supported by declaration of law made by the Supreme Court. On query regarding counter he submits, he will proceed to argue on basis of instructions received. He hands them up. He submits, clear declaration of law was that a highest bidder does not have vested right to have the lease granted in her favour. There was no arbitrariness in the decision taken in interest of public revenue.

3. Dr. Tripathi relies on judgment of the Supreme Court in Indore Vikas Praadhikaran (IDA) Vs. Shri Humud Jain Samaj Trust reported in AIR 2025 SC 322, paragraphs 12 to 15. He submits, there is clear declaration of law that a highest bidder does not have a vested right for her bid to be accepted nor to restrain the authority from cancelling the process in interest of public revenue. This was done upon evaluation of the bids received in the auction held pursuant to said notification dated 17th February, 2026. It came to notice of the authority that similar areas had yielded bids for mining lease at excess of Rs. 400/- per cubic meter. It was good basis for cancelling the auction process, on opinion duly formed. On query he hands up his instructions dated 7th April, 2026 with copy to Mr. Khare and submits, pages 3 to 5, in the instructions brief, contain a chart of leases granted for minor minerals. 20 leases have been tabulated. Revenue generated on premium for the leases is in excess of Rs. 400/- per cubic meter for every lease granted. In fact, some leases were granted for premium calculated at excess of Rs. 700/- per cubic meter. Thus, there was tangible basis for cancelling the process and issuing fresh notice for auction.

4. Mr. Khare in reply draws attention to paragraph 17 in the writ petition. The paragraph is reproduced below.

"17. That earlier in the same arazi no 12MI, situated at village chakalathia (Bhulie), tehsil-chunar, District-Mirzapur, 3 mining lease were allotted through e tender cum e-auction in the year 2025, 2023, by the respondents authorities, in which highest bid were Rs.-151, and Rs.-123, and Rs.-112, on fixed reserve price of Rs.110."

He submits, no counter has been filed. The tabulation of other leases cannot be relied upon as basis for the auction to be cancelled. It was done arbitrarily considering highest bids received in previous years (2023-2025) were at maximum Rs. 151/- per cubic meter. He lays emphasis that reserved price for auction of lease granted for aforesaid periods was Rs. 110/- per cubic meter. He lays emphasis that said reserved prices and earlier bids were in respect of the Arazi. Mr. Khare then draws attention to rule 23(4). The sub-rule is reproduced below.

"Rule 23.

.....(4) The District Officer shall get the area or areas declared under sub-rule (1), evaluated for quality and quantity of mineral for fixing minimum bid or offer by the Director, Geology and Mining, Uttar Pradesh or by an officer authorised by him before the date fixed for e-tender/e-auction/e-tender-cum-e-auction."

(emphasis supplied)

Mr. Khare relies on *Golden Food Products India vs. State of U.P.* reported in AIR 2026 SC 335, paragraphs 25, 27 and 32. He submits, there be interference for issuance of certiorari.

5. Rule 28(3) is reproduced below.

"Rule 28.

.....(3) If any bid or offer in e-tender/e-auction/e-tender-cum-e-auction is not satisfactory in the opinion of the District Magistrate, he may reject all the bids and offers in e-tender/e-auction/e-tender-cum-e-auction and order for fresh."

State contends that its functionary duly acted on opinion formed, to exercise discretion for rejecting all the bids and offers in the e-auction, to order for fresh. For purpose of the writ petition, instructions were issued and handed up, followed through by argument made upon reliance on *Indore Vikas Praadhikaran* (supra). The chart of premiums on leases granted are in respect of areas other than the Arazi, in respect of which the cancelled auction was notified. No counter has been filed on specifically denying statements made in paragraph 17 of the writ petition, nor is there any reference thereto in the instructions brief. We have been shown rule 23(4), requiring fixation of reserved price, upon evaluation of quality and quantity of minerals. From averments made in said paragraph of the petition, we see that bids received in years 2023-2025 were a little above the reserved price at Rs. 110/- per cubic meter. Said reserved price stood revised at Rs. 140/- per cubic meter. Petitioner's highest bid was more than double of the revised reserved price. We must presume that there was necessity to re-evaluate and the revised reserved price was duly fixed.

6. In *Indore Vikas Praadhikaran* (supra), declaration of law was that a highest bidder does not have vested right to have contract declared as made pursuant thereto. In that case, there was fact of arrears outstanding, not noticed by the authority fixing the reserved price. Apart from that, the facts also included conscious omission of State in not having issued allotment letter. The Supreme Court found that the Tender Evaluation Committee had discovered the former omission and therefore did not allot, to proceed to cancel. The Supreme Court said that judicial review cannot be used to substitute such decision made in interest of public revenue. There were several authorities relied upon to make the declaration. Consistently, the Supreme Court also said that judicial review is possible, where the procedure or manner adopted for cancellation was found to be, amongst others, arbitrary.

7. In *Golden Food Products India* (supra), *Indore Vikas Praadhikaran* (supra) was referred to. Dispute in that case was, auction was held and notices issued in respect of plots, which were dissimilar in size but carrying same reserved price. The Supreme Court found, smaller plots had many

bidders, while there were few in respect of the larger plots. Appellant before the Supreme Court made bid a little in excess of the reserved price. The bid was cancelled on the basis of bids received in excess of appellant's bid but, in respect of smaller plots. The Supreme Court, in those facts found, the basis of action of the authority to cancel not having nexus to rationale or reason. Paragraph 32 from the judgment is reproduced below.

"32. An auction process has a sanctity attached to it and only for valid reasons that the highest bid can be discarded in an auction which is otherwise held in accordance with law. If a valid bid has been made which is above the reserve price, there should be a rationale or reason for not accepting it. Therefore, the decision to discard the highest bid must have a nexus to the rationale or the reason. Merely because the authority conducting the auction expected a higher bid than what the highest bidder had bid cannot be a reason to discard the highest bid. In the instant case, no other party had placed a bid higher than the appellant herein. There was no infirmity in the conduct of the auction. No other party had complained about the process of auction conducted by the GDA-respondent No.2. The bid offered by the appellant herein was the highest and above the reserve price. In the circumstances, the said bid ought to have been accepted by GDA-respondent No.2 rather than cancelling the same without notice to the appellant herein. Hence, the cancellation of the bid submitted by the appellant herein is quashed." (emphasis supplied)

8. We have demonstration on facts undisputed that reserved price was presumably duly fixed, at Rs. 140/- per cubic meter for the Arazi in question. It was notified for auction on aforesaid notice dated 17th February, 2026, listed under serial no. 15. Immediately preceding earlier years had brought in bids less than that of petitioner, who had bid Rs. 361 per cubic meter. As aforesaid, the bid was more than double than the revised reserved price fixed. Reliance by State on higher bids received against other plots have not been demonstrated to be on same basis of quantity or quality, in respect of the mineral to be mined. As such, we do find arbitrariness in the opinion formed. Impugned cancellation itself does not disclose any basis for the opinion. The subsequent instructions have also not met with the requirement of demonstration that things were done in a proper manner.

9. Impugned order dated 19th March, 2026 as well as notification for e-tender-cum-auction dated 20th March, 2026 are set aside and quashed. Consequences to follow.

10. The writ petition is allowed and disposed of.

(2026) 4 ILRA 194
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 23.04.2026

BEFORE

THE HON'BLE SUBHASH VIDYARTHI, J.

Application U/S 528 No. 1352 of 2026

Brikesh Pandey

C.B.I., Lko.

...Applicant

Versus

...Opposite Party

Issue for Consideration

Matter pertains to whether the prosecution sanction orders issued u/s 19 of Prevention of Corruption Act, 1988 for prosecuting the applicants u/s 7 of the Prevention of Corruption Act and s. 61(2) of Bharatiya Nyaya Sanhita, 2023, were vitiated on account of alleged non-application of mind, and whether such alleged defect in sanction could be examined at the pre-trial stage so as to discharge the applicants and quash the proceedings.

Headnotes

Prevention of Corruption Act, 1988 - ss. 7, 17-A(1), 19 - Bharatiya Nyaya Sanhita, 2023 - s. 61(2) - Challenge to prosecution sanction - Validity - Discharge application - Trap case - Scope of interference at pre-trial stage - The case arose from a complaint made by one Rohan Gupta, a selected candidate for the post of Assistant Branch Post Master (ABPM) under Grameen Dak Sewa, alleging that certain officials demanded illegal gratification of Rs. 25,000/- for permitting him to join his post - Upon verification, the CBI registered an FIR u/s 7 of Prevention of Corruption Act, 1988 and s. 61(2) of Bharatiya Nyaya Sanhita, 2023 - A trap operation was conducted wherein one accused allegedly received the bribe amount on the instructions of another accused, while the remaining accused were also present at the spot, resulting in their arrest - After investigation, a charge-sheet was submitted alleging demand and acceptance of undue advantage in connivance with the applicants - The competent authority thereafter granted sanction for prosecution - The applicants moved discharge applications before the trial court contending absence of involvement and invalidity of sanction, which were rejected and charges were framed - Aggrieved thereby, the applicant filed instant application before the High Court challenging the said orders.

Held: In the present case, as per the prosecution case, the applicant Achche Lal was caught red handed while accepting bribe money and the other applicant Brikesh Pandey was also arrested during the trap proceedings - In view of the provision contained in the first proviso appended to s. 17-A of Prevention of Corruption Act, 1988, and the law laid down by Hon'ble Supreme Court in the case of CBI v. Santosh Karnani (infra), it appears that no previous sanction for prosecution of the applicants was required and the submission of the learned Counsel for the petitioner that the entire proceedings stand vitiated for the defect in prosecution sanction order, has no force and the same is rejected - Thus, there is no error or illegality in the impugned orders, accordingly, petitions lack merits and are dismissed. [Paras 34, 35] (E-13)

Case Law Cited

Sushant Gupta v. CBI, 2025 SCC OnLine All 3138; *Neera Yadav v. C.B.I. (Bharat Sangh)*: 2005 SCC OnLine All 1217; *Surendar Singh v. CBI*: 2026 SCC OnLine All 2049; *Neera Yadav v. C.B.I. (Bharat Sangh)*: 2006 SCC OnLine All 141; *State (Inspector of Police) v. Surya Sankaram Karri*: (2006) 7 SCC 172; *Sushant Gupta v. CBI*, 2025 SCC OnLine All 313; *Surendra Dhariwal v. State of Rajasthan and another*: Crl. Appeal Nos.3717-3718 of 2025, decided on 25.08.2025; *Parkash Singh Badal v. State of Punjab*: (2007) 1 SCC 1; *Dinesh Kumar v. Airport Authority of India*: (2012) 1 SCC 532; *CBI v. Ashok Kumar Aggarwal*: (2014) 14 SCC 295 - referred to

Ashok Kumar Choudhary v. Central Bureau of Investigation: 2026:AHC-LKO:22051; *CBI v. Santosh Karnani*: 2023 SCC OnLine SC 427 - followed
State of Mohammed Iqbal Ahmed v. State of Andhra Pradesh; (1979) 4 SCC 172 - distinguished

List of Acts

Prevention of Corruption Act, 1988; Bharatiya Nyaya Sanhita, 2023

List of Keywords

Application u/s 528 BNSS; Challenging validity of sanction orders; Special Judge Anti Corruption; Bharatiya Nyaya Sanhita; Prevention of Corruption Act; Discharge application; Senior Superintendent of Post Offices;

Grameen Dak Sewa(GDS); Superintendent of Police, CBI; Selection; Post; Training; Demand of bribe; FIR; Trap; Complainant; Spot; Charge-Sheet; Undue advantage; Competent authority issued sanction orders; Verification memo; Pre trap memo; Post trap memo; Transcription; Recorded conversation; Call records; Tainted money; Framed charges; Proceedings void ab initio; Previous approval; Application dismissed.

Case Arising From

ORIGINAL JURISDICTION: Application u/s BNSS No. - 1346 of 2026)

Connected with other matter

(Application u/s BNSS No. - 1352 of 2026)

From the Judgment and Orders dated 30.01.2026 and 21.02.2026 passed by Special Judge, Anti Corruption, CBI, Court No.2, Lucknow in Session Trial No.1604 of 2025 arising out of RC No.00620025A0001 Police Station - CBI/ACB, Lucknow as well as Trial Court.

Appearances for Parties

Adv. for the Applicant(s):

Jai Praksah Awasthi

Adv. for the Opposite Party(s):

Aakash Prasad

(Delivered by Hon'ble Subhash Vidyarthi, J.)

1. Heard Ms. Ayushi Upadhyaya, the learned counsel for the applicants and Shri Aakash Prasad, the learned counsel for the respondent-CBI.

2. Both the aforesaid applications have been filed challenging validity of two separate orders dated 30.01.2026 passed by the learned Special Judge, Anti Corruption, CBI, Court No.2, Lucknow in Session Trial No.1604 of 2025 arising out of RC No.00620025A0001 under Section 61 (2) to Bharatiya Nyaya Sanhita (BNS) read with Section 7 Prevention of Corruption Act, 1988, Police Station- CBI/ACB, Lucknow, whereby the applications filed by the applicants seeking their discharge, have been rejected. The applicants have also sought quashing of separate orders dated 21.02.2026 passed by the trial Court framing charges against them and they have challenged validity of the prosecution sanction orders dated 30.07.2025 passed by the Senior Superintendent of Post Offices, Azamgarh Division. They have prayed to discharge them of the alleged offences.

3. Briefly stated, facts of the case are that on 03.02.2025, one Rohan Gupta gave a complaint to the Superintendent of Police, C.B.I., Lucknow stating that he had been selected on the post of ABPM (Assistant Branch Post Master) under GDS (Grameen Dak Sewa) and he had completed three days' training. Ramesh Kumar and Brikesh Pandey (the applicant in Application No. 1352 of 2026) had demanded Rs.25,000/- for permitting him to join the post. After discreet verification, CBI registered FIR bearing No. RC0062025A0001 under Section 7 of the Prevention of Corruption Act, 1988 and 61(2) of Bhartiya Nagrik Suraksha Sanhita (BNSS) against Ramesh Kumar and Brikesh Pandey.

4. A trap was laid on 04.02.2025 during which on the instructions of the named accused Ramesh Kumar, Achche Lal (the applicant in Application No. 1346 of 2026) demanded bribe from the complainant through gesture and he received the amount from the complainant. The other named accused Brikesh Pandey (the applicant in Application No. 1346 of 2026) was also present there alongwith them. All the three persons were caught on the spot.

5. A charge-sheet was submitted on 29.03.2025 against (1) Ramesh Kumar Tudu, (2) Brikesh Pandey and (3) Achche Lal for offences under Section 61(2) BNS and Section 7 of Prevention of Corruption Act, 1988 stating that the investigation has revealed that for allowing the complainant to join the post, Ramesh Kumar Tudu demanded and accepted undue advantage from the complainant in connivance with Brikesh Pandey and Achche Lal.

6. On 30.07.2025, the competent authority issued separate orders granting sanction for prosecution of the applicants. The prosecution orders are detailed orders containing narration of the facts of the case. The sanctioning authority states that after carefully examining the material placed on record including copy of complaint, FIR, verification memo, pre trap memo, post trap memo, transcription of recorded conversation made between the complainant and the accused persons Ramesh Kumar Tudu and Brikesh Pandey during verification and trap proceeding, statement of witnesses, other relevant materials placed before the authority regarding the allegations, circumstances of the case and after being fully satisfied after applying his mind, the authority considered that the applicants have committed the offences 61(2) BNS and Section 7 PC Act, and they should be prosecuted for the said offences.

7. The applicants filed applications before the trial Court seeking their discharge. Achche Lal sought his discharge mainly on the ground that he had received the bribe amount on the instructions of Ramesh Kumar Tudu. Brikesh Pandey sought his discharge on the ground that there was no evidence of his involvement in demanding and receiving the bribe.

8. The applications seeking discharge have been rejected by means of an order dated 20.01.2026. The trial court held that the call records, trap memorandum, involvement of Achche Lal in the conversation and recovery of tainted money from the Achche Lal do not warrant his discharge. Regarding Brikesh Pandey, the trial Court held that the material indicates that he was involved in demanding money from the complainant to permit him to join the duties of the post on which he has been appointed. Brikesh Pandey was an integral part of the entire process. Whether he was in fact involved or not, would be determined after scrutiny of evidence during the trial.

9. The trial Court has framed charges against the applicants by means of an order dated 21.02.2026.

10. The validity of the prosecution sanction order has been challenged on the ground that in the verbatim similar prosecution sanction orders, the sanctioning authority has stated that he accords sanction under Section 19 of the Prevention of Corruption Act, 1988 for the prosecution of the applicants for the offences punishable under Section 61(2) of the Bharatiya Nyaya Sanhita (BNS) 2023, and Section 7 of the Prevention of Corruption Act, 1988 (as amended in 2018) and for

any other offences made out from the aforesaid facts and circumstances for taking cognizance of the said offences against the said accused by the Court of competent jurisdiction.

11. The learned counsel for the applicant has submitted that Section 19 of the Prevention of Corruption Act prohibits taking cognizance of the offences punishable under Sections 7, 11, 13, and 15 of the Act. Section 19 of the aforesaid Act does not provide for a grant of sanction for prosecution of the offence under Section 61(2) of BNS. The mention of Section 61(2) of BNS indicates that the sanction order has been passed in a mechanical manner, without application of mind.

12. In support of this contention, the learned counsel for the applicant has placed reliance on a judgment of the Hon'ble Supreme Court in the case of **State of Mohammed Iqbal Ahmed versus State of Andhra Pradesh; (1979) 4 SCC 172**, wherein the Honorable Supreme Court held that it is incumbent on the prosecution to prove that a valid sanction had been granted by the sanctioning authority after it was satisfied that a case for sanction had been made out constituting the offence. The Court has to see whether or not the sanctioning authority at the time of giving sanction, was aware of the facts constituting the offence and applied its mind to the same.

13. The learned counsel for the applicant has also placed reliance on a decision of this Court rendered in the case of **Sushant Gupta v. CBI**, 2025 SCC OnLine All 3138, wherein this Court had set-aside a similarly worded prosecution sanction order.

14. Per contra, the learned counsel for the respondent-CBI has submitted that what is required in Section 19 of the Prevention of Corruption Act is that no court shall take cognizance of any offence under section 7, 11, 13 and 15 of the Prevention of Corruption Act, 1988 without previous sanction by the competent authority. It does not prohibit grant of sanction for any other offence and the mere mention of the offence of criminal conspiracy along with the offence under Section 7 of the Prevention of Corruption Act, would not invalidate the sanction for prosecution for the offence under Section 7 of the Prevention of Corruption Act.

15. In support of his contentions, the learned counsel for respondent CBI has placed reliance on the decision rendered by a Full Bench of this Court in the case of **Neera Yadav v. C.B.I. (Bharat Sangh)**: 2005 SCC OnLine All 1217. He has also placed reliance on the judgments of this Court in **Surendar Singh v. CBI**: 2026 SCC OnLine All 2049 and **Ashok Kumar Choudhary versus Central Bureau of Investigation**: 2026:AHC-LKO:22051.

16. In **Mohd. Iqbal Ahmed v. State of A.P.**: (1979) 4 SCC 172, the appellant was said to have been caught red handed while receiving Rs.125/- as bribe. The resolution of the Standing Committee read as follows: -

"As per note of the Commissioner, M.C.H., the Standing Committee unanimously accords sanction for prosecution of Shri Mohd. Iqbal Ahmed (in the scale of 110?180) Section Officer of town Planning Section (under suspension) in a competent Court for the offence mentioned in the note of the Commissioner M.C.H., dated January 18, 1969 so as to enable the Commissioner to

sign the prosecution order and send it to the Director, Anti-Corruption Bureau for taking further action at the earliest."

The Hon'ble Supreme Court held that: -

*"3. A perusal of the resolution of the Sanctioning Authority clearly shows that no facts on the basis of which the prosecution was to be sanctioned against the appellant are mentioned in the sanction nor does this document contain any ground on which the satisfaction of the Sanctioning Authority was based and its mind applied. This document merely mentions that the sanction has been given on the basis of a note of the Commissioner, Municipal Corporation which appears to have been placed before the Committee. It is obvious, therefore, that this note, if any, must have come into existence either on March 31, 1969 or at any date prior to this. **The prosecution could have proved the facts constituting the offence which were placed before the Sanctioning Authority by producing the note at the trial. But no such thing has been done.** What the prosecution did was merely to examine two witnesses PWs 2 and 7. PW 2 has produced the order implementing the Resolution of the Sanctioning Authority which is Ex. P10 and is dated April 21, 1969, that is to say after the sanction was given. This document no doubt contains the facts constituting the offence but that does not solve the legal issues that arise in this case. **It is incumbent on the prosecution to prove that a valid sanction has been granted by the Sanctioning Authority after it was satisfied that a case for sanction has been made out constituting the offence. This should be done in two ways; either (1) by producing the original sanction which itself contains the facts constituting the offence and the grounds of satisfaction and (2) by adducing evidence aliunde to show that the facts placed before the Sanctioning Authority and the satisfaction arrived at by it.** It is well settled that any case instituted without a proper sanction must fail because this being a manifest difficulty in the prosecution, the entire proceedings are rendered void ab initio?."*

(Emphasis added)

17. The aforesaid judgment was given while examining the validity of a judgment passed by the High Court allowing an appeal against a judgment of acquittal passed by the trial Court where the prosecution had failed to adduce evidence to show the facts placed before the sanctioning authority and the satisfaction arrived by it. In the present case, this stage has not yet arrived and the petitioner has challenged the validity of the prosecution sanction order before commencement of the trial. Therefore, the ratio laid down in **Mohd. Iqbal Ahmed v. State of A.P.** (supra) would not apply to the present case.

18. In **Neera Yadav v. C.B.I. (Bharat Sangh)**: 2006 SCC OnLine All 141, the following questions had been referred to the Full Bench: -

"1. Whether in the case of public servant which can be removed only by the Central Government and sanction under section 19 of the Prevention of Corruption Act, 1988 is also given, further sanction under section 197 of the Criminal Procedure Code is also required because at the relevant time the said public servant was also employed in connection with the affairs of the State Government.

2. Whether public servant who is charged under section 13 of the Prevention of Corruption Act as also under section 120-B IPC and the sanction u/s 19 of the Prevention of Corruption Act is already given by the Central Government, yet the sanction by the State

Government under section 197 of the Code of Criminal Procedure is necessary since he is being charged under section 120-B IPC also.

3. If the answer to the above two questions is in affirmative, then, whether the alleged act or omission for which the petitioner are being charged had reasonable connection to the discharge of their official duty calling for applicability of section 197 of the Code of Criminal Procedure."

The Full Bench gave the following answers to the aforesaid questions: -

"(I) For prosecution under Prevention of Corruption Act, 1988, once sanction under Section 19 of the said Act is granted, there is no necessity for obtaining further sanction under Section 197 of the Code of Criminal Procedure.

(II) *Where a public servant is sought to be prosecuted under the provisions of Prevention of Corruption Act read with Section 120-B, I.P.C. and sanction under Section 19 of Act of 1988 has been granted, it is not at all required to obtain sanction under Section 197 Cr.P.C. from the State Government or any other authority merely because the public servant is also charged under Section 120-B, I.P.C.*

(III) *The offences under the Prevention of Corruption Act, 1988 as well as charge of criminal conspiracy, cannot be said to constitute "acts in discharge of official duty."*

(Emphasis added)

19. In **Surendar Singh v. CBI**, 2026 SCC OnLine All 2049, the petitioner had challenged the validity of a prosecution sanction order, a charge-sheet for offences under Section 120-B read with Sections 409, 420, 468, 471, 460, 477, 201 IPC, Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 and Sections 65 and 66 of Information Technology Act. This Court referred to the judgment of the Hon'ble Supreme Court in the case of **Parkash Singh Badal v. State of Punjab**: (2007) 1 SCC 1, wherein it has been held that: -

"48. The sanction in the instant case related to the offences relatable to the Act. There is a distinction between the absence of sanction and the alleged invalidity on account of non-application of mind. The former question can be agitated at the threshold but the latter is a question which has to be raised during trial."

20. This Court also relied upon the judgment in the case of **Dinesh Kumar v. Airport Authority of India**: (2012) 1 SCC 532, in which the Hon'ble Supreme Court followed the aforesaid law laid down in **Parkash Singh Badal** (supra) and held that: -

"9. While drawing a distinction between the absence of sanction and invalidity of the sanction, this Court in **Parkash Singh Badal** expressed in no uncertain terms that the question of absence of sanction could be raised at the inception and threshold by an aggrieved person. However, where sanction order exists, but its legality and validity is put in question, such issue has to be raised in the course of trial. Of course, in **Parkash Singh Badal**, this Court referred to invalidity of sanction on account of non-application of mind.

10. In our view, *invalidity of sanction where sanction order exists, can be raised on diverse grounds like non-availability of material before the sanctioning authority or bias of the sanctioning authority or the order of sanction having been passed by an authority not authorised or competent to grant such sanction. The above grounds are only illustrative and not exhaustive. All such grounds of invalidity or illegality of sanction would fall in the same category like the*

ground of invalidity of sanction on account of non-application of mind? a category carved out by this Court in Parkash Singh Badal, the challenge to which can always be raised in the course of trial.

13. In our view, having regard to the facts of the present case, now since cognizance has already been taken against the appellant by the trial Judge, the High Court cannot be said to have erred in leaving the question of validity of sanction open for consideration by the trial court and giving liberty to the appellant to raise the issue concerning validity of sanction order in the course of trial. Such course is in accord with the decision of this Court in Parkash Singh Badal and not unjustified."

21. Both the aforesaid judgments have been followed in **CBI v. Ashok Kumar Aggarwal**: (2014) 14 SCC 295, in which it was held that: -

"59. Undoubtedly, the stage of examining the validity of sanction is during the trial and we do not propose to say that the validity should be examined during the stage of inquiry or at pre-trial stage."

22. This Court also took into consideration the judgment in the case of **State (Inspector of Police) v. Surya Sankaram Karri**: (2006) 7 SCC 172, wherein the Hon'ble the Supreme Court relied upon the judgment in **State of Karnataka v. C. Nagrajswami**: (2005) 8 SCC 370 wherein it was held that: -

"14. Ordinarily, the question as to whether a proper sanction has been accorded for prosecution of the accused persons or not is a matter which should be dealt with at the stage of taking cognizance. But in a case of this nature where a question is raised as to whether the authority granting the sanction was competent therefor or not, at the stage of final arguments after trial, the same may have to be considered having regard to the terms and conditions of service of the accused for the purpose of determination as to who could remove him from service.

15. Grant of proper sanction by a competent authority is a sine qua non for taking cognizance of the offence. It is desirable that the question as regards sanction may be determined at an early stage. (See Ashok Sahu v. Gokul Saikia [1990 Supp SCC 41] and Birendra K. Singh v. State of Bihar [(2000) 8 SCC 498].)"

23. This Court noted in **Surender Singh** (supra) that the judgment in **State of Karnataka v. C. Nagrajswami** (supra) does not take into consideration the precedents in the cases of **Parkash Singh Badal**, **Dinesh Kumar** and **Ashok Kumar Aggarwal** (supra) and it does not mandate that in all cases, it is mandatory to examine the validity of the prosecution sanction order at the inception of trial. In view of the aforesaid legal position, this Court declined to examine the validity of the prosecution sanction order at the stage when examination of prosecution witnesses was already in progress. This Court had also weighed the factor that the petition had been filed after a delay of 10 years from the date of the prosecution sanction order. This Court left it open for the petitioner to raise the plea of validity of the prosecution sanction order before the trial court at the appropriate stage.

24. In **Sushant Gupta v. CBI**, 2025 SCC OnLine All 313, the prosecution sanction order stated that after fully and carefully examining the documents, copies of the statements of witnesses under Section 161 CrPC and other materials placed before him and having applied his mind properly in regard to the said allegations and circumstances of the case, the sanctioning authority considered that offences under Section 120-B read with Sections 409, 418, 419, 420, 467, 468, 471, 477(A) IPC and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 and substantive offences thereof are made out against the applicants and other persons and therefore the authority accorded sanction under Section 19 of the Prevention of Corruption Act, 1988 for prosecution of the applicants and other persons for the said offences and for any other offence(s) punishable under any other provisions of law in respect of the said acts and for taking cognizance of the said offences by a court of competent jurisdiction. The applicants filed an application for discharge on the ground that no sanction of prosecution had been granted under Section 197 CrPC and it was granted only under Section 19 of the Prevention of Corruption Act, 1988. This Court held that: -

"41. The applicants were working in Axis Bank, which is not even a nationalised bank, and it is not disputed that the applicants were not holding a post where they could not be removed from service except by or with the sanction of the government. In this view of the matter the provisions of Section 197 are not attracted to the case of the applicants. The prosecution sanction order dated 2-2-2022 issued by the President and Head Corporate Affairs of Axis Bank, Mumbai, states that the allegations levelled against 20 persons, including the applicants, have been corroborated by the statements recorded under Section 161 CrPC and the documents collected during investigation of the case. After careful examination and perusal of the documents and statements of the witnesses it has been found that offences under Section 120-B read with Section 409, 418, 419, 420, 468, 471 and 477-A IPC and Section 13(2) read with Section 13(1)(d) of the PC Act and substantive offence thereof are made out against 20 persons, including the applicants. The sanctioning authority proceeded to state that after fully and carefully examining the documents, copies of the statements of witnesses under Section 161 CrPC and other materials placed before him and having applied his mind properly in regard to the said allegations and circumstances of the case, considered that offences under Section 120-B read with Section 409, 418, 419, 420, 467, 468, 471 and 477-A IPC and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1998 and substantive offence thereof are made out against the applicants and other persons and therefore the authority has accorded sanction under Section 19 of the Prevention of Corruption Act, 1988 for prosecution of the applicants and other persons "for the said offences and for any other offence(s) punishable under any other provisions of law in respect of the said acts and for taking cognizance of the said offences by a court of competent jurisdiction".

* * *

43. ... The sanction of prosecution "for the said offences and for any other offence(s) punishable under any other provisions of law in respect of the said Acts" for which no sanction was obtained, indicates a total non-application of mind to the facts of the case and the law applicable. It indicates that the sanctioning authority has acted as a mere rubber stamp. Non-application of mind by the sanctioning authority vitiates the sanction order dated 2-2-2023 as also the order dated 28-7-2023 passed by the trial court rejecting the discharge application.

44. The order of sanction after a proper application of mind to the relevant facts and circumstances of the case and the material-on-record is a prerequisite for prosecution of a public servant, as it is intended to provide a safeguard to a public servant against frivolous and vexatious litigants. This safeguard cannot be dealt with in a casual and mechanical manner."

25. The learned Counsel for the respondent CBI informed that a challenge made to the aforesaid order by filing S.L.P. (Criminal) No. 15225 of 2025, which is pending consideration of the Hon'ble Supreme Court.

26. In the present case, the only charges are of commission of offence under Section 61(2) BNS and Section 7 of the PC Act. There is no allegation of commission of the offences under Sections 409, 418, 419, 420, 467, 468, 471 and 477-A IPC.

27. In **Neera Yadav v. C.B.I.** (supra), the Full Bench has held that sanction granted under Section 19 would be sufficient for prosecution for the offence under Section 120-B IPC also, which is equivalent to Section 61(2) BNS. Further, the offences under Section 7 of the Prevention of Corruption Act, 1988 and Section 61(2) BNS cannot be said to constitute "acts in discharge of official duty" and, therefore, no sanction is required for those acts.

28. As per the law laid down by the Hon'ble Supreme Court in **Parkash Singh Badal v. State of Punjab**, **Dinesh Kumar v. Airport Authority of India** and **CBI v. Ashok Kumar Aggarwal** the validity of sanction order has to be examined during the trial and not at pre-trial stage.

29. It is also relevant to note that Section 17-A(1) of the Prevention of Corruption Act, 1988 provides as follows: -

"17-A. Enquiry or Inquiry or investigation of offences relatable to recommendations made or decisions taken by public servant in discharge of official functions or duties. -

No police officer shall conduct any enquiry or inquiry or investigation into any offence alleged to have been committed by a public servant under this Act, where the alleged offence is relatable to any recommendation made or decision taken by such public servant in discharge of his official functions or duties, without the previous approval?

(a) in the case of a person who is or was employed, at the time when the offence was alleged to have been committed, in connection with the affairs of the Union, of that Government;

(b) in the case of a person who is or was employed, at the time when the offence was alleged to have been committed, in connection with the affairs of a State, of that Government;

(c) in the case of any other person, of the authority competent to remove him from his office, at the time when the offence was alleged to have been committed:

Provided that no such approval shall be necessary for cases involving arrest of a person on the spot on the charge of accepting or attempting to accept any undue advantage for himself or for any other person:

Provided further that the concerned authority shall convey its decision under this section within a period of three months, which may, for reasons to be recorded in writing by such authority, be extended by a further period of one month."

30. In **CBI v. Santosh Karnani**: 2023 SCC OnLine SC 427, the Hon'ble Supreme Court held that: -

"33... Section 17A merely contemplates that police officers shall not conduct any enquiry, inquiry or investigation into any offence alleged to have been committed by a public servant where the alleged offence is relatable to any recommendation made or decision taken in discharge of official functions or duties, without the previous approval of the competent authority. The first proviso to the section states that such approval is not necessary in cases involving arrest of the person on the spot on the charges of accepting undue advantage.

34. As may be seen, the first proviso to Section 17A refers to cases wherein a public servant is charged with acceptance of an undue advantage or attempt thereof. A prior approval or sanction to investigate such an officer in a trap case is likely to defeat the very purpose of trap and the investigation, which is not the underlying intention of the legislature. The investigation against Respondent No. 1, being an accused of demanding a bribe, did not require any previous approval of the Central Government. That apart, the accusation against Respondent No. 1 does not revolve around any recommendations made or decisions taken by him in his quasi-judicial or administrative capacity."

31. In **CBI v. Santosh Karnani** (supra), the accused could not be arrested at the spot during the trap and he had absconded, yet the Hon'ble Supreme Court held that the investigation against a person accused of demanding a bribe does not require any previous approval of the Central Government.

32. **CBI v. Santosh Karnani** (supra) has been followed in the case of **Surendra Dhariwal Vs. State of Rajasthan and another**: CrI. Appeal Nos.3717-3718 of 2025, decided on 25.08.2025.

33. In **Ashok Kumar Choudhary v. Central Bureau Of Investigation /Anti Corruption Bureau Lko**, Neutral Citation: 2026:AHC-LKO:22051, this Court after relying on Hon'ble Supreme Court's precedents on this aspect has held that under Section 17-A of the Prevention of Corruption Act 1988, grant of prosecution sanction is not required in case an accused is arrested during the trap proceedings.

34. In the present case also, as per the prosecution case, the applicant Achche Lal was caught red handed while accepting bribe money and the other applicant Brikesh Pandey was also arrested during the trap proceedings. In view of the provision contained in the first proviso appended to Section 17-A of the Prevention of Corruption Act, 1988, and the law laid down by the Hon'ble Supreme Court in the case of **CBI v. Santosh Karnani** (supra), it appears that no previous sanction for prosecution of the applicants was required and the submission of the learned Counsel for the petitioner that the entire proceedings stand vitiated for the defect in prosecution sanction order, has no force and the same is rejected.

35. In view of the foregoing discussion, I am of the considered view that there is no error or illegality in the orders dated 30.01.2026 passed by the learned Special Judge, Anti Corruption, CBI, Court No.2, Lucknow in Session Trial No.1604 of 2025 arising out of RC No.00620025A0001

under Section 61 (2) to Bharatiya Nyaya Sanhita (BNS) read with Section 7 Prevention of Corruption Act, 1988, Police Station- CBI/ACB, Lucknow, whereby the applications filed by the applicants seeking their discharge, have been rejected and in the orders dated 21.02.2026 passed by the trial Court framing charges against them. The petitions lack merits and are **dismissed**.

(2026) 4 ILRA 205
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 24.04.2026

BEFORE

THE HON'BLE SAMIT GOPAL, J.

Criminal Appeal No. 1158 of 1989

Ram Palat & Anr.

...Appellants

Versus

State of U.P.

...Respondent

Issue for Consideration

Matter pertains to whether, after acquittal of four accused out of the named members of the alleged unlawful assembly and the trial having ultimately resulted in conviction of only two accused, conviction for the offence under S. 323/149 I.P.C. could legally be sustained with the aid of S. 149 I.P.C., which requires an unlawful assembly consisting of five or more persons. (Paras 25-33)

Headnotes

Indian Penal Code, 1860 - Ss.141 and 149 - Unlawful Assembly - Essential requirement - Membership must be five or more persons - S. 149 creates vicarious or constructive criminal liability only when offence is committed by a member of an unlawful assembly - For constituting an unlawful assembly one of the main and important ingredients is that the assembly should consist of five or more persons. (Paras 27-29)

Indian Penal Code, 1860 - Ss.141 and 149 - Applicability of S. 149 - Where prosecution case names five or more persons as members of unlawful assembly and evidence is confined to those named persons - If acquittal of two or more accused reduces the number below five, S. 149 cannot be invoked unless evidence establishes participation of other unnamed or unidentified persons constituting the unlawful assembly. (Paras 30-31)

Indian Penal Code, 1860 - Ss.323/149, 141 and 149 - Conviction with aid of S. 149 - Trial of seven accused - One accused died during trial - Four accused acquitted - Remaining two accused acquitted of charges under Ss.147, 307/149 and 379 I.P.C. but convicted under S. 323/149 I.P.C. - Acquittal of four accused attained finality - No case of unnamed or unidentified members of unlawful assembly - Conviction under S. 323/149 I.P.C. unsustainable. (Paras 25-33)

Criminal Law - Acquittal of co-accused - Effect on charge under S. 149 I.P.C. - Acquittal of four accused rendered S. 149 I.P.C. inapplicable in the case as only two accused were convicted - Impugned judgment and order convicting accused with aid of S. 149 I.P.C. liable to be set aside. (Paras 32-33)

Criminal Appeal - Conviction and sentence under S. 323/149 I.P.C. - Legality - Since only two accused stood convicted and no circumstance existed warranting application of S. 149 I.P.C., conviction and sentence held totally illegal - Appeal allowed - Surviving appellant acquitted. (Paras 33-35)

Held: S. 149 I.P.C. applies only where an unlawful assembly consists of five or more persons - In the present case, out of seven named accused, one died during trial and four were acquitted, leaving only two convicted

accused - Since no unnamed or unidentified persons were shown to be members of the assembly, S. 149 I.P.C. was inapplicable - Consequently, the conviction under S. 323/149 I.P.C. was illegal and was set aside - The appeal was allowed and the surviving appellant was acquitted. (Paras 26-35) (E-7)

Case Law Cited

Mohan Singh v. State of Punjab, **1962 SCC OnLine SC 82**; *Dalip Singh v. State of Punjab*, **(1953) 2 SCC 36**; *Bharwad Mepa Dana v. State of Bombay*, **(1960) 2 SCR 172**; *Kartar Singh v. State of Punjab*, **AIR 1961 SC 1787**; *Subran v. State of Kerala*, **(1993) 3 SCC 32**; *Mahendra v. State of M.P.*, **2022 SCC OnLine SC 1348**.

List of Acts

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

List of Keywords

Unlawful assembly; common object; S. 149 I.P.C.; S. 141 I.P.C.; vicarious criminal liability; constructive criminal liability; acquittal of co-accused; membership must be five or more; named accused; unidentified persons; conviction under S. 323/149 I.P.C.; applicability of S. 149 I.P.C.; unlawful assembly consisted of five or more persons; acquittal rendered S. 149 I.P.C. inapplicable; appeal allowed; acquittal.

Case Arising From

APPELLATE JURISDICTION: Criminal Appeal arising from the judgment and order dated 03.05.1989 passed by the Vth Additional Sessions Judge, Basti in Session Trial No. 418 of 1986, whereby the accused-appellants were convicted and sentenced under S. 323/149 I.P.C. while being acquitted of charges under Ss.147, 307/149 and 379 I.P.C.

Appearances for Parties

Advs. for the Appellant:

Sri Pradeep Narayan Pandey.

Advs. for the Respondents:

Sri Ajay Singh, learned A.G.A.-I for the State.

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

1. This appeal was initially preferred by Ram Palat/appellant no. 1 and Bigranchhu/appellant no. 2 against the judgment and order dated 3.5.1989 passed by Vth Additional Sessions Judge, Basti in Session Trial No. 418 of 1986, State of U.P. vs. Ram Palat and 6 others, by which the accused/appellants have been convicted and sentenced for the offences under Sections 323/149 I.P.C. to six months rigorous imprisonment and a fine of Rs.500.00 each and in default of payment of fine, they have been directed to undergo further one month imprisonment.

2. During pendency of this appeal the appellant no. 1/Ram Palat died and thus vide order dated 13.09.2022 passed by a co-ordinate Bench of this Court his appeal stood abated. The same thus survived only for the appellant no. 2/Bigranchhu.

3. The case in the present matter was committed to the Court of Sessions for accused Ram Palat, cv Paras Nath, Raja Ram, Suresh, Bigranchhu, Mata Badal and Bigrail @ Janardan under Sections 147, 307/149 and 379 I.P.C. During pendency of trial, accused Raja Ram died and thus his trial stood abated (stated in para-2 of the impugned judgement and order).

4. Ram Palat, Paras Nath, Suresh, Bigranchoo, Mata Badal and Bigrail @ Janardan were tried wherein Paras Nath, Suresh, Mata Badal, Bigrail @ Janardan were acquitted of the charges levelled against them for offences under Sections 147, 307/149, 379 I.P.C. The accused Ram Palat and Bigranchoo were also charged for offences under Sections 147, 307/149, 379 I.P.C. and were acquitted of the said charges but were convicted for the offence under Sections 323/149 I.P.C. and sentenced therein as stated above.

5. An application dated 13.3.1987 was given by Ramdas Upadhyay to S.H.O. Police Station Kotwali, District Basti of which Kapil Muni Pandey was the scribe, alleging therein that his son Raghuvansh Upadhyay was Manager of Dayanand Vidyalay Malviya Road, Basti. He had a plot of land in Gidhi (Jigna), near petrol pump and besides his land, the land of Ram Palat was situated. With regards to dispute between him and Ram Palat regarding boundary of the land, his son Raghuvansh Upadhyay on 13.3.1986 at about 07.00 a.m. went to the land wherein on seeing the informant and his son, the accused armed with lathi and danda reached there and with an intention to murder his son on the exhortation of Ram Palat that □how could he dare to purchase the land besides his land and he may be murdered□, all the accused armed with lathi and danda assaulted him. The informant tried to save his son. The accused also assaulted the informant. On shouts by the informant and his son, Ramchandar, Virendra Bahadur Pandey, Hasnain and many other people reached there and saw the incident. Raghuvansh Upadhyay his son received serious injuries on his head, hands and legs and he also received injury. The accused have snatched and taken away a Reiko wrist watch, one gold ring of 8 ana, one silver ring with stone of 6 ana, Rs.735.00 kept in the pocket, one rexine bag containing papers of the land and papers of motorcycle, driving license, from the place one sofaset of bamboo, one big dari, two buckets have been taken away by them. His report be lodged and action be taken. The said application is marked as Ext. Ka-1 to the records.

6. On the basis of the said application a First Information Report was lodged on 13.03.1986 at about 8.30 a.m. as Case Crime No. 115 of 1986, under Section 395 I.P.C., Police Station- Kotwali, District Basti. The Chik F.I.R. is Ext. Ka-3 to the records.

7. Raghuvansh Upadhyay was medically examined on 13.03.1986 at 09.00 a.m. by Dr. A.K. Srivastava, Medical Officer of District Hospital, Basti and was found to have received 8 injuries which are as under: -

“1. Lacerated wound 4 cm x 1.5 cm x bone deep on the left side forehead 5cm above medial end of left eyebrow with traumatic swelling 10cm x 9cm on the middle of the forehead including front of head 3cm above the root of nose. Margins are irregular, bleeding present. Kept U.O. Adv. X-ray.

2. Lacerated wound 4cm x 1.5 cm x muscle deep on the right palm in between thumb and index finger, margins are irregular, bleeding present. Kept U.O. Adv. X-ray.

3. Contused swelling 15cm x all around the lower front of left forearm including front of wrist joint 18 cm below elbow joint. Kept U.O. Adv. X-ray. Red in colour.

4. Lacerated wound 1-1/2 cm x 1.5 cm skin deep on the palmer aspect on left palm 1cm above the root of index finger, margins are irregular, bleeding present.

5. Abraded contusion 4-1/2 cm x 3 cm on the front of left upper arm 2cm above elbow joint, read in colour.

6. Contusion 11cm x 3 cm on the outer aspect of right thigh 28cm above knee joint, red in colour.

7. Contusion 13cm x 2cm on the outer aspect of left thigh 18 cm above knee joint, red in colour.

8. Traumatic swelling 8cm x 7cm on the dorsum of left foot 4cm in front of ankle joint.”

The doctor opined the injuries to be simple except for injury no. 1 to 3 which were kept under observation till X-ray. They were opined to be caused by hard and blunt object and duration was fresh. The injury report is Ext. Ka-2 to the records.

8. Site plan of the place of occurrence was prepared on 13.03.1986 the same is Ext. Ka-6 to the records.

9. One kurta and payjama and one jacket (sadri) of Raghuvansh Upadhyay stated to be blood stained, were taken into possession by the police on 29.03.1986. The recovery memo is Ext. Ka-9 to the records.

10. X-ray examination of Raghuvansh Upadhyay was done on 14.3.1986 and X-ray report was prepared by Dr. G.N. Prasad, Radiologist, District Hospital, Basti, who did not find any fracture on the right forearm but found a chip fracture of second metacarpal of left hand. Skull was not found to have received any fracture. Parts of body x - rayed were skull, left hand and right forearm. The said X-ray report is Ext. Ka-11 to the records.

11. Investigation concluded and a charge sheet no.85, dated 7.5.1986 was submitted under Sections 147, 325, 308, 379 I.P.C. against Ram Palat, Paras Nath, Raja Ram, Suresh, Bigranchoo, Mata Bada, Bigrail @ Janardan. The same is Ext. Ka-10 to the records.

12. Vide order dated 17.10.1987 the Special Judge, Basti, framed charge against all the seven accused under Sections 147, 307/149, 379 I.P.C. The accused were read and explained about the charge who pleaded not guilty and claimed to be tried.

13. The trial in the matter started in which Ramdas, the first informant was examined as P.W.-1, Raghuvansh Upadhyay the injured was examined as P.W.-2, Hasnain an alleged eye witness and driver of P.W.-1 and P.W.-2, was examined as P.W.-3, Dr. A.K. Srivastava, Medical Officer, who conducted medical examination of Raghuvansh, was examined as P.W.-4, Kapil Dev Singh Head Constable who transcribed the Chik F.I.R. and prepared corresponding G.D. was examined as P.W.-5, Shrinath Sub-Inspector the Investigating Officer of the matter was examined as P.W.-6 who concluded it and filed a charge sheet.

14. The accused in the statement recorded under Section 313 Cr.P.C. denied the prosecution case and stated the prosecution case to be false. They stated of their implication in the matter due to conspiracy. The situation of the plot of the informant and the accused was admitted by them. It is stated that the informant had got forged sale deed executed for a public pond besides which the land of the accused is situated and thus with the police the present false case has been lodged. They

stated that the accused received injuries by falling on the ground and not by assault. In defense documents were filed. No defense evidence was led.

15. The trial court finding implication of the four accused as stated above to be false acquitted them of charges levelled against them and further acquitted the accused/appellants also for the charges framed against them but convicted them as aforesaid. The present appeal thus has been filed before this Court.

16. P.W.-1 Ramdas is the first informant of the present matter. He states that his land is situated in Gidhi near petrol pump besides which the land of Ram Palat, Paras Nath and others is situated. There is a dispute between them with regards to boundary of the land. On the day of the incident at about 7.00 a.m. Lekhpal and others were called for measurements for which he and his son Raghuvansh and driver Hasnain were waiting for the said officers. The disputed land is surrounded by wall on three sides. On that day for the officers he had arranged a sofa-set, one dari, buckets etc. at the field. Ram Palat and Paras Nath have their house and hotel on one side of the land which is situated at a distance of about 10-12 kathha. When they reached the land, Ram Palat and his son Raja Ram, Paras Nath, Bigranchoo came there and immediately Ram Palat exhorted as to how they could purchase the land besides his land, after which they ran to assault Raghuvansh. They then ran towards the basti. After running about 2-4 kathha, Mata Badal, Suresh and Janardan came from the front and surrounded them and assaulted them with lathi and danda. His son was being assaulted. He ran to save him on which the accused caught hold of him and assaulted him with 2 fist blows and told him to keep away or else he would also be assaulted. His driver was also there. On shouts by him and his driver, Ramchandrar and many other people of the village came there and saw the accused assaulting. During assault on his son, Bigranchoo took away his two rings (one gold and one silver), wrist watch, a bag containing papers of vehicle, money from the pocket of jacket and papers of land. From the disputed land they took away a sofa-set, dari, bucket, lota etc. When the accused ran away, then Kapil Muni came there to whom the informant stated about the incident and got an application written on which he signed and gave it to the police for lodging a report, the same was proved by him as Ext. Ka-1 to the records. His son was medically examined but since he did not receive any visible physical injury, he was not medically examined.

17. P.W.-2 Raghuvansh Upadhyay is the injured of the matter. He states that he had purchased land besides the land of Ram Palat in the name of his wife Smt. Girja Devi and sister Smt. Kamal Upadhyay. The land was occupied by Ram Palat and others and thus he was getting wall constructed around it. The accused stated that their land falls in the said area and had stopped construction of wall. On 09.03.1986 Ram Palat and others had broken the wall. Its report was given at the Police Station Kotwali. He had requested Lekhpal and Circle Officer to get the land measured and they had stated to come on 13.03.1986 for it. On 10.1.1986 he got an order on the basis of the sale deed for getting the land measured. The same is being filed by him. On the day of incident at about 7.00 a.m. he was waiting for Lekhpal and other officers along with his father and driver Hasnain. At the said land a bucket, sofa-set, dari etc. were arranged for officers. In the meantime, the accused Ram Palat, Paras Nath, Raja Ram and Bigranchoo reached there and Ram Palat exhorted as to how they could dare to purchase the land besides his land and they ran to assault him on which he ran towards Kotwali, Basti. After running about 30-35 steps the accused Mata Badal, Bigrail @ Janardan and Suresh armed with lathi and danda came from the hotel of

Ram Palat and surrounded him and assaulted him. In the meantime, the other accused came from behind and assaulted him with lathi and danda. His father ran to save him who was also assaulted with fist blows. Hasnain, Virendra Bahadur Pandey and many other persons had come there and saw the incident and intervened. Bigranchoo took away his rings, wrist watch, bag and money. They also took away the items kept in the field. He received many injuries. Kapil Muni came there who transcribed the application on the dictation of his father which was given at the police station. He was taken by the police for medical examination. He remained admitted in the hospital for about 5-6 days. He is filing papers of sale deed of the land.

18. P.W.-3 Hasnain is the driver of P.W.1 and P.W.2 and an alleged eye witness. He states of being present at the place of occurrence and states of the incident as that of P.W.-1 and P.W.-2.

19. P.W.-4 A.K. Srivastava is Medical Officer of District Hospital, Basti. He medically examined Raghuvansh Upadhyay and prepared the injury report, the details of which have already been stated above. He proves the said injury report as Ext. Ka-2 to the records. He states that the injuries could have been caused on 13.03.1986 at about 07.00 a.m. In his cross-examination he states that except for the injury no. 1 all other injuries were on non-vital parts of the body. The injury no. 1 was kept under observation and referred for X-ray but he does not know any further regarding it.

20. P.W.-5 Kapil Dev Singh is the Head Constable. He states of transcribing the Chik F.I.R. on the basis of written report given at the Police Station and also prepared the corresponding G.D. He proves the same as Ext. Ka-3 and Ext. Ka-4 respectively.

21. P.W.-6 Srinath, Sub-Inspector, is the Investigating Officer of the matter. He took up investigation and sent Raghuvansh Upadhyay for medical examination. He prepared site plan, recorded statements of the witnesses, took the clothes of the injured Raghuvansh Upadhyay in his possession and then filed a charge sheet against 7 accused which is Ext. Ka-10 to the records.

22. Heard Sri Pradeep Narayan Pandey, learned counsel for the appellant no. 2-Bighanchoo, Sri Ajay Singh, learned A.G.A.-I for the State and perused the records. The trial court records have been received, which are tagged with the present appeal which have also been perused.

23. Learned counsel for the appellant no. 2/Bigranchoo submitted as under: -

(A) The appellant has been falsely implicated in the present case.

(B) The appellants although were charged for offences under Sections 147, 307/149 and 379 I.P.C. but they were acquitted of the said charges and instead convicted for offence under Section 323/149 I.P.C.

(C) 04 other accused namely Paras Nath, Suresh, Mata Badal and Bigrail@Janardan who were also tried with the appellants for the charges under Sections 147, 307/149, 379 I.P.C., were acquitted of the said charges levelled against them.

(D) Acquittal of the said four accused and also of the accused-appellants for offences under Sections 147, 307/149, 379 I.P.C. is not under challenge and the same has attained finality.

(E) The present appeal has been preferred against conviction and sentence of the appellants for offence under Section 323/149 I.P.C.

(F) Conviction of the accused-appellants with the aid of Section 149 I.P.C. is totally illegal inasmuch as unlawful assembly must consist of minimum number of five persons for conviction with the aid of Section 149 I.P.C. In the present matter four accused have been acquitted and only two accused-appellants have been convicted under Section 323 I.P.C. with the aid of Section 149 I.P.C. which is illegal and they could not have been convicted with the aid of Section 149 I.P.C. since only two accused have been convicted.

(G) Conviction and sentence is illegal and cannot be sustained since it is with the aid of Section 149 I.P.C. and only two accused have been convicted and sentenced.

(H) The appeal be allowed and conviction and sentence of the surviving accused-appellant no. 2 Bigranchoo be set aside.

24. Learned A.G.A., per contra, opposed the submissions and the appeal and submitted as under: -

(A) The accused-appellants are named in the F.I.R. and also in the evidence as collected during investigation.

(B) One person namely Raghuvansh Upadhyay is an injured of the incident who has received injuries and thus his presence at the place of occurrence cannot be doubted.

(C) The accused are of the same village and previously known persons and thus there was no chance of false implication.

(D) Trial in the matter was of 7 accused out of which one Raja Ram died during pendency of the trial but as a matter of fact there were 7 accused in all and thus implication of Section 149 I.P.C. is proper.

(E) Trial court finding evidence to be beyond reasonable doubt in so far as it relates to the accused-appellants, convicted them and sentenced them as above.

(F) The appellants have been assigned specific role in the matter and even injuries as sustained could not have been false, fabricated or self - sustained injuries and thus conviction and sentence is well founded without any error.

(G) The present appeal is devoid of any merit and deserves to be dismissed.

25. After having heard learned counsels for the parties and perusing the records, the fact that stems out in the matter are that 7 accused were committed to the Court of Sessions for offences under Sections 147, 307/149, 379 I.P.C., out of 7 accused one accused Raja Ram died and thus his trial stood abated. Charges were framed vide order dated 17.10.1987 against 7 accused for offences under Sections 147, 307/149, 379 I.P.C. Thus after death of one accused during trial 6 (six) accused were tried for the said charges. Out of the said 6 accused, 4 accused namely Paras Nath, Suresh, Mata Bada, Bigrail@Janardan were acquitted of the charge levelled against them for offences under Sections 147, 307/149, 379 I.P.C. and two accused namely Ram Palat and Bigranchoo (who were the appellants before this Court) were also acquitted of the charges levelled against them for offences under Sections 147, 307/149, 379 I.P.C. but were convicted for offence under Sections 323/149 I.P.C. and sentenced for it.

26. For the purpose of discussions, it would be relevant to state herein that out of the said two convicted accused, who had preferred appeal before this Court, one of the appellant being Ram Palat (appellant no. 1) died during pendency of this appeal before this Court and thus his appeal stood abated vide order dated 13.09.2022. In so far as acquittal of the accused for charges under Sections 147, 307/34, 379 I.P.C. is concerned, the same attained finality. Acquittal of 4 accused namely Paras Nath, Suresh, Mata Bada, Bigrail @ Janardan, is not under challenge. Even acquittal of the accused-appellants under the said charges is also not under challenge. The moot question thus which arises before this Court is as to whether only 02 (two) accused can be convicted by a court for an offence with the aid of Section 149 I.P.C. The prosecution case in the present matter is that seven (7) named persons were members of an unlawful assembly out of whom one (1) died during trial and then six (6) persons were tried out of whom four (4) have been acquitted and thus it raises a question as to whether after acquittal of four (4) persons it leaves open to the prosecution to rely upon Section 149 I.P.C. against the appellants (now only one (1) is surviving amongst the two (2)).

27. At this stage it would be relevant to revert back to Section 149 I.P.C. which deals with an offence, if committed by any member of an unlawful assembly in prosecution of common object of that assembly, or that such members of the assembly knew to be likely to be committed in the prosecution of that object wherein every person who at the time of committing of that offence, is a member of the same assembly, is guilty of that offence. Section 149 I.P.C. reads as under:-

“149. Every member of unlawful assembly guilty of offence committed in prosecution of common object. If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence.”

28. Unlawful assembly as referred to in Section 149 I.P.C. is defined in Section 141 I.P.C. which reads as under:-

“141. Unlawful assembly. - An assembly of five or more persons is designated an ‘unlawful assembly’, if the common object of the persons composing that assembly is-

First.-To overawe by criminal force, or show of criminal force, 11[the Central or any State Government or Parliament or the Legislature of any State], or any public servant in the exercise of the lawful power of such public servant; or

Second.-To resist the execution of any law, or of any legal process; or

Third.-To commit any mischief or criminal trespass, or other offence; or

Fourth.-By means of criminal force, or show of criminal force, to any person, to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, or of the use of water or other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right; or

Fifth.-By means of criminal force, or show of criminal force, to compel any person to do what he is not legally bound to do, or to omit to do what he is legally entitled to do.

Explanation.-An assembly which was not unlawful when it assembled, may subsequently become an unlawful assembly.”

29. Thus for constituting an unlawful assembly one of the main and important ingredient is that the said assembly should consist of 5 (five) or more persons.

30. The applicability of Section 149 I.P.C. has been discussed and explained by the Apex Court in the following cases:

A. Mohan Singh v. State of Punjab, 1962 SCC OnLine SC 82 (a five Judge Bench of the Apex Court):-

“8. The true legal position in regard to the essential ingredients of an offence specified by Section 149 are not in doubt. Section 149 prescribes for vicarious or constructive criminal liability for all members of an unlawful assembly where an offence is committed by any member of such an unlawful assembly in prosecution of the common object of that assembly or such as the members of that assembly knew to be likely to be committed in prosecution of that object. It would thus be noticed that one of the essential ingredients of Section 149 is that the offence must have been committed by any member of an unlawful assembly, and Section 141 makes it clear that it is only where five or more persons constituted an assembly that an unlawful assembly is born, provided, of course, the other requirements of the said section as to the common object of the persons composing that assembly are satisfied. In other words, it is an essential condition of an unlawful assembly that its membership must be five or more. The argument, therefore, is that as soon as the two Piara Singhs were acquitted, the membership of the assembly was reduced from five to three and that made Section 141 inapplicable which inevitably leads to the result that Section 149 cannot be invoked against the appellants. In our opinion, on the facts of this case, this argument has to be upheld. We have already observed that the point raised by the appellants has to be dealt with on the assumption that only five persons were named in the charge as persons composing the unlawful assembly and evidence led in the course of the trial is confined only to the said five persons. If that be so, as soon as two of the five named persons are acquitted, the assembly must be deemed to have been composed of only three persons and that clearly cannot be regarded as an unlawful assembly.

9. In dealing with the question as to the applicability of Section 149 in such cases, it is necessary to bear in mind the several categories of cases which come before the criminal courts for their decision. If five or more persons are named in the charge as composing an unlawful assembly and evidence adduced by the prosecution proves that charge against all of them, that is a very clear case where Section 149 can be invoked. It is, however, not necessary that five or more persons must be convicted before a charge under Section 149 can be successfully brought home to any members of the unlawful assembly. It may be that less than five persons may be charged and convicted under Section 302/149 if the charge is that the persons before the Court along with others named constituted an unlawful assembly; the other persons so named may not be available for trial along with their companions for the reason, for instance, that they have absconded. In such a case, the fact that less than five persons are before the Court does not make Section 149 inapplicable for the simple reason that both the charge and the evidence seek to prove that the persons before the Court and others number more than five in all and as such, they together constitute an unlawful assembly. Therefore, in order to bring home a charge under Section 149 it is not necessary that five or more persons must necessarily be brought before the court and convicted. Similarly, less than five persons may be charged under Section 149 if the prosecution case is that the persons before the Court and others numbering in all more than five composed an unlawful assembly, these others being persons not identified and so not named. In such a case, if evidence shows that the persons

before the Court along with unidentified and un-named assailants or members composed an unlawful assembly, those before the Court can be convicted under Section 149 though the un-named and un-identified persons are not traced and charged. Cases may also arise where in the charge, the prosecution names five or more persons and alleges that they constituted an unlawful assembly. In such cases, if both the charge and the evidence are confined to the persons named in the charge and out of the persons so named two or more are acquitted leaving before the court less than five persons to be tried, then Section 149 cannot be invoked. Even in such cases, it is possible that though the charge names five or more persons as composing an unlawful assembly, evidence may nevertheless show that the unlawful assembly consisted of some other persons as well who were not identified and so not named. In such cases, either the trial court or even the High Court in appeal may be able to come to the conclusion that the acquittal of some of the persons named in the charge and tried will not necessarily displace the charge under Section 149 because along with the two or three persons convicted were others who composed the unlawful assembly but who have not been identified and so have not been named. In such cases, the acquittal of one or more persons named in the charge does not affect the validity of the charge under Section 149 because on the evidence the Court of facts is able to reach the conclusion that the persons composing the unlawful assembly nevertheless were five or more than five. It is true that in the last category of cases, the court will have to be very careful in reaching the said conclusion. But there is no legal bar which prevents the court from reaching such a conclusion. The failure to refer in the charge to other members of the unlawful assembly un-named and un-identified may conceivably raise the point as to whether prejudice would be caused to the persons before the court by reason of the fact that the charge did not indicate that un-named persons also were members of the unlawful assembly. But apart from the question of such prejudice which may have to be carefully considered, there is no legal bar preventing the Court of facts from holding that though the charge specified only five or more persons, the unlawful assembly in fact consisted of other persons who were not named and identified. That appears to be the true legal position in respect of the several categories of cases which may fall to be tried when a charge under Section 149 is framed.

10. In this connection, we may refer to three representative decisions of this Court. In *Dalip Singh v. State of Punjab*, (1953) 2 SCC 36 this Court has held that before Section 149 can be applied, the Court must be satisfied that there were at least five persons sharing the common object. It has also been held that this does not mean that five persons must always be convicted before Section 149 can be applied. If the Judge concludes that five persons were unquestionably present and shared the common object, though the identity of some of them is in doubt, the conviction of the rest would be good. In that case, this Court took the view that the evidence adduced by the prosecution did not satisfactorily prove the fact that the unlawful assembly was composed of five or more persons, and so, Section 149 was held to be inapplicable. In other words, on facts relevant for the purpose of applying Section 149 this case is similar to the case with which we are concerned in the present appeal.

11. In *Bharwad Mepa Dana v. State of Bombay*, (1960) 2 SCR 172 this Court was dealing with a case where twelve named persons were charged with having formed an unlawful assembly with the common object of committing the murder of three persons. At the trial before the Sessions Judge, seven of the named persons were acquitted and five were convicted under Section 302/149 and Section 302/34. On appeal, the High Court acquitted one of the convicted persons but maintained the conviction and sentence passed on the rest. The validity of the said order of conviction and sentence was challenged before this Court on several grounds, one of which was

that Section 149 became inapplicable as soon as eight out of the twelve persons named as members of the unlawful assembly were acquitted. In rejecting this argument, this Court referred to the finding recorded by the High Court that the unlawful assembly in question consisted of ten to thirteen persons out of whom only four were identified and not the rest; and held that it was open to the High Court to come to such a finding. The argument which was urged against the validity of such finding was put alternatively in two forms. It was first contended that the prosecution case must be confined to the charge framed against the accused persons and the charge in the Sessions Court referred to twelve named persons as composing the unlawful assembly, and so, as soon as eight of them were acquitted, Section 149 became inapplicable. It was also urged that in coming to the conclusion that the unlawful assembly consisted of ten to thirteen persons, the High Court was making out a case of a new unlawful assembly and that was not permissible in a criminal trial. Both these arguments were repelled by this Court and it was held that there was no legal bar which prevented the High Court from coming to the conclusion that apart from the persons who were acquitted and excluding them, evidence adduced by the prosecution showed the presence of more than five persons who composed the unlawful assembly. The assembly about the existence of which the High Court has made a finding is not a new assembly but the same assembly as alleged by the prosecution. The only difference is that according to the charge, all the members of the assembly were alleged to be known, whereas on the evidence the High Court has reached the conclusion that the identity of all the members of the assembly has not been established, though the number of the members composing the assembly is definitely found to be five or more. It is on this reasoning that this Court confirmed the conviction of the appellants under Section 302/149. Thus, this decision illustrates how Section 149 can be applied even if two or more of the persons actually charged are acquitted.

12. The same principle has been enunciated by this Court in *Kartar Singh v. State of Punjab*, AIR 1961 SC 1787. According to this decision, it is only when the number of alleged assailants is definite and all of them are named and the number of persons found to be proved to have taken part in the incident is less than five, that it cannot be held that the assailants' party must have consisted of five or more persons. It is true that having stated this position, this Court has also observed that the fact that certain persons are named in the charge as composing an unlawful assembly, excludes the possibility of other persons to be in the said assembly especially when there is no occasion to think that the witnesses who named all the accused could have committed mistakes in recognising the assailants. It is on this observation that Mr Raghurir Singh relies. We, however, think that it would be unreasonable to read this statement as laying down an unqualified proposition that whenever persons named in the charge are alleged to constitute an unlawful assembly it is legally not permissible to the prosecution to prove during the trial that persons in addition to those named in the charge also were members of the said assembly. In other words, what this observation intends to suggest is that where persons named in the charge are alleged to compose an unlawful assembly, the Court of facts would be slow to come to the conclusion that persons other than those named in the charge were members of the said assembly. If, however, it appears on evidence that persons not so named in the charge were members of the unlawful assembly, there is no legal bar which prevents the courts from reaching that conclusion. This position can and does arise where some of the persons composing the unlawful assembly are not identified by the witnesses and they are not named. In fact, the decision in the case of *Kartar Singh* itself shows that this Court rejected the appellants' contention that their conviction under Sections 302 and 307, read with Section 149 was invalid. Therefore, we see no inconsistency between the

observations made in this case and the earlier decisions to which we have just referred. The result is that in the circumstances of the present case, the appellants are entitled to contend that Section 149 cannot be invoked against them.”

B. Subran v. State of Kerala : (1993) 3 SCC 32:-

“8. Admittedly, none of the accused persons individually had been charged for the substantive offence of murder under Section 302 IPC. In the trial court all the six accused were charge-sheeted for an offence under Section 302 read with Section 149 IPC. Other charges were also framed against the accused but only with the aid of Section 149 IPC. After the acquittal of the two accused, could the High Court convict appellant 1 for the substantive offence under Section 302 IPC (with which he had not been charged) and the appellants 2 to 4 for an offence under Sections 326/149 IPC?

9. Section 141 IPC defines an unlawful assembly to be an assembly of five or more persons, where the common object of the persons comprising that assembly is to commit any of the acts enumerated in the five clauses of that Section. Section 149 IPC reads as under:

“149. Every member of unlawful assembly guilty of offence committed in prosecution of common object. If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence.”

10. A combined reading of Section 141 and Section 149 IPC (supra) show that an assembly of less than five members is not an unlawful assembly within the meaning of Section 141 and cannot, therefore, form the basis for conviction for an offence with the aid of Section 149 IPC. The effect of the acquittal of the two accused persons by the High Court and without the High Court finding that some other known or unknown persons were also involved in the assault, would be that for all intent and purposes the two acquitted accused persons were not members of the unlawful assembly. Thus, only four accused could be said to have been the members of the assembly but such an assembly which comprises less than five members is not an “unlawful assembly” within the meaning of Section 141 IPC. The existence of an unlawful assembly is a necessary postulate for invoking Section 149 IPC. Where the existence of such an unlawful assembly is not proved, the conviction with the aid of Section 149 IPC cannot be recorded or sustained. The failure of the prosecution to show that the assembly was unlawful must necessarily result in the failure of the charge under Section 149 IPC. Consequently, the conviction of appellants 2 to 4 for an offence under Sections 326/149 IPC cannot be sustained and the same would be the position with regard to the conviction of all the appellants for other offences with the aid of Section 149 IPC also.

14. Coming now to the case of the other three appellants. Since, their conviction for an offence under Section 326 with the aid of Section 149 is not sustainable in law, we set aside their conviction under Sections 326/149 IPC. They would be responsible for their individual acts. The injuries caused by Rajan and Preman appellants 2 and 3, were with a torch, iron rod and a cycle chain. None of the injuries caused by them according to the post-mortem report were on any vital part of the body, though some of the injuries caused by blunt weapons were grievous in nature. We, therefore, convict each of the two appellants Rajan and Preman, for an offence under Section 325 IPC and sentence them to suffer rigorous imprisonment for two years each.

C. Mahendra v. State of M.P. : 2022 SCC OnLine SC 1348:-

“12. It may be noticed that the essential ingredients of Section 149 are that the offence must have been committed by any member of an unlawful assembly, and Section 141 makes it clear that it is only where five or more persons constituted an assembly that an unlawful assembly is born, provided, of course, the other requirements of the said section as to the common object of the persons composing that assembly are satisfied. To say in other words, it is an essential condition of an unlawful assembly that its membership must be five or more.

13. At the same time, it may not be necessary that five or more persons necessarily be brought before the Court and convicted. Less than five persons may be charged under Section 149 if the prosecution case is that the persons before the Court and other numbering in all more than five composed an unlawful assembly, these others being persons not identified and unnamed.

14. However, in the instant case, the persons are specifically named by the complainant and against them, after the investigation, charge-sheet was filed and all the 20 accused persons faced trial.

15. It was not the case of the prosecution that there are other unnamed or unidentified persons other than the one who are charge-sheeted and faced trial. When the other co-accused persons faced trial and have been given benefit of doubt and have been acquitted, it would not be permissible to take the view that there must have been some other persons along with the appellant in causing injuries to the victim. In the facts and circumstances, it was as such not permissible to invoke Section 149 IPC.

31. In the present matter although as per the prosecution case at the inception at the time of lodging of the F.I.R. 07 (seven) persons were made accused. Charge sheet was submitted against all the seven persons. During pendency of trial one of the said accused died (however this does not make any difference in the nomenclature of the incident). In the trial four (04) accused were acquitted of the charges levelled against them. Two appellants who had preferred this appeal were also acquitted of the charges levelled against them but were convicted for an offence under Section 323 I.P.C. with the aid of Section 149 I.P.C. This appeal thus has been preferred by them.

The several categories of cases which come before the criminal courts for their decision with regard to the essential ingredients of an offence specified by Section 149 I.P.C. can be listed as under:

- A. By any member of an unlawful assembly,
- B. It is only where five or more persons constituted an assembly that an unlawful assembly is born,
- C. The common object of the persons composing that assembly are satisfied.
- D. Five persons or more were named in the charge as persons composing the unlawful assembly and evidence led in the course of the trial is confined only to the said five persons or more.
- E. As soon as two of the five named persons are acquitted, the assembly must be deemed to have been composed of only three persons and that clearly cannot be regarded as an unlawful assembly.
- F. If five or more persons are named in the charge as composing an unlawful assembly and evidence adduced by the prosecution proves that charge against all of them.

G. The other persons so named may not be available for trial along with their companions for the reason, for instance, that they have absconded. In such a case, the fact that less than five persons are before the Court does not make Section 149 inapplicable.

H. In order to bring home a charge under Section 149 it is not necessary that five or more persons must necessarily be brought before the court and convicted. Similarly, less than five persons may be charged under Section 149 if the prosecution case is that the persons before the Court and others numbering in all more than five composed an unlawful assembly, these others being persons not identified and so not named. In such a case, if evidence shows that the persons before the Court along with unidentified and un-named assailants or members composed an unlawful assembly, those before the Court can be convicted under Section 149 though the un-named and un-identified persons are not traced and charged.

I. The prosecution names five or more persons and alleges that they constituted an unlawful assembly. In such cases, if both the charge and the evidence are confined to the persons named in the charge and out of the persons so named two or more are acquitted leaving before the court less than five persons to be tried, then Section 149 cannot be invoked. Even in such cases, it is possible that though the charge names five or more persons as composing an unlawful assembly, evidence may nevertheless show that the unlawful assembly consisted of some other persons as well who were not identified and so not named. In such cases, either the trial court or even the High Court in appeal may be able to come to the conclusion that the acquittal of some of the persons named in the charge and tried will not necessarily displace the charge under Section 149 because along with the two or three persons convicted were others who composed the unlawful assembly but who have not been identified and so have not been named. In such cases, the acquittal of one or more persons named in the charge does not affect the validity of the charge under Section 149 because on the evidence the Court of facts is able to reach the conclusion that the persons composing the unlawful assembly nevertheless were five or more than five.

J. The failure to refer in the charge to other members of the unlawful assembly un-named and un-identified may conceivably raise the point as to whether prejudice would be caused to the persons before the court by reason of the fact that the charge did not indicate that un-named persons also were members of the unlawful assembly. But apart from the question of such prejudice which may have to be carefully considered, there is no legal bar preventing the Court of facts from holding that though the charge specified only five or more persons, the unlawful assembly in fact consisted of other persons who were not named and identified.

32. The acquittal of four accused rendered Section 149 I.P.C. inapplicable in this case as only two accused were convicted.

33. In the present matter since no such situation arose warranting charging of the accused under Section 149 I.P.C. and none of the characters are involved this Court holds that the accused-appellants cannot be convicted with the aid of Section 149 I.P.C. as only two (2) accused were convicted by the trial court. This Court thus finds that the impugned judgement and order is totally illegal and such the same is hereby set aside.

34. The appeal is allowed.

Criminal Law - Appreciation of evidence - Procedural safeguards in recovery cases - Investigating agency must follow statutory procedure scrupulously - Failure to comply with safeguards affecting fairness of trial - Conviction set aside and appellant acquitted. (Paras 42, 43, 44, 45, 47)

Held: The question for consideration was whether the conviction under S. 25 Arms Act, 1959, was justified being founded on the same evidence that led to the acquittal of the appellant of the charge under Ss. 399/402 IPC - the trial court itself noted discrepancies in the evidence and acquitted the accused under Ss. 399/402 IPC on the ground that the witnesses could not have heard what the accused were discussing and thereby disbelieved the prosecution case to that extent - the court cannot act selectively and pick and choose between the evidence - no independent witness from the place around the place of arrest was examined though the place was adjacent to a busy road - the Ravangi GD entry was not proven by the prosecution and no cogent explanation was forthcoming for its non-production - no armourer or ballistic expert's report was produced to establish that the seized firearms were functional - sanction under S. 39 of the Arms Act is not a mere formality and it must be shown that the sanction was granted after applying mind - the sanction order suffers from infirmities and lacuna and cannot be upheld - the prosecution failed to prove that the seized arms were properly sealed at the time of recovery - there is no evidence on record to show that the objects recovered satisfied the definition of arm, ammunition or firearm as contained in the Arms Act - the absence of corroborative and technical evidence creates reasonable doubt and conviction under S. 25 Arms Act cannot be sustained merely on police testimony and that of an independent witness procured by the police - the judgment and order of conviction passed by the trial court is not sustainable and is liable to be set aside and the appellant is acquitted of the charge under S. 25 of the Arms Act – Appeal allowed. (Paras 20, 26-40, 45, 46, 47) (E-7)

Case Law Cited

State of Rajasthan v. Daulat Ram (AIR 1980 SC 1314); Buta Singh Vs State of Punjab, 1997 SCC (Cri.) 1217; D. K Basu v. State of W.B. (1997) 1 SCC 416; State of Punjab v. Baldev Singh, 1999 INSC 282 (Jul 21, 1999).

List of Acts

Arms Act, 1959; Code of Criminal Procedure, 1973; Indian Penal Code, 1860; Dacoity Affected Areas Act, 1981

List of Keywords

S. 25 Arms Act; S. 39 Arms Act; sanction to prosecute; due application of mind; recovery of illegal firearms; independent witness; Ravangi GD entry; ballistic expert report; armourer report; sealing of seized arms; authenticity of recovery; benefit of doubt; police testimony; acquittal under S.s 399/402 IPC; reasonable doubt; defective sanction; recovery evidence; acquittal

Case Arising From

APPELLATE JURISDICTION: Arising from the Judgment and order dated 27-05-1988 passed by the Court of Special Judge (Dacoity Affected Area Act), Police Station Sikandra, District Kanpur Dehat in consolidated Sessions Trial Case Nos. 133 to 136 of 1987 convicting the accused under S. 25 Arms Act and sentencing them to rigorous imprisonment for one year.

Appearances for Parties

Advs. for the Appellant:

Learned Counsel for the appellant Azad Singh.

Advs. for the Respondents:

Learned AGA for the respondents/State of U.P.

(Delivered by Hon'ble Achal Sachdev, J.)

1. The present criminal appeal had been preferred by the appellant Chandrapal Yadav, son of Nanha Singh and Azad Singh son of Ujagar Lal under s. 374(2) Cr.P.C., being aggrieved by the Judgment and order dated 27-05-1988 by which the appellant Chandrapal Yadav and Azad Singh, along with co accused/non appellant Sheo Dutt were convicted of the charge under s.25 Arms Act,1959, in consolidated Sessions Trial case number 133 to 136 of 1987, State Vs. Sheo Dutt & Others, under sections.25 Arms Act and ss.399/402 IPC. by the Court of Special Judge (Dacoity Affected Area Act), Police Station Sikandra, District Kanpur Dehat, and were sentenced to undergo rigorous imprisonment for a period of 1 year and no default sentence was imposed.

2. The appellants were acquitted of the Charges under s.399/402 IPC, and no State appeal has been filed against the order of acquittal. During the pendency of the appeal, the appellant Chandrapal Yadav died and by order dated 08-01-2026 of this court, the appeal against appellant number 1 Chandrapal son of Nanha Singh stands abated.

3. The appellant, along with one other co-accused, were arrested by a police party on receiving information from an informant that a few persons had assembled and were making preparations for committing dacoity in the house of someone. The other two co-accused had made good their escape from the place of assembly, who were identified by the leader of arresting police party, PW-2 SSO Chandrapal Singh. The accused Digvijay and Gopal Singh, who had earlier escaped from the spot, later on surrendered before the court. The arrest and recovery memorandum has been proved as Exhibit Ka'1 by the prosecution. The case was investigated, and charge sheets were submitted separately under s.399/402 IPC bearing case crime number 140/87 against accused Sheo Dutt, Chandrapal Yadav, Azad Singh, and Digvijay Singh on 27-10-87 before the Court of Special Judge(Dacoity Affected Areas)Act,1981, and cognizance of the offence under the sections was taken by the court on 16-11-87 and against accused Gopal Singh on 28-11-87 and cognizance was taken on 07-12-87. Charge sheet in case crime number 141/87 under the Arms Act was filed before the court of Special Judge(Dacoity Affected Areas)Act,1981 against the accused Sheo Dutt on 27-10-87, and cognizance was taken by the court on 16-11-87. Charge sheet in case crime number 142/87 under the Arms Act was filed before the court of Special Judge(Dacoity Affected Areas)Act, 1983 against the accused Chandrapal Yadav on 27-10-87 and cognizance was taken by the court on 16-11-87. Charge sheet in case crime number 143/87 under the Arms Act was filed before the court of Special Judge(Dacoity Affected Areas)Act, 1983, against the accused Azad Singh on 27-10-87, and cognizance was taken by the court on 16-11-87.

4. The accused appeared before the court, and charges were framed against the accused under sections 399/402 IPC in case crime number 140/87 and under section 25 Arms Act in case crime numbers 141/87. 142/87 and 143/87 respectively on 08-01-1988. The accused denied the charge and claimed to be tried.

5. The accused were on bail during the trial. The proceedings under s.399/402 IPC and those under s.25 Arms Act, against the three accused viz. Sheo Dutt, Chandrapal Yadav and Azad Singh were consolidated as they were founded on the same evidence.

6. The prosecution examined 4 witnesses in support of their case, the details of which are as follows: ?

Sl. No.	Name of Witness	Category (Formal/fact)	Exhibit proved
P.W.-1	S.I., Sharad Prasad Tripathi	Witness of facts and recovery	The scribe of the recovery and arrest memo has proved recoveries of gun and countrymade pistols from the arrested accused and cartridges, viz. From accused Sheo Dutt Gun, Gun as Exhibit-1 and 4, Cartridges as Exhibit-2 to 5. From accused Chandrapal, Country made pistol as Exhibit-6 and 3, cartridges as Exhibit-6 to 9. From accused Azad Singh, Country made pistol as Exhibit-10 and 2, Cartridges as Exhibit-11 to 13 and a Torch as Exhibit-14. Proved Chik FIR Exhibit-K-2, written by HC Krishnapal Shukla as secondary evidence.
P.W.-2	Chandrapal Singh, Station House Officer, Police Station, Sikandra.	Informant, witness of fact and recovery	as Exhibit Ka-1 (Arrest cum recovery memo of the accused Sheo Dutt, Chandrapal and Azad Singh).
P.W.-3	S.I. Rameshwar Singh	Investigating officer	Site Plan Exhibit Ka-3, Charge sheets, Exhibit Ka-7 to Exhibit Ka-12, Sanction orders of the District Magistrate, Exhibit Ka-4 to Exhibit Ka-6.
P.W.-4	Ram Suresh	Witness of fact and recovery	

Paper Exhibits

Exhibit Ka'1	Arrest and Recovery memorandum (Fard)
Exhibit Ka'2	Chik FIR

Exhibit Ka'3	Site Plan
Exhibit Ka'4	Sanction order accused Sheo Dutt in the case crime number 141/87
Exhibit Ka'5	Sanction order accused Chandrapal Yadav, in case crime number 142/87
Exhibit Ka'6	Sanction Orde accused Azad Singh in the case crime numbber 143/87
Exhibit Ka'7	Charge sheet Case Crime Number 140/87, against the accused Ship Dutt, Chandrapal Yadav, Azad Singh and Digvijay Singh, under section 399/402 IPC
Exhibit Ka'8	Charge Sheet Case Crime Number 141/87, under section 25, Arms Act, against the accused Sheo Dutt.
Exhibit Ka'9	Charge Sheet Case Crime Number 142/87, under section 25 Arms Act, against the accused Chandrapal Yadav
Exhibit Ka'10	Charge Sheet Case Crime Number 143/87, under section 25 Arms Act, against the accused Azad Singh
Exhibit Ka'11	Charge Sheet Case Crime Number 140/87, under section 25 Arms Act, against the accused Gopal Singh, under section 399/402 IPC
Exhibit Ka'12	GD No.4 case institution case crime number 140/87 to 143/87

Material Exhibits

Accused	Material Exhibit
Sheo Dutt	Exhibit 1- Gun & Exhibits 2 to 5 -Cartridges
Chandrapal	Exhibit-6 – Country made pistol (Tamancha) & Exhibits 7 to 9
Azad Singh	Exhibit-10 – Country made pistol (Tamancha) & Exhibits 11 to 13 – Cartridges & Exhibit-14 - Torch

7. After the conclusion of the prosecution's evidence, statements of the accused were recorded under s.313 Cr.P.C wherein the witnesses alleged false implication in the case by the police and have stated that no recovery of any firearm from their possession was made.

8. The accused were given an opportunity to give evidence in their defence but no evidence was produced.

9. Arguments were heard, and the trial court acquitted all accused of charges under Sections 399/402 of the IPC but convicted accused Sheo Dutt, Chandrapal Yadav and Azad Singh under Section 25 of the Arms Act. Hence the present appeal.

10. The State preferred no appeal against the order of acquittal of the appellant under s.399/402 IPC, and acquittal under Sections 399/402 IPC has attained finality.

11. PW-1 SI Sharda Prasad Tripathi, in his Examination in Chief, has stated that on 4/5-10-1987, he was posted as SI at Police Station Sikandara and at 10:05 pm, he received information from a Mukhbir that in the vicinity of, towards south of Sikandara Chauraha, a group of 5-6 persons was to assemble in a Berry Orchard and were preparing to commit dacoity in house of Mithesh Kumar of Sikandra and on information received, he, along with SO Sikandra(PW-3) and a contingent of Inspector Hari Shankar, HC Devi Charan and 7 other constables proceeded towards the spot and also procured the presence of Ram Suresh, Ravindra Kumar to the place indicated and when they reached the place near Microwave tower, they all divided themselves into three teams and surrounded the people assembled there and after a brief challenge, two of the five persons succeeded in escaping and three persons were arrested from the spot and illegal fire arms and cartridges were recovered from their possession. The three arrested persons were Sheo Dutt, Chandrapal and Azad Singh. The memorandum of recovery of the illegal weapons seized and arrest was prepared by him under the directions of the SO Chandrapal Singh(PW-2). The names of two persons who had escaped were disclosed by the arrested persons as Gopal Singh and Digvijay Singh.

12. PW-2 Chandra Pal Singh was the Station Officer on 5/6-10-1987 and led the police party to the place where he had arrested 3 persons from the spot, viz. Sheo Dutt, Chandrapal and Azad Singh, as per the information received, 5-6 persons were to assemble in preparation for dacoity and has proved recovery and arrest memorandum as Exhibit Ka'1.

13. PW-3 is the investigation officer of the case and has prepared the site plan of the place of recovery and arrest of accused, and has obtained sanction to prosecute co accused Sheo Dutt accused/appellant Chandrapal Yadav, Azad Singh and has filed charge sheets against the accused after concluding the investigation.

14. PW-4 is a witness of fact and in his examination in Chief, has stated that he was summoned by the SO Chandrapal Singh, when he had gone to the shop of one Rakesh, to accompany them, and there, he witnessed three accused being arrested from a place near the microwave tower by the police party while two persons had made good their escape. At around 11 pm at night he also witnessed the recovery of weapons made from the arrested persons. In his cross-examination, the witness stated that he did not know the accused persons prior to the day of arrest, and no test identification was conducted by him in regard to the accused Gopal Singh and Digvijay Singh. In his cross-examination, the witness stated that the place of arrest was 3-4 furlongs from the police station Sikandra, and the orchard abuts a road where traffic moves 24 hrs.

15. Heard learned Counsel for the appellant Azad Singh and learned AGA for the respondents/State of UP and perused the record.

16. The appellant along with the other two co-accused Chandrapal and Sheo Dutt was convicted of an offence under Section 25 of the Arms Act, and acquitted of the charge under Section 399/402 IPC. Hence the present appeal.

17. Learned counsel for appellant has submitted that the appellant, along with other co-accused in aforesaid case crime number, have been falsely implicated in the case and the fact of false implication is strengthened by factum of acquittal recorded by the trial court acquitting the appellant of charge under sections 399/402 IPC by reaching a conclusion that in absence of independent corroborative evidence in regard to the fact that the appellant, along with the other co-accused, had assembled in preparation to commit offence of dacoity but conviction of appellant on same evidence under s.25 of Arms Act manifests non application of Judicial Mind, is total ignorance of the fact that there was no independent witness of recovery of the alleged illegal fire arms from possession of the appellant and there was no report of ballistic expert to corroborate the fact that the recovered fire arms were in a functional state to classify them as weapon. The fact of the matter is that the police had wrongly roped in the appellant as accused due to personal grudge that the police had against the accused persons.

18. Learned AGA has strongly contradicted the arguments forwarded by the counsel for the appellant and has submitted that the trial court has rightly convicted the appellant of charge under s.25 Arms Act, 1959, as the fact of possession of illicit firearms by the appellant is substantiated by evidence and the recovery of weapons is duly proved and the sanction to prosecute was granted by the District Magistrate after due examination of weapons and due application of mind.

19. Perusal of the judgment of the trial court shows that the trial court has acquitted the accused of the charge under sections 399/402 IPC and no appeal has been preferred by the State against the order of acquittal and the order of acquittal under sections has attained finality.

20. Now the question that comes up for consideration is as to whether the conviction of the appellant under section 25 Arms Act, 1959, is justified, being founded on the same evidence that led to the acquittal of the appellant of the charge under section 399/402 IPC ?

21. Perusal of the record of the trial court reveals that the prosecution did not tender the Ravangi GD and the report of the ballistic expert in evidence before the trial court.

22. The question now arises as where the prosecution's case rests solely on the recovery of alleged illegal firearms and cartridges from the physical possession of the accused, to what extent it would affect the prosecution's case?

23. Learned counsel argued that the conviction under Section 25 of the Arms Act is unsustainable, as it rests on the same evidence which led to the acquittal under Sections 399/402 IPC. He emphasised that the PW-4 Ram Suresh is a chance witness or rather a witness procured by the police to lend credence to the proceeding although the place of arrest is an orchard adjacent to a busy road, but the recovery memo nowhere suggests that the arresting party had made an effort to obtain evidence of people passing by and the dacoits, though armed, did not fire at the police party to save themselves from arrest and to escape. Absence of independent witnesses, non-production of Ravangi GD entries before the court and absence of ballistic verification create serious doubts regarding the prosecution's case. It was submitted that the trial court's approach, while convicting the appellant under s.25 Arms Act reflects the non-application of the judicial mind.

24. Learned AGA contended that the conviction was rightly recorded. He argued that the recovery of illicit firearms was duly proved, the weapons were produced before the court, and sanction to prosecute was granted by the District Magistrate after due examination and application of mind. The learned AGA further submits that the prosecution's case is substantiated by the recovery of illegal arms and ammunition from the appellant and the non-production of Ravangi GD before the trial Court is merely a lapse on the part of the prosecution, and the appellant will not get any advantage.

25. Perusal of record shows that the prosecution's case rests on police testimony and the testimony of sole independent witness, PW-4 Ram Suresh, who was summoned by the police before arresting the alleged miscreants/dacoits, and he was with the police from 10:15 pm onwards and remained with the police till ten minutes after the arrest of the appellant. In his cross-examination, the witness stated that he had heard the accused persons talking for around 45 minutes and had supported the prosecution's case. As per the recovery memorandum Exhibit Ka'1 and evidence of PW-2, the accused Digvijay and Gopal Singh, who were able to escape from the spot, were known to the SO Chandrapal Singh since before the incident which led to registration of the present case and were identified by him while escaping.

26. The trial Court Judge, in its Judgment, himself noted discrepancies in the evidence of PW-1, PW-2 and PW-4 regarding what had transpired between the accused while they were planning and preparing to commit dacoity on the date of arrest of the accused persons, and the trial court has acquitted the appellant and the accused Sheo Dutt and the other two accused of charges under s.399/402 IPC on the ground that the witnesses were at such a distance that they could not have heard what the accused were discussing and thereby disbelieved the prosecution's case to that extent and did not find evidence of an independent witness worthy to convict the accused under section 399/402 IPC. The court cannot act selectively and pick and choose between the evidence.

27. No independent witness from the place around the place of arrest was examined, though recovery allegedly took place late at night from a secluded place, but the place is adjacent to a busy road. The Ravangi GD entry, which is a procedural safeguard against fabrication, was not proven by the prosecution and is not on record, and no cogent explanation has been forthcoming from the prosecution side for non-production thereof. No armourer or ballistic expert's report was produced to establish that the seized firearms were functional. Insofar as the sanction to prosecute under s.39 of the Arms Act is concerned, the prosecution has proved the same as Exhibit Ka'4 to Exhibit Ka 5.

28. So far as the question of grant of sanction is concerned, mere filing of a document along with other papers submitted at the time of police report, cannot be said to be a proper compliance with giving evidence to prove the requirement of Section 39 of the Arms Act. Section 39 of the Arms Act provides that a previous sanction of the District Magistrate is necessary for the prosecution against any person in respect of any offence under Section 39. Sanction under Section 29 of the Arms Act is not a mere formality. It has to be proved that it was granted by the District Magistrate after applying his mind. It must be shown that the firearm or weapon with respect to which the sanction was prayed was actually taken to the authority concerned, and after looking at the relevant papers, understanding and after applying his mind, the sanction was granted.

29. In the present case, there is no due application of mind by the sanctioning authority. It must appear from the sanction order itself that actually application of mind has been made, and the Officer granting the sanction order was fully aware of the facts of the case. It does not speak any word about the date on which the offence was committed, the manner in which the accused was arrested or the manner of making search and seizure and recovery of the arms. Sanctioning the prosecution of a person could not be an act to issue a licence for the sale of arms or any commodity, as is done by the officers of the Executive.

30. At this juncture, **Section 3(4) Cr.P.C.** assumes relevance and is being reproduced below ?

"s.3(4) Where, under any law, other than this Code, the functions exercisable by a Magistrate relate to matters-

(a) which involve the appreciation or sifting of evidence or the formulation of any decision which exposes any person to any punishment or penalty or detention in custody pending investigation, inquiry or trial or would have the effect of sending him for trial before any Court, they shall, subject to the provisions of this Code, be exercisable by a Judicial Magistrate; or

(b) which are administrative or executive in nature, such as, the granting of a licence, the suspension or cancellation of a licence, sanctioning prosecution or withdrawing from a prosecution, they shall, subject as aforesaid, be exercisable by an Executive Magistrate."

31. Order granting Sanction under s.39 of the Arms Act, 1959, an act which forms part of the judicial function of an officer of the Executive, which is defined by Section 3(4) of the Cr.P.C. It might be an administrative executive action, but the function ultimately being of putting a person on trial for a particular offence, it could really be quasi-judicial in nature, which could have an administrative tinge. It was required that the District Magistrate, Kanpur Dehat, ought to have indicated facts of the case and other details of it sufficiently in his sanction order, to indicate that the order has been passed on due application of mind, but the sanction order suffers from infirmities and lacuna, and it cannot be upheld.

32. The Investigating officer of the case, PW-3 Rameshwar Singh, in his examination in chief, has stated that he had obtained the Sanction orders to prosecute on 26-10-87, and he nowhere states that he had produced the recovered seized weapons before the District Magistrate in a sealed state for his examination at the time of obtaining the sanction order.

33. The recovery memorandum Exhibit Ka'1 shows that the weapons and cartridges recovered were sealed separately on the spot but the fact that the weapons were produced in sealed state is not verifiable from the statement of PW-1 or PW-2 and nowhere it is mentioned, either in the recovery memorandum or statements of PW-1, PW-2 or PW-4 as to whose seal had been applied on the sealed items and the seals have not been produced before the trial court for its examination and comparison with seals that had been applied to the seized weapons and cartridges.

34. Production of seal is necessary before the trial court to establish authenticity of recovery. Non-production is generally fatal unless corroborated by strong independent evidence. The seal impression must be produced in court and compared with the seal on seized property. If seals are not produced, courts presume possibility of tampering, and benefit of doubt goes to the accused.

35. The prosecution's failure to prove that the seized arms were properly sealed at the time of recovery is a serious evidentiary lapse. Courts have consistently emphasized that sealing is not a mere formality?it is a safeguard against tampering, substitution, or fabrication of material evidence. Since conviction under Section 25 Arms Act hinges on authenticity of recovery, absence of sealing proof undermines the prosecution's case. In firearm cases, this lapse is compounded if there is also no armourer/ballistic report or no independent witnesses, making conviction under the Arms Act highly vulnerable.

36. Hon'ble Supreme Court, in the case of **State of Rajasthan v. Daulat Ram (AIR 1980 SC 1314)**, wherein recovery of contraband opium was the subject matter in issue, held that the failure to prove proper sealing and safe custody of seized contraband fatally undermines the prosecution case, as it creates a serious doubt about tampering or substitution. This principle has since been applied to Arms Act cases as well, and the Court held that the absence of proof regarding sealing and safe custody of seized articles creates a fatal gap in the prosecution case.

37. The trial Court has ignored the aforementioned important aspects regarding the procedure that the arresting officer was to comply at the time of recovery. The whole process of recovery of alleged illegal arms and ammunition and sanction of prosecution comes under the shadow of doubt.

38. There is no evidence on record to show that the investigating officer asked for sanction, and nothing has been brought on record to suggest that the country-made pistol was made available to the District Magistrate at the time of granting sanction under section 39 of the Arms Act. The investigating officer nowhere states that he had produced the recovered items in a sealed state before the District Magistrate. Perusal of the sanction order clearly reveals the fact of the absence of a description of the weapons that were produced before the District Magistrate, and in the absence thereof, the court comes to the conclusion that the sanction to prosecute was given mechanically, without due application of mind and is unreliable and defective, but the same was not considered by the trial court.

39. In the present case, the objects allegedly seized from the appellant were not sent for any expert opinion, either to any ballistic expert or to any armourer. There is no evidence about the recovered articles sent for an FSL report or opinion of a ballistic expert to ascertain whether the bullet could have been fired from the recovered weapon. There is no evidence on record to show that the objects recovered from the appellant satisfied the definition of "arm" ", ammunition", or "firearm" as contained in the Arms Act.

40. Thus, the absence of corroborative and technical evidence creates reasonable doubt. Conviction under Section 25 Arms Act cannot be sustained merely on police testimony and that of an independent witness who has been procured by the police from the very onset when police received the information that a few miscreants were to assemble at a particular place, without making any effort to obtain independent witnesses of arrest and recovery near the place of arrest, when the place abuts a busy road with ongoing traffic, particularly when the same evidence was found insufficient to prove the charge under Sections 399/402 IPC.

41. Hon'ble Supreme Court, in the case of **Buta Singh Vs State of Punjab, 1997 SCC (Cri.) 1217**, in para 4, has observed that -

"4. We need not detain ourselves to consider the statements of PW 1 and PW 2, the recovery witnesses, as we find that the prosecution's case suffers from a serious infirmity in this case. The objects allegedly seized from the appellant were not sent for any expert opinion, either to the ballistic expert or to any armourer. There is no evidence on the record to show that the objects recovered from the appellant satisfied the definition of "arm" "ammunition" or "firearm" as contained in the Arms Act. In the absence of any such evidence, the conviction of the appellant cannot be sustained. This appeal consequently succeeds and is allowed. The conviction and sentence of the appellant are set aside, and he is hereby acquitted."

42. Hon'ble Supreme Court, in the case of **D. K Basu v. State Of W.B . (1997) 1 SCC 416** opined: "We are conscious of the fact that the police in India have to perform a difficult and delicate task, particularly in view of the deteriorating law and order situation, communal riots, political turmoil, student unrest, terrorist activities, and among others the increasing number of underworld and armed gangs and criminals. Many hard-core criminals like extremists, terrorists, drug peddlers, smugglers who have organized gangs, have taken strong roots in society. It is being said in certain quarters that with more and more liberalisation and enforcement of fundamental rights, it would lead to difficulties in the detection of crimes committed by such categories of hardened criminals by soft peddling interrogation. It is felt in those quarters that if we lay too much of emphasis on the protection of their fundamental rights and human rights, such criminals may go scot-free without exposing any element or iota of criminality, with the result that the crime would go unpunished and in the ultimate analysis, the society would suffer. The concern is genuine, and the problem is real. To deal with such a situation, a balanced approach is needed to meet the ends of justice. This is all the more so in view of the expectation of society that police must deal with criminals in an efficient and effective manner and bring to book those who are involved in the crime. The cure cannot, however, be worse than the disease itself."

43. In the case of **State of Punjab v. Baldev Singh, 1999 INSC 282 (Jul 21, 1999)**, in para 57, sub-para 4, the Hon'ble Supreme Court has drawn a conclusion that ?

"(4) That there is indeed a need to protect society from criminals. The societal intent in safety will suffer if persons who commit crimes are let off because the evidence against them is to be treated as if it does not exist. The answer, therefore, is that the investigating agency must follow the procedure as envisaged by the statute scrupulously, and the failure to do so must be viewed by the higher authorities seriously, inviting action against the official concerned so that the laxity on the part of the investigating authority is curbed. In every case, the result is important, but the means to achieve it must remain above board. The remedy cannot be worse than the disease itself. The legitimacy of the judicial process may come under a cloud if the court is seen to condone acts of lawlessness conducted by the investigating agency during search operations, and may also undermine respect for the law and may have the effect of unconscionably compromising the administration of justice. That cannot be permitted. An accused is entitled to a fair trial. A conviction resulting from an unfair trial is contrary to our concept of justice. The use of evidence

collected in breach of the safeguards provided by Section 50 at the trial would render the trial unfair."

44. The principles laid down in the aforementioned case laws are guiding principles that the trial courts must adhere to while scrutinizing recovery evidence, be it in an Arms Act case or a case involving narcotics, and so on and so forth.

45. In the light of the above discussion, the judgment and order of conviction passed by the trial court is not sustainable and is liable to be set-aside.

46. Hence, criminal appeal filed by appellant, Azad Singh is **allowed**.

47. The judgment and order dated 27.05.1988 of the trial court convicting the appellant under Section 25 of the Arms Act, is hereby set-aside, and the appellant is acquitted of the said charge.

48. The appellant, Azad Singh, is already on bail. He need not surrender. His bail bonds are cancelled and sureties are discharged.

49. Let a copy of this judgment and order be sent to the trial court along with the trial court record for information and necessary compliance.

(2026) 4 ILRA 230
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 29.04.2026

BEFORE

THE HON'BLE SIDDHARTH, J.
THE HON'BLE JAI KRISHNA UPADHYAY, J.

Criminal Appeal No. 1618 of 2008

Ajai Pal
State of U.P.

...Appellant
Versus
...Respondent

Issue for Consideration

Matter pertains to whether the conviction of the appellant under Ss. 364A, 302 and 201 IPC and S. 25 of the Arms Act could be sustained on the basis of circumstantial evidence, namely recovery of the deceased's kurta, alleged recovery of ransom money, recovery of weapon, and test identification parade, when the appellant was not named in the FIR, no disclosure statement was recorded prior to recovery, the FSL report did not conclusively connect the weapon with the crime, and the identification proceedings were alleged to be vitiated. (Paras 12-21)

Headnotes

Criminal Law - Circumstantial Evidence - Conviction based on recoveries and identification - Indian Evidence Act, 1872 - S. 27 - Requirement of disclosure statement leading to discovery - Recovery of deceased's kurta allegedly at instance of accused - No disclosure statement of

appellant recorded before recovery - Without recorded statement proving information supplied by accused, discovery becomes a simple recovery - Recovery rendered doubtful and prosecution failed to establish discovery in accordance with law. (Paras 14-15)

Criminal Law - Murder and Kidnapping for Ransom - Recovery of weapon - Forensic evidence - FSL report not conclusively linking recovered pistol with pellets recovered from body - Expert only stating that it was "possible" that pellets were from recovered pistol - Legally insufficient to connect weapon with murder - Benefit of doubt available to accused. (Para 16)

Criminal Law - Recovery of articles - Ransom money - Requirement of proving nexus between recovered currency and crime - Currency notes being unidentifiable articles of common use - No identification marks, serial numbers, stains or other distinguishing features proved - Prosecution failed to establish recovered amount as exact ransom money - Recovery could not legally be treated as ransom money. (Para 17)

Criminal Law - Evidence - Recovery proceedings - non-examination of independent witnesses - Independent witnesses to recovery available but not produced before trial court - Creates doubt regarding authenticity of recovery and prosecution version. (Para 16)

Criminal Law - Test Identification Parade - Evidentiary value - Identification parade intended only as corroborative evidence - Duty of prosecution to establish accused was kept *baparda* and not shown to witnesses before TIP - Investigating Officer failed to state that appellant was kept veiled while in custody or on remand - Contention that witnesses had seen appellant before TIP gained substantial weight - Evidentiary value of TIP diminished. (Paras 18-20)

Criminal Law - Circumstantial Evidence - Complete chain of circumstances - Conviction - Entire prosecution case resting on circumstantial evidence - Omission to record disclosure statement, failure to link ransom money, insufficient proof regarding pellets and weapon, and vitiated identification process - Chain of circumstances not complete - Findings of trial court not in conformity with evidence on record - Conviction unsustainable and liable to be set aside. (Paras 21-22)

Held: The prosecution failed to prove the recovery of the deceased's kurta in accordance with S. 27 of the Evidence Act, as no disclosure statement of the appellant was recorded prior to the alleged recovery. (Paras 14-15)

The FSL report did not conclusively connect the recovered pistol with the pellets found in the deceased's body, and non-examination of independent recovery witnesses created further doubt. (Para 16)

The prosecution failed to establish any nexus between the recovered ₹40,000 and the alleged ransom amount, as the currency notes were not identifiable. (Para 17)

The prosecution also failed to prove that the appellant was kept *baparda* before the test identification parade, thereby diminishing the evidentiary value of the identification proceedings. (Paras 18-20)

Since the prosecution case rested entirely on circumstantial evidence and the chain of circumstances was incomplete, the conviction was held unsustainable. The impugned judgment was set aside and the appellant was acquitted of all charges. **Appeal allowed.** (Paras 21-23) (E-7)

Case Law Cited

Subramanya v. State of Karnataka, (2023) 11 SCC 255; *Mohd. Inayatullah v. State of Maharashtra*, (1976) 1 SCC 828; 1976 SCC (Cri) 199; *Earabhadrapa v. State of Karnataka*, (1983) 2 SCC 330; 1983 SCC (Cri) 447; *Pulukuri Kotayya v. King Emperor*, 1946 SCC OnLine PC 47: (1946-47) 74 IA 65; AIR 1947 PC 67; *Dudh Nath Pandey v. State of U.P.*, (1981) 2 SCC 166; 1981 SCC (Cri) 379; *Bodhraj v. State of J&K*, (2002) 8 SCC 45 : 2003 SCC (Cri) 201; *State of Maharashtra v. Damu*, (2000) 6 SCC 269; 2000 SCC (Cri) 1088; *Mahmood v. State of U.P.* (1976) 1 SCC 542; *Mulla v. State of U.P.*, (2010) 3 SCC 508; *Matru v. State of U.P.* [(1971) 2 SCC 75 : 1971 SCC (Cri) 391]; *Santokh Singh v. Izhar Hussain* [(1973) 2 SCC 406 : 1973 SCC (Cri) 828]; *Gireesan Nair v. State of Kerala*, (2023) 1 SCC 180; *C. Muniappan v. State of T.N.*, (2010) 9 SCC 567; (2010) 3 SCC (Cri) 1402; *State of H.P. v. Lekh Raj*, (2000) 1 SCC 247; 2000 SCC (Cri) 147; *Lal Singh v. State of U.P.*, (2003) 12 SCC 554 : 2004 SCC (Cri) Supp 489; *Suryamoorthi v. Govindaswamy*, (1989) 3 SCC 24 : 1989 SCC (Cri) 472; *Sk. Umar Ahmed Shaikh v. State of Maharashtra*, (1998) 5 SCC 103 : 1998 SCC (Cri) 1276; *Chunthuram v. State of Chhattisgarh*, (2020) 10 SCC 733 : (2021) 1 SCC (Cri) 9; *Ramkishan Mithanlal Sharma v. State of Bombay*, (1955) 1 SCR 903

: AIR 1955 SC 104; Rajesh Govind Jagesha v. State of Maharashtra, (1999) 8 SCC 428 : 1999 SCC (Cri) 1452.

List of Acts

Indian Penal Code, 1860; Code of Criminal Procedure, 1973; Indian Evidence Act, 1872; Arms Act, 1959

List of Keywords

Circumstantial evidence; disclosure statement; discovery; S. 27; recovery; kurta; ransom money; country-made pistol; FSL report; pellets; test identification parade; TIP; baparda; identification proceedings; recovery memo; independent witnesses; benefit of doubt; chain of circumstances; acquittal; conviction; kidnapping for ransom; murder

Case Arising From

APPELLATE JURISDICTION: Criminal Appeal arising from the judgment and order dated 28.02.2008 passed by the Additional Sessions Judge/Fast Track Court No. 2, Pilibhit in S.T. No. 28 of 2003 (Case Crime No. 86/02) under Ss. 364A/302/201 IPC, S.T. No. 28-B of 2003 under Ss. 364A/302/201 IPC and S.T. No. 31 of 2003 (Case Crime No. 125/02) under S. 25 of the Arms Act, whereby the appellant was convicted and sentenced under Ss. 364A, 302 and 201 IPC and S. 25 of the Arms Act.

Appearances for Parties

Advs. for the Appellant:

Sri Abhishek Kumar Jaiswal, Advocate (appointed by High Court Legal Services Committee)

Advs. for the Respondents:

Sri Pawan Kumar Srivastava, learned AGA for the State.

(Delivered by Hon'ble Jai Krishna Upadhyay, J.)

1. The trial of the accused persons-Ajaypal, Ahlakar, and Awdhesh was conducted jointly under Sessions Trial Nos. 28 of 2003 and 28-B of 2003 and the trial of the accused Pawan was conducted under Sessions Trial No. 12 of 2003, in connection with Case Crime No. 86 of 2002 under Sections 364-A, 302, and 201 IPC. Additionally, separate trials were conducted for the accused Awdhesh under Sessions Trial No. 29 of 2003 (Case Crime No. 109/02, under Section 25 Arms Act), and for the accused Ajaypal under Sessions Trial No. 31 of 2003, Case Crime No. 125 of 2002, under Section 25 Arms. Act); these proceedings were based on the charge sheets submitted to the court by the police of Police Station Deoria Kalan, District Pilibhit. Since all the above cases are related to the same prosecution and the entire prosecution evidence has been presented by the prosecution in the case file pertaining to Sessions Trial No. 28 of 2003, (State vs Jugendra Singh & Ors).

2. Vide judgment and order dated 28.02.2008 passed by Additional Sessions Judge/Fast Track Court No. 2, Pilibhit, the charges levelled against accused persons Ahalkar, Awadhjesh Gujar and Pawan Kumar U/s 364A, 302 and 201 IPC and separate charge sheet submitted against accused Awadhesh U/s 25 of the Arms Act were not substantiated by the evidence available on record and in absence of solid and credible evidence, the accused persons Ahaklar, Pawan Kumar, Awadhesh Gujar were acquitted of the charges levelled against them having been given benefit of doubt. The accused Ajaypal was found guilty U/s 364A, 302 and 201 IPC as well as charge U/s 25 of the Arms Act. Hence the instant appeal is preferred by accused/appellant Ajaypal only.

3. Heard Sri Abhishek Kumar Jaiswal, Advocate appointed by High Court Legal Services Committee, Sri Pawan Kumar Srivastava, learned AGA for the State and perused the trial court record and also judgment of the trial court.

4. The instant criminal appeal has been preferred against the judgment and order dated 28.02.2008 passed by Additional Sessions Judge/Fast Track Court No. 2, Pilibhit in S.T. No. 28 of 2003 (Case Crime No. 86/02) under Sections 364A/302/201 IPC. ST No. 28B of 2003 (Case Crime No. 86/02) U/s 364A/302/201 & ST No. 31/03 (Case Crime No. 125/02), U/s 25 Arms Act, P.S. Deoria Kalan, District - Pilibhit (State Vs. Ajay Pal) convicting the appellant for an offence, U/s 364A IPC for imprisonment of life and a fine of Rs. 5000/- in default of payment 3 years additional imprisonment, U/s 302 IPC for imprisonment of life and a fine of Rs. 5000/- in default of payment 3 years additional R.I., U/s 201 IPC for imprisonment of 5 years and a fine of Rs., 2000/- in default of payment one-year additional R.I. and U/s 25 of Arms Act for imprisonment of 3 years R.I. and a fine of Rs. 1000/- in default of payment 6 months additional R.I. All the sentences will run concurrently.

5. Prosecution case in nutshell is as follows: -

(i) The complainant Ramesh Chandra Gupta has given a written complaint (Ex-ka-1) to the SHO, PS- Deoria Kalan, to the effect that on 21.03.02, at 4.30 pm, his brother, Suresh Chand Gupta was returning home from Bhatta (brick kiln) on his Hero Honda motorcycle. On the way, at the canal bridge of Bada gaon, a white coloured Maruti van bearing number UP 14/9119 was parked there, three men and a woman with short hair cut came out of the Van and they stopped his brother and took him away in that Maruti van which was seen by many people. They would identify them, if appear before them.

(ii) According to the complainant, his brother Suresh Chand was kidnapped at 5 o'clock. On the basis the written complaint, submitted by the complainant, an First Information Report was lodged on the very same day on 21.03.2002 at 18:20 pm bearing Case No. 86/02 at Deoria Kalan Police Station under Section 364A IPC. The FIR is marked as Ex-ka-2./. Investigation was subsequently initiated. During the investigation, on 30.04.2002, the Investigating Officer ensured to arrest three accused persons namely Awdhesh Gujar, Harish Shankar and Kamini Kasyap and recovered a Maruti van bearing No. UP 26A/8125 and an illegal country made pistol of 315 bore. At the same time, other accused involved in the incident came to light. Thereafter, during the further investigation on 06.05.2002, a kurta (belonging to the deceased), an illegal country-made pistol, and a ransom amount of '49,500 were recovered from the possession of the accused, Jugendra Gujar. From the accused, Ajaypal, a ransom amount of '40,000 and the weapon used in the murder were recovered. Furthermore, a ransom amount of '18,000 was recovered from the possession of the accused, Omveer. Thus, the Investigating Officer prepared the site plans-delineating the location from where the deceased was abducted, the scene where the body of the deceased, Suresh Chand Gupta, was recovered, the place of the accused's arrests and the recovery of the murder weapons (pistols), and the location where the Maruti van was recovered-and prepared the Panchayatnama (inquest report) and post-mortem report of the deceased.

(iii) The Investigating Officer identified a total of 10 accused persons involved in the case; consequently, a charge sheet was submitted to the court for trial against accused Nos. 1 to 9

(including Jugendra) following their arrest, and against the accused Guddu Yadav, who remained absconding.

(iv) Thereafter, the Magistrate took cognizance of the case after receiving the charge-sheet against the accused Jugendra and ors. on 29.07.2002, and providing the copies to the accused persons U/s 207 CrPC and finding the case to be exclusively triable by the Court of Sessions, the case of the accused Pawan was committed to the Court for trial on 03.01.2003, and the cases of the remaining accused-Jugendra, Awdhesh, Ajaypal, Ahlakar, and Omveer-were committed on 14.01.2003.

(v) Pursuant to the order dated 14.01.2003, passed by the Chief Judicial Magistrate, Pilibhit, directions were issued to separate the case files of three accused persons namely Kamini Kashyap, Veerpal @ Chhote, and Harishankar, from the original case record and to forward them to the Principal Judge, Juvenile Court, Bareilly, for trial, as a result of their being juvenile delinquents. Furthermore, a charge sheet was submitted against another accused, Guddu Yadav, while he was absconding and neither he appeared before the court nor has he been arrested and produced before the court.

(vi) During the course of the trial, the proceedings against the accused persons Jugendra and Omveer have stood abated due to their demise. And currently, the case remains pending for adjudication against only four accused persons-Ajaypal, Awdhesh, and Ahlakar and Pawan.

(vii) The Court framed charges on 09.05.2003, against the accused-Ajaypal, Awdhesh, and Pawan-as well as against Jugendra (deceased) and Omveer (deceased), under Sections 364A, 302/34, and 201 of IPC. Additionally, separate charges were framed against the accused Ajaypal and Awdhesh under Section 25 of the Arms Act. The accused denied the charges levelled against them and claimed trial.

6. The prosecution has examined a total of 16 witnesses from among those proposed in the charge sheet. The details of their evidence are as follows: -

6.1. PW-1, Head Moharrir, Ramdas, has stated that on 21.3.2002, he was posted as Head Moharrir at PS Deoria kalan. On that day at 18:20 pm, on the basis of the written complaint filed by the complainant Ramesh Chand Gupta, he had prepared the copy of the report which is Ex-ka-2 (entered in GD) and chik FIR which is Ex-ka-1 A) related to the case crime no. 86/02 u/s 364A IPC in his hand-writing and signature.

6.2. PW-1 A, Ramesh Chand Gupta, the complainant and informant, stated that he lodged the FIR (Ex-ka-A) regarding the kidnapping of his real brother, Suresh Chand Gupta. He stated that on March 21, 2002, at 4:30 p.m., while returning home from his brick kiln on a motorcycle, he observed a white Maruti van bearing number UP 14/9119, parked at the Bada village canal culvert. Inside the van were three men and a woman with short hair. At approximately 5:00 p.m., these individuals kidnapped his brother and fled in the vehicle. The witness was informed of the incident by witnesses Ramu, Ajay, Babu Ram, Om, and Prakash, after which he lodged the FIR (Paper ka4/2) at the Deoria Kalan Police Station. He also stated that on March 25, 2002, Satyapal, the clerk of his brick kiln, showed him a ransom letter (Paper 9/1 and 9/2) instructing the witness to wear a white kurta-pyjama and a red scarf and meet at the bridge ahead of Mala station. Upon arriving there with Satyapal, a short, dark-complexioned man led them into the forest where they met three other armed men. Two men surrounded him from behind while two stood in front,

demanding '15 lakh. After pleading, the ransom was settled at '8 lakh, to be paid on the Friday of Holi. The witness noted that two of the four men appeared to be neighbors and identified them in court. On the agreed Friday, he returned to the location with Satyapal on a motorcycle, carrying '5,37,000 in a black bag, but no one arrived to collect the money. Following this, a towel, spectacle case, documents, and another letter were found at the Bhagwatipur canal bridge. The letter claimed the miscreants did not appear because the witness had brought the police and directed him to Shamshipur village for the payment. On April 1st, the witness and seven or eight other villagers arrived at Budhana Bridge in a Tata Sumo with the '5,37,000. The miscreants met Babu Ram and Om Prakash at Shamshipur, took the money, and promised to release Suresh at the Bhadariya turn. When his brother failed to return after five days of waiting, the witness informed the Sub-Inspector. On May 6, 2002, the dead body of Suresh Chand Gupta was found. Subsequently, on June 19, 2002, the witness attended a jail identification parade where he correctly identified the accused: Jugendra, Ajaypal, Omveer, and Kamini Kashyap.

6.3. PW-2, Ramu Gupta, stated that he knew the deceased, Suresh Chand Gupta. On March 21, 2002, while traveling to Bareilly in a Gypsy with Satish Gupta and Mahip Singh, they stopped at Madhavapur around 1:00 p.m. to fill air in the tires. There, he observed a white Maruti van near the distillery; two men were outside eating eggs, while a man and a girl with short hair were sitting inside. All appeared to be outsiders. Upon returning from Bareilly at approximately 5:30 p.m., he learned in Deoria Kalan that miscreants in a Maruti van had kidnapped Suresh Chand Gupta about half an hour earlier at the Bada village canal culvert. At 5:45 p.m. that same day, he informed Ramesh Chandra Gupta about the van and the individuals he had seen in Madhavapur. The witness later attended identification proceedings at the District Jail, Pilibhit, where he identified the accused Jugendra Gujar, Kamini Kashyap, and Ajaypal. Subsequently in another identification proceedings, he identified Veerpal and Harishankar. Pointing to the accused present in court, he identified Jugendra and Ajaypal by name.

6.4. PW-3, Om Prakash, stated that he worked at the brick kiln of Mahipal Singh, who was in partnership with the kidnapped victim, Suresh Chand Gupta. Following the receipt of a ransom letter, the witness traveled to Budhanapul, District Shahjahanpur, on April 1, 2002, in a Marshall vehicle and a motorcycle. Leaving the vehicle at Budhanapul, he and Babu Ram carried '5,37,000 in a black bag to Shamshipur Ghat as instructed. After crossing the river around 4:00 p.m., they encountered three miscreants, while two others remained hidden behind trees. The miscreants directed them to a specific location with a Paakad tree and a high-plinth well on Gadhia Road to deliver the money. He and Babu Ram handed over the black bag containing the '5,37,000 to the three miscreants. Upon receiving the ransom, the men claimed Suresh Gupta would be released at Gadaria Mod, Bisalpur, at 1:00 a.m. that night. However, when the witness and his companion reached the location, Suresh was not there. The witness later identified two of the miscreants during an identification parade at District Jail, Pilibhit. Identifying the accused present in court, the witness confirmed that the individual, who identified himself as Ajaypal, was among the miscreants present when the money was taken.

6.5. PW-4, Rajnish Sharma, the Sub-District Magistrate who conducted the identification proceedings, stated that on June 19, 2002, he presided over the identification of the accused, Jugendra Gujar, Awadhesh Gujar, Ajaypal, Omveer, and Kamini Kashyap at the District Jail,

Pilibhit. He stated that witness Ajay Singh correctly identified Ajaypal and Kamini Kashyap; witness Ramu Gupta identified Jugendra Gujar, Ajaypal, Omveer, and Kamini Kashyap; and witness Satish Gupta identified Awadhesh Gujar and Kamini Kashyap. Witness Babu Ram correctly identified only Omveer, while witness Om Prakash identified Jugendra and Ajaypal. Witness Rakesh Kumar failed to identify any of the accused. The witness proved the identification memo (Ex-Ka-3), confirming it was prepared in his own handwriting and bears his signature.

6.6. PW-5, Satish Gupta, stated that the deceased, Suresh Chand Gupta, was his cousin. On March 21, 2002, at approximately 1:00 p.m., while traveling toward Bareilly with Ramu Gupta, they stopped at Madhwapur to inflate their tires. Near a distillery, he observed a white Maruti van (UP 14/9119) containing two men eating eggs and a dusky-complexioned girl with short hair sitting inside; he noted they all looked like outsiders. Upon returning that evening, he learned that Suresh had been kidnapped at the Bada village canal culvert just half an hour prior. Approximately three months later, he attended identification proceedings at the Pilibhit jail, where he identified three of the five accused: Awadhesh, Omveer, and Kamini Kashyap. He confirmed he had seen them only twice'once before the kidnapping and once during the jail identification. In court, the witness identified the accused Awadhesh, noting that the other accused, including the female, were not present.

6.7. PW-6, Dr. Saubhagya Prakash, the Medical Officer at District Hospital, Pilibhit, stated that he conducted the post-mortem examination on the body of Suresh Chand Gupta on May 7, 2002, at 12:30 p.m.

General Examination: The body was approximately one month old, of average build, with rigor mortis completely subsided. Advanced decomposition was evident: soft parts were missing, eyeballs were absent, and the face was reduced to a skull. The skin had decayed and whitened in places, four teeth were missing from the upper right jaw, hair had fallen out, and maggots were present.

Ante-Mortem Injuries:

1. *A circular wound mark measuring 2.5 cm x 2.5 cm, extending deep to the cavity, located on the right side of the abdomen approximately 5 cm above the navel, with surrounding blackening present.*

2. *A circular wound measuring 3 cm x 3 cm, deep to the cavity, and was situated on the right side of the abdomen, towards the midline, 16 cm above the navel.*

3. *An incised wound, measuring 9 cm x 3 cm deep to the cavity, was present on the right side of the chest, 11 cm below the right nipple.*

Upon internal examination of the wounds, the organs (brain, lungs, heart, intestines, kidneys, spleen, and liver) were found to have undergone liquefaction. Fractures were detected in the 9th, 10th, and 11th ribs on the right side. Eight pellets and wads were recovered from the abdomen. The witness concluded that the cause of death was shock and hemorrhage resulting from firearm injuries. The post-mortem report (Ex-Kh-3A) was prepared in his own handwriting.

6.8. PW-7, Senior Sub-Inspector, stated that on 24.03.2003, he was posted as SHO at Deoria Kalan, succeeding SI Yashpal Singh. After initial searches in March 2002, he interrogated witnesses Satish and Shriram Gupta on 04.04.2002. On 06.04.2002, the complainant submitted

ransom letters marked as Exhibits Kha/9/1 to Kha/9/4. Acting on the information of the informer, police intercepted a Maruti Van bearing number UP 26A/8125 at 2:25 AM on 30.04.2002, arresting Avdhesh Gujar, Harishankar Verma, and Kamini. From Avdhesh, a 315-bore rifle (Material Ex-1) and cartridges (Material Ex-2 and 3) were seized. From Harishankar, a 315-bore pistol (Material Ex-4) and cartridges (Material Ex-5 and 6) were recovered. Arrest and recovery memos were marked Ex-ka-3B. He stated that when the aforementioned three accused persons were interrogated separately, they led the police to the specific spot marked as 'A' in Gadha Range, where a blood-stained leaf was recovered (Ex-Ka-4 and site map Ex-Ka-5). Following the arrest of accused Ahlakar on 01.05.2002, the witness raided the residences of Jugendra Gujar, Ajaypal, and Pawan. On 06.05.2002, Jugendra Gujar was apprehended with an unlicensed 315 bore pistol and a '50 note, leading to charges under Sections 364A, 302, 201 IPC and under Section 25 Arms Act (Ex-Ka-6). A 315 bore rifle and 12 bore pistols were proved as Material Ex-7 and 8. At Jugendra's instance, Suresh Chand Gupta's body was recovered in Gadha Forest (Ex-Ka-7 and site map Ex-Ka-8). They also facilitated the recovery of '49,500/- in ransom money (Ex-Ka-9) site map (Ex-Ka-11) and photocopies (Ex-Ka-10). After recording statements from Veerpal and Ajaypal, the witness led the recovery of the deceased's kurta on 18.05.2002 (Ex-Ka-12) and site map (Ex-Ka-13). Ajaypal further led police to his house, unearthing a 12 bore pistol (Ex-Ka-14) and '40,000/- in ransom money (Ex-Ka-15) and site map (Ex-Ka-16). On 20.05.2002, accused Omveer was arrested with '18,000/- ransom money (Ex-Ka-17). In court, the witness identified '40,000/- in photocopies from Ajaypal (Material Ex-11 and 12), '18,000/- from Omveer (Material Ex-13 and 14), Ajaypal's 12 bore pistol Material (Ex-15), and the deceased's green kurta Material (Ex-16). The witness was transferred on 29.05.2002.

6.9. PW-8, Ramji Lal, final investigating officer stated that in June 2002, he took over the investigation of the case from the previous Investigating Officer, P.K. Sharma, while serving as the SHO at Deoria Kalan. He conducted identification proceedings for the accused persons, Jugendra, Awadhesh, Ajay Pal, Omveer, Kamini Kashyap, Harishankar, Veerpal alias Chhota, and Pawan Kumar, and dispatched seized articles to the Forensic Science Laboratory (FSL) in Agra. Following the investigation, he submitted a charge sheet (C.S. No. 71/02), proved as Ex-K-18, and a separate charge sheet against Pawan Kumar, proved as Ex-Ka-19. He identified the handwriting and signatures of P.K. Sharma on the site maps for the victim's "kurta" (Ex-Ka-20) and the recovery of the murder weapon and ransom money (Ex-Ka-21). He also confirmed that the identification of the accused Pawan was conducted on July 29, 2002. Furthermore, he proved the scientific reports from the FSL regarding the soil and blood-stained leaves (Ex-Ka-22) and the firearms and pellets (Ex-Ka-23).

6.10. PW-9, Constable Jitendra Pal Singh, stated that on May 7, 2002, he was serving as a Constable Clerk at the Deoria Kalan Police Station. On that day, based on a memo from SHO P.K. Sharma, he prepared the Chik FIR for Crime No. 117/02 under Section 25 of the Arms Act and recorded the General Diary (G.D.) entry, both in his own handwriting; these were proved as Ex-Ka-24 and Ex-Ka-25, respectively. On May 18, 2002, he similarly prepared the Chik FIR and G.D. entry for Crime No. 125/02, proved as Ex-Ka-26 and Ex-Ka-27. Additionally, testifying as a secondary witness, he identified the handwriting and signatures of the Constable Clerk Mahendra Singh. He affirmed that the Chik FIRs and G.D. entries for Crime Nos. 109/02 to 111/02, involving

the accused Awadhesh Gujar and Harishankar Verma, were written by Mahendra Singh and proved them as Ex-Ka-31 and Ex-Ka-32.

6.11. PW-10, H.C.P. Israr Ali, stated that on May 18, 2002, he was posted at the Deoria Kalan Police Station and was assigned the investigation of Case No. 125/02 against Ajaypal under Section 25 of the Arms Act. After recording statement of witnesses and preparing a site plan of the incident spot, he submitted a charge sheet against the accused. The witness proved the charge sheet as Ex-Ka-28, the site plan as Ex-Ka-29, and the formal prosecution sanction issued by the District Magistrate as Ex-Ka-30.

6.12. PW-11, Sub-Inspector Puland Singh, stated that on May 6, 2002, while conducting vehicle checks at the Manpur T-junction, he intercepted a Maruti Van approaching from Bilsanda around 12:40 PM. The driver, identified as Veerpal alias Chhote, son of Tularam confessed that he and his accomplices had used that specific van to abduct Suresh Gupta eight days before Holi. The witness took the accused and the vehicle (Registration No. UP 14/9119), which was linked to Case Crime No. 86/02 under Section 364-A IPC, into police custody. He prepared and signed the seizure memo at the spot, which he identified and proved as Exhibit Ka-33.

6.13. PW-12, Sub-Inspector Vishanram Arya, stated that on 7.05.2002 he was posted as sub-inspector at Police Station Deoria Kalan entrusted with the investigations of Crime Nos. 109/02, 110/02, and 117/02 under Section 25 of the Arms Act against accused Avdhesh, Harishankar, and Jugendra Gujar, respectively. During the investigation, he recorded witness statements and prepared a site map of recovery for Avdhesh and Harishankar in his own handwriting (Ex-Ka-34). He proved the prosecution sanction order for Avdhesh Gujar (Ex-Ka-35) and the corresponding charge sheet (Ex-Ka-36). Regarding the country-made pistol recovered from Jugendra, he proved the site map prepared at the complainant's indication (Ex-Ka-37), the prosecution sanction order (Ex-Ka-38), and the charge sheet submitted against Jugendra (Ex-Ka-39).

6.14. PW-13, Sub-Inspector Yashpal Singh, stated that on 21.03.2002 he was posted as Sub-Inspector at the Police Station Deoria kalan and the case was registered in his presence. He initiated the investigation by communicating the information to all district police stations via wireless setup. On March 22, 2002, he recorded the complainant's statement and interrogated witnesses at the place of occurrence in Bargaon. He proved the site map of the occurrence, prepared in his own handwriting, as Ex-Ka-26. He noted that the further investigation was subsequently taken over by Station In-charge P.K. Mishra.

6.15. PW-14, Sub-Inspector Yashveer Singh, stated that on May 6, 2002; while serving as Station In-charge at Gajraula, he received a written complaint regarding the body of Suresh Kumar Gupta, which was located in the Gadha Range forest. He proceeded to the spot and conducted the inquest proceedings in the presence of witnesses (Panchan). The inquest report, dictated to H.C.P. Ranveer Singh, was proved as Ex-Ka-40. He also proved the related police documents, including the challan of the dead body (Ex-Ka-41), letter to R.I. (Ex-Ka-42), photograph of the body (Ex-Ka-43), letter to C.M.O. (Ex-Ka-44), Form No. 33 (Ex-Ka-45), and the sample seal (Ex-Ka-46). Following the inquest, the body was dispatched for post-mortem examination.

6.16. PW-15, Constable Badshah Singh, stated that on April 30, 2002, he was posted at Police Station Deoria Kalan, along with Station In-charge P.K. Sharma. On the same day at approximately 2:25 a.m., they arrested accused persons Awadhesh Gujar and Harishankar, who were found in possession of a 315-bore country-made rifle, a 315-bore country-made pistol, and several cartridges. Additionally, they apprehended Kamini Kashyap, a wanted accused in the kidnapping of Suresh Chand Gupta. The recovery and arrest memo (Ex-Ka-3-Ba) was prepared on the spot by P.K. Sharma. The witness identified and proved this document as evidence against the three accused.

6.17. PW-16, Awadhesh Kumar Tiwari, the then S.D.M. stated that on July 29, 2002; while serving as the Sub-District Magistrate in Pilibhit, he conducted a test identification parade for the accused Pawan Kumar son of Jhankar Singh, in connection with case no. 86\02 under section 364 IPC at the Government Observation Home. Witnesses Ajay Singh and Ramu Gupta correctly identified Pawan Kumar during the parade. The witness proved the identification memo (Ex-Ka-48), confirming it was prepared in his own handwriting.

7. Thereafter the statements of the accused persons, Awadhesh Gujar, Ahlakar, Ajaypal, and Pawan were recorded under Section 313 of the Cr.P.C. The accused denied all allegations, labeling the entire prosecution story as false. They specifically challenged the integrity of the identification proceedings, claiming the process was flawed because the witnesses had already seen and identified them prior to the official parade.

8. The accused persons were provided an opportunity to present evidence in their defence. In defence only Ajay Pal and his father, Ganga Ram (DW-1), were examined. Ganga Ram testified that his son, Ajaypal, is innocent and was falsely implicated. Regarding the '40,000 recovered from Ajaypal, Ganga Ram claimed the money was intended for his daughter's marriage. He explained that '20,000 had been raised by mortgaging land to Ram Vilas, while the remaining '20,000 was borrowed from his brother-in-law, Omkar. He asserted that the police staged a fake recovery of the cash to provide merit to a false case.

9. By the impugned judgment, learned trial Court has convicted and sentenced the appellant, hence this appeal is preferred by appellant Ajay Pal.

10. Learned counsel for the appellant has made the following submissions: -

(a) The appellant is neither named in the FIR nor he had abducted the deceased - Suresh Chandra Gupta, brother of the complainant and there was no evidence against the appellant while lodging the FIR by the complainant.

(b) No disclosure statement of appellant has been recorded before recovery of 'kurta' of the deceased.

(c) The recovery of alleged 'ransom money' as well as weapon are fabricated and have been falsely shown from the possession of the appellant.

(d) The witnesses were shown the appellant prior to the identification, and the Investigating Officer failed to confirm that the appellant's face was veiled (baparda) while in police custody or at the station.

(e) The witnesses of alleged recovery namely Anil Kumar Gupta and Jitendra Kumar Gupta were not produced before the trial Court.

(f) The Forensic Science Laboratory (FSL) report does not give definite opinion that the pellets recovered from body of the deceased were from the alleged country made pistol.

11. On the other hand, learned AGA for the State supporting the impugned judgment, has submitted as follows:

(a) The recovery memo regarding weapon used in the murder (Ex. Ka-14) was related to appellant Ajay Pal has been proved by Investigating Officer, P.K. Sharma (PW-7) and it was also proved by him that ransom money of Rs. 40,000/-was recovered from the 'kothari' on the indication of the appellant.

(b) The 'kurta' of the deceased was recovered at the instance of the appellant.

(c) The FSL report indicates that it is possible that the pellets recovered from the body of the deceased were from the recovered country made pistol.

(d) There is no infirmity or illegality in the impugned judgment and order. The trial court has rightly convicted the accused-appellant.

(e) The prosecution has proved its case beyond reasonable doubt; therefore, this appeal lacks merit and is liable to be dismissed.

12. We have considered rival contentions and have perused the trial court record in the light of raised contentions. Admittedly entire foundation of the prosecution's case against the appellant rests upon circumstantial evidence, specifically subsequent recoveries and identification during the trial.

13. It is evident from the record that the appellant, Ajaypal, was not named in the First Information Report (FIR). The complainant, Ramesh Chandra Gupta, lodged the FIR against unknown persons who were seen in a white Maruti van. At the time of the report, there was no specific evidence or information linking the appellant to the abduction of the deceased. His name and alleged involvement only surfaced much later during the police investigation.

14. The prosecution relies on the recovery of the deceased's 'kurta' at the instance of appellant as a key link in the case. We find that no disclosure statement of appellant was recorded before the recovery of such 'kurta'. Keeping in mind the aforesaid evidence, we proceed to consider whether the prosecution has been able to prove and establish the discovery in accordance with the law. Hon'ble Apex Court in the case of **Subramanya v. State of Karnataka, (2023) 11 SCC 255** held that:

'76. Section 27 of the Evidence Act reads thus:

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

81. The conditions necessary for the applicability of Section 27 of the Act are broadly as under:

(1) *Discovery of fact in consequence of an information received from accused;*
 (2) *Discovery of such fact to be deposed to;*
 (3) *The accused must be in police custody when he gave information; and*
 (4) *So much of information as relates distinctly to the fact thereby discovered is admissible* ‘ Mohd. Inayatullah v. State of Maharashtra [Mohd. Inayatullah v. State of Maharashtra, (1976) 1 SCC 828: 1976 SCC (Cri) 199]. Two conditions for application:

(1) *information must be such as has caused discovery of the fact; and*
 (2) *information must relate distinctly to the fact discovered* ‘ Earabhadrapa v. State of Karnataka [Earabhadrapa v. State of Karnataka, (1983) 2 SCC 330: 1983 SCC (Cri) 447] .

83. *The scope and ambit of Section 27 of the Evidence Act were illuminatingly stated in Pulukuri Kotayya v. King Emperor [Pulukuri Kotayya v. King Emperor, 1946 SCC OnLine PC 47: (1946-47) 74 IA 65: AIR 1947 PC 67], which have become locus classicus, in the following words: (SCC OnLine PC: AIR p. 70, para 10).*

‘10. ‘ it is fallacious to treat the ‘fact discovered’ within the section as equivalent to the object produced; the fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this, and the information given must relate distinctly to this fact. Information as to past user, or the past history, of the object produced is not related to its discovery in the setting in which it is discovered. Information supplied by a person in custody that ‘I will produce a knife concealed in the roof of my house’ does not lead to the discovery of a knife; knives were discovered many years ago. It leads to the discovery of the fact that a knife is concealed in the house of the informant to his knowledge, and if the knife is proved to have been used in the commission of the offence, the fact discovered is very relevant. But if to the statement the words be added ‘with which I stabbed A’ these words are inadmissible since they do not relate to the discovery of the knife in the house of the informant.’

84. *What emerges from the evidence of the investigating officer is that the appellant-accused stated before him while he was in custody, ‘I may get discovered the murder weapon used in the incident’. This statement does not indicate or suggest that the appellant-accused indicated anything about his involvement in the concealment of the weapon. It is a vague statement. Mere discovery cannot be interpreted as sufficient to infer authorship of concealment by the person who discovered the weapon. He could have derived knowledge of the existence of that weapon at the place through some other source also. He might have even seen somebody concealing the weapon, and, therefore, it cannot be presumed or inferred that because a person discovered the weapon, he was the person who had concealed it, least it can be presumed that he used it. Therefore, even if discovery by the appellant is accepted, what emerges from the substantive evidence as regards the discovery of weapon is that the appellant disclosed that he would show the weapon used in the commission of offence.*

85. *In Dudh Nath Pandey v. State of U.P. [Dudh Nath Pandey v. State of U.P., (1981) 2 SCC 166: 1981 SCC (Cri) 379] , this Court observed that the evidence of discovery of pistol at the instance of the appellant cannot, by itself, prove that he who pointed out the weapon wielded it in the offence. The statement accompanying the discovery was found to be vague to identify the authorship of concealment and it was held that pointing out of the weapon may, at the best, prove the appellant's knowledge as to where the weapon was kept.*

86. *Thus, in the absence of exact words, attributed to an accused person, as statement made by him being deposed by the investigating officer in his evidence, and also without proving*

the contents of the panchnama, the High Court was not justified in placing reliance upon the circumstance of discovery of weapon.

87. *In the aforesaid context, we may also refer to a decision of this Court in Bodhraj v. State of J&K [Bodhraj v. State of J&K, (2002) 8 SCC 45 : 2003 SCC (Cri) 201] , as under : (SCC pp. 58-59, para 18).*

'18. ' It would appear that under Section 27 as it stands in order to render the evidence leading to discovery of any fact admissible, the information must come from any accused in custody of the police. The requirement of police custody is productive of extremely anomalous results and may lead to the exclusion of much valuable evidence in cases where a person, who is subsequently taken into custody and becomes an accused, after committing a crime meets a police officer or voluntarily goes to him or to the police station and states the circumstances of the crime which lead to the discovery of the dead body, weapon or any other material fact, in consequence of the information thus received from him. This information which is otherwise admissible becomes inadmissible under Section 27 if the information did not come from a person in the custody of a police officer or did come from a person not in the custody of a police officer. The statement which is admissible under Section 27 is the one which is the information leading to discovery. Thus, what is admissible being the information, the same has to be proved and not the opinion formed on it by the police officer. In other words, the exact information given by the accused while in custody which led to recovery of the articles has to be proved. It is, therefore, necessary for the benefit of both the accused and the prosecution that information given should be recorded and proved and if not so recorded, the exact information must be adduced through evidence. The basic idea embedded in Section 27 of the Evidence Act is the doctrine of confirmation by subsequent events. The doctrine is founded on the principle that if any fact is discovered as a search made on the strength of any information obtained from a prisoner, such a discovery is a guarantee that the information supplied by the prisoner is true. The information might be confessional or non-inculpatory in nature but if it results in discovery of a fact, it becomes a reliable information. It is now well settled that recovery of an object is not discovery of fact envisaged in the section. Decision of the Privy Council in Pulukuri Kotayya v. King Emperor [Pulukuri Kotayya v. King Emperor, 1946 SCC OnLine PC 47 : (1946-47) 74 IA 65 : AIR 1947 PC 67] is the most-quoted authority for supporting the interpretation that the 'fact discovered' envisaged in the section embraces the place from which the object was produced, the knowledge of the accused as to it, but the information given must relate distinctly to that effect. (See State of Maharashtra v. Damu [State of Maharashtra v. Damu, (2000) 6 SCC 269: 2000 SCC (Cri) 1088] .) No doubt, the information permitted to be admitted in evidence is confined to that portion of the information which 'distinctly relates to the fact thereby discovered'. But the information to get admissibility need not be so truncated as to make it insensible or incomprehensible. The extent of information admitted should be consistent with understandability. Mere statement that the accused led the police and the witnesses to the place where he had concealed the articles is not indicative of the information given.'

15. Therefore, Under Section 27 of the Indian Evidence Act, only the specific information given by an accused that leads directly to the discovery of a fact is admissible in court. Without a recorded statement to prove the appellant actually provided this information, the discovery becomes a simple recovery. As no disclosure statement was recorded in the instant matter, it

becomes highly doubtful that recovery of the 'kurta' was actually made at his instance or it was planted.

16. Further, as per prosecution, a country-made pistol was recovered from Ajaypal (Ex. Ka-14) but the Forensic Science Laboratory (FSL) reports (Ex. Ka-22 and Ka-23) could not positively match the pellets found in the deceased's body to the recovered pistol. The expert only stated it was "possible" that the pellets found in the body were from the recovered pistol, which is legally insufficient to link the weapon to the murder. In **Mahmood v. State of U.P. (1976) 1 SCC 542**, when the expert's report is vague or provides no definite opinion, the accused cannot be linked to the murder, and the benefit of the doubt must go to the accused. It is to be noted that although two independent witnesses (Anil Kumar Gupta and Jitendra Kumar Gupta) were mentioned in the recovery memo, the prosecution never brought them to court to testify. This omission created a doubt as to the authenticity of such recovery. It is settled law that non-examination of independent witnesses to a recovery, especially when they are available, creates a doubt in the prosecution's version.

17. Regarding the recovery of '40,000 from the appellant, the prosecution is mandated to prove a clear 'nexus' between the recovered object and the alleged crime. It is a settled principle of law that currency notes are unidentifiable articles of common use; therefore, unless the prosecution can prove that the specific notes recovered carried unique identification marks, such as recorded serial numbers, distinctive stains, or other markings, that match the description of the ransom, the recovery remains unsubstantiated. In the instant matter, since there is no identification as to the currency notes and the prosecution has failed to establish that the recovered amount is the exact money given by the witnesses to the accused person, it cannot be legally held that the recovered amount was ransom money. In 2000s, while '40,000 was a significant sum, it was not an "impossible" amount for a citizen to possess, and the burden remains on the prosecution to prove the criminal origin of the money. Hence, we do not find merit in this contention of learned A.G.A..

18. Finally, a primary pillar of the prosecution's case was the identification of the appellant. It has been contended by the learned counsel for the appellant that the witnesses were deliberately shown the appellant prior to the formal identification proceedings, thereby vitiating the entire process. This contention gains substantial weight from the glaring omission in the testimony of the Investigating Officer, PW-7, who completely failed to state that the appellant was kept veiled (Baparda) when he was taken on remand or while he was at the police station. As established by the Hon'ble Supreme Court in the case of **Mulla v. State of U.P., (2010) 3 SCC 508** has held:

'43. As was observed by this Court in Matru v. State of U.P. [(1971) 2 SCC 75 : 1971 SCC (Cri) 391] identification tests do not constitute substantive evidence. They are primarily meant for the purpose of helping the investigating agency with an assurance that their progress with the investigation into the offence is proceeding on the right lines. The identification can only be used as corroboration of the statement in court. (Vide Santokh Singh v. Izhar Hussain [(1973) 2 SCC 406 : 1973 SCC (Cri) 828].)

44. The necessity for holding an identification parade can arise only when the accused persons are not previously known to the witnesses. The whole idea of a test identification parade is that witnesses who claim to have seen the culprits at the time of occurrence are to identify them

from the midst of other persons without any aid or any other source. The test is done to check upon their veracity. In other words, the main object of holding an identification parade, during the investigation stage, is to test the memory of the witnesses based upon first impression and also to enable the prosecution to decide whether all or any of them could be cited as eyewitnesses of the crime.

45. The identification proceedings are in the nature of tests and significantly, therefore, there is no provision for it in the Code and the Evidence Act, 1872. It is desirable that a test identification parade should be conducted as soon as possible after the arrest of the accused. This becomes necessary to eliminate the possibility of the accused being shown to the witnesses prior to the test identification parade. This is a very common plea of the accused and, therefore, the prosecution has to be cautious to ensure that there is no scope for making such allegation. If, however, circumstances are beyond control and there is some delay, it cannot be said to be fatal to the prosecution.'

19. Recently in the case of **Gireesan Nair v. State of Kerala, (2023) 1 SCC 180**, Hon'ble Apex Court reiterated that:

'28. We may, at the outset, note that the eyewitnesses questioned by the prosecution did not give out the names or identities of the accused participating in the riot and involved in the destruction of public property. Therefore, the IO (PW 84) had to necessarily conduct a TIP. The object of conducting a TIP is threefold. First, to enable the witnesses to satisfy themselves that the accused whom they suspect is really the one who was seen by them in connection with the crime. Second, to satisfy the investigating authorities that the suspect is the real person whom the witnesses had seen in connection with the said occurrence. Third, to test the witnesses' memory based on first impression and enable the prosecution to decide whether all or any of them could be cited as eyewitnesses to the crime (Mulla v. State of U.P. [Mulla v. State of U.P., (2010) 3 SCC 508, paras 44, 45 & 55 : (2010) 2 SCC (Cri) 1150]).

29. TIPs belong to the stage of investigation by the police. It assures that investigation is proceeding in the right direction. It is a rule of prudence which is required to be followed in cases where the accused is not known to the witness or the complainant (Matru v. State of U.P. [Matru v. State of U.P., (1971) 2 SCC 75, para 17 : 1971 SCC (Cri) 391] ; Mulla v. State of U.P. [Mulla v. State of U.P., (2010) 3 SCC 508, paras 41 & 43 : (2010) 2 SCC (Cri) 1150] and C. Muniappan v. State of T.N. [C. Muniappan v. State of T.N., (2010) 9 SCC 567, para 42 : (2010) 3 SCC (Cri) 1402]). The evidence of a TIP is admissible under Section 9 of the Evidence Act. However, it is not a substantive piece of evidence. Instead, it is used to corroborate the evidence given by witnesses before a court of law at the time of trial. Therefore, TIPs, even if held, cannot be considered in all the cases as trustworthy evidence on which the conviction of an accused can be sustained (State of H.P. v. Lekh Raj [State of H.P. v. Lekh Raj, (2000) 1 SCC 247, para 3 : 2000 SCC (Cri) 147] and C. Muniappan v. State of T.N. [C. Muniappan v. State of T.N., (2010) 9 SCC 567, para 42 : (2010) 3 SCC (Cri) 1402]).

31. In cases where the witnesses have had ample opportunity to see the accused before the identification parade is held, it may adversely affect the trial. It is the duty of the prosecution to establish before the court that right from the day of arrest, the accused was kept 'baparda' to rule out the possibility of their face being seen while in police custody. If the witnesses had the opportunity to see the accused before the TIP, be it in any form i.e. physically, through

photographs or via media (newspapers, television, etc.), the evidence of the TIP is not admissible as a valid piece of evidence (Lal Singh v. State of U.P. [Lal Singh v. State of U.P., (2003) 12 SCC 554 : 2004 SCC (Cri) Supp 489] and Suryamoorthi v. Govindaswamy [Suryamoorthi v. Govindaswamy, (1989) 3 SCC 24 : 1989 SCC (Cri) 472]).

32. If identification in the TIP has taken place after the accused is shown to the witnesses, then not only is the evidence of TIP inadmissible, even an identification in a court during trial is meaningless (Sk. Umar Ahmed Shaikh v. State of Maharashtra [Sk. Umar Ahmed Shaikh v. State of Maharashtra, (1998) 5 SCC 103 : 1998 SCC (Cri) 1276]). Even a TIP conducted in the presence of a police officer is inadmissible in light of Section 162 of the Code of Criminal Procedure, 1973 (Chunthuram v. State of Chhattisgarh [Chunthuram v. State of Chhattisgarh, (2020) 10 SCC 733 : (2021) 1 SCC (Cri) 9] and Ramkishan Mithanlal Sharma v. State of Bombay [Ramkishan Mithanlal Sharma v. State of Bombay, (1955) 1 SCR 903 : AIR 1955 SC 104]).

34. It is for the prosecution to prove that a TIP was conducted in a fair manner and that all necessary measures and precautions were taken before conducting the TIP. Thus, the burden is not on the defence. Instead, it is on the prosecution (Rajesh Govind Jagesha v. State of Maharashtra [Rajesh Govind Jagesha v. State of Maharashtra, (1999) 8 SCC 428, para 4 : 1999 SCC (Cri) 1452]).’

20. Accordingly, in the instant case where appellant was shown to the witnesses before any formal identification, and PW’7 (the Investigating Officer) did not say anywhere that the appellant was kept veiled (baparda) while in custody or on remand, the value of TIP diminishes.

21. In view of the aforesaid discussions and the facts and circumstances of the case, we are of the view that the findings recorded by the learned Trial Court in the impugned judgment are not in conformity with the evidence on record. The prosecution case rests entirely on circumstantial evidence; however, the chain of circumstances is far from complete. Notably, omission to record the disclosure statement of the appellant, failure to link the ransom money to the appellant, insufficient proof as to the fact that pellets found in the body of deceased were of the pistol of accused and finally vitiated process of test identification parade goes to the root of the prosecution.

22. Consequently, the judgment of conviction of learned trial Court is found to be unsustainable in the eyes of the law and is liable to be set aside. Accordingly, impugned judgment and order dated 28.02.2008 is hereby set aside and the appellant Ajay Pal is acquitted of all the charges and bail bond of the appellant is discharged.

23. Criminal appeal is **allowed**.

24. Let a copy of this judgment alongwith trial court record be sent to the concerned Chief Judicial Magistrate/Trial Court for compliance.

25. Sri Abhishek Kumar Jaiswal, Advocate appointed by the High Court Legal Services Committee is held entitled to his professional fee of Rs. 15,000/- which shall be paid to him within two weeks of raising of bill by him.

(2026) 4 ILRA 246
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 30.04.2026

BEFORE

THE HON'BLE SIDDHARTH, J.
THE HON'BLE VINAI KUMAR DWIVEDI, J.

Criminal Appeal No. 2034 of 1984

Ranvir Singh & Ors.

...Appellants

Versus

State of U.P.

...Respondent

Issue for Consideration

Matter pertains to whether conviction under Ss. 302/34 IPC could be sustained on the basis of prosecution evidence in view of doubtful ocular testimony, admitted enmity, material contradictions, non-examination of a material witness and lack of reliable corroboration. (Paras 16-38)

Headnotes

Criminal Law - Murder - Sustainability of conviction based on testimony of alleged eye-witnesses whose presence at the place of occurrence was doubtful and whose evidence contained material contradictions and improvements - Indian Penal Code, 1860 - Ss. 302, 34 - Informant admittedly not present at the place of occurrence at the time of incident; alleged eye-witnesses found unreliable; conduct of witnesses unnatural; testimony not inspiring confidence - Conviction cannot be sustained on doubtful ocular evidence. (Paras 17-24, 36-38)

Criminal Law - Appreciation of Evidence - Effect of material improvements and contradictions in statements of prosecution witnesses - Code of Criminal Procedure, 1973 - S. 161 - Where witnesses introduce material facts in Court which were not stated before the Investigating Officer, such improvements affect credibility and render evidence unsafe for reliance. (Paras 18, 20, 21, 33, 36)

Criminal Law - Benefit of Doubt - Whether suspicion arising from previous hostility can substitute legal proof - Indian Penal Code, 1860 - Ss. 302, 34 - Suspicion, however grave, cannot take the place of proof; conviction must rest upon clear, cogent and unimpeachable evidence proving guilt beyond reasonable doubt. (Paras 25-29)

Criminal Law - Enmity - Effect of admitted civil and criminal litigation between parties - Indian Penal Code, 1860 - Ss. 302, 34 - Enmity is a double-edged weapon; while it may furnish motive for commission of offence, it may equally furnish motive for false implication; in absence of reliable evidence conviction cannot be founded merely on existence of enmity. (Paras 18, 24-29)

Criminal Law - Recovery Evidence - Evidentiary value of articles allegedly belonging to accused recovered from place of occurrence - Indian Penal Code, 1860 - Ss. 302, 34 - Recovery of cap (topa), muffler and waist-cloth (tahmad) from spot not conclusively connected with accused; no witness capable of identifying such articles as regularly used by accused examined - Recovery held insufficient to connect accused with crime. (Paras 31-33)

Criminal Law - Investigation - Non-examination of material witness and failure to recover weapon of offence - Code of Criminal Procedure, 1973 - Investigation proceedings - non-production of material witness named in charge-sheet and absence of recovery of firearm or knife from accused constitute circumstances creating serious doubt regarding prosecution version. (Paras 34-35)

Criminal Law - Assessment of Ocular Evidence - Occurrence allegedly witnessed at 06:30 A.M. in first week of January amidst heavy fog - Indian Penal Code, 1860 - Ss. 302, 34 - Claim of witnessing occurrence held doubtful where surrounding circumstances relating to visibility rendered prosecution version suspect. (Para 30)

Criminal Law - Appeal Against Conviction - Failure of Trial Court to properly appreciate evidence - Indian Penal Code, 1860 - Ss. 302, 34 - Trial Court having ignored major contradictions, doubtful conduct of witnesses and infirmities in prosecution case, conviction held unsustainable; accused entitled to acquittal by extending benefit of doubt. (Paras 37-39)

Held: The prosecution failed to establish guilt beyond reasonable doubt - The alleged eye-witnesses were found unreliable due to doubtful presence, material contradictions, improvements and unnatural conduct - Recovery evidence was inconclusive and a material witness was withheld. (Paras 17-24, 31-36)

Suspicion, however grave, cannot take the place of proof - Mere enmity, in the absence of cogent and reliable evidence, cannot sustain conviction. (Paras 25-29)

Conviction under Sections 302/34 IPC was set aside and the appellant acquitted -appeal allowed. (Paras 37-39) (E-7)

Case Law Cited

Sujit Biswas v. State of Assam; **(2013) 12 SCC 406**; *State of Odisha v. Banabihari Mohapatra and Another*; **(2021) 15 SCC 268**; *Sushil and Others v. State of U.P.*; **1995 SSC (Cri.) 388**; *State of Punjab v. Sucha Singh*; **(2003) 3 SCC 153**

List of Acts

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

List of Keywords

Murder; Appreciation of evidence; Eye-witness; Direct evidence; Suspicion; Proof; Benefit of doubt; Enmity; False implication; Civil litigation; Criminal litigation; Contradictions; Improvements; Material witness; non-examination of witness; Recovery; Cap (topa); Muffler; Waist-cloth (tahmad); Country-made pistol; Knife; Place of occurrence; Visibility; Heavy fog; Acquittal; Conviction; Section 302 IPC; Section 34 IPC

Case Arising From

APPELLATE JURISDICTION: Criminal Appeal arising out of the judgment and order dated 26.07.1984 passed in Sessions Trial No. 163 of 1979 arising out of Case Crime No. 4 of 1979, under Section 302/34 IPC, Police Station Muradnagar, District Ghaziabad, whereby the accused-appellants were convicted and sentenced to life imprisonment.

Appearances for Parties

Advs. for the Appellant:

Mr. Rahul Misra, learned counsel for the surviving appellant.

Advs. for the Respondents:

Mr. G.N. Kanaujiya, learned A.G.A.-I for the State/opposite party.

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

1. Heard Mr. Rahul Misra, learned counsel for the surviving appellant, Omkar; Mr. G.N. Kanaujiya, learned A.G.A.-I for the State/opposite party and perused the record.

2. This criminal appeal has been filed by accused-appellants, Ranvir Singh, Omkar, Mangey Ram and Hem Raj Singh against the judgment and order dated 26.07.1984 of learned Trial Court passed in Sessions Trial No. 163 of 1979 (State v. Ranvir Singh and others) arising out of Case Crime No. 4 of 1979, under Section 302/34 IPC, Police Station Muradnagar, District Ghaziabad.

3. Brief facts of the case are that informant Gajraj Singh (PW-7) got scribed the written report, Exhibit Ka-10, by Bhanwar Singh and lodged an F.I.R., Exhibit Ka-2, on 05.01.1979 at 07:00 A.M. against Ranvir Singh, Omkar Singh, Mangey Ram and Hem Raj Singh alleging inter alia that "litigation is going on between us and our uncle Ranvir and grandfather Chunni, who have been living for some time in village Pathauli, and they have executed an agreement of the land in favour of Mangey Ram and Hem Raj of our village, and now both the parties have joined together. My father, who was pursuing the land case, while he was alive, these people had no hope of winning the case. Therefore, they were planning to kill my father (Shyam Singh). Today on 05.01.1979 at about 6:30 A.M., my father and my maternal uncle (Segram) were coming from the jungle when they reached near Mahavir's chak and the fields of Brahmapal Singh, then from the sugar-cane field of Mahavir Singh, Ranvir Singh s/o Chunni, Omkar Singh s/o Ranvir Singh, Mangey Ram and Hem Raj s/o Chhajju Singh came out and all four surrounded my father. Ranvir Singh and Hem Raj had knives in their hands. Mangey Ram and Omkar Singh had country-made pistols. These persons said that today we will give you taste of litigation. All of them suddenly attacked upon him with country-made pistols and knives and caused injuries to him. After receiving injuries, he fell down and succumbed to death. This incident was witnessed by Segram s/o Dharm Singh, resident of village Saidpur, Balkishan s/o Harpal Singh, Veersen s/o Aman Singh, Jhabbar Singh s/o Itwara, resident of village Abupur. My father's dead body is lying at the spot. Please get my report lodged and appropriate action be taken."

4. After lodging the written report, Exhibit Ka-10, an F.I.R. was registered against the accused-appellants at Case Crime No. 4 of 1979, under Section 302 IPC by Constable 498 Satyapal Singh (PW-2) on 05.01.1979 at 07:00 AM. On receiving information about the incident, Ram Charan Lal Sharma (PW-11) reached at the spot with police team including S.I. Ramraj and S.I. P.D. Sharma. On the direction of Ram Charan Lal Sharma (PW-11), S.I. P.D. Sharma conducted panchayatnama of the dead body of deceased, Shyam Singh, and prepared the same, Exhibit Ka-5. S.I. P.D. Sharma also prepared challan nash, Exhibit Ka-6, letter to C.M.O., Exhibit Ka-7, photo nash, Exhibit Ka-8, letter to R.I., Exhibit Ka-9. S.I. P.D. Sharma also took sample of bloodstained soil and plain soil and prepared fard memo as Exhibit Ka-20 and Ka-21. He also collected four live cartridges, two empty cartridges, one plastic tikli (button), five chindi, one striped waist-cloth (tahmad dharidar), one muffler and one cap (topa) from the place of occurrence and prepared recovery memo, Exhibit Ka-13. From the place of occurrence, S.I. P.D. Sharma collected burnt clothes, hair and two teeth stuck with muscle of deceased, Shyam Singh. He also collected kheru of white colour bloodstained on which mark of cut and burn was present and prepared fard, Exhibit Ka-14, and burn clothes, Exhibit Ka-22. Investigating Officer Ram Charan Lal Sharma (PW-11) prepared site plan of the place of occurrence as Exhibit Ka-11. The dead body of the deceased, Shyam Singh, was sent for conducting post mortem examination. The Investigating Officer recorded the statement of the witnesses under Section 161 Cr.P.C. He also sent all articles and objects collected from the place of occurrence for chemical examination to Forensic Science Laboratory. After completing all formalities of the investigation, Investigating Officer Ram Charan Lal Sharma (PW-11) submitted charge-sheet, Exhibit Ka-15, against the accused-appellants.

5. Dr. S.C. Goyal (PW-1) conducted autopsy of the dead body of the deceased, Shyam Singh, and prepared the post mortem report, Exhibit Ka-1. He found following ante mortem injuries on the dead body of the deceased, Shyam Singh:

- “1. Incised wound 1 cm *1/2 cm *bone deep on the middle part of the forehead, 2 cm from the root of the nose; margins clearly placed.*
- 2. Lacerated wound 2 cm *1/2 cm *bone deep on the right-side head 8 cm above.*
- 3. Lacerated wound 3cm *1/4cm *bone deep on right side head, 10 cm above the right ear.*
- 4. Lacerated wound 2 cm *1 cm *scalp deep on left side head 8 cm above left ear.*
- 5. Lacerated wound 2 1/2 cm *1 1/2 cm *bone deep on the left side head, 10 cm above the left ear.*
- 6. Lacerated wound 1 cm *1 cm *bone deep on left side head, 9 cm above from the left ear; margins irregular.*
- 7. Incised wound 2 cm *1/2cm *muscle deep on the left mastoid region, 3 cm behind the left ear; margins clearly cut.*
- 8. Incised wound 1 cm *1/2 cm *muscle deep on the left angle of mouth.*
- 9. Gunshot wound of entry 3 cm *2 1/2 cm *bone deep on right side of face middle of the lower mandible blackening and scorching present around the injury in an area of 8 cm* 6 cm six big pellets recovered from the wound.*
- 10. Blackening and scorching present on right upper arm (upper third), extending up to injury no. 9.*
- 11. Blackening and scorching present in an area of 12 cm* 8 cm on the back of the right forearm.*
- 12. Gunshot wound of entry 2 cm *2 cm * chest cavity deep on left side front of chest, 5 cm above the nipple at 1 o'clock.*
- 13. Incised wound 2 cm *1 cm *chest cavity deep left side back of chest, 9 cm below the lower border of scapula.”*

6. In internal examination, left side of ribs nos. 2 and 3 of the left side of the chest was found broken. Right side of lower jaw was also found broken. During the post mortem examination, six bigger size of pellets were removed from the right side of the face. One large round pellet and pieces of wadding were removed from the right chest cavity that were handed over to the constable, who brought the dead body of the deceased to the post mortem house. According to the opinion of Dr. S.C. Goyal (PW-1), cause of death of the deceased was haemorrhage and shock due to ante mortem injuries. According to Dr. S.C. Goyal (PW-1), these injuries were sufficient to cause death to the deceased.

7. Charge-sheet was filed by the Investigating Officer in the concerned Magistrate Court. Since the case was exclusively triable by the Court of Session, learned Magistrate committed the case to the Court of Session.

8. Charges were framed against the accused-appellants on 19.07.1982 under Section 302 read with Section 34 IPC by the Trial Court. The accused-appellants denied from the charges framed against them and claimed trial.

9. To substantiate the charges against the accused-appellants, prosecution adduced Dr. S.C. Goyal (PW-1), Satyapal Singh (PW-2), Shyam Sundar Dubey (PW-3), Madan Pal (PW-4), Sanjay Gupta (PW-5), Tikam Singh (PW-6), Gajraj Singh (PW-7), Bir Sen (PW-8), Balkishan (PW-9),

Sewag Ram (PW-10) and Ramcharan Lal Sharma (PW-11). Apart from the above ocular evidence, prosecution also relied on documentary evidence from Exhibits Ka-1 to Ka-16.

10. Trial Court recorded evidence of the prosecution witnesses. Thereafter, accused-appellants were examined under Section 313 Cr.P.C. In their statements under Section 313 Cr.P.C., accused-appellants denied from all allegations levelled by the prosecution against them. They have also stated that they have falsely been implicated in this case due to village rivalry and enmity between them. The surviving accused-appellant, Omkar, has stated that he lived in village Pathauli. A case relating to attempt to murder him was instituted against Mangey and Gajraj, in which they were convicted. From that time, I left the village. Due to this enmity, I had been falsely implicated in this case.

11. After hearing the arguments of the prosecution and defence and perusing the evidence, learned Trial Court found the accused-appellants guilty under Section 302 read with Section 34 IPC and convicted them for life imprisonment.

12. Aggrieved by the judgment and order of conviction and sentence dated 26.07.1984, accused-appellants preferred this criminal appeal before this Court.

13. During pendency of this criminal appeal, appellant nos. 1, 3 and 4, Ranvir Singh, Mangey Ram and Hem Raj Singh have died. Therefore, the criminal appeal against appellant nos. 1, 3 and 4 stands dismissed as abated. Now, the criminal appeal is being adjudicated only in respect of appellant no. 2, Omkar.

14. Learned counsel for surviving accused-appellant, Omkar, has submitted that the date and time of the incident is 05.01.1979 at 06:30 A.M. However, informant Gajraj Singh (PW-7) lodged a written report, Exhibit Ka-10, naming all accused-appellants, with surprising promptness within half an hour at 07:00 A.M. at Police Station Muradnagar, District Ghaziabad. The distance of police station from the place of occurrence is about two miles. It is also submitted that it is surprising that only within half an hour, informant so quickly and rapidly got scribed a written report from his brother, Bhanwar Singh, and reached the police station Muradnagar and lodged written report, Exhibit Ka-10. This fact made the prosecution story doubtful. Apart from this, the date 05.01.1979 falls in the winter season. In the first week of January, at 06:30 A.M., the sun generally does not rise. In the month of January, even during the first week, there is usually heavy fog in the atmosphere. Learned counsel for surviving accused-appellant, Omkar, has also submitted that although prosecution produced informant Gajraj Singh (PW-7), Bir Sen (PW-8), Balkishan (PW-9) and Sewag Ram (PW-10) as eye-witnesses of the incident, however, from the perusal of their evidence, it is clear that they have not seen the occurrence with their own eyes. Evidence of these prosecution witnesses speaks these facts loudly itself. Prosecution projected these prosecution witnesses, Gajraj (PW-7), Bir Sen (PW-8), Balkishan (PW-9) and Sewag Ram (PW-10) as projected witnesses with due consideration, deliberation and afterthoughts. From the place of occurrence and the material articles recovered therefrom, it appears that the deceased, Shyam Singh, was killed at night by some unknown persons. When dead body of the deceased, Shyam Singh, was found lying at the place of occurrence and this news reached his house, then due to previous enmity because a large number of litigation including civil and criminal nature was

pending between the deceased, Shyam Singh, and prosecution witnesses on one side and accused-appellants on other, prosecution, on the ground of suspicion, has falsely implicated the accused-appellants in the alleged crime after deliberation and afterthought, with a view to take revenge. The testimonies of the prosecution witnesses are not trustworthy and reliable. By their evidence itself, it is clear that so called eye-witnesses of prosecution have not witnessed the happening of the occurrence with their own eyes. It is also submitted that prosecution was unable to prove that so called muffler, cap (topa) and waist-cloth (tahmad), which were recovered from the place of occurrence, were surely of the appellant. The prosecution was unable to produce any witness, who could prove and testify by their evidence that he has seen Omkar wearing the above muffler, cap (topa) and waist-cloth (tahmad) regularly. However, without considering and discussing these material facts in its judgment and order, learned Trial Court only on the ground of evidence of so-called eye-witnesses of prosecution, held the surviving accused-appellant, Omkar, and the deceased appellants guilty for commission of the crime. There is no reasonable discussion regarding the culpability and liability of the appellant that inspires confidence in the mind of the learned Trial Court, on the basis of which the Trial Court was convinced that the surviving accused-appellant, along with the other deceased appellants, had committed the alleged crime. Learned Trial Court has not appreciated the evidence in proper perspective and in legal manner and delivered a wrong judgment and order against surviving accused-appellant, Omkar, wholly against the settled principles of law. Therefore, in view of the above facts and circumstances, surviving accused-appellant, Omkar, is liable to be acquitted and judgment and order of conviction and sentence passed by learned Trial Court is liable to be set aside.

15. Per contra, learned A.G.A. for the respondent-State has vehemently opposed the arguments of learned counsel for the accused-appellant and submitted that this is a case of direct evidence. Prosecution witness Gajraj Singh (PW-7), Bir Sen (PW-8), Balkishan (PW-9) and Sewag Ram (PW-10) were present at the place of occurrence at the time when incident happened. Surviving accused-appellant, Omkar, with other dead appellants have brutally committed murder of the deceased, Shyam Singh, by assaulting with knife and by firing upon him with country-made pistol in front of the prosecution witnesses. There are no major or material contradictions in the evidence of the prosecution witnesses by reason of which the prosecution evidence could be doubted. Learned Trial Court has appreciated the evidence in proper prospective and delivered a reasonable judgment and order, which is based on cogent evidence and according to the settled principles of law in this respect. There is no force in this criminal appeal of the accused-appellant, Omkar. The appeal is devoid of merits, hence is liable to be rejected.

16. In the light of the above arguments of learned counsel for the surviving appellant, Omkar, and the learned A.G.A. for the State, it is appropriate and judicious to peruse and analyse the prosecution evidence to determine whether the prosecution has been able to prove its case beyond reasonable doubt.

17. From the perusal of the evidence of informant Gajraj Singh (PW-7), who is son of deceased Shyam Singh, it is revealed that this witness is not an eye-witness of the incident. At the time of the incident, this witness was not present at the place of occurrence but he was at his home. This fact was itself admitted by this witness in his evidence that at the time of incident, I was at my home and Jhabbar has come home and informed me that accused-appellants, Mangey, Hem Raj,

Ranvir and Omkar, have killed your father Shyam Singh and he also told that Ranvir and Hem Raj had knife in their hand and rest of the accused had country-made pistols in their hand." According to this witness as told by Jhabbar, he went to the spot. Thus, from the evidence of this witness, it is established that informant Gajraj Singh (PW-7) is not an eye-witness of the incident because at the time of happening of the incident, he was not present at the spot. Written report, Exhibit Ka-10, has been got scribed by this witness by his brother, Bhanwar Singh. All the facts written by writer Bhanwar Singh on the dictation of Gajraj Singh (PW-7), were stated by Jhabbar and other prosecution witnesses. In other words, Jhabbar and other prosecution witnesses have narrated the happening of the incident to informant Gajraj Singh (PW-7) and he in the same way has narrated the prosecution story in the written report, Exhibit Ka-10.

18. From the evidence of the informant, Gajraj Singh (PW-7), it appears that, according to this witness, a civil litigation was pending and continuing between the prosecution side on one hand and the accused-appellants on the other. From the evidence of this witness, it emerges that not only civil litigation was pending between the prosecution and defence sides, but several criminal cases were also pending between them. In some cases, the prosecution witnesses supported the prosecution story, while in other cases, the accused-appellants also appeared as witnesses in support of their prosecution version. It also revealed that there was bitter enmity between both sides due to civil and criminal litigations between them. Gajraj Singh (PW-7) stated that before three days of the incident, accused-appellants have threatened his father, Shyam Singh, to kill him and they have also threatened that we will teach you about the litigation. From the evidence of this witness as submitted by him in the Court, it emerged that at the time of the incident, maternal uncle of this witness, Sewag Ram, Bir Sen and Balkishan, were present at the place of occurrence when accused-appellants have committed the crime. Thus, from the evidence of this witness, it is revealed that this witness is not an eye-witness of the incident. There was bitter enmity between both sides since civil and criminal litigation were pending between them. Apart from the above facts, in his cross-examination, this witness has stated that I had told the Investigating Officer that the accused had told my father that they would give him the taste of litigation. If the Investigating Officer had not written this fact in my statement under Section 161 Cr.P.C., I cannot tell reason for this. I had stated in tehri report that Jhabbar had come to my home and told about the incident and I told these things to the Investigating Officer. If the Investigating Officer had not written in my statement and Bhanwar Singh had not written these things in the tehri report, then I cannot tell reason for this. In this way, we find that this witness has made major improvement in his evidence against the statement given to the Investigating Officer under Section 161 Cr.P.C. Meaning thereby, this witness with a view to give force to the prosecution story stated those facts and things in the Court which were not stated by this witness to the Investigating Officer under Section 161 Cr.P.C. Thus, from the perusal of the whole evidence of informant Gajraj Singh (PW-7), we find that this witness only after happening of the incident and receiving information about the incident has lodged the written report at the police station naming accused-appellants as accused for the commission of the crime. Apart from this, we find no other relevancy in the evidence of this witness.

19. Bir Sen (PW-8) is also said to be the eye-witness of the incident. This witness has stated that at the place of occurrence on 05.01.1979 at 06:30 A.M., this witness was going to water his field from the tube-well. Then he heard the noise in the sugar-cane field of Brahmamal. Jhabbar was

also present with him. According to him, when he reached near the field of Brahmapal then he had seen that Hem Raj and Ranvir Singh were assaulting Shyam Singh with knives. Shyam Singh was retreating in order to defend himself. Mangey fired a shot from a country-made pistol at Shyam Singh, but the shot missed. Thereafter, Mangey struck Shyam Singh on the head with the butt of the country-made pistol. By the assault of the accused, Shyam Singh fell down. Omkar fired a shot from the country-made pistol at Shyam Singh, which hit in his chest. Mangey wanted to shoot from the country-made pistol but the cartridge fell down. Then Mangey loaded second cartridge and fired shot near the right ear of Shyam Singh, which hit him. This witness also stated that along with him, Singh Ram, Jhabbar Singh and Balkishan had also seen this incident at the place of occurrence. According to this witness, □at the time of committing of the offence, cap (topa), muffler and waist-cloth (tahmad) of Omkar had fell down on the spot. From the evidence of this witness, it is emerged that Chunni, father of the deceased Shyam Singh and accused Ranvir, had left the village Abupur before this incident and went to village Pathauli. From this fact, it is clear that at the time of the incident, surviving accused-appellant, Omkar, and his father deceased-appellant, Ranvir, was not living in the same village where incident happened. In other words, surviving accused-appellant, Omkar, and his father, Ranvir, and his grandfather, Chunni, were living in other village Pathauli at the time of the incident. From the evidence of this witness, it is revealed that the incident happened for about 3-4 minutes. From the perusal of the cross-examination of this witness, it is revealed that he has stated that the Investigating Officer had taken my statement. I had told him that Jhabbar also went on tube-well with me. I could not tell any reason that why the Investigating Officer has not written this thing in my statement. This witness has also stated that I had told the Investigating Officer that the noise was coming from the field of Brahmapal. If the Investigating Officer had not written this thing, I cannot tell any reason for this.

20. Thus, from the perusal of the evidence of Bir Sen (PW-8), this fact is revealed that according to this witness, four accused-appellants including surviving accused-appellant, Omkar, were attacking Shyam Singh by knife and country-made pistol. However, the statement of Bir Sen (PW-8) appears to be doubtful because if four accused persons simultaneously attacked the deceased Shyam Singh with knives and country-made pistols, there is a possibility that some pellets from the firearms could also have hit the accused persons, since according to this witness, all the accused persons were assaulting. All the accused surrounded the deceased Shyam Singh and were assaulting from very close range. However, there is no evidence of this kind in the record that some injuries were also caused on the body of the accused persons. From the evidence of this witness, it is also revealed that this witness has also improved his statement in the Court against the statement which was given by him to the Investigating Officer under Section 161 Cr.P.C. Evidence of this witness appears to be concocted and afterthought. From the perusal and appreciation of the whole evidence, it is apparent that the prosecution tried to project this witness as an eye-witness of the incident. However, from the perusal of the evidence of this witness, it is clear that this witness has not seen the happening of the incident with his own eyes. Although this witness has stated that incident happened for 3-4 minutes but this witness has not made any attempt by calling people of the nearby area to save life of the deceased, Shyam Singh, from assailants. Despite the fact that incident happened for 3-4 minutes but this witness has not made any attempt to save the deceased Shyam Singh. This witness has also not made any noise and hue and cry so that people of the nearby houses could come at the place of the occurrence to save the life of the deceased, Shyam Singh. In this way, conduct of this witness Bir Sen (PW-8) does not inspire confidence. This

witness has stated the happening of the incident in the way which appears to be concocted and artificial and creates reasonable doubt about his presence at the place of occurrence. Due to this reason, we find that testimony of this witness is suspicious and unworthy of credit. Hence, we would not rely on the evidence of this witness in support of the prosecution story.

21. Balkishan (PW-9) has also stated the happening of the incident in the same way in which Bir Sen (PW-8) has stated the prosecution story. The only difference is that according to this witness on the day of the incident on 05.01.1979 at 06:30 A.M., he was returning on his cart (buggi) from Modi Nagar Sugar Mill after delivering his sugar-cane at the mill. When this witness reached his village near the field of Brahmapal, he heard Bir Sen, Jhabbar, and Segram shouting to run towards Shyam Singh and save him. However, if we believe the statement of Balkishan (PW-9) that Bir Sen, Segram, and Jhabbar made a noise and called upon people to reach the place of occurrence to save the life of Shyam Singh, it is surprising that despite the noise made by these three persons, none of the neighbours or persons from nearby houses heard the noise or came to the place of occurrence to save Shyam Singh. Only this witness Balkishan (PW-9) has heard the noise of Bir Sen, Segram and Jhabbar. It is also surprising that other prosecution witness Jhabbar was not produced by the prosecution in the Court. Jhabbar ran towards the house of Shyam Singh and informed Gajraj Singh (PW-7) about the incident, but none of the prosecution eye-witnesses called for any help from the neighbours or persons residing nearby. This witness has also stated that during the incident, cap (topa), muffler and waist-cloth (tahmad) of Omkar have fell down on the spot. From the evidence of this witness, it is also revealed that this witness was also accused in other cases and appellants were prosecution witnesses in that cases. According to this witness, the sun had not risen at the time of the incident, but it was daylight and the sun was about to rise. It was a winter day, and there was moonlight at the time of the incident. This witness has also stated during cross-examination that I had not told to the Investigating Officer that cap (topa), muffler and waist-cloth (tahmad) of Omkar had fell down on the spot because he has not questioned me.

22. Thus, from the perusal of the evidence of Balkishan (PW-9), it appears that this witness has also stated in the same way, style and manner as was stated by Bir Sen (PW-8) in the Court. From this fact, it is revealed that prosecution witness Balkishan (PW-9) was also not present at the place of occurrence when incident happened. The prosecution also projected Balkishan (PW-9) to support its case. Due to this reason, Balkishan (PW-9) has stated the happening of the incident in the same way and manner as was stated by Bir Sen (PW-8). From the evidence of this witness, it is also revealed that the sun had not risen at the time of the incident but was about to rise. It is also surprising fact that none of the people from the nearby area or neighbours, who were residing in houses near or at some distance from the place of occurrence, heard the noise of Bir Sen, Segram, and Jhabbar, whereas only this witness, Balkishan (PW-9), has heard them shouting to run towards the spot and save Shyam Singh. From the perusal of the evidence of Balkishan (PW-9), it appears that this witness is also a projected witness by the prosecution to support its case. However, from the evidence of this witness, we find that statement of this witness also does not inspire confidence. In this way, we find that presence of this witness Balkishan (PW-9) is also doubtful at the place of occurrence when the incident happened.

23. Prosecution witness Sewag Ram (PW-10) is brother-in-law of the deceased, Shyam Singh. In other words, he is real brother of wife of the deceased, Shyam Singh. From perusal of the

evidence of this witness, it is revealed that this witness has stated that he had come to the house of Shyam Singh two days prior to the incident upon hearing that a quarrel was going on between Shyam Singh and his brother over agricultural land. According to this witness, he along with deceased, Shyam Singh, had gone to ease themselves towards jungle. As per the statement of this witness, when he and Shyam Singh after easing themselves were returning towards village and reached at the field of Brahmapal then from the sugar-cane field of Mahabir, Ranvir and Hem Raj with knives and Mangey and Omkar with country-made pistols came out. Hem Raj and Ranvir assaulted with knives on Shyam Singh. According to this witness, when he made a noise then Omkar and Mangey have said that go away otherwise we will shoot you. Thereafter, in his evidence, nearly in the same way, this witness has also stated the prosecution story as was stated by other prosecution witness, Bir Sen (PW-8) and Balkishan (PW-9). From the evidence of this witness, this fact again emerged and corroborated that deceased-appellant, Ranvir, with his father Chunni and children were living in village Pathauli. Thus, from the above statement of this witness, this fact emerged that the deceased-appellant, Ranvir, and surviving accused-appellant, Omkar, were not living in the same village where incident happened but they were living in village Pathauli, away from village Abupur. This witness has accepted in his cross-examination that village of this witness is eight kosh away from the place of occurrence. This witness has also stated in his cross-examination that he has not stayed at the place of occurrence. From there, he went to the house of Shyam Singh and from there he went to his village. According to this witness, after one month, Investigating Officer called him at the police station and recorded his statement. From the perusal of the whole evidence of Sewag Ram (PW-10), it is also apparent that this witness is also not an eye-witness of the incident. This witness has not seen the incident with his own eyes. The prosecution with consideration and afterthought projected this witness to be present at the home of Shyam Singh prior to two days of the incident. Prosecution tried unsuccessfully to project this witness with this story that he went to ease himself with the deceased Shyam Singh and when he along with deceased, Shyam Singh, were returning from jungle to their home, then incident happened. In this way, prosecution although tried to project this witness as an eye-witness of the incident, however, he has himself stated that he has not stayed at the place of occurrence and had went to the home of Shyam Singh and from there, he went to his village. This witness is a real brother-in-law of the deceased, Shyam Singh, and maternal uncle of the informant Gajraj Singh (PW-7) and Bhanwar Singh. In spite of this fact and his close relationship with the deceased Shyam Singh and his family, being the real brother of the deceased's wife, this witness did not consider it proper to stay at the place of occurrence, accompany the dead body to the post-mortem house, or participate in the cremation proceedings of the deceased Shyam Singh. The above conduct of this witness clearly indicates that he was later, upon consideration and afterthought, projected by the prosecution as an eye-witness to support and strengthen the prosecution story and to falsely implicate the surviving accused-appellant, Omkar, along with the other deceased-appellants. From the conduct and behaviour of this witness, it is also explicitly clear that he was not present with the deceased, Shyam Singh, at the time of the incident. Thus, from the overall perusal and analysis of the statement of Sewagram (PW-10), we find that evidence and statement of this witness creates a doubt and suspicion about the facts as stated by this witness in the Court in the support of the prosecution story. Due to this reason, we are unable to believe the testimony of this witness as reliable and trustworthy.

24. From the perusal of the whole evidence of the prosecution witness as available on record and as stated by the informant Gajraj Singh (PW-7), Bir Sen (PW-8), Balkishan (PW-9) and Sewagram (PW-10), it is clear that many civil and criminal cases were pending between the prosecution and defence sides. The litigation was both civil and criminal in nature. Cases under Section 307 IPC were pending against the prosecution side, in which prosecution witnesses were arrayed as accused persons. There were also criminal cases in which one side was the prosecution and the other side was arrayed as the accused. There was civil litigation pending between them relating to agricultural land of Chunni Lal, father of deceased, Shyam Singh, and deceased-appellant, Ranvir Singh. Cases were also pending in Revenue Court. It is also revealed that there was bitter enmity between the prosecution sides and accused-appellants. From the perusal of the entire prosecution evidence, it is apparent that due to bitter enmity and suspicion between the prosecution side and the defence side, the surviving accused-appellant, Omkar, along with the other deceased appellants, has been falsely implicated in the present case for the commission of the alleged crime.

25. However, only on the ground of suspicion and doubt without cogent and reliable evidence which must be beyond reasonable doubt, no accused persons could be held guilty for commission of the crime.

26. The Supreme Court in ***Sujit Biswas v. State of Assam***; (2013) 12 SCC 406 has held in para-13 as under:

“13. Suspicion, however grave it may be, cannot take the place of proof, and there is a large difference between something that may be proved, and something that will be proved. In a criminal trial, suspicion no matter how strong, cannot and must not be permitted to take place of proof. This is for the reason that the mental distance between may be and must be is quite large, and divides vague conjectures from sure conclusions. In a criminal case, the court has a duty to ensure that mere conjectures or suspicion do not take the place of legal proof. The large distance between may be true and must be true, must be covered by way of clear, cogent and unimpeachable evidence produced by the prosecution, before an accused is condemned as a convict, and the basic and golden rule must be applied. In such cases, while keeping in mind the distance between may be true and must be true, the court must maintain the vital distance between mere conjectures and sure conclusions to be arrived at, on the touchstone of dispassionate judicial scrutiny, based upon a complete and comprehensive appreciation of all features of the case, as well as the quality and credibility of the evidence brought on record. The court must ensure, that miscarriage of justice is avoided, and if the facts and circumstances of a case so demand, then the benefit of doubt must be given to the accused, keeping in mind that a reasonable doubt is not an imaginary, trivial or a merely probable doubt, but a fair doubt that is based upon reason and common sense.”

27. The Supreme Court recently in ***State of Odisha v. Banabihari Mohapatra And Another***; (2021) 15 SCC 268 has held:

“It is well settled by a plethora of judicial pronouncement of this Court that suspicion, however strong cannot take place of proof. An accused is presumed to be innocent unless proved guilty beyond reasonable doubt.”

28. It is also a settled principle of law that mere enmity, in the absence of cogent, reliable, and foolproof evidence, is not sufficient to hold a person guilty of a heinous crime such as murder.

29. Hon'ble Supreme Court in the case of **Sushil And Others v. State of U.P.**; 1995 SSC (Cri.) 388 and in the case of **State of Punjab v. Sucha Singh**; (2003) 3 SCC 153, has held that:

"Enmity is a double-edged weapon which cut both ways. It may constitute motive for the commission of the crime and at the same time it may also provide a motive for false implication."

30. From the written report, Exhibit Ka-10, and from the evidence of Bir Sen (PW-8), Balkishan (PW-9) and Sewag Ram (PW-10), it is clear that date and time of the incident is 05.01.1979 at 06:30 am. The month of January is a very cold season. Generally, in the first week of January, heavy fog is present in the atmosphere. Due to the dense fog during this period, visibility of nearby places is reduced to a few feet. In other words, due to heavy fog in the atmosphere covering the ground also, visibility in all directions, i.e., front, back, and other sides, is extremely poor. However, in spite of the happening of the incident on 05.01.1979 at 06:30 am, eye-witnesses of the prosecution are stating in the Court that they had seen the happening of the incident with their own eyes. These statements of the prosecution witnesses appear to be doubtful and suspicious due to the heavy fog present in the month of January. Hence, due to the above reason, testimonies of the above witnesses do not inspire confidence, as such, we do not rely on them.

31. In the evidence of Bir Sen (PW-8) and Balkishan (PW-9), it has been stated that during the course of the incident, cap (topa), muffler, and waist-cloth (tahmad) of the accused-appellant, Omkar, fell on the ground at the place of occurrence, which has been mentioned in the recovery memo (Exhibit Ka-13). Cap (topa) is exhibited as material Exhibit-17, muffler is exhibited as material Exhibit-18 and waist-cloth (tahmad) is exhibited as material Exhibit-19.

32. Investigating Officer, Ramcharan Lal Sharma (PW-11) has stated in his evidence that on his direction, S.I. P.D. Sharma took into custody from the place of occurrence, one striped waist-cloth (tahmad dharidar), one muffler and one cap (topa) However, prosecution witnesses Bir Sen (PW-8) and Balkishan (PW-9) have stated in their evidence that these cap (topa), muffler and waist-cloth (tahmad) are of accused-appellant, Omkar. It is an admitted fact by the prosecution witnesses that at the time of the incident, surviving accused-appellant, Omkar, and deceased-appellant, Ranvir, were not living in village Abupur where incident happened but they were living in village Pathauli, situated in district Meerut. In the above condition, how these facts could be regarded conclusively to be proved that above cap (topa), muffler and waist-cloth (tahmad) were of accused-appellant, Omkar. This fact can be proved only by a person who had seen the accused-appellant, Omkar, usually wearing the aforesaid cap (topa), muffler, and waist-cloth (tahmad), and who may be his neighbour. Since cap (topa), muffler and waist-cloth (tahmad) are commonly worn in every house during the winter season, only a person residing in village Pathauli who regularly meets the accused-appellant, Omkar, could verify that the recovered cap (topa), muffler, and waist-cloth (tahmad) were used and worn by the accused-appellant, Omkar. Thus, in view of the above facts, it could not be conclusively presumed that recovered cap (topa), muffler, and waist-cloth (tahmad) from the place of occurrence surely are of the accused-appellant, Omkar. These facts also create a doubt about veracity of the prosecution story.

33. Prosecution witness Balkishan (PW-9) has stated in his cross-examination that I had not told the Investigating Officer that on the spot, cap (topa), muffler, and waist-cloth (tahmad) of Omkar, had been left on the ground because he had not asked from me. From the above statement of prosecution witness Balkishan (PW-9), suspicion about the recovery of so-called cap (topa), muffler, and waist-cloth (tahmad) of accused-appellant, Omkar, also become doubtful.

34. It is also a clear fact that the Investigating Officer could not recover any weapon of assault like fire-arm or knife from the possession or on the pointing out of the surviving accused-appellant, Omkar.

35. It is also a noteworthy fact that prosecution has not adduced and examined Jhabbar, who has informed about the incident to the informant Gajraj Singh (PW-7) and is also an eye-witness of the incident. The prosecution withheld this very material witness by not producing and examining in the Court since Jhabbar whose name as a prosecution witness has been mentioned in the charge-sheet at Sl. No. 5. Non-production by the prosecution and examination of this witness Jhabbar in the Court is a very material fact which raise a serious doubt about the veracity and truthfulness of the prosecution story.

36. Thus, from the above discussions and analysis of the prosecution evidence, it is clear that evidence of prosecution witness Gajraj Singh (PW-7), Bir Sen (PW-8), Balkishan (PW-9) and Sewag Ram (PW-10) does not inspire confidence. The presence of above these prosecution witnesses at the place of occurrence is very doubtful. From the perusal of the evidence of the above witnesses, it is clear that there are major and material contradictions in the evidence of the above witnesses. Apart from the above, conduct of the witnesses is also highly doubtful and unnatural.

37. In view of the above discussions, we find that learned Trial Court has not appreciated the evidence of the prosecution in right prospective and without observing major and material contradictions only relying on the evidence of the prosecution witnesses Gajraj Singh (PW-7), Bir Sen (PW-8), Balkishan (PW-9) and Sewag Ram (PW-10) held the surviving accused-appellant, Omkar, with other deceased-appellants guilty. The finding and reasoning of the learned Trial Court are not supported by cogent and reasonable finding in this regard.

38. In view of the above facts, judgment and order of the learned Trial Court dated 26.07.1984 is not sustainable in the eyes of law. Hence, we find that judgment and order of learned Trial Court dated 26.07.1984 is liable to be set aside and the appeal of the surviving appellant, Omkar, is liable to be allowed.

39. The criminal appeal is **allowed**. Accordingly, we set aside the impugned judgment and order dated 26.07.1984 of conviction and sentence passed against the accused-appellant, Omkar, by learned Trial Court in Sessions Trial No. 163 of 1979 (State v. Ranvir Singh and others) arising out of Case Crime No. 4 of 1979, under Section 302/34 IPC, Police Station Muradnagar, District Ghaziabad. The appellant is acquitted of the charge under Sections 302/34 IPC. The appellant, Omkar, is on bail. He need not surrender. His bail bonds are cancelled and sureties stand discharged. However, he shall comply with the provisions of Section 437-A Cr.P.C.

40. Let a copy of this judgment be sent to the learned Trial Court forthwith along with the Trial Court record for compliance.

(2026) 4 ILRA 259
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 24.04.2026

BEFORE

THE HON'BLE SIDDHARTHA VARMA, J.
THE HON'BLE JAI KRISHNA UPADHYAY, J.

Criminal Appeal No. 5148 of 2025

Ram Bhawan Harijan

...Appellant

Versus

State of U.P.

...Respondent

Issue for Consideration

Matter pertains to whether in a case resting entirely upon circumstantial evidence, the alleged recovery and identification of a shawl said to belong to the accused, found wrapped around the dead body of the deceased, constituted a complete and reliable chain of circumstances sufficient to sustain conviction under Ss. 302 and 201 I.P.C., particularly in light of contradictions in evidence, procedural lapses and the evidentiary value of identification of property under S. 9 of the Indian Evidence Act, 1872. (Paras 19-30)

Headnotes

Criminal Law - Murder and Causing Disappearance of Evidence - Circumstantial Evidence - Indian Penal Code - Ss. 302 and 201 - Indian Evidence Act, 1872 - S. 9 - Conviction based solely on recovery and identification of a shawl allegedly belonging to accused - Circumstances must be of a conclusive nature and should be so complete as to not leave any reasonable ground for a conclusion consistent with the innocence of the accused - Prosecution case rested entirely upon circumstantial evidence and there were no eyewitnesses to the alleged occurrence - Held, chain of circumstances was not complete and failed to establish guilt beyond reasonable doubt. (Paras 19, 31)

Evidence - Identification of Thing - Indian Evidence Act, 1872 - S. 9 - Recovery of article allegedly belonging to accused from body of deceased - Contradiction between ocular testimony and contemporaneous documentary evidence regarding presence of shawl during inquest and autopsy - PW2 and PW3 stated that body was wrapped in appellant's shawl whereas testimony of PW5 and inquest report prepared by PW6 omitted presence of any such shawl - Held, discrepancy suggested that link of shawl may have been an afterthought to connect appellant to crime and rendered recovery highly doubtful. (Paras 20, 31)

Evidence - Identification of Property - Indian Evidence Act, 1872 - S. 9 - Absence of specific description of article sought to be identified - No description regarding colour, pattern, fabric or unique identifying marks of shawl - Generic identification as a spotted shawl belonging to accused - Held, without distinct characteristics, formal Test Identification Parade for property or detailed forensic description, it was hazardous to conclude that shawl found was exact one owned by accused. (Para 21)

Evidence - Chain of Custody - Recovery of Material Object - Indian Evidence Act, 1872 - S. 9 - Procedural lapse in handling physical evidence - Shawl allegedly carried by police officer and shown to villagers instead of being preserved in sealed forensic custody - Chain of custody found broken - Held, article lost evidentiary value as Court could not be certain that item was not

planted or altered and such casual approach to vital physical evidence created serious doubt in prosecution case. (Para 22)

Evidence - Facts Necessary to Explain or Introduce Relevant Facts - Identification of Thing - Indian Evidence Act, 1872 - S. 9 - Scope and applicability - Provision recognizes facts establishing identity of any person or thing whose identity is relevant - Recovery of any article of accused person from body of deceased relevant and admissible under provision - However, facts establishing identity must satisfy legal requirements and be tested within judicial process. (Paras 23-25)

Evidence - Test Identification Parade and Identification of Property - Indian Evidence Act, 1872 - S. 9 - Evidentiary value - Identification evidence whether of person or thing is inherently weak and only corroborative in nature - Identification cannot serve as sole basis of conviction and requires support of strong independent links to complete chain of circumstances - Held, evidence of shawl being corroborative in nature was insufficient to establish guilt of accused. (Paras 26-30)

Criminal Trial - Appreciation of Evidence - Circumstantial Evidence - Conviction and Sentence - Trial Court failed to appreciate that circumstances must leave no room for any hypothesis except guilt of accused - Recovery of shawl doubtful, serious lapses in investigation and lack of independent witnesses created significant gap in prosecution version - Held, judgment of conviction unsustainable in eyes of law and liable to be set aside - Appeal allowed and conviction quashed. (Paras 31-33)

Held: The present case rests entirely upon circumstantial evidence and admittedly there are no eyewitnesses to the alleged occurrence - the recovery of the dead body allegedly wrapped in a shawl belonging to the appellant was the cornerstone of the prosecution case but a fatal contradiction existed between the ocular testimony and the contemporaneous documentary evidence as the testimony of PW5 and the inquest report prepared by PW6 categorically omitted the presence of any such shawl during the inquest and autopsy - even otherwise there was a total absence of any specific description concerning the shawl's color, pattern, fabric or unique identifying marks and the witnesses merely offered a generic identification - the prosecution narrative was further marred by a significant procedural lapse as the chain of custody was broken and the article lost its evidentiary value - although the alleged shawl was relevant as a thing and facts establishing its identity were relevant under S. 9 of the Indian Evidence Act, 1872, identification is a weak and corroborative piece of evidence and cannot serve as the sole basis of conviction - the chain of circumstances was far from complete and the recovery of the shawl was highly doubtful and lacked evidentiary value - serious lapses in the investigation process and lack of independent witnesses created a significant gap in the prosecution version and the judgment of conviction was not in conformity with the evidence on record and was liable to be set aside - Allowed partly. (Paras 19-31) (E-7)

Case Law Cited

Sharad Birdhichand Sarda vs. State of Maharashtra (1984) 4 SCC 116; Munshi Singh Gautam v. State of M.P., (2005) 9 SCC 631; Matru v. State of U.P. (1971) 2 SCC 75; Santokh Singh v. Izhar Hussain (1973) 2 SCC 406; Kanta Prashad v. Delhi Admn. AIR 1958 SC 350; Vaikuntam Chandrappa v. State of A.P. AIR 1960 SC 1340; Budhsen v. State of U.P. (1970) 2 SCC 128; Rameshwar Singh v. State of J&K (1971) 2 SCC 715; Vinod @ Nasmulla v. State of Chhattisgarh, (2025) 4 SCC 312; Umesh Chandra v. State of Uttarakhand, (2021) 17 SCC 616; Iqbal v. State of U.P., (2015) 6 SCC 623; Hari Nath v. State of U.P., (1988) 1 SCC 14; Kanta Prashad v. Delhi Administration (1958) SCC Online SC 10; Sheikh Hasib v. State of Bihar (1972) 4 SCC 773; Dana Yadav v. State of Bihar (2002) 7 SCC 295.

List of Acts

Indian Penal Code, 1860; Code of Criminal Procedure, 1973; Indian Evidence Act, 1872; Bharatiya Sakshya Adhiniyam, 2023

List of Keywords

Circumstantial evidence; murder; disappearance of evidence; recovery of dead body; shawl; identification of thing; identification of property; S. 9 of Indian Evidence Act; Test Identification Parade; corroborative

evidence; chain of circumstances; chain of custody; inquest report; post-mortem report; contradiction in evidence; procedural lapse; evidentiary value; independent witnesses; benefit of doubt; acquittal; conviction set aside.

Case Arising From

APPELLATE JURISDICTION: Criminal Appeal against the judgment and order dated 18.04.2025 passed by the Additional District and Sessions Judge, Prayagraj arising out of Case Crime No. 81 of 2021 registered as Sessions Trial No. 2103 of 2021 whereby the appellant was convicted under Ss. 302 and 201 I.P.C. and sentenced to life imprisonment with fine and other consequential sentences.

Appearances for Parties

Advs. for the Appellant:

Sri Sushil Kumar Dwivedi

Advs. for the Respondents:

Smt. Kiran Bala (for the Informant),

Sri Ajay Sharma, learned A.G.A. (for the State)

(Delivered by Hon'ble Jai Krishna Upadhyay, J.)

1. Heard Sri Sushil Kumar Dwivedi, learned counsel for the appellant; Smt. Kiran Bala, learned counsel appearing for the informant and Sri Ajay Sharma, learned A.G.A. for the State and perused the trial Court record as well as the judgment and order passed by the trial Court.

2. Initially the learned counsel for the appellant was pressing the bail application but subsequently when the learned counsel for the first informant opposed the same and insisted that the case be finally heard, learned counsel for the appellant argued the case finally. The paper book in the case had already been prepared.

3. This criminal appeal has been preferred by the appellants against the judgment and order dated 18.04.2025 passed by the Additional District and Sessions Judge, Prayagraj arising out of Case Crime No. 81 of 2021, registered as Sessions Trial No. 2103 of 2021 (State Vs. Ram Bhawan Harijan), whereby the learned District and Sessions Judge had convicted appellant under Section 302/201 I.P.C. and sentenced him under Section 302 I.P.C. to undergo life imprisonment with fine of Rs. 20,000/-. In case of default in the payment of fine, he was sentenced to undergo additional sentence of one year. Further, he was sentenced three years rigorous imprisonment with fine of Rs. 2,000/- for under Section 201 I.P.C. In case of default in the payment of fine, he has been sentenced to undergo additional sentence of 15 days.

4. The prosecution story in nutshell is as under:-

4.1. Informant Mukesh alias Virendra, son of Harilal, resident of Semri Tarhar, Police Station Lalapur, District-Prayagraj, had given a tehrir at Police Station Lalapur on 29.07.2021 and lodged first information report to the effect that on 27.07.2021 at 4 pm, his daughter Mohini Devi, aged about 5 years, had gone to play near the pond on the south side of the village and she did not return home. Her description is as follows: Age 5 years, fair complexion, height 2.5 feet, short hair on the head, a pimple on the right foot, wearing a blue frock, yellow leggings, and a white handkerchief, and was barefoot. When she did not return, he searched for her extensively but she

was not found. Thereafter, the informant went to the police station for registering the F.I.R. On 29.07.2021, the F.I.R. was registered at Police Station Lalapur.

4.2. The informant again submitted an application dated 31.07.2021 to the Station House Officer, Bara, District Prayagraj, to the effect that his daughter, Mohini, had gone to the pond to play on 27.07.2021 at around 4:00 p.m., however she had not returned and had gone missing. After a thorough search, he submitted a written application on 29.07.2021, registering a case under Section 363 of I.P.C. He, subsequently heard that a body of an unidentified girl had been recovered at the Bara police station. Upon receiving this information, the informant reached the Bara police station. Upon viewing the body, he identified it as that of his daughter, Mohini, aged around 5 years. He suspected that Ram Bhawan Harijan, a resident of his village in the district of Prayagraj, had murdered his daughter Mohini and had thrown her body in the canal to conceal it.

4.3 Thereafter, in the instant case, an inquest was prepared by S.I. Ajit Singh and other documents were prepared. The inquest report and other documents were exhibited as Ex. Ka-3 and Ex. Ka7 to Ex. Ka11. After the inquest report was prepared, the body of the deceased Mohini was sent for postmortem, which was conducted by Dr. Uttam Singh Yadav. A total of three injuries on the body of the deceased were found and the cause of death was asphyxia due to strangulation and smothering. The post-mortem report is exhibited as Ex. Ka6.

4.4. This case was investigated by SI Ajay Kumar Gupta, who prepared the site plan Ex. Ka-7 and recorded the statements of witnesses under Section 161 Cr.P.C. After completion of investigation, a charge sheet against accused-appellant Ram Bhawan Harijan was submitted and thereafter, the matter was committed to the Court of Session and charges under Sections 302/201 I.P.C. were framed against the accused. The accused denied the charges and claimed trial.

5. During the course of trial as many as 9 prosecution witnesses were examined. The incriminating circumstances appearing in the prosecution evidence were put to the appellant while recording his statement under Section 313 Cr.P.C. The appellant denied the incriminating circumstances and claimed that he had been falsely implicated in the present case.

6. By the impugned judgment, the learned trial judge convicted the appellant. Hence, this appeal.

7. Sri Sushil Kumar Dwivedi, learned counsel appearing on behalf of the appellant submitted that:-

(i) PW1, PW2 and PW3 are not eye witnesses of the incident. The prosecution has not examined any eye witness of the incident. He further submitted that the prosecution has not been able to prove the intention/motive to commit the murder of the deceased.

(ii) This case is based upon circumstantial evidence and the chain of circumstances has not been established by the prosecution. In the present case, there is no evidence regarding the last seen. The accused has been only identified by the so called 'shawl' of the accused. However, it has also been submitted that the shawl was not belonging to the accused. Moreover, PW6 Ajit Singh, who prepared the inquest report has stated that the body was not wrapped in Shawl due to which the statement related to the shawl also become false and doubtful.

8. Per contra, Smt. Kiran Bala, learned counsel for the informant and Sri Ajay Sharma, learned A.G.A. for the State submitted that prosecution has successfully proved that the accused had enmity with the informant and had threatened him a few days immediately before the incident. They submitted that in the present case, the accused was identified by his shawl. Prosecution witnesses had supported the version of the prosecution. They lastly submitted that the trial Court has rightly convicted and sentenced the accused-appellant. Therefore, the appeal lacks merit and is liable to be dismissed.

9. Having considered the rival submissions advanced by the learned counsel for the parties, it would be appropriate to first analyze the testimony of witnesses.

10. PW1 Virendra alias Mukesh is the informant who has stated that he is illiterate and he can only sign. The incident occurred approximately one year and four months ago at 4 p.m. On that day, his daughter Mohini, aged around 5 to 6 years, went to play in a pond situate on the south side of the village. When she did not return, he searched for her everywhere, but failed to trace her out. On the next day, he again searched everywhere for her. His father, Hari Lal, and the village Pradhan Naresh, also searched for her. When the whereabouts of her daughter were not found, he along with his father and village Pradhan went to the police station Lalapur to register a missing report. After four days of filing the missing report, the police Inspector of Police Station Lalapur informed him that a dead body of a girl had been found. On receiving the said information he along with his father Hari Lal, elder brother of his father Baijnath, Village Pradhan Naresh and Ibrahim went to the police Station concerned. The concerned Inspector of Police took all of them to the Canal where they saw that the dead body of his daughter Mohini was lying. He recognized the dead body by looking at her face and clothes. The body was swollen and was wrapped in a Shawl which belonged to the accused Ram Bhawan Harijan. He knew the accused Ram Bhawan from before the incident since he was his neighbour. He suspected that Ram Bhawan had murdered his daughter and had thrown her body into the canal to hide it. Before this incident, there was a dispute with Ram Bhawan. He had said, *"You call me 'Katli-Katli', and I will destroy you."*

11. PW2 Hari Lal is the grandfather of the deceased who had stated that incident is of the year 2021. About 27 to 28 months back at around 4 pm, his grand-daughter Mohini, had gone to play in the pond, south of the house and did not return. When she did not return, he along with others searched for her but could not find her. When his granddaughter had gone to play, she was wearing speckled sky blue and yellow leggings. She was wearing a dark dull scarf in her neck. His son Virendra and Mukesh had reported the incident to the police station about the fact that her granddaughter had gone missing. The police came and inquired. After that, he, Baijnath, Naresh, Doctor Pradhan, and a few other people from the village went to Pratappur with the police. He had said that all of them had searched extensively but couldn't find the girl. On the fourth day, the police inspector informed them that a dead body had been found on the canal track near Bhodi village Bara police station. They asked him to go and identify the body. His elder brother Baijnath, Harilal, Swayam Ibrahim, Doctor Pradhan and Mukesh went there to identify the body. When they reached there, they saw that it was his granddaughter's body, which was swollen and the tongue was sticking out. They had seen that the dead body was wrapped in a shawl, which belonged to Ram Bhawan. Ram Bhawan used to walk around the village wearing it. All this, completely convinced him that Ram Bhawan had murdered his granddaughter. The body was sealed at the spot

where it was found, and the Panchayatnama proceedings were conducted and it was sent for post-mortem. He had stated that along with him there were people namely, Dr. Naresh Kumar, my elder brother Bajinath, Virendra alias Mukesh, and Ibrahim. He had put his thumb impression on the Panchayatnama. He had further stated that 3 to 4 months prior to the incident, Ram Bhawan had threatened him that he would kill him, ruin his sons and leave them worthless. He has proved the inquest paper nos. 7A/2 to 7A/3, which is exhibited as Ex. Ka3. He stated that four days after filing the report, the dead body of his granddaughter was found. He had gone to the place where the dead body was found, in connection with this incident.

12. PW 3 Bajinath stated that Mukesh alias Virendra is his nephew. His daughter's name was Mohini. The incident occurred on 27.07.2021, at around 4 p.m. Mohini was five years old at that time. She went to play near the pond to the south of his house that day from where, she did not return. They began searching for her, but could not find her. The next day, their family and villagers searched again. On 29.07.2021, Mukesh lodged a report at the police station. The police searched his house and surrounding areas. His nephew, Surendra, circulated Mohini's posters throughout the village and via mobile phone. On 31.07.2021, the police called them to the police station and took them to the canal in Bhodi village, where the dead body of a young girl was found. Upon seeing the dead body, they recognized it as that of Mohini. She was wearing a spotted kurti, a sky-blue shirt, and a dull white scarf wrapped around her neck. The dead body was swollen and her tongue was protruding. The body was wrapped in a spotted shawl. He recognized that shawl, but did not tell anyone. Then the body was taken to Police Station Bara. At the police station, the dead body was sealed in a white cloth and the formalities were done. A Panchayatnama was done. His signature is on Panchayatnama paper no. 7A which is exhibited as Ex. Ka3. Then the body was taken to the mortuary. After the post-mortem, they brought the dead body to Daraganj and performed the last rites. After that, when the Inspector came to the village, his brother Hari Lal called for the shawl which was with Mohini's body. He did not tell anything on the spot but went to the police station and told that the shawl belonged to the accused Ram Bhawan.

13. PW4 HC Samarendra Singh stated that on 29.07.2021, he was posted in the Police Station Lalapur, District Prayagraj. On that day, on the basis of written report of informant Mukesh alias Virendra, son of Hari Lal Raidas, resident of Semri Tarhar, Police Station Lalapur, District Prayagraj, FIR No. 81/21 was registered at 15.31 PM against unknown, under section 363 of IPC. He has proved the chick F.I.R. which is exhibited as Ex. Ka4.

14. PW5 is the Dr. Uttam Singh Yadav who had stated that on 31.07.2021, he was posted as Medical Officer in Tej Bahadur Sapru Hospital. On that day, he was on duty with Medical Officer Dr. Suryabhan Singh Yadav in the mortuary for postmortem. On that day, he conducted post-mortem of the dead body. The dead body was 112 cm tall, of medium built, and had been decapitated. The skin could be easily removed.

14.1 Injuries as were reported:-

External injuries on the lip-

1. Abrasion 1 cm X 0.5 cm above the lip
2. Contusion 1 x 0.5 cm in the middle of the lower lip

3. A ligature mark measuring approximately 3 cm wide was found around the neck. The ligature mark was located 6 cm below the groin and 6 cm below the left shoulder. Inspection of the ligature mark revealed blood clots within the muscle, and the hyoid bone, the killing chest bone, was found to be broken.

Note-Pelvic content coming out through vaginal opening.

Internal injury ‘ found on opening the brain.

14.2. The fifth and sixth vertebrae on the right side of the chest were found broken. The pleura was congested. Both lungs were congested. The stomach contained 200 grams of food. Intestinal mucus and gases were present. The large intestine contained the liver, spleen, pancreas, and both kidneys. Objects were protruding from the vagina and the inside of the cavity. The probable time of death was approximately four days prior. The cause of death was asphyxia, strangulation, and smothering. There was a cleft, a leggings, and a towel on the deceased's body. The post-mortem was started at 2:20 and concluded at 2:50. The seal was found to be intact.

15. PW6 Ajeet Singh was the Sub-Inspector who has stated in his statement that on 30.07.2021, the body of an unidentified deceased was found in the Bhodi Canal. The information was provided by Vimlesh, son of Bhagirathi, a resident of Bhodi village, Bara police station. Since he was the station in-charge, the responsibility of preparing inquest report was assigned to him. He has proved the inquest report paper nos. 7A/2 to 7A/4 which is exhibited as Ex. Ka3. He has also proved the documents relating to the inquest report i.e. the Challan Nash, Photonash, letter of R.I. and letter of C.M.O., which are exhibited as Ex. Ka7 to Ka11.

16. PW7 Inspector Ajay Kumar Gupta was the Investigating Officer, who has prepared the site plan of the incident which is exhibited as Ex. Ka-8.

17. PW8 Manish Kumar Tripathi was one of the Investigating Officers in the instant case who had stated that investigation of the instant case was transferred to him by the earlier Investigating Officer, namely, Vrandavan Rai, who stated that on the instruction of S.I. Ajeet Singh, he prepared the site plan of the place where the dead body was recovered. He has proved the site plan which is exhibited as Ex. Ka8. He has also proved the charge sheet submitted against the accused-appellant, which is exhibited as Ex. Ka9.

18. PW9 Manoj Kumar was the Head Constable who has proved the recovered articles i.e. Shawl, Frock, Leggings and Scarf as material exhibits 1, 2, 3 and 4 respectively.

19. Evidently, the present case rests entirely upon circumstantial evidence, as admittedly there are no eyewitnesses to the alleged occurrence. It is a fundamental principle of criminal law that in cases where direct evidence is absent, the court must meticulously examine the chain of circumstances to determine if they lead to the sole conclusion of the guilt of the accused. As held by the Hon'ble Supreme Court in the landmark case of **Sharad Birdhichand Sarda vs. State of Maharashtra (1984) 4 SCC 116**, circumstances must be of a conclusive nature and should be so complete as to not leave any reasonable ground for a conclusion consistent with the innocence of the accused. Accordingly, we shall now proceed to discuss the specific circumstances and the evidence produced by the prosecution to see whether they established a complete chain as whether they indicated, beyond a reasonable doubt, the guilt of the accused.

20. In the present case, there is only one circumstance against the accused and it is also the cornerstone of the prosecution's case i.e. recovery of the dead body, allegedly wrapped in a "shawl" belonging to the appellant. However, a fatal contradiction exists between the ocular testimony and the contemporaneous documentary evidence. While PW2 and PW3 emphatically stated that the body was found wrapped in the appellant's shawl, the testimony of Dr. Uttam Singh Yadav (PW5) and the Inquest Report prepared by SI Ajeet Singh (PW6) categorically omit the presence of any such shawl during the inquest and autopsy. This discrepancy suggests that the "link" of the shawl may have been an afterthought to connect the appellant to the crime.

21. Even if the court were to momentarily overlook the contradiction regarding the presence of the shawl, the prosecution's reliance on its identification is legally unsound. A perusal of the record reveals a total absence of any specific description concerning the shawl's color, pattern, fabric, or unique identifying marks. The witnesses merely offered a generic identification, claiming it to be a 'spotted shawl' belonging to the accused without explaining how they distinguished it from any other common garment. It is a settled principle of law that for a piece of clothing to serve as a link in a circumstantial chain, it must possess distinct characteristics that preclude the possibility of it belonging to anyone else. In a rural setting where mass-produced garments are common, there is no "hard and fast rule" that a particular type of shawl is unique to one individual. Without a formal Test Identification Parade (TIP) for the property or a detailed forensic description in the seizure memo, it is hazardous to conclude that the shawl found, if it existed, was the exact one owned by the appellant.

22. The prosecution's narrative regarding the shawl is further marred by a significant procedural lapse during the Panchayat Nama (inquest) conducted on 31.07.21. According to the PW-3, a police officer later came to the village on 01.08.2021 claiming he had "brought this shawl" to show them. As a matter of standard legal procedure, whenever a Panchayat Nama is conducted, every article of clothing or material found on the deceased must be immediately seized, documented in the recovery memo, and sealed on the spot to be sent for forensic examination (FSL). This protocol is mandatory to ensure that the evidence is protected from any form of tampering or planting. However, in this case, the fact that the shawl was allegedly being carried around by a police officer to be shown to villagers, rather than being in a sealed forensic cover, raises a grave concern. This suggests that the "chain of custody" was broken. If the shawl was not sealed at the scene and was instead handled loosely by the police, it loses all its evidentiary value, as it becomes impossible for the Court to be certain that the item was not planted or altered to falsely implicate the accused. Such a casual approach to vital physical evidence creates a serious doubt in the prosecution's story.

23. Having addressed the factual inconsistencies surrounding the recovery of the shawl, it is imperative to evaluate the legal framework under which such a recovery, if accepted, would operate. The prosecution relies on the identification of this 'shawl' to bridge the gap between the accused and the deceased. In the eyes of the law, such a link is governed by Section 9 of the Indian Evidence Act, which renders relevant any of those facts necessary to explain or introduce a relevant fact, or those which establish the identity of any "thing" whose identity is relevant. Here, the shawl is the "thing" through which the prosecution seeks to establish the identity of the accused.

Consequently, the admissibility and weight of this evidence must be scrutinized under Section 9 of Indian Evidence Act, 1872 which is as follows:

‘9. Facts necessary to explain or introduce relevant facts.

Facts necessary to explain or introduce a fact in issue or relevant fact, or which support or rebut an inference suggested by a fact in issue or relevant fact, or which establish the identity of anything or person whose identity is relevant, or fix the time or place at which any fact in issue or relevant fact happened, or which show the relation of parties by whom any such fact was transacted, are relevant in so far as they are necessary for that purpose.’

24. Therefore, it can be concluded that Section 9 of the Indian Evidence Act, 1872 is a provision, designed to ensure that the evidentiary narrative is complete and intelligible. It recognizes five distinct categories of facts as relevant:

- (i) those necessary to explain or introduce a fact in issue or relevant fact,
- (ii) those which support or rebut an inference suggested by a fact in issue or relevant fact,
- (iii) those which establish the identity of any person or thing whose identity is relevant,**
- (iv) those which fix the time or place at which any fact in issue or relevant fact occurred,
- and
- (v) those which show the relation of parties by whom any such fact was transacted.

25. The importance of Section 9 lies in its dual nature; while sometimes much of the focus in criminal trials often rests on the identification of the accused, the law places equal emphasis on the identification of things. The inclusion of ‘thing’ alongside ‘person’ makes clear that the provision is not confined to human identification alone. Courts have consistently applied Section 9 to the identification of stolen property, forged documents, handwriting, or other material objects, recognizing that such identification is often crucial to linking circumstantial evidence with the fact in issue. For instance, recovery of stolen articles from the accused, verification of signatures on disputed documents, or determination of the genuineness of a will are all admissible under this section. In the same manner recovery of any article of accused person from the body of deceased is also relevant and admissible under this provision. Thus, Section 9 operates as a connective tissue in the law of evidence, bridging facts in issue with explanatory or corroborative circumstances, and ensuring that both persons and things are properly identified, contextualized, and tested within the judicial process. Accordingly, in the instant matter the alleged ‘shawl’ is relevant as a thing and facts establishing its identity are also relevant.

26. Further, the primary legal question is whether the mere recovery of an article, and its subsequent identification by witnesses is sufficient to sustain a conviction under the law. It is pertinent to note here that Section 9 requires that the circumstances surrounding the identification should be beyond reproach. If, as the witnesses stated, the police officer simply brought the shawl to the village and claimed it was the one used in the crime, the act of identification is no longer an independent act of recognition; it becomes a guided suggestion. Without a distinct and recorded description that matches the appellant’s specific property, the shawl fails to meet the threshold of a "fact that establishes identity."

27. Following this legal logic, even when the shawl is relevant under Section 9 of the Indian Evidence Act, it cannot serve as the sole basis for a conviction. It is a well-settled principle of criminal jurisprudence that the evidence of identification, whether of a person or a thing as contemplated under Section 9, is inherently a weak type of evidence and only corroborative in nature. Hon'ble Supreme Court in the case of **Munshi Singh Gautam v. State of M.P., (2005) 9 SCC 631** stated:

'16. As was observed by this Court in Matru v. State of U.P. [(1971) 2 SCC 75 :1971 SCC (Cri) 391] identification tests do not constitute substantive evidence. They are primarily meant for the purpose of helping the investigating agency with an assurance that their progress with the investigation into the offence is proceeding on the right lines. The identification can only be used as corroborative of the statement in court. (See Santokh Singh v. Izhar Hussain [(1973) 2 SCC 406: 1973 SCC (Cri) 828] .) The necessity for holding an identification parade can arise only when the accused are not previously known to the witnesses. The whole idea of a test identification parade is that witnesses who claim to have seen the culprits at the time of occurrence are to identify them from the midst of other persons without any aid or any other source. The test is done to check upon their veracity. In other words, the main object of holding an identification parade, during the investigation stage, is to test the memory of the witnesses based upon first impression and also to enable the prosecution to decide whether all or any of them could be cited as eyewitnesses of the crime. The identification proceedings are in the nature of tests and significantly, therefore, there is no provision for it in the Code and the Evidence Act. It is desirable that a test identification parade should be conducted as soon as after the arrest of the accused. This becomes necessary to eliminate the possibility of the accused being shown to the witnesses prior to the test identification parade. This is a very common plea of the accused and, therefore, the prosecution has to be cautious to ensure that there is no scope for making such an allegation. If, however, circumstances are beyond control and there is some delay, it cannot be said to be fatal to the prosecution.

17. It is trite to say that the substantive evidence is the evidence of identification in court. Apart from the clear provisions of Section 9 of the Evidence Act, the position in law is well settled by a catena of decisions of this Court. The facts, which establish the identity of the accused persons, are relevant under Section 9 of the Evidence Act. As a general rule, the substantive evidence of a witness is the statement made in court. The evidence of mere identification of the accused person at the trial for the first time is from its very nature inherently of a weak character. The purpose of a prior test identification, therefore, is to test and strengthen the trustworthiness of that evidence. It is, accordingly, considered a safe rule of prudence to generally look for corroboration of the sworn testimony of witnesses in court as to the identity of the accused who are strangers to them, in the form of earlier identification proceedings. This rule of prudence, however, is subject to exceptions, when, for example, the court is impressed by a particular witness on whose testimony it can safely rely, without such or other corroboration. The identification parades belong to the stage of investigation, and there is no provision in the Code which obliges the investigating agency to hold or confers a right upon the accused to claim a test identification parade. They do not constitute substantive evidence and these parades are essentially governed by Section 162 of the Code. Failure to hold a test identification parade would not make inadmissible the evidence of identification in court. The weight to be attached to such identification should be a matter for the courts of fact. In appropriate cases it may accept the evidence of identification even without

insisting on corroboration. (See Kanta Prashad v. Delhi Admn. [AIR 1958 SC 350: 1958 Cri LJ 698], Vaikuntam Chandrappa v. State of A.P. [AIR 1960 SC 1340: 1960 Cri LJ 1681], Budhsen v. State of U.P. [(1970) 2 SCC 128: 1970 SCC (Cri) 343: AIR 1970 SC 1321] and Rameshwar Singh v. State of J&K [(1971) 2 SCC 715: 1971 SCC (Cri) 638: AIR 1972 SC 102].'

28. Then Recently in **Vinod @ Nasmulla v. State of Chhattisgarh, (2025) 4 SCC 312** Hon'ble Supreme Court again reiterated that:

*'21. A test identification parade under Section 9 of the Evidence Act, 1872[***] is not substantive evidence in a criminal prosecution but is only corroborative evidence. The purpose of holding a test identification parade during the stage of investigation is, firstly, to ensure that the investigating agency is proceeding in the right direction where the accused is unknown and, secondly, to serve as a corroborative piece of evidence when the witness identifies the accused during trial. [Umesh Chandra v. State of Uttarakhand, (2021) 17 SCC 616, para 9; Iqbal v. State of U.P., (2015) 6 SCC 623, para 15: (2015) 3 SCC (Cri) 301] The evidence of identification merely corroborates and strengthens the oral testimony in court which alone is the primary and substantive evidence as to identity. [Hari Nath v. State of U.P., (1988) 1 SCC 14, para 19: 1988 SCC (Cri) 14]*

22. In Rameshwar Singh v. State of J&K [Rameshwar Singh v. State of J&K, (1971) 2 SCC 715: 1971 SCC (Cri) 638], a three-Judge Bench of this Court succinctly summarised the evidentiary value of the TIP as under: (SCC p. 719, para 6) '6. 'The identification during police investigation' is not substantive evidence in law and it can only be used for corroborating or contradicting evidence of the witness concerned as given in Court. The identification proceedings 'must be so conducted that evidence with regard to them when given at the trial, enables the court safely to form appropriate judicial opinion about its evidentiary value for the purpose of corroborating or contradicting the statement in Court of the identifying witness.'

Thus, if the witness who identified a person or an article in the TIP is not examined during trial, the TIP report which may be useful to corroborate or contradict him would lose its evidentiary value for the purposes of identification.

23. The rationale behind the aforesaid legal principle is that unless the witness enters the witness box and submits himself for cross-examination how can it be ascertained as to on what basis he identified the person or the article. Because it is quite possible that before the TIP is conducted the accused may be shown to the witness or the witness may be tutored to identify the accused. Be that as it may, once the person who identifies the accused during the TIP is not produced as a witness during trial, the TIP is of no use to sustain an identification by some other witness.'

29. The legal character of a Test Identification Parade (TIP) as a non-substantive piece of evidence has been firmly established through a long line of Supreme Court jurisprudence, extending from early precedents to very recent rulings. In foundational cases like **Kanta Prashad v. Delhi Administration (1958) SCC Online SC 10** and **Sheikh Hasib v. State of Bihar (1972) 4 SCC 773**, it has been clarified that TIP is primarily an investigative tool intended to reassure the police that their inquiry is moving in the right direction. This principle was further elaborated in cases like **Dana Yadav v. State of Bihar (2002) 7 SCC 295** and **Munshi Singh (supra)**, where the Court observed that while dock identification is the only substantive evidence, a prior TIP is a "rule of prudence" necessary to corroborate the witness's memory. Most recently, in **Vinod @ Nasmulla (supra)** the Supreme Court reaffirmed that TIP cannot be the sole basis of conviction.

30. The collective findings of these judgments and law laid down in Section 9 of Indian Evidence Act, 1972 (Section 7 of the Bharatiya Sakshya Adhiniyam, 2023) establishes that the primary purpose of a Test Identification Parade (TIP) or the identification of property under this section is to provide corroborative value to the investigation; it is not a substantive piece of evidence that can stand alone as be the basis of conviction. In the eyes of law, identification is a matter of opinion and memory, which are susceptible to error, influence, or suggestion, especially when the object in question is a common article like a shawl. A "weak" or "corroborative" piece of evidence as per Section 9 requires the support of other strong, independent links to complete the chain of circumstances. Therefore, the evidence of the shawl, being corroborative in nature, is insufficient to establish the guilt of the accused.

31. In view of the aforesaid discussions and the facts and circumstances of the case, we are of the view that the findings recorded by the learned Trial Court in the impugned judgment are not in conformity with the evidence on record. The prosecution case rests entirely on circumstantial evidence; however, the chain of circumstances is far from complete. Notably, the recovery of the "shawl" is highly doubtful and lacks evidentiary value. Furthermore, the serious lapses in the investigation process and the lack of independent witnesses create a significant gap in the prosecution's version of events. The learned Trial Judge failed to appreciate that in a case of circumstantial evidence, the circumstances must be of a conclusive nature, leaving no room for any other hypothesis except the guilt of the accused. Consequently, the judgment of conviction of learned trial Court is found to be unsustainable in the eyes of the law and is liable to be set aside.

32. Accordingly, the appeal is allowed, and the judgment of conviction is hereby set aside.

33. The appellant is in jail. If the appellant is not required in any other case, he be released forthwith.

34. Let a copy of the judgment and order alongwith trial court record be sent to the concerned Chief Judicial Magistrate/Trial Court for compliance.

35. Before parting with the judgment, I would like to express my appreciation to my Research Associate, Ms. Anjali Singh for her thorough research and assistance to the Court in the instant case.

(2026) 4 ILRA 270
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 24.04.2026

BEFORE

THE HON'BLE ABDUL SHAHID, J.

Criminal Appeal No. 11406 of 2025

Mahesh Tripathi

State of U.P. & Anr.

...Appellant

Versus

...Respondents

Issue for Consideration

Matter pertains to whether, in an appeal under S. 14-A(1) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, the summoning order, charge sheet and entire proceedings arising out of offences under the Bharatiya Nyaya Sanhita, 2023 and the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 were liable to be set aside on account of material inconsistencies in the F.I.R., statements recorded during investigation, and reliance on CCTV footage contrary to the ocular version. (Paras 7-10, 32-63)

Headnotes

Criminal Law - Quashing of proceedings - Maintainability of appeal - Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 - S. 14-A (1) - Scope of appellate jurisdiction - High Court has jurisdiction to review the order passed by the Special Court on both facts and law - Appeal held maintainable against summoning order and consequential proceedings. (Paras 9-10)

Criminal Law - Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 - Ss. 3(1)(r), 3(1)(s), 3(2)(5a) - Investigation - Material inconsistencies in prosecution case - F.I.R. lodged on the next day of the incident - Complainant repeatedly changed version in statements recorded under S. 161 Cr.P.C. and altered role assigned to named accused - Genesis of prosecution case materially altered during investigation - Serious doubt raised on prosecution story. (Paras 22-25, 30-38, 53-58)

Criminal Procedure - Appreciation of evidence at stage of cognizance - Ocular evidence and CCTV footage - CCTV footage without audio relied upon during investigation - Complainant and injured witness changed earlier ocular versions after viewing CCTV footage - CCTV footage ultimately became basis of charge sheet - Ocular statements and subsequent statements based on CCTV footage found contradictory - Reliance on such inconsistent material held to cast serious doubt on prosecution case. (Paras 35-49, 54-60)

Criminal Law - Quashing of charge sheet and summoning order - Contradictory statements of complainant and injured witness - Inherent inconsistencies going to root of matter - No person permitted to invoke process of law according to his own wishes, surmises and conjectures - Impugned summoning order and entire proceedings against appellant set aside and quashed. (Paras 61-64)

Practice and Procedure - Judicial terminology - Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 - Special Court - Expression court below - Supreme Court directions regarding use of terminology Trial Court Record (TCR) instead of Lower Court Record (LCR) - Court observed that terminology court below may be replaced with trial court or concerned court. (Paras 65-70)

Held: The present matter is a criminal appeal under S. 14-A(1) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 wherein the High Court has jurisdiction to review the order passed by the Special Court on both facts and law - the complainant is neither illiterate nor uneducated rather he is a responsible person holding the position of Chairman of the Zila Panchayat and from 29.06.2025 to 21.07.2025 and thereafter on 19.09.2025 there have been material changes in his statements - the entire genesis of the prosecution case has been materially altered during the course of investigation - the complainant and the injured witness have consistently changed their versions from their earlier statements under S. 161 Cr.P.C. as well as from the contents of the F.I.R. - the State has relied more upon the CCTV footage than the ocular evidence and the CCTV footage does not contain any audio - the complainant has thereby denied and materially departed from the ocular averments made at the time of registration of the F.I.R. and in his earlier statements - the ocular statement of the complainant and the injured witness and their subsequent statements after seeing CCTV recording are contradictory - it is the ocular evidence which has to prevail and reliance on statements after seeing CCTV footage raises serious doubt on entire prosecution story - the statement of the complainant suffers from inherent inconsistencies and no person is permitted to invoke the process of law according to his own wishes surmises and conjectures - the subsequent improvements and inconsistencies in the prosecution story cannot be judicially accepted - the impugned summoning order is set aside and the entire proceedings against the appellant are quashed - Appeal allowed. (Paras 10, 32-38, 45-49, 58-64) (E-7)

Case Law Cited

State of Gujarat Versus Afroz Mohammed Hasanfatta passed in Criminal Appeal No. 224 of 2019 dated 05.02.2019; Sakhawat and Another v. State of U.P. in SLP (Criminal) No. 1936 of 2019 dated 08.02.2024.

List of Acts

Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989; Bharatiya Nyaya Sanhita, 2023; Code of Criminal Procedure, 1973; Bharatiya Nagarik Suraksha Sanhita, 2023.

List of Keywords

Summoning order; charge sheet; criminal appeal; Special Court; cognizance; F.I.R.; delay in lodging F.I.R.; material inconsistencies; ocular evidence; CCTV footage; statements under S. 161 Cr.P.C.; caste-based remarks; tender process; prosecution story; contradictory statements; investigation; quashing of proceedings; inherent inconsistencies; public view; Special Case; Trial Court Record.

Case Arising From

APPELLATE JURISDICTION: Criminal Appeal under S. 14-A(1) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 against the impugned order dated 14.10.2025 passed by the Special Judge (SC/ST Act)/Additional District & Sessions Judge, Mahoba in Special Case No. 86 of 2025 and seeking quashing of the charge sheet, summoning order and entire proceedings arising out of Case Crime No. 0277 of 2025.

Appearances for Parties**Advs. for the Appellant:**

Sri H.N. Singh, learned Senior Advocate, assisted by Sri Vineet Kumar Singh.

Advs. for the Respondents:

Sri Vinay Saran, learned Senior Advocate, assisted by Sri Avijit Saxena for Respondent No. 2; Sri Acharya Rajesh Tripathi, learned A.G.A. for the State.

(Delivered by Hon'ble Abdul Shahid, J.)

1. Heard Sri H.N. Singh, learned Senior Advocate, assisted by Sri Vineet Kumar Singh, learned counsel for the appellant, Sri Vinay Saran, learned Senior Advocate, assisted by Sri Avijit Saxena, learned counsel for the Respondent No. 2 and Sri Acharya Rajesh Tripathi, learned A.G.A. for the State.

2. The present Criminal appeal under Section 14-A(1) of the Scheduled Castes Act and Scheduled Tribes (Prevention of Atrocities) Act, 1989 has been filed against the impugned order dated 14.10.2025 passed by Special Judge (SC/ST Act)/Additional District & Sessions Judge, Mahoba in Special Case No.86 of 2025 (State Vs. Mahesh Tiwari and Another) under Sections 221, 132, 352, 351(2), 127(1) of the Bharatiya Nyaya Sanhita, 2023 and Sections 3(1)(r), 3(1)(s), 3(2)(5a) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 arising out of Case Crime No.0277 of 2025, Police Station Kotwali Nagar, District Mahoba and the entire proceedings of Special Case No.86 of 2025 (State Vs. Mahesh Tiwari and Another) pending in the Court of Additional District & Sessions Judge/Special Judge (SC/ST Act), Mahoba.

3. The genesis of the case, as per the complainant/opposite party no. 2, Jai Prakash Anuragi, is that he lodged an F.I.R. regarding an incident dated 28.06.2025 at 16:50 hours. The F.I.R. was registered with a delay on 29.06.2025 at 13:26 hours under Sections 221, 132, 352, and 351(2) of

the IPC, and Sections 3(1)(r), 3(1)(s), and 3(2)(va) of the SC/ST Act, 1989. The complainant lodged the F.I.R. against two accused persons, namely, (1) Mahesh Tiwari, son of unknown, and (2) Ankit Shukla, son of Devendra Shukla.

4. It is stated in the complaint that on 28.06.2025, during the tender process at the Zila Panchayat, when documents were being deposited in the tender box, at about 4:50 p.m., Mahesh Tiwari (resident of Kabrai, Mahoba) and Ankit Shukla (resident near Vikas Bhawan, Mahoba), along with their associates, entered the premises and approached the tender box. They allegedly instructed that water be poured into the box. Upon protest by a government employee present there, Mahesh Tiwari pushed the employee aside, while Ankit Shukla allegedly caught hold of the complainant/Jai Prakash Anuragi from behind and abused him using caste-based remarks in a loud voice and said where is Kuriya Chairman.

5. On hearing this noise, the complainant, along with Zila Panchayat member Shri Mrityunjay Pratap Ahirwar, came out and questioned the accused. It is further alleged that Mahesh Tiwari threatened the complainant and used caste-based remarks against both the complainant and the said member, and thereafter left the spot, extending threats of future consequences.

6. The present criminal appeal has been filed against the summoning order dated 14.10.2025 issued after submission of the charge sheet against the appellant, Mahesh Tiwari. The charge sheet was also filed against Shailendra Singh, who is not before this Court.

7. At the outset, learned counsel for the opposite party no. 2 raised a preliminary objection that the summoning order has been issued on the basis of the investigation, followed by submission of the charge sheet; hence, the relief sought by the appellant for quashing of the charge sheet, the summoning order, and the entire proceedings is not liable to be quashed.

8. Learned counsel for the opposite party no. 2/complainant had relied on the law laid down by the Hon'ble Supreme Court in State of Gujarat Versus Afroz Mohammed Hasanfatta (reportable judgement) passed in Criminal Appeal No. 224 of 2019 dated 05.02.2019. The said appeal was filed before the Honb'ble Supreme Court against the order of the High Court of Gujarat dated 03.05.2017 allowing the Criminal Revision No.264 of 2017 and by which the High Court has set aside the order dated 15.11.2014 passed by the Chief Judicial Magistrate at Surat by which the Magistrate had taken cognizance of the offences punishable under Sections 420, 465, 467, 468, 471, 477A and 120-B IPC on the basis of the second supplementary charge sheet filed by the police in Criminal Case No.62851/2014 and ordered issuance of process to the respondent-accused. The impugned judgment which was challenged before the Hon'ble Supreme Court was against the criminal revision.

9. Learned counsel for the appellant has objected that the present criminal appeal is maintainable and the entire relief sought by him in the said appeal could be granted by this Court. This is not a criminal revision rather this is a criminal appeal under section 14-A(1) of the Scheduled Castes Act and Scheduled Tribes (Prevention of Atrocities) Act, 1989. (later referred as 'Act, 1989' for the sake of brevity). It is as follows:

‘Section 14A. Appeals.’(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), (corresponding B.N.S.S., 2023) an appeal shall lie, from any judgment, sentence or order, not being an interlocutory order, of a Special Court or an Exclusive Special Court, to the High Court both on facts and on law.’

10. There is legal force in the submission made by learned counsel for the appellant. Undoubtedly, the present matter is a criminal appeal under Section 14-A(1) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, wherein the High Court has jurisdiction to review the order passed by the Special Court, as defined under the said provision, on both facts and law.

11. Learned counsel for the appellant has submitted that there is a considerable delay in lodging the F.I.R. The opposite party is neither illiterate nor uneducated; rather, he is the Chairman of the Zila Panchayat. The F.I.R. was lodged against Mahesh Tiwari (appellant) as well as Ankit Shukla; however, no specific role was subsequently assigned to Ankit Shukla, who has been exonerated during the investigation, and no charge sheet has been filed against him. Ankit Shukla was named in the F.I.R. along with the name of his father; hence, it may be presumed that Jai Prakash Anuragi (opposite party no. 2) was well aware of him. The F.I.R. was lodged on the next day of the incident, with a delay of approximately 24 hours.

12. Learned counsel for the appellant has further submitted that there are material inconsistencies in the statements made by the complainant during the investigation, and none of the independent witnesses has supported his version.

13. It is further submitted that as per the complainant’s own averments, the ingredients of the offences under the SC/ST Act could not be fulfilled as the alleged incident did not occur in a public view. It is contended that the Chairman came out of his chamber only for two minutes and returned shortly thereafter. It is also alleged that the complainant did not want the appellant to participate as a competitor in the tender process and attempted to prevent him from submitting his tender.

14. Per contra, learned counsel for opposite party no. 2 has submitted that there is consistency in the complainant’s statements and there is ocular evidence supporting the prosecution case. It is further submitted that the appellant has failed to prove any motive, prima facie case is made out against him and the charge sheet has been duly filed and cognizance taken by the learned Special Court. Accordingly, the present criminal appeal is liable to be dismissed.

15. Learned counsel for the appellant has further submitted that the appellant is a contractor registered with various departments. A tender notice inviting e-tender/e-auction was published by the Zila Panchayat, Mahoba on 11.06.2025 for various tender items and last extended date was fixed 28.06.2025 on that date the appellant went to submit his tender in the tender box. The appellant though is qualified for submitting his tender but was being illegally prevented from submitting his tender in the tender box because the Chairman of Zila Panchayat i.e. the informant was interested in handing over the contract to the person of his choice and for that purpose, he was preventing the appellant from submitting the tender and thereafter to participate in bid. The appellant showed his objection for not permitting to submit the tender, consequently, the Chairman

of Zila Panchayat i.e. the informant became annoyed and in spite of that, the appellant had submitted the tender, hence the informant has lodged an FIR.

16. Learned counsel for the appellant has further submitted that the statement of the complainant was recorded under section 161 Cr.P.C. but he has failed to make any statement about the specific use of language relating to caste and further, it is not disputed that the alleged incident has not taken place in public view but is said to have happened in the office of the Zila Panchayat.

17. The statement of the complainant/opposite party no. 2 was first recorded on 29.06.2025 under Section 161 Cr.P.C., wherein he stated that Mahesh Tiwari threatened a government employee and pushed him, while Ankit Shukla caught hold of the complainant from behind and, after issuing threats, hurled abuses and used casteist remarks, stating, 'Where is that Kuriya Chairman'' This was heard inside, whereupon the complainant and his associate, Mrityunjay Pratap Ahirwar, came outside and questioned the accused as to why they were abusing. Thereafter, Mahesh Tiwari and Ankit Shukla allegedly said, 'Kuriya, we will see, how you run the Zila Panchayat,' and further addressed Mrityunjay Pratap Ahirwar, who was standing beside the complainant, with caste-based remarks, threatening him as well. Thereafter, they left the place after extending threats.

18. The informant further stated that Mahesh Tiwari and Ankit Shukla had threatened the government employee, Ram Milan Verma, and had interfered with the tender process and official work. He also stated that the CCTV footage could be examined for verification. In response to a specific query as to how he knew Mahesh Tiwari and Ankit Shukla, the informant stated that he had known both of them for a long time and that they were well acquainted with each other, including knowledge of each other's caste.

19. In reply to a further question as to whether any physical assault (marpeet) had taken place with him or any other person, he stated that no such incident had occurred. When asked whether he was willing to undergo a medical examination, he stated that, since no physical assault had taken place, he did not wish to undergo any medical examination of his own accord.

20. Learned counsel for the appellant has further submitted that another relevant witness, Shiv Shankar Vyas, who was posted as Nazir in the office of the Zila Panchayat, has narrated the incident dated 28.06.2025 only to the extent of submission of the tender and has not supported the allegations made by the Chairman of the Zila Panchayat regarding the use of caste-related language or any humiliation on the basis of caste.

21. Learned counsel for the appellant has further submitted that another relevant statement of Ram Milan an employee of the Zila Panchayat do admit that the appellant had got an apprehension that he is being prevented from submitting his tender, in the circumstances, he was caught hold by Ankit Shukla and the appellant has submitted his tender in tender box but regarding other alleged incident of use of language relating to caste was not supported by Ram Milan and Rajesh Kumar.

22. Learned counsel for the appellant has further submitted that the police recorded the statement of Opposite Party No. 2/complainant on 21.07.2025 vide CD-8, wherein he stated that he

had omitted to mention the name of Ravi Tiwari in the First Information Report along with the appellant and Ankit Shukla, and that Ravi Tiwari was also present at the scene of occurrence. In this regard, a true copy of the statement of the complainant recorded vide CD-8 dated 21.07.2025, along with the statement of witness Mrityunjay, has been jointly filed by the appellant.

23. Further, the third statement of the informant was recorded by the Investigating Officer on 19.09.2025 vide CD-17, wherein he stated that Ankit Shukla, who was earlier alleged to have caught hold of Ram Milan Verma, was not present at the scene of occurrence, and that the person who had caught hold of Ram Milan Verma was some other individual. He further stated that Ankit Shukla was not involved in the offence.

24. The statement of Ram Milan Verma was again recorded on 19.09.2025, wherein he also changed the prosecution version by stating that Ankit Shukla was not the person who had caught hold of him, but that the said person was Shailendra Singh, the driver of Mahesh Tiwari.

25. After concluding the investigation, the Investigating Officer submitted the charge sheet on 22.09.2025 against the appellant and Shailendra Singh, and concluded that Ankit Shukla and Ravi Tiwari were not involved in the alleged offence and were not present at the scene of occurrence.

26. Learned A.G.A. has filed a counter affidavit sworn by Arun Kumar Singh, who is the Circle Officer (City), District Mahoba. He has deposed that the Zila Panchayat, Mahoba, had invited tenders on 11.06.2025, and the last extended date for submission was fixed as 28.06.2025. On that date, the appellant and other persons were present at about 4:50 p.m.

27. It is further submitted that the Investigating Officer conducted further investigation. On 06.09.2025, the deponent, being the Deputy Superintendent of Police, was given charge of the Circle (City), and the investigation of the present case was taken up by him on 08.09.2025. Thereafter, the case diary and other evidence were examined. In the course of investigation, further statements of the complainant, Shri Jaiprakash Anuragi, the victim, and other witnesses were recorded. The CCTV footage of the spot was also examined and the site was inspected.

28. During investigation, it was found that on 28.06.2025, in the premises of the District Panchayat, Mahoba, after being pushed by the accused Mahesh Tiwari, the victim Ram Milan Verma above was pushed.

29. The person who hold the above mentioned person, it was Ankit Shukla son of Devendra Shukla has been told to be some other person Shailendra Singh (driver of Mahesh Tiwari) and the person involved (holding) has been identified by the accused and witnesses as Shailendra Singh, the complainant and witnesses above have confirmed that Ankit Shukla son of Devendra Shukla above named and Ravi Tiwari son of Ram Manohar Tiwari above named who came to light, were not involved (participants) in the said incident. From the consideration of CCTV footage related to the above mentioned case, all the persons seen except the named Mahesh Tiwari and Shailendra Singh above named were found to be in normal posture and their expressions appeared to be normal.

30. Thereafter, Ankit Shukla and accused Ravi Tiwari have been exonerated and the charge sheet was filed against Shailendra singh and Mahesh Tiwari and section 127(1) B.N.S. has been added. The Investigation Officer had relied on the third statement of the complainant under section 161 Cr.P.C. (corresponding section 180 B.N.S.S., 2023) dated 19.09.2025 where in the third statement of the complainant, the complainant stated that I closely minutely observed the video related to the incident and enquired from other people, then I came to know that I have written and mentioned the name of the person who caught the employee Rammilan Verma after pushing him, as Ankit Shukla. However, that person is not Ankit Shukla, the person who caught him is someone else, about whom not much information is available, perhaps he was the driver of Mahesh Tiwari, Ankit Shukla was not involved in the incident.

31. However, in his earlier statements dated 29.06.2025 and 21.07.2025 recorded under Section 161 Cr.P.C., as well as in the F.I.R. lodged by him, the complainant had specifically named Ankit Shukla along with his father's name, Devendra Shukla. When the I.O. has specifically questioned, then the complainant stated that he knows very well to Mahesh Tiwari and Ankit Shukla for a long time and also aware of their caste identities.

32. The complainant is neither illiterate nor uneducated; rather, he is a responsible person holding the position of Chairman of the Zila Panchayat. It cannot be assumed that such a person would make statements that change materially over time. However, from 29.06.2025 to 21.07.2025 and thereafter on 19.09.2025, there have been material changes in his statements, despite the F.I.R. having been lodged one day after the incident by himself.

33. The tender process was to be completed by 5:00 p.m. on 28.06.2025, and the alleged incident is stated to have occurred at about 16:50 hours. It is evident that the appellant came, submitted his tender, and thereafter left the premises.

34. When a specific query was put to the complainant in his third statement dated 19.09.2025 by the Investigating Officer as to why he had earlier named Ankit Shukla in the F.I.R., in his statements, and in the supplementary statement, and had even identified him in the video, but was now stating that another person was involved and Ankit Shukla had no role in the incident, the complainant replied that Ankit Shukla had approached him and asked him to verify the video. Upon re-examining the footage, he realized that Mahesh Tiwari had pushed Ram Milan and the person holding him was not Ankit Shukla but another individual/wearing a round-neck black T-shirt, lowers, and slippers. He then stated that Ankit Shukla is innocent and declined to say anything further.

35. Thus, the entire genesis of the prosecution case has been materially altered during the course of investigation. There is no question of relying solely upon subsequent perusal of video footage for identification of the accused, when the complainant was admittedly present at the spot and had initially named and assigned specific roles to each accused in the F.I.R.

36. While electronic evidence is admissible, it is ordinarily considered in addition to ocular or circumstantial evidence. In the present case, the complainant/Opposite Party No. 2 was present at the spot and had made serious allegations against the appellant under the provisions of the B.N.S.

as well as the special provisions of the Act of 1989. The consistent changes in his version and his increasing reliance on electronic evidence over his own ocular account cast serious doubt on the prosecution case.

37. Similarly, the injured Ram Milan Verma, an employee of the Zila Panchayat, has also recorded two statements under Section 161 Cr.P.C., dated 29.06.2025 and 19.09.2025, which are contradictory to each other. Being an employee under the administrative control of Opposite Party No. 2/complainant, who is the Chairman of the Zila Panchayat, the possibility of influence cannot be completely ruled out, particularly in the facts and circumstances of the present case.

38. Thus, both the complainant and the injured witness have consistently changed their versions from their earlier statements under Section 161 Cr.P.C., as well as from the contents of the F.I.R., which was lodged on the next day of the incident by complainant/opposite party no. 2 himself.

39. The State has filed a counter affidavit and has relied more upon the CCTV footage than the ocular evidence. It is stated that the CCTV footage dated 28.06.2025 is available from 16:00 hours to 17:40:19 hours, though the footage does not contain any audio.

40. As per the version in the F.I.R., the alleged incident took place at 16:50 hours. However, as per the CCTV footage, which forms the basis of the filing of the charge sheet, it is recorded that at 16:51:09 hours certain persons entered the office of the Zila Panchayat, namely Mahesh Tiwari, Himanshu Shukla, Sanjay Tiwari and Mohit Tiwari. Thereafter, at 16:51:45 hours, Himanshu Shukla took some papers from Mohit Tiwari and dropped in the box. On which some objections has been raised by the injured Ram Milan then Mahesh Tiwari had pushed injured Ram Milan Verma at 16.51.49 hours and another person wearing a black colour half round-neck T-shirt, appeared to be holding Ram Milan. The CCTV footage shows that Mohit Tiwari dropped the papers at 16:52:09 hours.

41. The complainant, Jai Prakash Anuragi failed to identify the person who was holding the injured Ram Milan and specifically stated that the said person was not Ankit Shukla, who had been previously named in the F.I.R. On the other hand, the injured Ram Milan stated that the person holding him was Shailendra Singh, the driver of Mahesh Tiwari. Thus, the prosecution story has undergone a material change.

42. Since the registration of the F.I.R. on 29.06.2025 and the statements of the complainant recorded under Section 161 Cr.P.C. on 29.06.2025, 21.07.2025 and 19.09.2025 as well as the statement of Ram Milan was recorded on 29.06.2025 and on 19.09.2025, there have been material inconsistencies. Another person standing near Sanjay Tiwari, wearing a sky-blue shirt, has been identified by all as Ankit Shukla, and another person wearing a saffron (bhagwa) kurta has been identified as Krishna Kant Mishra.

43. As per CCTV footage, at 16:52:47 hours, two persons were seen coming outside the office of the Chairman of the Zila Panchayat; the complainant has stated that one of them was himself and the other was Mrityunjay Pratap Ahirwar, a Member of the Zila Panchayat. Thereafter, some

conversation appeared to took place between the complainant/Chairman and his colleague, Mrityunjay Pratap Ahirwar, with Mahesh Tiwari and his associates, and their demeanor appeared normal.

44. Thereafter, at 16:54:50 hours, Mrityunjay Pratap Ahirwar was seen entering the office of the Zila Panchayat, and at the same time the complainant/Opposite Party No. 2 also entered his office. Subsequently, Mahesh Tiwari and his associates remained present in the premises, standing and sitting there, and ultimately left the premises at 16:57:27 hours.

45. This forms the basis of the filing of the charge sheet after the third statement of the complainant/Opposite Party No. 2 under Section 161 Cr.P.C., which is based on the CCTV footage. The complainant has thereby denied and materially departed from the ocular averments made at the time of registration of the F.I.R. and in his earlier statements under Section 161 Cr.P.C. dated 29.06.2025 and 21.07.2025.

46. The said CCTV footage is also contrary to the ocular evidence of the injured Ram Milan himself, an employee of the Zila Panchayat. His first statement under Section 161 Cr.P.C., based on ocular evidence, and his subsequent statement dated 19.09.2025 based on CCTV footage, are contradictory to each other.

47. As per the F.I.R., the incident occurred at 16:50 hours, whereas the CCTV footage, which forms the basis of the charge sheet, shows that at 16:52:47 hours the complainant/Chairman and Mrityunjay Pratap Ahirwar came outside their office. A brief conversation then took place between them and Mahesh Tiwari and his associates, during which their appearance, demeanor and conditions are appeared to be absolutely normal.

48. Thereafter, at 16:54:50 hours, both Mrityunjay Pratap Ahirwar and the complainant/Opposite Party No. 2 are seen re-entering their office. Thus, they remained outside for approximately two minutes, during which only a normal conversation took place with the appellant and his associates and the behaviour and demeanor of the appellant was normal. Even thereafter, the appellant and his associates remained present at the Zila Panchayat premises and left the Zila Panchayat office premises at 16:57:27 hours.

49. These CCTV recordings have ultimately become the basis for filing the charge sheet against the appellant. Whereas, the ocular statement of the complainant and Ram Milan recorded in F.I.R., and their statements under section 161 Cr.P.C. on 19.06.2025, 21.07.2025 and 19.09.2025, respectively, are contradictory to their statement under section 161 Cr.P.C. after seeing C.C.T.V. recording on 19.09.2025. Both are contradictory. It is the ocular evidence which has to prevail, whereas, both are relying on statement after seeing C.C.T.V. footage, which raises serious doubt on entire prosecution story.

50. A counter affidavit has also been filed by Opposite Party No. 2/complainant, wherein it is stated that the said counter affidavit is dated 15.02.2026. He has deposed that the appellant ought to have taken legal recourse against the answering Opposite Party instead of using caste-offensive words and engaging in manhandling with the staff of the answering Opposite Party, which,

according to him, shows that the appellant committed the alleged act knowingly and intentionally with the intent to tarnish the reputation of the answering Opposite Party.

51. However, in his statement, the answering Opposite Party has disclosed that specific caste-related words were used by the appellant, namely 'Koriya' towards him and 'Chamra' towards the Member of the Zila Panchayat, Mrityunjay Pratap Ahirwar. This indicates that, according to the complainant, the appellant used caste-related expressions towards both the answering Opposite Party and the said Member of the Zila Panchayat.

52. In paragraph 8 of the counter affidavit, it is deposed that the appellant was not prevented from depositing his tender document; rather, he was advised by the employee on duty at the tender box to insert the tender envelope directly without folding it. This was allegedly misconstrued by the appellant and his associate, Ankit Shukla, who then pushed the said employee and used caste-offensive words towards the answering Opposite Party as well as the Member of the Zila Panchayat, Mrityunjay Pratap Ahirwar, referring to him as 'Chamra.'

53. The complainant, in his third statement recorded under Section 161 Cr.P.C. on 19.09.2025, which is based on the CCTV footage, stated that Ankit Shukla was not involved. However, while filing the counter affidavit dated 15.02.2026, he again named Ankit Shukla.

54. The complainant is not consistent in his version; neither his averments based on ocular evidence nor those based on CCTV footage are consistent, and both are contradictory to each other. He has further deposed in paragraph 9 that the presence of the appellant and his associates at the place of occurrence, as well as the alleged manhandling committed by them, was captured in the CCTV camera installed inside the Zila Panchayat office, where the incident allegedly took place. The footage, which is without audio, is stated to show that a heated exchange and manhandling took place by the appellant and his associates.

55. However, as per the CCTV footage, the entry of Mahesh Tiwari into the premises is recorded at 16:51:09 hours, which has already been clearly explained in detail earlier.

56. The complainant/opposite Party No. 2, along with Mrityunjay Pratap Ahirwar, came outside their office at 16:52:47 hours and returned to their office at 16:54:50 hours. During this interval, the complainant and his associate, Mrityunjay Pratap Ahirwar, were seen talking to Mahesh Tiwari and his associates, and their demeanor appeared normal. The complainant remained outside his office for only about two minutes, as mentioned above, and there was no apparent altercation between them; rather, their conduct and demeanor appeared entirely normal.

57. Even after 16:54:50 hours, when the complainant and his associate had returned to their office, Mahesh Tiwari and his associates remained seated and standing in the premises and left the premises peacefully at 16:57:27 hours. Thus, the complainant has materially changed his averments, which were earlier based on ocular evidence.

58. He has further relied on the CCTV footage and has changed the complete averments. There is neither consistency nor corroboration in the contentions made in the F.I.R., which was

lodged after a delay of about one day. Thereafter, the complainant recorded his statements under Section 161 Cr.P.C. on 29.06.2025 and 21.07.2025. Subsequently, he recorded another statement on the basis of CCTV footage on 19.09.2025. All these statements are contradictory to each other.

59. The statement of Ram Milan Verma (injured), an employee of the Zila Panchayat, was first recorded on the basis of ocular evidence on 29.06.2025, and thereafter his statement under Section 161 Cr.P.C., based on CCTV footage, was recorded on 19.09.2025. Both statements are contradictory to each other.

60. The complainant has further contended that the CCTV footage should prevail over the ocular evidence, which is contrary to the settled principles of law. It is the CCTV footage which ultimately became the basis for the filing of the charge sheet, and thereafter cognizance was taken by the learned Special Court and summons were issued.

61. The statement of the complainant suffers from inherent inconsistencies. No person is permitted to invoke the process of law according to his own wishes, surmises, and conjectures. Such inconsistencies go to the very root of the matter. The entire incident, as narrated and recorded by the complainant in his complaint, is contradicted by his subsequent deviations from his own statements and averments based on alleged ocular evidence.

62. Furthermore, the F.I.R. was lodged on the next day of the incident, after a reasonable lapse of time from the alleged occurrence. The F.I.R. has been lodged by a responsible person, who is the Chairman of the Zila Panchayat, therefore, the subsequent improvements and inconsistencies in the prosecution story cannot be judicially accepted.

63. In view of all the facts, reasons, circumstances and the provisions of law, the impugned summoning order dated 14.10.2025 passed by the Special Judge (SC/ST) Act/Additional District & Sessions Judge, Mahoba in Special Case No.86 of 2025 (State Vs. Mahesh Tiwari and Another), is hereby set aside and the entire proceedings against the appellant in the said session case is hereby quashed.

64. The criminal appeal is hereby allowed.

65. However, it is observed by this Court that the term 'court below' does not appear to be the correct legal terminology for the Special Court or the Exclusive Special Court as defined under Section 14 of the Act, 1989.

66. The impugned order challenged before this Court has been passed by the Special Court as defined under Section 14 of the Act, 1989.

67. The Hon'ble Supreme Court, in SLP (Criminal) No. 1936 of 2019 (Sakhawat and Another v. State of U.P.), dated 08.02.2024, has held as under:

'The Registry to call for the soft copy of the record of the Trial Court. The soft copies thereof be provided to the learned counsel appearing for the parties.

The learned counsel appearing for the petitioners shall place on record the printed version of all the depositions of the prosecution witnesses and other relevant documents.'

It will be appropriate if the Registry of this Court stops referring to the Trial Courts as 'Lower Courts'. Even the record of the Trial Court should not be referred to as Lower Court Record (LCR). Instead, it should be referred as the Trial Court Record (TCR). The Registrar (Judicial) to take a note of this order. A copy of this order be sent to him.'

68. In view of the aforesaid order passed by the Hon'ble Supreme Court, the terminology 'court below' may be replaced with 'trial court.' or the concerned court, as in the present case, is the Special Court under the SC/ST Act.

69. In view of the aforesaid order passed by the Hon'ble Supreme Court, this may be included in the procedure of this Court.

70. A copy of this order, for this purpose only, may be placed before the learned Registrar General for perusal and may be considered for implementation of these directions of the Supreme Court after due procedure on the administrative side.

(2026) 4 ILRA 282
REVISIONIST JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 27.04.2026

BEFORE

THE HON'BLE MRS. SWARUPAMA CHATURVEDI, J.

Criminal Revision No. 247 of 2026

Sushila Singh

...Revisionist

Versus

State of U.P. & Anr.

...Opposite Parties

Issue for Consideration

Issue pertains to whether an application u/s 173(4) of Bhartiya Nagarik Suraksha Sanhita, 2023, seeking a direction for registration of an FIR in respect of alleged financial irregularities under the MNREGA Act, 2005, was maintainable at the instance of the revisionist, and whether the learned A.C.J.M.-I was justified in refusing to direct registration of an FIR in view of the statutory scheme contained in s. 28 r/w Sch.-I Paragraphs 26, 29(f) and 32 of MNREGA Act, 2005.

Headnotes

Bhartiya Nagarik Suraksha Sanhita, 2023 - s. 173(4) - Mahatma Gandhi National Rural Employment Guarantee Act, 2005 - s. 28, paragraph 26, 29(f), 32 of Sch. I - The Uttar Pradesh Panchayat Raj Act 1947 - s. 26 - Registration of FIR - Magistrate's discretion - Financial irregularity - Alleged misappropriation of Government funds - Gram pradhan - Ward member - Locus standi - Revisional jurisdiction - Supervisory power - Administrative Inquiry - CDO report - Criminal proceedings - Statutory remedy - Maintainability - The revisionist, an elected Ward Member of Gram Panchayat Majhauva Bakunth, moved an application u/s 173(4) of Bhartiya Nagarik Suraksha Sanhita, 2023 seeking a direction for registration of an FIR against the Gram

Pradhan and other officials, alleging financial irregularities, fraudulent preparation of job cards, misappropriation of MNREGA funds and misuse of government money - During the proceedings, an inquiry report submitted by the Chief Development Officer, Basti, recorded that no major financial embezzlement had been found, though certain procedural irregularities relating to issuance of job cards to relatives of Gram Pradhan were noticed and had already been addressed departmentally - Relying upon the statutory mechanism provided under the MNREGA Act, 2005, the learned A.C.J.M.-I rejected the application as not maintainable - Aggrieved thereby, the revisionist filed instant criminal revision challenging the said order.

Held: Consequently, on a holistic consideration of inquiry report, the statutory bar under MNREGA Act, and absence of authorisation in favour of revisionist, the conclusion arrived at that the application was not legally maintainable cannot be faulted -The impugned order, thus, neither suffers from any jurisdictional error nor from any material illegality or perversity warranting interference in exercise of revisional jurisdiction - There are catena of judgments to the effect that when a Statute is a complete Code in itself and have the provision for overriding effect then the interpretation is to be given in a way that it gives prominence to subsequent legislation - The application u/s 173(4) BNSS is not maintainable at the instance of the revisionist, and the learned A.C.J.M.-I was justified in declining to direct registration of an FIR on her application - Consequently, the impugned order is justified, having duly considered all allegations for which registration of FIR was sought, and rightly relying on report of CDO, which records that opposite party nos. 1 and 2 did not commit any irregularities, while noting that the minor procedural lapse identified has already resulted in appropriate action against the concerned secretary - Accordingly, criminal revision petition is devoid of merit and dismissed. [Para 30 to 32] (E-13)

Case Law Cited

Janata Dal v. H.S. Chowdhary, (1992) 4 SCC 305; *Sanjaysinh Ramrao Chavan v. Dattatray Gulabrao Phalke*, (2015) 3 SCC 123; *Solidaire India Ltd. v. Fairgrowth Financial Services Ltd.*, (2001) 3 SCC 71 - referred to

Books and Periodicals Cited

Black's Law Dictionary - referred to

List of Acts

Bhartiya Nagarik Suraksha Sanhita, 2023; Mahatma Gandhi National Rural Employment Guarantee Act, 2005; The Uttar Pradesh Panchayat Raj Act, 1947

List of Keywords

Criminal Revision; s. 173(4); Mahatma Gandhi National Rural Employment Guarantee Act, 2005; The Uttar Pradesh Panchayat Raj Act, 1947; Gram Pradhan; Bhartiya Nagarik Suraksha Sanhita; Application by revisionist; Registration of First Information Report; Inquiry report; Village Development Officer; Financial irregularities; Misappropriation and misuse of MNREGA funds; Fraudulent payments by preparing fake job cards; Embezzling government funds; Cognizable offence; Maintainable; Statutory scheme; Overriding effect; District Programme Coordinator; Disciplinary action; Criminal proceedings; Locus standi; Revisional jurisdiction; Perversity; Special enactment; Complete code; Revision devoid of merit and dismissed.

Case Arising From

ORIGINAL JURISDICTION: Criminal Revision No. - 247 of 2026

From the Judgment and Order dated 20.12.2024 passed by the Additional Chief Judicial Magistrate, 1st, Basti, in Criminal Misc. Case No. 2043 of 2024 arising out of Misc. Case No. 173/12/2024.

Appearances for Parties

Adv. for the Revisionist(s):

Adarsh Kumar, Subahsh Chandra Yadava

Adv. for the Opposite Party(s):
G.A.

(Delivered by Hon'ble Mrs. Swarupama Chaturvedi, J.)

1. The present criminal revision petition has been preferred assailing the order dated 20.12.2024, passed by the learned A.C.J.M., 1st, Basti in Criminal Misc. Case No. 2043 of 2024, Sushila Singh Vs. Resham Singh and others whereby the application filed by the revisionist under Section 173(4) of the Bhartiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred to as 'B.N.S.S.') has been rejected.

2. This Court has condoned the delay in filing this revision petition vide its order dated 13.01.2026, and thereafter the matter was listed for hearing today.

3. The undisputed facts in this case are that the revisionist is an elected ward member of Gram Panchayat Majhauva Bakunth, Block- Saltauva Gopalpur, who moved an application no Misc. Case No. 173/12/2024 dated 30.09.2024 under Section 173(4) B.N.S.S. before the court of A.C.J.M.-I, Basti, seeking a direction for registration of a First Information Report ((hereinafter referred to as 'FIR') at Police Station Rudhauhi.

4. During the course of proceedings before learned A.C.J.M.-I, Basti, an inquiry report dated 26.11.2024, bearing No. 756/MNREGA/Shi. Janch/2024-25, was submitted by the Chief Development Officer (hereinafter referred as 'CDO'), Basti, before the court concerned. Thereafter, learned A.C.J.M.-I, Basti, by order dated 20.12.2024, passed in Criminal Misc. Case No. 2043 of 2024, arising out of Misc. Case No. 173/12/2024, rejected the said application of the revisionist, which has given rise to the present revision.

5. Heard Sri Subhash Chandra Yadav, learned counsel appearing for the revisionist, who submits that prior to the year 2021 elections, job cards under the MNREGA scheme were created in the names of family members of the Gram Pradhan. He further submits that during the period 2021-2022, the said Gram Pradhan, in collusion with the Village Development Officer and other block level officers, committed financial irregularities by re-billing for works already completed in the year 2018- 19 and by withdrawing funds against fictitious MNREGA works, particularly on canal bandh.

6. Sri Yadav further submits that on 22.10.2022, the Gram Pradhan transferred MNREGA funds into her personal account. In addition, she also made fraudulent payments by preparing fake job cards in the names of her husband Vipin Singh, brothers-in-law Vikas Kumar and Vishal, and father-in-law's brother Ramchandra, thereby embezzling government funds. Specific amounts have been attributed to such alleged transfers and withdrawals.

7. Sri Yadav contends that upon a complaint made to the District Magistrate, an inquiry was conducted by the Block Development Officer, Saltauva Gopalpur, culminating in the issuance of a show-cause notice dated 06.12.2022 to the Gram Pradhan regarding the use of substandard materials in the construction of a school boundary wall. He further contends that the aforesaid acts

collectively disclose cognizable offences involving misappropriation and misuse of MNREGA funds, however, despite the said allegations and material, no FIR was registered, compelling the revisionist to invoke the jurisdiction of the Magistrate under Section 173(4) BNSS.

8. On the other hand, Sri Chandan Singh, learned A.G.A. appearing for the State supports the impugned order and submits that no error has been committed by the learned Magistrate in rejecting the application of the revisionist and the order is well reasoned and based upon established principles of law.

9. Sri Singh contends that the allegations made by the revisionist were duly investigated in an administrative inquiry conducted by the competent authority, and the CDO, Basti, and in the report dated 26.11.2024, it is recorded that there is no sign of significant financial embezzlement of government funds by the Gram Pradhan, however, certain procedural irregularities were noticed with respect to the issuance of job cards in favour of family members of the Gram Pradhan, which was stated to have been prepared prior to the 2021 elections. In that regard, appropriate action had already been taken against the then Gram Panchayat Secretary, who delayed in handing over of documents, which led to providing of benefits as alleged but as soon as documents got handed over, the concerned job cards were cancelled, thereby addressing the irregularity at the departmental level itself.

10. Learned A.G.A. further contends that the controversy in question is governed by the special enactment, namely the Mahatma Gandhi National Rural Employment Guarantee Act, 2005 (hereinafter referred to as 'MNREGA Act'), which constitutes a complete Code in itself. Placing reliance upon Section 28 of the said Act, he argues that the provisions of the MNREGA Act have an overriding effect over other laws. He further referred to Schedule-I, Paragraph 26, which provides for recovery of misappropriated funds as arrears of land revenue, and Paragraphs 29(f) and 32 of Schedule-I, which specifically vest authority in the District Programme Coordinator to take disciplinary action and to initiate criminal proceedings, including lodging of an FIR, upon finding prima facie financial irregularities.

11. Relying upon above-mentioned statutory scheme, Sri Singh submits that the revisionist, being a private person, has no locus to seek direction for registration of an FIR under Section 173(4) BNSS in absence of any recommendation or authorization by the competent authority under the MNREGA framework. It is thus submitted that the learned Magistrate has rightly decided the application to be not maintainable.

12. In view of the rival submissions advanced by learned counsel for the parties and upon perusal of the record, the point for consideration before this Court is whether the application under Section 173(4) BNSS was maintainable at the instance of the revisionist in light of the statutory scheme provided under Section 28 read with Schedule I paragraphs 26, 29 (f) and 32 of MNREGA Act, 2005, and whether the learned A.C.J.M.-I was justified in declining to issue a direction for registration of FIR or the order suffers from illegality, material irregularity or patent error warranting interference by this Court.

13. To begin with it is important to understand the objective behind providing the power of criminal revision. The Supreme Court has analysed the object of the revisional jurisdiction under Section 401 Code of Criminal Procedure (1973), which now corresponds to Section 442 of the BNSS, in **Janata Dal v. H.S. Chowdhary, (1992) 4 SCC 305** and held that:

"130. The object of the revisional jurisdiction under Section 401 is to confer power upon superior criminal courts ? a kind of paternal or supervisory jurisdiction ? in order to correct miscarriage of justice arising from misconception of law, irregularity of procedure, neglect of proper precaution or apparent harshness of treatment which has resulted, on the one hand, or on the other hand in some underserved hardship to individuals. The controlling power of the High Court is discretionary and it must be exercised in the interest of justice with regard to all facts and circumstances of each particular case, anxious attention being given to the said facts and circumstances which vary greatly from case to case."

14. Regarding scope of the revision jurisdiction, Supreme Court has held in **Sanjaysinh Ramrao Chavan v. Dattatray Gulabrao Phalke, (2015) 3 SCC 123** that:

"14. In the case before us, the learned Magistrate went through the entire records of the case, not limiting to the report filed by the police and has passed a reasoned order holding that it is not a fit case to take cognizance for the purpose of issuing process to the appellant. Unless the order passed by the Magistrate is perverse or the view taken by the court is wholly unreasonable or there is non-consideration of any relevant material or there is palpable misreading of records, the Revisional Court is not justified in setting aside the order, merely because another view is possible. The Revisional Court is not meant to act as an appellate court. The whole purpose of the revisional jurisdiction is to preserve the power in the court to do justice in accordance with the principles of criminal jurisprudence. The revisional power of the court under Sections 397 to 401 CrPC is not to be equated with that of an appeal. Unless the finding of the court, whose decision is sought to be revised, is shown to be perverse or untenable in law or is grossly erroneous or glaringly unreasonable or where the decision is based on no material or where the material facts are wholly ignored or where the judicial discretion is exercised arbitrarily or capriciously, the courts may not interfere with decision in exercise of their revisional jurisdiction."

15. The basic jurisprudence of the power of revision is same while exercising revisional jurisdiction in all revision cases, and the Court does not sit in appeal over the decision of the Magistrate in any revision petition. Unless the order under challenge is shown to be perverse, manifestly illegal, or resulting in miscarriage of justice, interference is not warranted. The revisional jurisdiction of this Court is supervisory in nature and is intended to correct jurisdictional errors, perversity or gross illegality. It is not an appellate forum for re-evaluating facts or substituting another possible view. None of these parameters are attracted in the present case.

16. The Supreme Court in **Sanjaysinh Ramrao Chavan (supra)** held that the revisional court is not to interfere with the order of the Magistrate merely because it does not agree with the conclusion arrived at. If the Magistrate's order is based on material on record and suffers from no patent illegality or jurisdictional error, the High Court should not disturb the findings in its revisional capacity and here, the CDO report and MNREGA Act provisions are discussed and

applied correctly in the order passed by learned A.C.J.M.-I, which makes it clear that the impugned order does not warrant interference under revision jurisdiction.

17. Moving further, to understand the power of the Magistrate under Section 173(4) BNSS, it is necessary to note that the provision is to ensure that no incident goes without investigation and if there is such situation with anyone, then this provision provides the remedy. For ready reference Section 173(4) BNSS is reproduced below:

"Any person aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in sub-section (1), may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by this Sanhita, and such officer shall have all the powers of an officer in charge of the police station in relation to that offence failing which such aggrieved person may make an application to the Magistrate."

18. A careful reading of Section 173(4) BNSS shows that while the legislature has used the expression "any person aggrieved", thereby conferring a remedy, the same is qualified by the use of the expression "may" and the requirement that the authority must be "satisfied" that the information discloses a cognizable offence. Thus, the provision is to be understood as enabling in nature and does not mandate mechanical exercise of power by the Magistrate.

19. It is a settled principle of interpretation, embodied in the Latin maxim "noscitur a sociis", that the meaning of words used in a statutory provision must be derived from the context in which they occur and from the words surrounding them. A provision cannot be read in fragments by isolating individual expressions, rather, it must be construed as a whole so as to give coherent and consistent meaning to all words in it. Applying this principle to Section 173(4) of BNSS, the expressions "may", "satisfied", and "any person aggrieved", though occurring at different places, are required to be read together and in conjunction with the scheme of the provision, so as to ascertain the true legislative intent and to avoid an interpretation that renders any part internally inconsistent.

20. Harmonious reading of Section 173(4) BNSS demonstrates a balance between ensuring access to justice and preventing misuse of the criminal process. It contemplates application of mind and a judicious assessment of the facts and circumstances of each case. The scheme of the Section 173(4) BNSS indicates a mechanism, where recourse to the Magistrate arises only upon failure in getting earlier remedy, hence, the magistrate is required to assess the circumstance led to the filing of the application. The expression "may" used in the provision, as per Black's Law Dictionary, is to confers discretion, rather than imposing a mandatory obligation. It indicates that the authority is empowered to act, but is not bound to do so in every case, the exercise of such power being dependent upon the facts and circumstances presented.

21. In the light of the above interpretation, the facts of the present case is to be seen which gives right to any person aggrieved but the discretion remains with the Magistrate. The exercise of

power under Section 173(4) BNSS is not automatic and requires due consideration of the surrounding circumstances, including the sequence of events and the conduct of the parties. Where the application is moved for which the departmental action is concluded as per Statute, the Magistrate would be justified in exercising restraint. The requirement of satisfaction under the provision necessarily entails such scrutiny and precludes mechanical directions for registration of an FIR.

22. Considering the impugned order in the backdrop of the rival submissions, statutory framework and established principles of law, it is evident that the learned A.C.J.M.-I has proceeded on a correct understanding of law and material on record, warranting no interference in revisional jurisdiction.

23. Learned A.C.J.M.-I has duly considered the inquiry report dated 26.11.2024 submitted by the CDO, Basti. The said report does not disclose any case of major financial embezzlement of State or Central Finance Commission funds. However, it records a limited irregularity pertaining to issuance of job cards in favour of relatives of the Gram Pradhan prior to the 2021 elections, which was already addressed at the administrative level by fastening responsibility upon the then Gram Panchayat Secretary and by cancellation of the said job cards. The impugned order records that the job cards provided to the relatives of the Gram Pradhan was due to delay in document transfer by the Secretary and the moment it was identified the said cards were cancelled. Thus, the foundational factual premise for directing registration of FIR on allegations of large-scale embezzlement was not substantiated at the level of inquiry.

24. The learned A.C.J.M.-I has correctly appreciated the statutory scheme of the MNREGA Act, 2005, which is a special enactment containing a self-contained mechanism for dealing with allegations arising under it. Schedule-I, Paragraph 26 provides that misappropriated amounts are recoverable as arrears of land revenue, while Paragraphs 29(f) and 32 specifically vest authority in the District Programme Coordinator as the competent authority to initiate disciplinary action and to direct criminal proceedings, including registration of FIR, upon satisfaction of prima facie irregularity. In view of this special statutory mechanism, the competence for initiating such action is not left open-ended but it has prescribed the designated authority. Relevant provisions read as under:

"Schedule I

Minimum Features of a Rural Employment Guarantee Scheme

...

26. Any misappropriation of amounts spent under the Act shall be recoverable under the Revenue Laws for recovery prevailing in the State.

...

29. Establish an effective grievance redressal mechanism consisting of :

....

(f) In case of a prima facie evidence regarding financial irregularities are noticed after preliminary enquiry of the complaint or of findings in the social audit report, the District Programme Coordinator after obtaining legal advice will ensure that a First Information Report is lodged;

32. *Wherever contravention of the provisions of the Act has been proved after due enquiry by the State Government or the District Programme Coordinator or the Programme Officer or the Ombudsperson or any other authority authorized by the State Government, action in accordance with the provisions of section 25 of the Act shall be taken."*

25. Further, Section 28 of the MNREGA Act, 2005, gives overriding effect to its provisions over other laws. For ready reference the provisions mentioned above are quoted below :

"28. Act to have overriding effect. The provisions of this Act or the Schemes made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of such law:

Provided that where a State enactment exists or is enacted to provide employment guarantee for unskilled manual work to rural households consistent with the provisions of this Act under which the entitlement of the households is not less than and the conditions of employment are not inferior to what is guaranteed under this Act, the State Government shall have the option of implementing its own enactment:

Provided further that in such cases the financial assistance shall be paid to the concerned State Government in such manner as shall be determined by the Central Government, which shall not exceed what the State would have been entitled to receive under this Act had a Scheme made under this Act had to be implemented. "

26. Since the revisionist has asserted its locus being the elected ward member of the Gram Panchayat, the status which she has earned as per provisions of The Uttar Pradesh Panchayat Raj Act 1947, therefore, it is relevant to see that whether the provisions of The Uttar Pradesh Panchayat Raj Act 1947 would have primacy or the MNREGA Act, 2005, which is a subsequent special enactment having the provision of overriding effect.

27. Panchayat Raj Act enumerates rights of individual members which includes that a member of a Gram Panchayat may at any meeting, move any resolution and put question to the Pradhan and Up-Pradhan on matters connected with the administration of the Gram Panchayat in the manner prescribed. The plain reading of the Section 26 of Panchayat Raj Act makes it clear that the provision does not extend right to members for filing an FIR as attempted by the revisionist.

28. Although, there seems to be no inconsistency in between both enactments regarding filing of FIR against the Gram Pradhan in case of allegations of financial irregularity, the analysis by the Supreme Court in case of primacy to be given to the subsequent enactment can be referred. In ***Solidaire India Ltd. v. Fairgrowth Financial Services Ltd., (2001) 3 SCC 71***, the Supreme has held that:

"9. It is clear that both these Acts are special Acts. This Court has laid down in no uncertain terms that in such an event it is the later Act which must prevail. The decisions cited in the above context are as follows: Maharashtra Tubes Ltd. v. State Industrial & Investment Corp'n. of Maharashtra Ltd. [(1993) 2 SCC 144 : (1993) 78 COMP CAS 803]; Sarwan Singh v. Kasturi Lal [(1977) 1 SCC 750 : (1977) 2 SCR 421]; Allahabad Bank v. Canara Bank [(2000) 4 SCC 406 :

(2000) 101 Comp Cas 64] and *Ram Narain v. Simla Banking & Industrial Co. Ltd.* [(1956) 2 SCC 75 : (1956) 26 Comp Cas 280 : AIR 1956 SC 614 : 1956 SCR 603].

10. We may notice that the Special Court had in another case dealt with a similar contention. In *Bhoruka Steel Ltd. v. Fairgrowth Financial Services Ltd.* [1996 SCC OnLine Bom 717 : (1997) 89 Comp Cas 547 (Special Court)] it had been contended that recovery proceedings under the Special Court Act should be stayed in view of the provisions of the 1985 Act. Rejecting this contention, the Special Court had come to the conclusion that the Special Court Act being a later enactment would prevail. The headnote which brings out succinctly the ratio of the said decision is as follows:

"Where there are two special statutes which contain non obstante clauses the later statute must prevail. This is because at the time of enactment of the later statute, the legislature was aware of the earlier legislation and its non obstante clause. If the legislature still confers the later enactment with a non obstante clause it means that the legislature wanted that enactment to prevail. If the legislature does not want the later enactment to prevail then it could and would provide in the later enactment that the provisions of the earlier enactment continue to apply."

29. It is in this context that the learned Magistrate has rightly held that the revisionist, even being a ward member, she will be considered as a private individual, and not being authorised by the District Programme Coordinator under the statutory framework, and hence, she lacked locus standi to seek a direction for registration of FIR under Section 173(4) BNSS. The finding on locus standi, therefore, flows directly from the statutory scheme and cannot be said to suffer from any legal infirmity.

30. Consequently, on a holistic consideration of the inquiry report, the statutory bar under the MNREGA Act, and the absence of authorisation in favour of the revisionist, the conclusion arrived at that the application was not legally maintainable cannot be faulted. The impugned order, thus, neither suffers from any jurisdictional error nor from any material illegality or perversity warranting interference in exercise of revisional jurisdiction. There are catena of judgements to the effect that when a Statute is a complete Code in itself and have the provision for overriding effect then the interpretation is to be given in a way that it gives prominence to the subsequent legislation.

31. In view of the above, the application under Section 173(4) BNSS is not maintainable at the instance of the revisionist, and the learned A.C.J.M.-I was justified in declining to direct registration of an FIR on her application. Consequently, the impugned order dated 20.12.2024 is justified, having duly considered all allegations for which registration of the FIR was sought, and rightly relying on the report of the CDO, which records that opposite party nos. 1 and 2 did not commit any irregularities, while noting that the minor procedural lapse identified has already resulted in appropriate action against the concerned secretary.

32. Therefore, there is no error in the impugned order dated 20.12.2024. The criminal revision petition is devoid of merit and is hereby dismissed. However, it is clarified that if any proceeding regarding the identified irregularity is ongoing under MNREGA Act the same shall continue independent to the observation made in this order.

(2026) 4 ILRA 291
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 27.04.2026

BEFORE

THE HON'BLE SANDEEP JAIN, J.

Crl. Misc. Writ Petition No. 30265 of 2025

Mohd. Chand

...Petitioner

Versus

State of U.P. & Ors.

...Respondents

Issue for Consideration

Issue pertains to whether a vehicle could be confiscated u/s 5-A(7) of the Uttar Pradesh Prevention of Cow Slaughter Act, 1955 in the absence of any conclusive evidence or authorized laboratory report establishing that the meat allegedly recovered from the vehicle was "beef" within the meaning of s. 2(a) of the Act, and whether the confiscation orders passed by District Magistrate and affirmed by Commissioner were legally sustainable.

Headnotes

Bharatiya Nyaya Sanhita, 2023 - s. 109 - Uttar Pradesh Prevention of Cow Slaughter Act, 1955 - ss. 2(a), 3, 5, 5A/8 - Arms Act, 1959 - ss. 25, 27 and 3 - Confiscation of vehicle - Transportation of Beef - Burden of proof upon State authorities to prove that seized meat was "beef" - Arbitrary action of State - Seizure of commercial vehicle - Compensation - Award of damages - Release of vehicle - The petitioner challenged the confiscation of his Mahindra Pickup, which was allegedly intercepted by police on 18.10.2024 and found carrying meat purported to be beef of five cows - Consequent thereto, an FIR was registered under the various provisions of Uttar Pradesh Prevention of Cow Slaughter Act, 1955, the Bharatiya Nyaya Sanhita, 2023 and the Arms Act, 1959 - Relying upon the alleged recovery, the District Magistrate, Baghpat initiated confiscation proceedings u/s 5-A of Act of 1955 and ordered confiscation of the vehicle - The petitioner's statutory appeal was dismissed by the Commissioner, Meerut Division - Before the High Court, the petitioner contended that the veterinary examination report merely expressed suspicion regarding the origin of meat and no authorized laboratory report conclusively established that the seized substance was beef - While the State submitted meat examination report, which also disclosed that the seized meat was suspected of cow or its progeny - State admitted that there is no documentary evidence on record to conclusively establish that the said seized meat was beef.

Held: It is evident that the Examiner was not confident whether the seized meat was beef or not, as such, without conclusively proving that the seized meat was beef, the vehicle of petitioner could not have been confiscated - The Authorities below without examining this issue has proceeded to confiscate the vehicle of petitioner, which is arbitrary, illegal and unwarranted under the provisions of Act of 1955 - It is apparent that due to illegal and arbitrary action of functionaries of State, the petitioner has suffered serious economic loss because the vehicle was a transport vehicle, which was the source of livelihood of petitioner - The petitioner has been deprived from earning through this vehicle, since 18.10.2024, when it was illegally seized by respondents - A period of more than 18 months has elapsed since then - In the facts and circumstances of the case, for the economic loss/deprivation caused to petitioner and to compensate for arbitrary action of State, it would be appropriate to award damages of Rs. 2 lacs to petitioner - The instant writ petition has

merit and allowed - Impugned orders quashed, direction to State to pay damages to petitioner within seven days, to release the vehicle of petitioner within three days. [Paras 10, 12 to 16] (E-13)

Case Law Cited

Indibily Creative Private Ltd. And Others v. Government of West Bengal And Others (2020) 12 SCC 436 - referred to

List of Acts

Bharatiya Nyaya Sanhita, 2023; Uttar Pradesh Prevention of Cow Slaughter Act, 1955; Arms Act, 1959; Constitution of India, 1950

List of Keywords

Article 226 of Constitution of India; Bharatiya Nyaya Sanhita, 2023; Uttar Pradesh Prevention of Cow Slaughter Act, 1955; Arms Act, 1959; District Magistrate; Vehicle was confiscated; Transporting beef of five cows; Appeal dismissed by Commissioner; No conclusive opinion was expressed by veterinary doctor regarding seized meat; Meat examination report; Meat was examined at Veterinary Hospital; Examiner was not confident whether the seized meat was beef or not; Compensation for consequential financial losses; Source of livelihood; Economic loss/deprivation caused to petitioner; Award damages; Petition allowed; Liberty to recover amount of damages from the Respondent No.2,3 and 4; Direction to release of vehicle within three days.

Case Arising From

ORIGINAL JURISDICTION: Criminal Misc. Writ Petition No. - 30265 of 2025

From the Judgment and Orders dated 16.06.2025 passed by the District Magistrate, Baghpat in Case No.1024 of 2024, and Commissioner, Meerut Division, Meerut in Case No. 2386 of 2025.

Appearances for Parties

Adv. for the Petitioner(s):
Gurfan Ali

Adv. for the Respondent(s):
G.A.

(Delivered by Hon'ble Sandeep Jain, J.)

1. The petitioner has filed the instant writ petition under Article 226 of the Constitution of India challenging the impugned order dated 16.06.2025 passed by the District Magistrate, Baghpat, in Case No.1024 of 2024, Computerized Case No.D202411080001024 (State vs. Mohd. Chand), under Section 5-A of the Uttar Pradesh Prevention of Cow Slaughter Act, 1955, whereby his Mahindra Pickup Registration No.DL-1L-AL1964 has been confiscated in favour of the State for transporting beef of five cows and against the order of the Commissioner, Meerut Division, Meerut dated 14.11.2025 passed in Case No.2386 of 2025, Computerized Case No.C202511000002386 (Mohd. Chand vs. State of U.P. and others), under Section 5-A(8) of the Act of 1955, whereby the appeal preferred by the petitioner has been dismissed and consequently the order of the District Magistrate, Baghpat dated 16.06.2025 has been affirmed.

2. Factual matrix is that on 18.10.2024 at 1:40 hours while checking suspecting vehicles and persons, the police on getting information, stopped the Bolero Vehicle No.DL-1L-AL1964, in which, on search made beef of five cows were found. According to the FIR, the head and legs of

the cows were visible. Accordingly, the police also arrested the persons travelling in the above vehicle after a brief encounter. An FIR in this matter was registered on 18.10.2024 at 5:33 hours, being Case Crime No.347 of 2024, under Sections 109 of the B.N.S., 2023, Sections 3, 5, 5A/8 of the Uttar Pradesh Prevention of Cow Slaughter Act, 1955 and Section 25, 27 and 3 Arms Act, 1959 against the accused Chand and Saddam.

3. Since beef was found in the above vehicle, the District Magistrate, Baghpat issued notice to the petitioner for confiscating the above vehicle and after hearing the parties by order dated 16.06.205, the vehicle was confiscated/seized on the ground that it was transporting beef of five cows, which was prohibited. The petitioner challenged the above order by filing appeal, which was also dismissed by the Commissioner, Meerut Division, Meerut by impugned order dated 14.11.2025. By way of the instant writ petition, both the above orders have been challenged by the petitioner.

4. Learned counsel for the petitioner submitted that according to the prosecution case, the vehicle of the petitioner having Registration No.DL-1L-AL1964 was transporting beef of five cows on 18.10.2024, but as per the report of the veterinary doctor, no conclusive opinion was expressed regarding the origin of the above meat.

5. Learned counsel submitted that the burden lies upon the prosecution to prove that the alleged meat seized from the vehicle of the petitioner was beef and unless and until, this fact was proved beyond doubt, the vehicle of the petitioner cannot be confiscated by the State.

6. Per contra, learned AGA submitted that he has filed his counter affidavit on behalf of the State enclosing meat examination report, which also disclosed that the seized meat was suspected of cow or its progeny. Learned AGA admitted that there is no documentary evidence on record to conclusively prove that the seized meat was beef.

7. I have heard the learned counsel for the parties and perused the documents on record.

8. Section 2(a), 5 and 5-A of the Uttar Pradesh Prevention of Cow Slaughter Act, 1955 reads as under:

"2(a) beef means flesh of cow but does not include such flesh contained in sealed containers and imported as such into Uttar Pradesh;"

"5. Prohibition on sale of beef-Except as herein excepted and notwithstanding anything contained in any other law for the time being in force, no person shall sell or transport or offer for sale or transport or cause to be sold or transported beef or beef-products in any form except for such medicinal purposes as may be prescribed.

Exception.-A person may sell and serve or cause to be sold and severed beef or beef-products for consumption by a bonafide passenger in an aircraft or railway train."

"5-A. Regulation on transport of cow, etc. - (1) No person shall transport or offer for transport or cause to be transported any cow, or bull or bullock, the slaughter whereof in any place in Uttar Pradesh is punishable under this Act, from any place within the State to any place

outside the State, except under a permit issued by an officer authorised by the State Government in this behalf by notified order and except in accordance with the terms and conditions of such permit.

(2) Such officer shall issue the permit on payment of such fee not exceeding [five hundred rupees] for every cow, bull or bullock as may be prescribed :

Provided that no fee shall be chargeable where the permit is for transport of the cow, bull or bullock for a limited period not exceeding six months as may be specified in the permit.

(3) Where the person transporting a cow, bull or bullock on a permit for a limited period does not bring back such cow, bull or bullock into the State within the period specified in the permit, he shall be deemed to have contravened the provision of sub-section (1).

(4) The form of permit, the form of application therefor and the procedure for disposal of such application shall be such as may be prescribed.

(5) The State Government or any officer authorised by it in this behalf by general or special notified order, may, at any time, for the purpose of satisfying itself, or himself, as to the legality or propriety of the action taken under this section, call for and examine the record of any case and pass such orders thereon as it or he may deem fit].

***(6) Where the said conveyance has been confirmed to be related to beef by the competent authority or authorised laboratory under this Act,** the driver, operator and owner related to transport, shall be charged with the offence under this Act, unless it is not proved that the transport medium used in crime, despite all its precautions and without its knowledge, has been used by some other person for causing the offence.*

(7) The vehicle by which the beef or cow and its progeny is transported in violation of the provisions of this Act and the relevant rules, shall be confiscated and seized by the law enforcement officers. The concerned District Magistrate/Commissioner of Police will do all proceedings of confiscation and release, as the case may be.

(8) The cow and its progeny or the beef transported by the seized vehicle shall also be confiscated and seized by the law enforcement officers. The concerned District Magistrate/Commissioner will do all proceedings of the confiscation and release, as the case may be.

(9) The expenditure on the maintenance of the seized cows and its progeny shall be recovered from the accused for a period of one year or till the release of the cow and its progeny in favour of the owner thereof whichever is earlier.

(10) Where a person is prosecuted for committing, abetting, or attempting to an offence under Sections 3, 5 and 8 of this Act and the beef or cow-remains in the possession of accused has been proved by the prosecution and transported things are confirmed to be beef by the competent authority or authorised laboratory, then the Court shall presume that such person has committed such offence or attempt or abetment of such offence, as the case may be, unless the contrary is proved.

(11) Where the provisions of this Act or the related rules in context of search, acquisition, disposal and seizure are silent, the relevant provisions of the Code of Criminal Procedure, 1973 shall be effective thereto."

9. It is clear from Section 2(a) of the Act, 1955 that "beef" means flesh of cow and as per Section 5 of the Act, the transportation of the beef is prohibited. It is also apparent that under Section 5-A (7) of the Act, 1955, the vehicle can only be confiscated if beef is transported in it. The burden lies upon the State to prove that the meat seized from the vehicle of the petitioner was beef, but as per the meat examination report dated 18.10.2024, the seized meat was suspected to be of

cow or its progeny. The meat was examined at Veterinary Hospital, Baghpat, but the Examiner was not confident about the origin of the meat and for this reason, he requested for confirmatory diagnosis of meat samples, but a report in that behalf is not available on record. As per Section 5-A(6) of the Act, a report of authorized laboratory confirming beef is mandatory for initiating proceedings under this Act.

10. It is evident that the Examiner was not confident whether the seized meat was beef or not, as such, without conclusively proving that the seized meat was beef, the vehicle of the petitioner could not have been confiscated in the instant case. The Authorities below without examining this issue has proceeded to confiscate the vehicle of the petitioner, which is arbitrary, illegal and unwarranted under the provisions of the Act of 1955.

11. The Apex Court in the case of ***Indibly Creative Private Ltd. And Others vs. Government of West Bengal And Others (2020) 12 SCC 436***, has granted compensation for consequential financial losses caused by State authorities. In this case the petitioner has suffered violation of fundamental rights under Articles 19(1)(a) & (g), 14 and 21. The respondent State authorities were directed to pay compensation of Rs 20 lakhs, which was a huge amount. The relevant para is extracted hereinbelow:-

“52. As a consequence of the pulling off of the film from the theatres where it was screened on 16-2-2019, the petitioners have suffered a violation of their fundamental right to free speech and expression and of their right to pursue a lawful business. This has been occasioned by the acts of commission and, in any event, of omission on the part of the State in failing to affirm, fulfil and respect the fundamental freedoms of the petitioners. We are clearly of the view that a remedy in public law for the grant of remedial compensation is required in the present case. We order and direct the respondents to pay to the petitioners compensation which we quantify at Rs 20 lakhs within a period of one month from the date of the present judgment.”

12. It is apparent that due to illegal and arbitrary action of the functionaries of the State, the petitioner has suffered serious economic loss because the vehicle was a transport vehicle, which was the source of livelihood of the petitioner. The petitioner has been deprived from earning through this vehicle, since 18.10.2024, when it was illegally seized by the respondents. A period of more than 18 months has elapsed since then. In the facts and circumstances of this case, for the economic loss/deprivation caused to the petitioner and to compensate for the arbitrary action of the State, it would be appropriate to award damages of Rs. 2 lacs to the petitioner.

13. In view of the above facts, the instant writ petition has merit and is liable to be allowed.

14. **Accordingly, the writ petition is allowed** and the impugned order dated 16.06.2025 passed by the District Magistrate, Baghpat and 14.11.2025 passed by the Commissioner, Meerut Division, Meerut, are hereby quashed.

15. The State is directed to pay damages of Rs.2 lacs (two lacs) to the petitioner within a period of seven days. The State is at liberty to recover the above amount of damages from the respondent no.2,3 and 4, in accordance with law.

16. The respondents are directed to release the Vehicle No.DL-1L-AL1964 within three days to the petitioner.

(2026) 4 ILRA 296
APPELLATE JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 23.04.2026

BEFORE

THE HON'BLE SANDEEP JAIN, J.

First Appeal No. 306 of 2026

Poonam Pandey & Anr.

...Appellants
Versus

Kulsum & Ors.

...Respondents

Issue for consideration

The matter pertains to execution of decree for possession of immovable property and the right of third-party/strangers to resist execution under Order XXI Rules, 97,99, 101, 103 CPC.

Headnotes

A. Code of Civil Procedure,1908-Order XXI Rules 97, 99, 101 & 103-Execution of decree for possession-Stranger's/third party objection maintainable under Order XXI Rules 97/99 CPC-Independent right must be prima facie established-Mere claim without documentary support insufficient-Objections filed to obstruct execution liable to rejection-Appeal dismissed. (Para 16 to 25)

Held

The court ruled that A stranger claiming independent right, title or interest in the decretal property is entitled to resist execution and seek adjudication of such claim in execution proceedings itself. Rejection of objections solely on the ground that the objector is neither a decree-holder under Rule 97 nor a person already dispossessed under Rule 99 is legally unsustainable. However, where the objector fails to produce any material establishing a prima facie independent right or interest in the property and the objections appear intended merely to frustrate execution of a decree that has attained finality, the executing court is justified in rejecting such objections. Though the executing court erred on the question of maintainability, the appellants having failed to substantiate their alleged ownership or inheritance rights, the order rejecting their objections was liable to be affirmed. **Appeal dismissed.** (E-6)

Case law Cited

Periyammal (Dead) Thru LRs. And Others Vs. V. Rajamani and Another (2025) SCC OnLine SC 507, N.S.S. Narayan Sharma Vs. Goldstone Exports (P) Ltd. (2002) 1 SCC 662, Sameer Singh Vs. Abdul Rab (2015) 1 SCC 379; (2015) 1 SCC (Civ) 509, Brahmdeo Chaudhary Vs. Rishikesh Prasad Jaiswal, (1997) 3 SCC 694, Silverline Forum (P) Ltd Vs. Rajiv Trust, (1998) 3 SCC 723, Bhanwar Lal Vs. Satyanarain (1995) 1 SCC 6, Rahul S. Shah Vs. Jinendra Kumar Gandhi (2021) 6 SCC 418 : (2021) 3 SCC (Civ) 569, Alka Shrirang Chavan and Another Vs. Hemchandra Rajaram Bhonsle and Others (2026) SCC Online SC 55, Usha Sinha Vs. Dina Ram (2008) 7 SCC 144-referred to.

List of Acts

Code of Civil Procedure,1908, Transfer of Property Act,1882.

List of Keywords

Execution Proceedings, Decree for Possession, Obstruction to execution, Stranger to Decree, Third-Party rights, Independent title, Order XXI Rule 97,99,101, Deemed Decree, Collusive Decree, Lis Pendens, Resistance to Possession, Frivolous objections, Decree-holder, Judgment debtor, Possession of Immovable property, Objection in Execution.

Case Arising from

CIVIL JURISDICTION: FIRST APPEAL No. -306 OF 2026

Poonam Pandey And Another Vs. Kulsum And 9 Others

From the judgment and order dated 23.04.2026 of the High Court of judicature at Allahabad.

Appearances for Parties

Advs, for Appellant

Arpit Malviya, Awadesh Kumar Malviya

Adv. for Respondent:-

(Delivered by Hon'ble Sandeep Jain, J.)

1. Supplementary affidavit filed is taken on record.
2. The instant appeal has been filed by the appellants under Order 21 Rule 103 C.P.C. challenging the impugned order dated 06.01.2026 passed by the Court of Civil Judge (Senior Division)/Fast Track Court, Ghazipur in Misc. Case No.57 of 2023 (Poonam Pandey and others vs. Nizamuddin and others), whereby appellants' application under Order 21 Rule 97 and 99 C.P.C. was rejected on the ground that it was not maintainable.
3. Earlier, the appellants had preferred a writ petition being Matters Under Article 227 No.2578 of 2026 (Smt. Poonam Pandey and another vs. Kalrun and others) before this Court, which was disposed of by order dated 25.02.2026 on the ground that it was not maintainable since the impugned order was a decree under Order 21 Rule 103 CPC, which was appealable.
4. Learned counsel for the appellants submitted that the appellants were residing in the disputed property, who are having ownership in it being the legal heirs of their deceased father Paramhans Pandey, but they were not made a party to the suit no.348 of 1988 and as such, the decree passed in that suit was not binding upon them. It was further submitted that the decree passed in the above suit was a collusive decree, which has been passed in collusion with the defendants.
5. Learned counsel submitted that since the appellants were having vested independent right in the property, as such, they cannot be evicted from the property in the execution proceedings initiated by the decree holder of Original Suit No.348 of 1988.
6. I have heard the learned counsel for the appellants and perused the documents submitted with the appeal.
7. It is apparent from the documents submitted with the appeal that the plaintiff/decreed holder Nizamuddin filed O.S. No.348 of 1988 against defendants Shivanand Bharti son of Raja Ram Bharti, Shri Ram, Ramji and Basant Kumar sons of Shivanand Pandey(Bharti) for the relief of

permanent injunction and for getting possession of the disputed property on the ground that he is the owner of the disputed property and the defendants are threatening to dispossess him and the defendants have also made encroachment on his land to which he is entitled to reclaim the possession. The defendants submitted their written statement in this suit with the averments that they are the owners on the basis of adverse possession in the disputed property.

8. It was further averred by the defendants that the plaintiff is neither the owner nor in possession of the disputed property. The defendants admitted that they are in possession of the disputed property. It is relevant to mention here that the dispute is in relation to Arazi No.2299 situated in Village Karimuddinpur, Pargana Muhammadabad, District Ghazipur.

9. The trial court decreed the suit on 22.12.2011 and it has recorded a specific finding that the plaintiff is the owner of the disputed property on the basis of sale deed executed in his favour, in which the defendants have made illegal construction and in view of the evidence on record, the original suit of the plaintiff was decreed and the defendants were directed to remove their illegal construction on the disputed property and hand its possession to the plaintiff, failing which, the plaintiff was held entitled to get the relief through court.

10. It is further apparent that the defendants challenged the impugned decree of the trial court by filing Civil Appeal No.7 of 2012 (Shivanand Bharti and others vs. Nizamuddin), which was dismissed on merits on 21.10.2019 by the Additional District Judge, Court No.1, Ghazipur, as such, the decree passed by the trial court has been affirmed.

11. The appellate court also specifically concluded that the defendants failed to prove their ownership of the disputed property.

12. It is further apparent that the decree passed in Original Suit No.348 of 1988 was put in execution by the plaintiff/decreed holder by filing Execution Case No. 03 of 2020 for getting possession of the disputed land, which was illegally in possession of the defendants in which the appellants moved an application under Order 21 Rule 97 and 99 C.P.C. on the basis that they are the owners of the disputed property, they are having vested right in it, but they were not impleaded in the original suit as defendants, as such, the decree passed in the original suit, which was affirmed by the appellate court, was not binding on them.

13. The appellants' application under Order 21 Rule 97 and 99 C.P.C. has been dismissed by the execution court by impugned order dated 06.01.2026 on the ground that the appellants are alleging to be in possession of the disputed property. A finding has been recorded that since the appellants were never dispossessed from the disputed property, as such, the application moved by them was not legally maintainable. It was further held that the appellants are not decree holders as per Order 21 Rule 97 C.P.C. and as per Rule 99, they have not been dispossessed from the disputed property, hence, they have no right to raise objection in execution proceedings under Order 21 Rule 97 and 99 C.P.C. Aggrieved against which, the instant appeal has been filed by the appellants.

14. The Apex Court in the case of ***Periyammal (Dead) Through LRs. And Others vs. V. Rajamani and Another*** 2025 SCC OnLine SC 507 while interpreting Order 21 Rule 97 and Rule 99 C.P.C., held as under:-

"43. It is a settled position of law that an application under Order 21 Rule 97 may be made in respect of obstruction raised by any person in obtaining possession of the decretal property. The courts adjudicating such application have to do so in accordance with Rule 101 and hold a full-fledged inquiry to determine all questions including questions relating to right, title or interest in the property arising between the parties.

44. This Court in Brahmddeo Chaudhary v. Rishikesh Prasad Jaiswal (1997) 3 SCC 694, has held that: (SCC pp. 701-703 & 705, paras 8-10)

"8. A conjoint reading of Order 21 Rules 97, 98, 99 and 101 projects the following picture:

(1) If a decree-holder is resisted or obstructed in execution of the decree for possession with the result that the decree for possession could not be executed in the normal manner by obtaining warrant for possession under Order 21 Rule 35, then the decree-holder has to move an application under Order 21 Rule 97 for removal of such obstruction and after hearing the decree-holder and the obstructionist the court can pass appropriate orders after adjudicating upon the controversy between the parties as enjoined by Order 21 Rule 97 sub-rule (2) read with Order 21 Rule 98. It is obvious that after such adjudication if it is found that the resistance or obstruction was occasioned without a just cause by the judgment-debtor or by some other person at his instigation or on his behalf then such obstruction or resistance would be removed as per Order 21 Rule 98 sub-rule (2) and the decree-holder would be permitted to be put in possession. Even in such an eventuality the order passed would be treated as a decree under Order 21 Rule 101 and no separate suit would lie against such order meaning thereby the only remedy would be to prefer an appeal before the appropriate appellate court against such deemed decree.

(2) If for any reason a stranger to the decree is already dispossessed of the suit property relating to which he claims any right, title or interest before his getting any opportunity to resist or offer obstruction on spot on account of his absence from the place or for any other valid reason then his remedy would lie in filing an application under Order 21 Rule 99CPC claiming that his dispossession was illegal and that possession deserves to be restored to him. If such an application is allowed after adjudication then as enjoined by Order 21 Rule 98 sub-rule (1) CPC the executing court can direct the stranger applicant under Order 21 Rule 99 to be put in possession of the property or if his application is found to be substanceless it has to be dismissed. Such an order passed by the executing court disposing of the application one way or the other under Order 21 Rule 98 sub-rule (1) would be deemed to be a decree as laid down by Order 21 Rule 103 and would be appealable before appropriate appellate forum. But no separate suit would lie against such orders as clearly enjoined by Order 21 Rule 101.

5. In short the aforesaid statutory provisions of Order 21 lay down a complete code for resolving all disputes pertaining to execution of the decree for possession obtained by a decree-holder and whose attempts at executing the said decree meet with rough weather. Once resistance is offered by a purported stranger to the decree and which comes to be noted by the executing court as well as by the decree-holder the remedy available to the decree-holder against such an obstructionist is only under Order 21 Rule 97 sub-rule (1) and he cannot bypass such obstruction and insist on reissuance of warrant for possession under Order 21 Rule 35 with the help of police

force, as that course would amount to bypassing and circumventing the procedure laid down under Order 21 Rule 97 in connection with removal of obstruction of purported strangers to the decree. Once such an obstruction is on the record of the executing court it is difficult to appreciate how the executing court can tell such obstructionist that he must first lose possession and then only his remedy is to move an application under Order 21 Rule 99CPC and pray for restoration of possession. The High Court by the impugned order and judgment has taken the view that the only remedy available to a stranger to the decree who claims any independent right, title or interest in the decretal property is to go by Order 21 Rule 99. This view of the High Court on the aforesaid statutory scheme is clearly unsustainable. It is easy to visualise that a stranger to the decree who claims an independent right, title and interest in the decretal property can offer his resistance before getting actually dispossessed. He can equally agitate his grievance and claim for adjudication of his independent right, title and interest in the decretal property even after losing possession as per Order 21 Rule 99. Order 21 Rule 97 deals with a stage which is prior to the actual execution of the decree for possession wherein the grievance of the obstructionist can be adjudicated upon before actual delivery of possession to the decree-holder. While Order 21 Rule 99 on the other hand deals with the subsequent stage in the execution proceedings where a stranger claiming any right, title and interest in the decretal property might have got actually dispossessed and claims restoration of possession on adjudication of his independent right, title and interest dehors the interest of the judgment-debtor. Both these types of enquiries in connection with the right, title and interest of a stranger to the decree are clearly contemplated by the aforesaid scheme of Order 21 and it is not as if that such a stranger to the decree can come in the picture only at the final stage after losing the possession and not before it if he is vigilant enough to raise his objection and obstruction before the warrant for possession gets actually executed against him. With respect the High Court has totally ignored the scheme of Order 21 Rule 97 in this connection by taking the view that only remedy of such stranger to the decree lies under Order 21 Rule 99 and he has no locus standi to get adjudication of his claim prior to the actual delivery of possession to the decree-holder in the execution proceedings. The view taken by the High Court in this connection also results in patent breach of principles of natural justice as the obstructionist, who alleges to have any independent right, title and interest in the decretal property and who is admittedly not a party to the decree even though making a grievance right in time before the warrant for execution is actually executed, would be told off the gates and his grievance would not be considered or heard on merits and he would be thrown off lock, stock and barrel by use of police force by the decree-holder. That would obviously result in irreparable injury to such obstructionist whose grievance would go overboard without being considered on merits and such obstructionist would be condemned totally unheard. Such an order of the executing court, therefore, would fail also on the ground of non-compliance with basic principles of natural justice. On the contrary the statutory scheme envisaged by Order 21 Rule 97CPC as discussed earlier clearly guards against such a pitfall and provides a statutory remedy both to the decree-holder as well as to the obstructionist to have their respective say in the matter and to get proper adjudication before the executing court and it is that adjudication which subject to the hierarchy of appeals would remain binding between the parties to such proceedings and separate suit would be barred with a view to seeing that multiplicity of proceedings and parallel proceedings are avoided and the gamut laid down by Order 21 Rules 97 and 103 would remain a complete code and the sole remedy for the parties concerned to have their grievances once and for all finally resolved in execution proceedings themselves.

10. " "5. " A reading of Order 21 Rule 97CPC clearly envisages that "any person" even including the judgment-debtor irrespective whether he claims derivative title from the judgment-debtor or sets up his own right, title or interest dehors the judgment-debtor and he resists execution of a decree, then the court in addition to the power under Rule 35(3) has been empowered to conduct an enquiry whether the obstruction by that person in obtaining possession of immovable property was legal or not. The decree-holder gets a right under Rule 97 to make an application against third parties to have his obstruction removed and an enquiry thereon could be done. Each occasion of obstruction or resistance furnishes a cause of action to the decree-holder to make an application for removal of the obstruction or resistance by such person." [Ed.: As observed in *Bhanwar Lal v. Satyanarain*, (1995) 1 SCC 6, p. 9, para 5.] "

45. In *Shreenath [Shreenath v. Rajesh]*, (1998) 4 SCC 543, the application under Order 21 Rule 97 was filed by the tenants who were not parties to the suit. The question was whether the tenants could maintain an application under Order 21 Rule 97. This Court while interpreting the words "any person" held that any person includes even persons not bound by the decree. Paras 10 and 11 read thus: (SCC pp. 548-49, paras 10-11)

"10. Under sub-clause (1) Order 21 Rule 35, the executing court delivers actual physical possession of the disputed property to the decree-holder and, if necessary, by removing any person bound by the decree who refuses to vacate the said property. The significant words are by removing any person bound by the decree. Order 21 Rule 36 conceives of immovable property when in occupancy of a tenant or other person not bound by the decree, the court delivers possession by fixing a copy of the warrant in some conspicuous place of the said property and proclaiming to the occupant by beat of drum or other customary mode at some convenient place, the substance of the decree in regard to the property. In other words, the decree-holder gets the symbolic possession. **Order 21 Rule 97 conceives of resistance or obstruction to the possession of immovable property when made in execution of a decree by "any person". This may be either by the person bound by the decree, claiming title through the judgment-debtor or claiming independent right of his own including a tenant not party to the suit or even a stranger.** A decree-holder, in such a case, may make an application to the executing court complaining such resistance for delivery of possession of the property. Sub-clause (2) after 1976 substitution empowers the executing courts when such claim is made to proceed to adjudicate upon the applicant's claim in accordance with the provisions contained hereinafter. This refers to Order 21 Rule 101 (as amended by the 1976 Act) under which all questions relating to right, title or interest in the property arising between the parties under Order 21 Rule 97 or Rule 99 shall be determined by the court and not by a separate suit. By the amendment, one has not to go for a fresh suit but all matter pertaining to that property even if obstruction by a stranger is adjudicated and finality given even in the executing proceedings. We find the expression "any person" under sub-clause (1) is used deliberately for widening the scope of power so that the executing court could adjudicate the claim made in any such application under Order 21 Rule 97. Thus by the use of the words "any person" it includes all persons resisting the delivery of possession, claiming right in the property even those not bound by the decree, includes tenants or other persons claiming right on their own including a stranger.

11. So, under Order 21 Rule 101 all disputes between the decree-holder and any such person is to be adjudicated by the executing court. A party is not thrown out to relegate itself to the long-drawn-out arduous procedure of a fresh suit. This is to salvage the possible hardship both to the decree-holder and other person claiming title on their own right to get it adjudicated in the very

execution proceedings. We find that Order 21 Rule 35 deals with cases of delivery of possession of an immovable property to the decree-holder by delivery of actual physical possession and by removing any person in possession who is bound by a decree, while under Order 21 Rule 36 only symbolic possession is given where the tenant is in actual possession. Order 21 Rule 97 as aforesaid, conceives of cases where delivery of possession to decree-holder or purchaser is resisted by any person. "Any person", as aforesaid, is wide enough to include even a person not bound by a decree or claiming right in the property on his own including that of a tenant including a stranger."

46. In *Silverline Forum (P) Ltd. v. Rajiv Trust* (1998) 3 SCC 723, a three-Judge Bench of this Court has observed that a third party to the decree including the transferee pendente lite can offer resistance or obstruction and his right has to be adjudicated under Order 21 Rule 97CPC. The relevant portion of the said judgment is reproduced below: (SCC pp. 727-29, paras 9-10 & 14)

"9. At the outset, we may observe that it is difficult to agree with the High Court [*Silverline Forum (P) Ltd. v. Rajiv Trust*, 1997 SCC OnLine Cal 152] that resistance or obstructions made by a third party to the decree of execution cannot be gone into under Order 21 Rule 97 of the Code. Rules 97 to 106 in Order 21 of the Code are subsumed under the caption "Resistance to delivery of possession to decree-holder or purchaser". Those rules are intended to deal with every sort of resistance or obstructions offered by any person. Rule 97 specifically provides that when the holder of a decree for possession of immovable property is resisted or obstructed by "any person" in obtaining possession of the property such decree-holder has to make an application complaining of the resistance or obstruction. Sub-rule (2) makes it incumbent on the court to proceed to adjudicate upon such complaint in accordance with the procedure laid down.

10. It is true that Rule 99 of Order 21 is not available to any person until he is dispossessed of immovable property by the decree-holder. Rule 101 stipulates that all questions "arising between the parties to a proceeding on an application under Rule 97 or Rule 99" shall be determined by the executing court, if such questions are "relevant to the adjudication of the application". A third party to the decree who offers resistance would thus fall within the ambit of Rule 101 if an adjudication is warranted as a consequence of the resistance or obstruction made by him to the execution of the decree. No doubt if the resistance was made by a transferee pendente lite of the judgment-debtor, the scope of the adjudication would be shrunk to the limited question whether he is such a transferee and on a finding in the affirmative regarding that point the executing court has to hold that he has no right to resist in view of the clear language contained in Rule 102. Exclusion of such a transferee from raising further contentions is based on the salutary principle adumbrated in Section 52 of the Transfer of property Act.

14. It is clear that the executing court can decide whether the resister or obstructor is a person bound by the decree and he refused to vacate the property. That question also squarely falls within the adjudicatory process contemplated in Order 21 Rule 97(2) of the Code. The adjudication mentioned therein need not necessarily involve a detailed enquiry or collection of evidence. Court can make the adjudication on admitted facts or even on the averments made by the resister. Of course the court can direct the parties to adduce evidence for such determination if the court deems it necessary."

47. This Court in *N.S.S. Narayana Sarma v. Goldstone Exports (P) Ltd.* (2002) 1 SCC 662, has held as under: (SCC pp. 668-69, paras 15 & 19)

"15. Provision is made in the Civil Procedure Code for delivery of possession of immovable property in execution of a decree and matters relating thereto. In Order 21 Rule 35 provisions are made empowering the executing court to deliver possession of the property to the decree-holder if necessary, by removing any person bound by the decree who refuses to vacate the property. In Rule 36 provision is made for delivery of formal or symbolical possession of the property in occupancy of a tenant or other person entitled to occupy the same and not bound by the decree to relinquish such occupancy. Rules 97 to 101 of Order 21 contain the provisions enabling the executing court to deal with a situation when a decree-holder entitled to possession of the property encounters obstruction from "any person". From the provisions in these Rules which have been quoted earlier the scheme is clear that the legislature has vested wide powers in the executing court to deal with "all issues" relating to such matters. It is a general impression prevailing amongst the litigant public that difficulties of a litigant are by no means over on his getting a decree for immovable property in his favour. Indeed, his difficulties in real and practical sense, arise after getting the decree. Presumably, to tackle such a situation and to allay the apprehension in the minds of litigant public that it takes years and years for the decree-holder to enjoy fruits of the decree, the legislature made drastic amendments in provisions in the aforementioned Rules, particularly, the provision in Rule 101 in which it is categorically declared that all questions including questions relating to right, title or interest in the property arising between the parties to a proceeding on an application under Rule 97 or Rule 99 or their representatives, and relevant to the adjudication of the application [Ed.: The matter between two asterisks has been emphasised in original.] shall be determined by the Court dealing with the application and not by a separate suit [Ed.: The matter between two asterisks has been emphasised in original.] and for this purpose, the court shall, notwithstanding anything to the contrary contained in any other law for the time being in force, be deemed to have jurisdiction to decide such questions. On a fair reading of the Rule it is manifest that the legislature has enacted the provision with a view to remove, as far as possible, technical objections to an application filed by the aggrieved party whether he is the decree-holder or any other person in possession of the immovable property under execution and has vested the power in the executing court to deal with all questions arising in the matter irrespective of whether the court otherwise has jurisdiction to entertain a dispute of the nature. This clear statutory mandate and the object and purpose of the provisions should not be lost sight of by the courts seized of an execution proceeding. The court cannot shirk its responsibility by skirting the relevant issues arising in the case.

19. From the principles laid down in the decisions noted above, the position is manifest that when any person claiming title to the property in his possession obstructs the attempt by the decree-holder to dispossess him from the said property the executing court is competent to consider all questions raised by the persons offering obstruction against execution of the decree and pass appropriate order which under the provisions of Order 21 Rule 103 is to be treated as a decree."

48. In *Sameer Singh v. Abdul Rab* [(2015) 1 SCC 379 : (2015) 1 SCC (Civ) 509] , this Court, after considering its previous judgment in *Brahmdeo Chaudhary* [*Brahmdeo Chaudhary v. Rishikesh Prasad Jaiswal*, (1997) 3 SCC 694] has held thus: (SCC p. 389, para 26)

"26. The aforesaid authorities clearly spell out that the court has the authority to adjudicate all the questions pertaining to right, title or interest in the property arising between the parties. **It also includes the claim of a stranger who apprehends dispossession or has already been dispossessed from the immovable property.** The self-contained code, as has been emphasised

by this Court, enjoins the executing court to adjudicate the lis and the purpose is to avoid multiplicity of proceedings. It is also so because prior to 1976 amendment the grievance was required to be agitated by filing a suit but after the amendment the entire enquiry has to be conducted by the executing court. Order 21 Rule 101 provides for the determination of necessary issues. Rule 103 clearly stipulates that when an application is adjudicated upon under Rule 98 or Rule 100 the said order shall have the same force as if it were a decree. Thus, it is a deemed decree. If a court declines to adjudicate on the ground that it does not have jurisdiction, the said order cannot earn the status of a decree. If an executing court only expresses its inability to adjudicate by stating that it lacks jurisdiction, then the status of the order has to be different."

49. A conjoint reading of the relevant provisions and the principles laid down by this Court makes it clear that in execution of decree for possession of immovable property, the executing court delivers actual physical possession of the decretal land to the decree-holder. Rule 35 confers jurisdiction on the executing court to remove any person, who is bound by the decree and who refuses to vacate the property. The words "any person who is bound by the decree", clearly mandate that removal can only be of a person who is bound by the decree. Rules 97 to 101 deal with situation when execution is obstructed or resisted by "any person" claiming right, title or interest in the property. The words "any person" include even a stranger to a decree resisting the decree of possession as not being bound by a decree or by claiming independent right, title or interest to the property.

50. Thus, Rule 97 not only provides to a decree-holder in obtaining possession of an immovable property but also to a stranger who obstructs or resists delivery of possession of the property by claiming derivative title from the judgment debtor or independent right, title or interest in the decretal property. Whereas, Rule 99 gives right to a third party claiming right, title or interest in the property to seek restoration of the decretal property. Suffice it to say that the remedy under Rule 99 is available when a person claiming right to the decretal property is already dispossessed.

51. Rule 101 enjoins upon the executing court dealing with application under Rule 97 or 99 to determine all questions including questions relating to right, title or interest in the property, arising between the parties and relevant to the adjudication of the application. As held by this Court in *Silverline Forum (P) Ltd. v. Rajiv Trust*, (1998) 3 SCC 723 the question that the executing court is obliged to determine under Rule 101 must possess two adjuncts viz. (i) that such question should have legally arisen between the parties, and (ii) such question must be relevant for consideration and determination between the parties. Upon adjudication of such questions, the executing court is under an obligation to pass appropriate order as contemplated under Rule 98 or 100, as the case may be. When eventually such order is passed, it would be treated as decree and no separate suit would lie against such order. It therefore follows that the only remedy is to prefer an appeal before the appropriate court against such deemed decree.

(iii) Section 47CPC vis-à-vis Order 21 Rule 97CPC

52. Under Section 47CPC, questions arising between the parties to the suit relating to the execution, discharge or satisfaction of the decree are covered whereas under Order 21 Rule 97 read with Rule 101 CPC, questions including those relating to right, title or interest in the property arising between the parties to the proceeding on an application under Rule 97 or Rule 99 of Order 21 are to be determined by the executing court. The language of Rule 97 provides that where the holder of a decree for possession of immovable property is resisted or obstructed by any person in obtaining possession of the property, he may make an application to the court complaining of such

resistance or obstruction. The language used is "obstructed by any person". It may be by the judgment-debtor or by a third person. Sub-rule (2) of the said Rule 97 further provides that where an application is made under sub-rule (1), the court shall proceed to adjudicate upon the application in accordance with the provisions thereunder contained. Sub-rule (2) of Rule 98 of Order 21 further provides that where upon such determination, the court is satisfied that the resistance or obstruction was occasioned without any just cause by the judgment-debtor or by some other person at his instigation or on his behalf, he shall direct that the applicant be put into possession of the property.

53. Rule 101 of Order 21 provides as under:

"101. Question to be determined."

All questions (including questions relating to right, title or interest in the property) arising between the parties to a proceeding on an application under Rule 97 or Rule 99 or their representatives, and relevant to the adjudication of the application, shall be determined by the court dealing with the application and not by a separate suit and for this purpose, the court shall, notwithstanding anything to the contrary contained in any other law for the time being in force, be deemed to have jurisdiction to decide such questions."

54. Thus the cumulative effect of all these rights read together is that if an application under Order 21 Rule 97 is made, then its determination will be under Rule 101 and then Rule 103 further provides that where any application has been adjudicated upon under Rules 98 or 100, the order made thereon shall have the same force and will be subject to the same conditions as to an appeal or otherwise as if it were a decree. Under Section 47CPC all questions relating to the execution, discharge or satisfaction of the decree, have to be determined by the executing court whereas under Rule 101 all questions including question relating to right, title or interest in the property arising between the parties to the proceedings have to be determined by the executing court. Section 47 is a general provision whereas Order 21 Rules 97 and 101 deal with a specific situation. Moreover, Section 47 deals with executions of all kinds of decrees whereas Order 21 Rules 97 and 101 deal only with execution of decree for possession. Apart from that, earlier i.e. prior to the amendment, every order falling under Section 47 was appealable (as the terms "decree" included the order under Section 47CPC) whereas now only certain orders as provided for under Order 21 have been made appealable.

56. This Court in *Bhanwar Lal v. Satyanarain* (1995) 1 SCC 6, has held that even an application filed under Section 47 would be treated as an application under Order 21 Rule 97 and an adjudication is required to be conducted under Rule 98. Dispossession of the applicant from the property is not a condition for declining to entertain the application. The relevant portion of the judgment is reproduced below: (SCC p. 9, paras 5-7)

"5. The procedure has been provided in Rules 98 to 103. We are not, at present, concerned with the question relating to the procedure to be followed and question to be determined under Order 21 Rules 98 to 102. A reading of Order 21 Rule 97CPC clearly envisages that "any person" even including the judgment-debtor irrespective whether he claims derivative title from the judgment-debtor or set up his own right, title or interest dehors the judgment-debtor and he resists execution of a decree, then the court in addition to the power under Rule 35(3) has been empowered to conduct an enquiry whether the obstruction by that person in obtaining possession of immovable property was legal or not. The decree-holder gets a right under Rule 97 to make an application against third parties to have his obstruction removed and an enquiry thereon could be

done. Each occasion of obstruction or resistance furnishes a cause of action to the decree-holder to make an application for removal of the obstruction or resistance by such person.

6. When the appellant had made the application on 25-5-1979 against Satyanarain, in law it must be only the application made under Order 21 Rule 97(1)CPC. The executing court, obviously, was in error in directing to make a fresh application. It is the duty of the executing court to consider the averments in the petition and consider the scope of the applicability of the relevant rule. On technical ground the executing court dismissed the second application on limitation and also the third application, on the ground of res judicata which the High Court has in the revisions now upheld. The procedure is the handmaid of substantive justice but in this case it has ruled the roost.

7. In the above view we have taken, the High Court has committed grievous error of jurisdiction and also patent illegality in treating the application filed by the appellant as barred by limitation and the third one on res judicata. Once the application, dated 25-5-1979 was made, the Court should have treated it to be one filed under Order 21 Rule 97(1)CPC. The question of res judicata for filing the second and third applications does not arise. Under these circumstances the appellate court, though for different reasons was justified in directing an enquiry to be conducted for removal of the obstruction or resistance caused by Satyanarain under Order 21 Rules 35(3) and 97(2) and Order 21 Rules 101 and 102CPC."

65. What flows from the position of law, as aforesaid, is that the issues that ought to have been raised by the parties during the adjudication of the original suit cannot be determined by the executing court as such adjudication may undermine the decree itself. This Court in *Rahul S. Shah v. Jinendra Kumar Gandhi* [(2021) 6 SCC 418 : (2021) 3 SCC (Civ) 569] has held that the benefit of Section 47 cannot be availed to conduct a retrial causing failure of realisation of fruits of the decree. The relevant portion of the judgment is reproduced below: (SCC p. 430, paras 24-27)

"24. In respect of execution of a decree, Section 47CPC contemplates adjudication of limited nature of issues relating to execution i.e. discharge or satisfaction of the decree and is aligned with the consequential provisions of Order 21CPC. Section 47 is intended to prevent multiplicity of suits. It simply lays down the procedure and the form whereby the court reaches a decision. For the applicability of the section, two essential requisites have to be kept in mind. Firstly, the question must be the one arising between the parties and secondly, the dispute relates to the execution, discharge or satisfaction of the decree. Thus, the objective of Section 47 is to prevent unwanted litigation and dispose of all objections as expeditiously as possible.

25. **These provisions contemplate that for execution of decrees, executing court must not go beyond the decree. However, there is steady rise of proceedings akin to a retrial at the time of execution causing failure of realisation of fruits of decree and relief which the party seeks from the courts despite there being a decree in their favour. Experience has shown that various objections are filed before the executing court and the decree-holder is deprived of the fruits of the litigation and the judgment-debtor, in abuse of process of law, is allowed to benefit from the subject-matter which he is otherwise not entitled to.**

26. The general practice prevailing in the subordinate courts is that invariably in all execution applications, the courts first issue show-cause notice asking the judgment-debtor as to why the decree should not be executed as is given under Order 21 Rule 22 for certain class of cases. However, this is often misconstrued as the beginning of a new trial. For example, the judgment-debtor sometimes misuses the provisions of Order 21 Rule 2 and Order 21 Rule 11 to set

up an oral plea, which invariably leaves no option with the court but to record oral evidence which may be frivolous. This drags the execution proceedings indefinitely.

27. This is antithesis to the scheme of the Civil Procedure Code, which stipulates that in civil suit, all questions and issues that may arise, must be decided in one and the same trial. Order 1 and Order 2 which relate to parties to suits and frame of suits with the object of avoiding multiplicity of proceedings, provides for joinder of parties and joinder of cause of action so that common questions of law and facts could be decided at one go."

75. It is worthwhile to revisit the observations in *Rahul S. Shah [Rahul S. Shah v. Jinendra Kumar Gandhi, (2021) 6 SCC 418 : (2021) 3 SCC (Civ) 569]* wherein this Court has provided guidelines and directions for conduct of execution proceedings. The relevant portion of the said judgment is reproduced below: (SCC pp. 433-35, para 42)

"42. All courts dealing with suits and execution proceedings shall mandatorily follow the below mentioned directions:

42.1. In suits relating to delivery of possession, the court must examine the parties to the suit under Order 10 in relation to third-party interest and further exercise the power under Order 11 Rule 14 asking parties to disclose and produce documents, upon oath, which are in possession of the parties including declaration pertaining to third-party interest in such properties.

42.2. In appropriate cases, where the possession is not in dispute and not a question of fact for adjudication before the court, the court may appoint Commissioner to assess the accurate description and status of the property.

42.3. After examination of parties under Order 10 or production of documents under Order 11 or receipt of Commission report, the court must add all necessary or proper parties to the suit, so as to avoid multiplicity of proceedings and also make such joinder of cause of action in the same suit.

42.4. Under Order 40 Rule 1CPC, a Court Receiver can be appointed to monitor the status of the property in question as custodia legis for proper adjudication of the matter.

42.5. The court must, before passing the decree, pertaining to delivery of possession of a property ensure that the decree is unambiguous so as to not only contain clear description of the property but also having regard to the status of the property.

42.6. In a money suit, the court must invariably resort to Order 21 Rule 11, ensuring immediate execution of decree for payment of money on oral application.

42.7. In a suit for payment of money, before settlement of issues, the defendant may be required to disclose his assets on oath, to the extent that he is being made liable in a suit. The court may further, at any stage, in appropriate cases during the pendency of suit, using powers under Section 151CPC, demand security to ensure satisfaction of any decree.

42.8. **The court exercising jurisdiction under Section 47 or under Order 21CPC, must not issue notice on an application of third party claiming rights in a mechanical manner. Further, the court should refrain from entertaining any such application(s) that has already been considered by the court while adjudicating the suit or which raises any such issue which otherwise could have been raised and determined during adjudication of suit if due diligence was exercised by the applicant.**

42.9. **The court should allow taking of evidence during the execution proceedings only in exceptional and rare cases where the question of fact could not be decided by resorting to any**

other expeditious method like appointment of Commissioner or calling for electronic materials including photographs or video with affidavits.

42.10. The court must in appropriate cases where it finds the objection or resistance or claim to be frivolous or mala fide, resort to sub-rule (2) of Rule 98 of Order 21 as well as grant compensatory costs in accordance with Section 35-A.

42.11. Under Section 60CPC the term "" in name of the judgment-debtor or by another person in trust for him or on his behalf" should be read liberally to incorporate any other person from whom he may have the ability to derive share, profit or property.

42.12. The executing court must dispose of the execution proceedings within six months from the date of filing, which may be extended only by recording reasons in writing for such delay.

42.13. The executing court may on satisfaction of the fact that it is not possible to execute the decree without police assistance, direct the police station concerned to provide police assistance to such officials who are working towards execution of the decree. Further, in case an offence against the public servant while discharging his duties is brought to the knowledge of the court, the same must be dealt with stringently in accordance with law.

42.14. The Judicial Academies must prepare manuals and ensure continuous training through appropriate mediums to the court personnel/staff executing the warrants, carrying out attachment and sale and any other official duties for executing orders issued by the executing courts."

(emphasis supplied)

15. The Apex Court in the case of ***Alka Shrirang Chavan and Another vs. Hemchandra Rajaram Bhonsale and Others*** 2026 SCC OnLine SC 55, held as under:-

"59. In *Silverline Forum Pvt. Ltd. v. Rajiv Trust* [(1998) 3 SCC 723] , a sub-tenant, who was not a party to a decree for eviction, resisted execution of the decree and the court ordered an inquiry under Section 151CPC. The High Court upheld that order and that was challenged in appeal before this Court. While disagreeing with the view taken by the High Court that resistance or obstruction made by a third party to the decree for execution cannot be gone into under Order XXI Rule 97CPC, this Court observed as under:

9. "...Rules 97 to 106 in Order 21 of the Code are subsumed under the caption "Resistance to delivery of possession to decree-holder or purchaser". Those rules are intended to deal with every sort of resistance or obstructions offered by any person. Rule 97 specifically provides that when the holder of a decree for possession of immovable property is resisted or obstructed by "any person" in obtaining possession of the property such decree-holder has to make an application complaining of the resistance or obstruction. Sub-rule (2) makes it incumbent on the court to proceed to adjudicate upon such complaint in accordance with the procedure laid down.

10. It is true that Rule 99 of Order 21 is not available to any person until he is dispossessed of immovable property by the decree-holder. Rule 101 stipulates that all questions "arising between the parties to a proceeding on an application under Rule 97 or Rule 99" shall be determined by the executing court, if such questions are "relevant to the adjudication of the application". A third party to the decree who offers resistance would thus fall within the ambit of Rule 101 if an adjudication is warranted as a consequence of the resistance or obstruction made by him to the execution of the decree. No doubt if the resistance was made by a transferee pendente lite of the judgment-debtor, the scope of the adjudication would be shrunk to the limited question

whether he is such a transferee and on a finding in the affirmative regarding that point the execution court has to hold that he has no right to resist in view of the clear language contained in Rule 102. Exclusion of such a transferee from raising further contentions is based on the salutary principle adumbrated in Section 52 of the Transfer of Property Act.

11. When a decree-holder complains of resistance to the execution of a decree it is incumbent on the execution court to adjudicate upon it. But while making adjudication, the court is obliged to determine only such question as may be arising between the parties to a proceeding on such complaint and that such questions must be relevant to the adjudication of the complaint.

12. The words "all questions arising between the parties to a proceeding on an application under Rule 97" would envelop only such questions as would legally arise for determination between those parties. **In other words, the court is not obliged to determine a question merely because the resister raised it.** The questions which the executing court is obliged to determine under Rule 101, must possess two adjuncts. First is that such questions should have legally arisen between the parties, and the second is, such questions must be relevant for consideration and determination between the parties, e.g., **if the obstructor admits that he is a transferee pendente lite it is not necessary to determine a question raised by him that he was unaware of the litigation when he purchased the property.** Similarly, a third party, who questions the validity of a transfer made by a decree-holder to an assignee, cannot claim that the question regarding its validity should be decided during execution proceedings. **Hence, it is necessary that the questions raised by the resister or the obstructor must legally arise between him and the decree-holder.** In the adjudication process envisaged in Order 21 Rule 97(2) of the Code, the execution court can decide whether the question raised by a resister or obstructor legally arises between the parties. An answer to the said question also would be the result of the adjudication contemplated in the sub-section.

13. In the above context we may refer to Order 21 Rule 35(1) which reads thus:

"35. (1) Where a decree is for the delivery of any immovable property, possession thereof shall be delivered to the party to whom it has been adjudged, or to such person as he may appoint to receive delivery on his behalf, and, if necessary, by removing any person bound by the decree who refuses to vacate the property."

59.1. This Court held that it is clear that the executing court can decide whether the resister or obstructor is a person bound by the decree and whether he refuses to vacate the property. It has been held thus:

14. It is clear that the executing court can decide whether the resister or obstructor is a person bound by the decree and he refuses to vacate the property. That question also squarely falls within the adjudicatory process contemplated in Order 21 Rule 97(2) of the Code. The adjudication mentioned therein need not necessarily involve a detailed enquiry or collection of evidence. The court can make the adjudication on admitted facts or even on the averments made by the resister. Of course the court can direct the parties to adduce evidence for such determination if the court deems it necessary.

60. NSS Narayana Sarma v. Goldstone Exports (P) Ltd. (2002) 1 SCC 662, also makes an analysis of Order XXI Rules 97 to 101 CPC. In this case, the contest was between two sets of transferees of the subject property, including the appellants. The objections filed by the appellants under Order XXI Rule 99 read with Rule 101 CPC having been dismissed by the High Court as non-maintainable, the appellants were before this Court assailing the judgment of the High Court. In that context, this Court examined the aforesaid provisions in the following manner:

15. Provision is made in the Civil Procedure Code for delivery of possession of immovable property in execution of a decree and matters relating thereto. In Order 21 Rule 35 provisions are made empowering the executing court to deliver possession of the property to the decree-holder if necessary, by removing any person bound by the decree who refuses to vacate the property. In Rule 36 provision is made for delivery of formal or symbolical possession of the property in occupancy of a tenant or other person entitled to occupy the same and not bound by the decree to relinquish such occupancy. Rules 97 to 101 of Order 21 contain the provisions enabling the executing court to deal with a situation when a decree-holder entitled to possession of the property encounters obstruction from "any person". From the provisions in these Rules which have been quoted earlier the scheme is clear that the legislature has vested wide powers in the executing court to deal with "all issues" relating to such matters. It is a general impression prevailing amongst the litigant public that difficulties of a litigant are by no means over on his getting a decree for immovable property in his favour. Indeed, his difficulties in real and practical sense, arise after getting the decree. Presumably, to tackle such a situation and to allay the apprehension in the minds of litigant public that it takes years and years for the decree-holder to enjoy fruits of the decree, the legislature made drastic amendments in provisions in the aforementioned Rules, particularly, the provision in Rule 101 in which it is categorically declared that all questions including questions relating to right, title or interest in the property arising between the parties to a proceeding on an application under Rule 97 or Rule 99 or their representatives, and relevant to the adjudication of the application shall be determined by the court dealing with the application and not by a separate suit and for this purpose, the court shall, notwithstanding anything to the contrary contained in any other law for the time being in force, be deemed to have jurisdiction to decide such questions. On a fair reading of the Rule it is manifest that the legislature has enacted the provision with a view to remove, as far as possible, technical objections to an application filed by the aggrieved party whether he is the decree-holder or any other person in possession of the immovable property under execution and has vested the power in the executing court to deal with all questions arising in the matter irrespective of whether the court otherwise has jurisdiction to entertain a dispute of the nature. This clear statutory mandate and the object and purpose of the provisions should not be lost sight of by the courts seized of an execution proceeding. The court cannot shirk its responsibility by skirting the relevant issues arising in the case.

60.1. After adverting to *Silverline* and other decided cases, this Court concluded as under:

19. From the principles laid down in the decisions noted above, the position is manifest that when any person claiming title to the property in his possession obstructs the attempt by the decree-holder to dispossess him from the said property the executing court is competent to consider all questions raised by the persons offering obstruction against execution of the decree and pass appropriate order which under the provisions of Order 21 Rule 103 is to be treated as a decree""

61. The next case on this issue is *Usha Sinha v. Dina Ram* [(2008) 7 SCC 144] . After agreeing with the proposition of law laid down in *Silverline*, this Court held as under:

25. We are in respectful agreement with the proposition of law laid down by this Court in *Silverline Forum*. In our opinion, the doctrine is based on the principle that the person purchasing property from the judgment-debtor during the pendency of the suit has no independent right to property to resist, obstruct or object execution of a decree. Resistance at the instance of transferee of a judgment-debtor during the pendency of the proceedings cannot be

said to be resistance or obstruction by a person in his own right and, therefore, is not entitled to get his claim adjudicated.

26. For invoking Rule 102, **it is enough for the decree-holder to show that the person resisting the possession or offering obstruction is claiming his title to the property after the institution of the suit in which decree was passed and sought to be executed against the judgment-debtor.** If the said condition is fulfilled, the case falls within the mischief of Rule 102 and such applicant cannot place reliance either on Rule 98 or Rule 100 of Order 21."

(emphasis supplied)

Conclusion of this Court

16. It is apparent from the above law laid down by the Apex Court in the case of **Periyammal** (supra) and **Alka Shrirang Chavan** (supra) that even a stranger is entitled to obstruct the execution of a decree of possession by claiming independent right in the disputed property and such right is to be adjudicated by the executing court under Order 21 Rule 97 and 99 C.P.C. It is further apparent that for adjudicating the right of the stranger under Order 21 Rule 99 C.P.C., it is not mandatory that he had been dispossessed by the decree holder from the disputed property before his objections can be considered by the executing court. The trial court in the instant case has dismissed the application of the appellants on the ground that they are neither the decree holder under Order 21 Rule 97 C.P.C. nor they have been dispossessed under Order 21 Rule 99 C.P.C., hence, their application is not legally maintainable. In the light of the law laid down by the Apex Court in the above mentioned cases, certainly the reasoning of the executing court is erroneous and legally unsustainable. It is apparent that the appellants application could not have been dismissed on the ground of maintainability. But the question remains whether the appellants have proved any prima facie independent right, title and interest in the disputed property, entitling them to resist their dispossession from it?

17. The Apex Court in the case of **Rahul S. Shah** (supra) has held that the Court should refrain from entertaining an application of the third party claiming rights in the disputed property, in a mechanical manner and should only take evidence in execution proceedings in exceptional and rare cases. It was further held that where the Court finds the objections or resistance or claim to be frivolous or malafide, it can resort to Order 21 Rule 98(2) C.P.C. for granting compensatory costs in accordance with Section 35-A.

18. It is alleged by the appellants/applicants in their application under Order 21 Rule 97 and 99 C.P.C. that the predecessor/grandfather of the applicants was Rajaram and after his death, a partition took place between the sons of Rajaram namely Shivanand Bharti and Paramhans Pandey, about 10 years back. The applicants have not disclosed when Rajaram died and when partition took place between his sons, but have mentioned that their father died in the year 2009.

19. It is also apparent that the plaintiff in O.S. No.348 of 1988 claimed ownership of disputed property on the basis of sale deed, whereas, no documentary proof of ownership could be produced by defendants in that case.

20. It is apparent that the appellants have failed to produce any documentary evidence to establish their ownership or any independent right in the disputed property. The appellants allege that the disputed property was allotted to their father, Paramhans Pandey, in a family partition, and upon his death, they became the owners in possession of the property. It is apparent that if the partition took place during the pendency of the original suit, then on this basis no rights can be claimed by the appellants. The appellants further contend that the plaintiffs and defendants in O.S. No. 348 of 1988 were neither the rightful owners nor in possession of the disputed property, and, as such, the decree passed in O.S. No. 348 of 1988 was collusive but no documentary evidence has been submitted in this regard by the appellants.

21. It is further evident that the suit was contested by Paramhans Pandey's brother, Shivanand Bharti, and his sons, namely Sri Ram, Ramji, and Basant Kumar. It is also apparent that Shivanand Bharti and his family and Paramhans Pandey and his family were residing in the same disputed house, as alleged by the appellants, hence, it is improbable that the appellants were unaware of the pendency of O.S. No.348 of 1988 and Civil Appeal No.7 of 2012.

22. Since the defendants and the appellants were residing in the same disputed house, if they had any right in the property, they could have moved an impleadment application in the original suit. However, despite being aware of the suit, no such application was ever filed by them.

23. It is further apparent that no independent right has vested in the appellants to challenge the decree passed in that suit. The application under Order 21 Rules 97 and 99 C.P.C. appears to have been filed merely to frustrate the decree passed in O.S. No. 348 of 1988, in collusion with the judgment debtors. Since the appellants have failed to demonstrate any independent right or interest in the disputed property, they are not entitled to resist the decree passed in O.S. No. 348 of 1988.

24. Accordingly, the appeal lacks merit and is liable to be dismissed at the admission stage.

25. **The appeal is dismissed at the admission stage.**

26. Consequently, the impugned order dated 06.01.2026 is affirmed, albeit on a different ground.

(2026) 4 ILRA 312
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 29.04.2026

BEFORE

THE HON'BLE SHEKHAR B. SARAF, J.
THE HON'BLE ABDHESH KUMAR CHAUDHARY, J.

Special Appeal No. 84 of 2025

Saurav Raj

...Appellant

Versus

Sonakshi Verma

...Respondent

Issue for Consideration

(1) Maintainability of Special Appeal against an order disposing of contempt application with the direction to pursue the proceeding filed u/s 379, BNSS before the competent court.

Headnotes

(A) Practice and Procedure – Special Appeal – Maintainability – Contempt application was filed for filing false affidavit in maintenance case – Single Judge declined to proceed contempt application in order to curtail the multiplicity of proceedings as a proceeding u/s 379, BNSS was already filed and pending before the competent court – Validity challenged – Plea of violation of judgment rendered in Rajnish v. Neha case was raised – Permissibility: (E-1)

Held: In Rajnesh v. Neha, the Hon'ble Supreme Court laid down a general caution that irresponsible pleadings may invite action under Section 340 Cr.P.C. or contempt, but did not mandate automatic initiation of such proceedings, particularly in cases of inadvertent or immaterial errors in disclosure affidavits. [Para 15]

Further held: An appeal is a creation of statute and once the legislature in its wisdom has chosen not to provide for any remedy of appeal against an order passed, whereby the contempt court has declined to initiate contempt proceeding, then appeal cannot be construed to be maintainable as the proceedings under the Contempt of Courts Act are self-contained – The learned Single Judge by observing that multiple proceedings cannot be permitted as a proceeding under Section 379 BNSS was already pending and giving liberty to approach the competent court to pursue the grievance therein exercising contempt jurisdiction has neither entered into the merits of dispute nor decided any question, inter alia, which may affect the valuable rights of the parties as filing contempt against a contemnor does not confer any right against which a special appeal can be filed. [Para 19 and 21]

(B) Interpretation of statute – *Quando aliquid prohibetur ex directo, prohibetur et per obliquum* – Meaning – Applicability: (E-1)

Held: If there is no provision of appeal in the statute, one cannot take aid of any other provisions as such of the Rules as *quando aliquid prohibetur ex directo, prohibetur et per obliquum*, that is, what cannot be done directly cannot be done indirectly. [Para 21]

Case Law Cited

Rajnesh vs. Neha, AIR 2021 SC 569; Special Appeal No. 372 of 2023, Subhash Chandra vs. Srikant Goswami; Midnapore Peoples Cooperative vs. Chunni Lal Nanda and Others, (2006) 5 SCC 399; RFA 695/2016, Pratibha vs. Kunwar Singh Tanwar & Ors., (Delhi High Court); Secretary, Hailkandi Bar Association vs. State of Assam and Anr., AIR 1996 SC 1925; Civil Appeal No. 4235 of 2014, Board of Cricket Control in India vs. Cricket Association of Bihar and Ors.); M.S. Ahlawat vs. State of Haryana and another, AIR 2000 SC 168; Dhananjay Sharma vs. State of Haryana, (1995) 3 SCC 757; Ishwar Singh Bindra and Others vs. State of U.P., AIR 1968 SC 1450; Vinod Kumar Gupta vs. Shri Veer Bahadur Yadav, 2023(7) ADJ 107 (DB) – **referred to.**

List of Acts

Constitution of India – Article 215; Contempt of Courts Act, 1971 – Section 10; Criminal Procedure Code – Section 340 Cr.P.C.; Protection of Women from Domestic Violence Act, 2005 – Section 12.

List of Keywords

Contempt application, Maintenance application, False affidavit, Transfer application, Multiple litigation, Merit of dispute, Due course of justice, *Ubi jus ibi remedium*, Mens rea, Parallel proceedings in two separate courts of law, Conjunction 'and', Disjunctively, Exclusionary bar, Multiple proceeding, Multiplicity of proceedings, *res integra*, Oversteps its jurisdiction, Substantive issue, Amenable to an appeal, Cases of inadvertent or immaterial errors, Appropriate sanctions, Perjury application, Peripheral to the merits.

Case Arising From

Judgment and order dated 13.08.2024 passed in Contempt Application No. 3201 of 2024.

Appearances for Parties

Advs. for the Appellant: Priyanka Singh, Abhay Pratap Singh.

Advs. for the Respondents: Pranshu Agrawal.

(Delivered by Hon'ble Shekhar B. Saraf, J.)

The present Special Appeal has been filed by the appellant under Chapter VIII Rule 5 of the Allahabad High Court Rules, 1952 (hereinafter referred to as the 'Rules, 1952') against the order dated August 13, 2024 passed by the learned Single Judge in Contempt Application No. 3201 of 2024 whereby the learned Single Judge disposed of the contempt application on the ground that proceeding under Section 379 of Bharatiya Nagarik Surakhsha Sanhita, 2023 (hereinafter referred to as 'BNSS' ; formerly Section 340 of the Code of Criminal Procedure, 1973) has already been filed and is pending before the trial court.

FACTS

1. The factual matrix giving rise to the present special appeal has been delineated below:

a. The marriage between the appellant and the respondent, Sonakshi Verma was solemnized on February 15, 2021 in accordance with Hindu rites and rituals. Disputes arose soon thereafter which led respondent to file multiple cases against the appellant and his family members, including maintenance application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as 'DV Act') registered as Case No. 3288 of 2022 (P.S. Aliganj, Lucknow) before the Court of Civil Judge (J.D.)/F.T.C., Lucknow.

b. In the said proceedings, the respondent filed an Affidavit of Assets and Liabilities (A.O.A.) dated June 27, 2022 in accordance with the directions of the Hon'ble Supreme Court in **Rajnesh v. Neha** reported in AIR 2021 SC 569. In the said affidavit, the respondent stated her income as 'NA' (Non-Applicable) and stated 'NA' against properties/assets even though the respondent at that time was a serving judicial officer of the Bihar Judiciary (Civil Judge/Judicial Magistrate-I, presently posted as Registrar, Bihar Land Tribunal, Patna).

c. The maintenance application was decided ex-parte against the appellant on November 2, 2023, whereby maintenance of ₹10,000 per month was granted alongwith a restraint order in respect of a matrimonial house and compensation of Rs.2,00,000/-.

d. Aggrieved by allegedly false affidavit filed by the respondent in maintenance proceedings, the appellant initiated proceedings under Section 340 Cr.P.C. by filing Misc. Application No. 83439 of 2024 before the court of ACJ (J.D.) (Crime Against Women) F.T.C. 50.

e. Thereafter, the appellant also filed Contempt Application (Civil) No. 3201 of 2024 before this Hon'ble Court, seeking initiation of contempt against the respondent for deliberately filing a false affidavit in violation of the mandate given in **Rajnesh v. Neha** (Supra), which expressly provides that false statements and misrepresentations in maintenance affidavits may invite proceedings under Section 340 Cr.P.C. and contempt of court. The learned Single Judge disposed of the contempt application by the judgment and order dated August 13, 2024 without recording any finding whether prima facie contempt was made out or not and directed the appellant to pursue the application under Section 340 Cr.P.C. before the learned trial court. It is this judgment dated 13.08.2024, which has been impugned in the present intra-court appeal.

CONTENTIONS OF THE APPELLANT

2. The learned counsel appearing on behalf of the appellant has made the following submissions:

a. The learned Single Judge erred in failing to decide the core issue as to whether contempt was made out against the respondent in light of the clear dictum of the Hon'ble Supreme Court in *Rajnesh v. Neha* (Supra), particularly para (h) of the guidelines, which mandates initiation of contempt proceedings for making false statements in the affidavit of assets and liabilities.

b. There is no bar against proceeding simultaneously under Section 379 of BNSS and Contempt of Court.

c. A Special Appeal is maintainable against an order of the Contempt Court where it has overstepped its jurisdiction. In the present case, the Hon'ble Single Judge exceeded the bounds of contempt jurisdiction by directing the appellant to file a transfer application and pursue proceedings under Section 340 Cr.P.C. and inter alia holding that multiple litigations cannot be permitted, thereby delving into the merits of the original controversy. Such an order is therefore liable to be challenged by way of the present Special Appeal.

d. If the learned Single Judge, for any reason, decides an issue or issues any direction relating to the merits of the dispute between the parties in contempt proceedings, then the aggrieved party is not without a remedy and may challenge the same by way of an intra-court appeal, where such a remedy is available.

e. The swearing of a false affidavit in judicial proceedings not only has the tendency to obstruct the due course of justice but also to impede, obstruct, and interfere with the administration of justice.

f. The respondent has deliberately and intentionally filed a false affidavit before the learned Civil Court which is in gross violation of the directions issued by the Hon'ble Supreme Court in *Rajnesh v. Neha* (Supra). The specific false statements include:

i. Stating her source of income as 'N/A' (Non-Applicable), despite being a serving Civil Judge/Judicial Magistrate-I in the Bihar Judiciary since 2018 and drawing a regular salary from the State exchequer.

ii. Stating 'N/A' against properties/assets, despite having purchased a four-wheeler car (Hyundai Creta, Reg. No. UP 32 NX 2057) on 12-09-2023 while the PWDVA proceedings were still pending.

iii. Stating her mother and brother as dependents without any supporting documentary evidence, when in fact her brother is a married man, practicing lawyer, and manager/managing director of a hotel.

iv. Projecting medical expenses of Rs. 40,000/- as a personal liability, when as a judicial officer, her medical expenses are borne out by the State.

g. The respondent, by filing a false affidavit, misled the learned Civil Judge F.T.C., Lucknow, who passed the ex-parte order dated November 2, 2023 on the basis of such affidavit. The appellant being aggrieved party, is left without any remedy, which is contrary to the well-settled maxim '*Ubi jus ibi remedium*'.

h. To buttress her arguments, counsel has placed reliance on the following judgments:

(i) **Subhash Chandra v. Srikant Goswami, Managing Director, Sahkari Gram Vikas Bank Ltd., Lucknow** in Special Appeal No. 372 of 2023; to contend that a special appeal would be maintainable against the order of contempt court if it has overstepped its jurisdiction.

(ii) **Midnapore Peoples Cooperative v. Chunni Lal Nanda and Others** reported in (2006) 5 SCC 399; to contend that special appeal would be maintainable, if the learned Single Judge has made any direction relating to merits of the dispute in contempt jurisdiction .

(iii) **Pratibha v. Kunwar Singh Tanwar & Ors.**; RFA 695/2016 (Delhi High Court); to contend that misleading statements made before the court can invoke its contempt jurisdiction.

(iv) **Secretary, Hailkandi Bar Association v. State of Assam and Anr.** reported in AIR 1996 SC 1925; to contend that contempt of court and proceedings under Section 340 CrPC can run simultaneously.

(v) **Board of Cricket Control in India v. Cricket Association of Bihar and Ors.** in (Civil Appeal No. 4235 of 2014); wherein the court has issued notice to explain as to why proceedings under Section 340 CrPC and contempt of court should not be initiated against the contemnors.

(vii) **M.S. Ahlawat v. State of Haryana and another** reported in AIR 2000 SC 168; to contend that petitioner therein was prosecuted for giving false evidence as well as for contempt of court.

(viii) **Dhananjay Sharma v. State of Haryana** reported in (1995) 3 SCC 757; to contend that swearing of false affidavit in judicial proceedings had the tendency to impede, obstruct, and interfere with the administration of justice and therefore amounts to criminal contempt of court.

CONTENTIONS OF THE RESPONDENT:

3. The learned counsel appearing on behalf of respondent has made the following submissions:

a. The impugned order passed by contempt court does not contain any direction nor does it discuss the merits of the original controversy. The learned Single Judge merely observed that multiple proceedings on the same subject matter are not permissible when an application under Section 340 Cr.P.C. was already pending before the competent court. Hence, the contempt court has rightly declined to entertain parallel proceedings, and accordingly, the Special Appeal is liable to be dismissed on the ground of maintainability itself.

b. The affidavit in question did not contain the notation 'NIL', rather, the entry 'N/A' was merely an inadvertent slip of the pen, constituting a human error and without any mens rea to mislead the learned Court. This contention is corroborated by the affidavit itself, wherein the respondent declared her occupation as 'Civil Judge, Bihar Judicial Service.' Furthermore, in her maintenance application under Section 12 of the DV Act, the respondent had expressly acknowledged her status as a Judicial Officer, as well as in the final order dated November 2, 2023, the learned magistrate expressly recorded that the respondent was working as Sub-Divisional Judicial Magistrate (East), Muzaffarpur, Bihar and that both parties are working persons.

c. The appellant had already filed an application under Section 340 Cr.P.C. on the same subject matter before the learned trial court. The initiation of parallel proceedings in two separate courts of law pertaining to the same subject matter is not permissible. The Contempt Court rightly observed that multiple proceedings should not be permitted. The respondent relied on the proviso to Section 10 of the Contempt of Courts Act, 1971, which stipulates that no High Court shall take cognizance of contempt alleged to have been committed in respect of a subordinate court where such contempt constitutes an offence punishable under the IPC.

d. The appellant had filed more than nine cases against the respondent and her family. He also has a habit of lodging complaints against the presiding officer of the Court whenever he fails to secure a favourable order and in effect to it, he has filed a complaint against the Additional Chief Judicial Magistrate who accepted the final report in an FIR lodged by the appellant.

e. The appellant has wrongly interpreted the directions contained in para h of the judgment of the Supreme Court in **Rajnesh v. Neha** (Supra). The conjunction 'and' in the expression 'u/s. 340 Cr.P.C., and for contempt of Court' must be read disjunctively, i.e., as 'or', to give effect to the true intention of the Hon'ble Supreme Court. The jurisdiction to punish for contempt is vested exclusively in the High Courts under the Contempt of Courts Act. The Supreme Court's observation cannot be read to mean that both remedies must be pursued cumulatively.

f. To buttress his arguments counsel has placed reliance on the following judgment:

(i) **Ishwar Singh Bindra and Others v. State of U.P.** reported in **AIR 1968 SC 1450**, wherein it was held that 'and' may, by force of context, be read as 'or' to effectuate legislative intent.

ANALYSIS

4. After hearing the arguments canvassed by learned counsel appearing on behalf of both the parties and perusal of materials placed on record, the following issue emerges:

I. Whether Special Appeal under Chapter VIII Rule 5 of the Rules, 1952 is maintainable against the order of the Contempt Court? If so, under what circumstances?

5. The petitioner contends that a Special Appeal/Intra- Court appeal would be maintainable as the learned Single Judge by declining to initiate contempt proceedings had traversed its jurisdiction by not deciding as to whether any contempt has been made out or not but instead relegated the parties to approach the lower court in a pending proceeding under Section 379 BNSS. As per the judgment of the Supreme Court in **Rajnesh v. Neha** (Supra) , the pleadings made in the applications for maintenance and replies should be responsible; if false statements are made, the court may consider initiation of proceedings under Section 379 BNSS and for contempt of court. There is no exclusionary bar for filing proceeding under contempt of court and Section 379 BNSS. Furthermore, the discovery of the fact that the proceedings under Section 379 BNSS has been dismissed will render the appellant remediless.

6. Per contra, learned counsel appearing on behalf of respondent has vehemently opposed the aforesaid arguments and submits that the present special appeal is not maintainable as the order passed by the Contempt Court neither adjudicated the merits of the dispute nor issued any substantive directions, and rightly discouraged multiplicity of proceedings since the appellant had already invoked Section 379 BNSS on the same subject matter before the court below. It is contended that the appellant has attempted to mislead the Court regarding the respondent's affidavit, whereas the alleged discrepancy ('N/A') was merely an inadvertent error without any intention to misrepresent, which stands contradicted by consistent disclosures of her status as a judicial officer in prior proceedings and orders. The respondent emphasizes that parallel proceedings on the same issue are impermissible, and in view of the proviso to Section 10 of the Contempt of Courts Act, 1971, contempt jurisdiction is barred where the alleged act constitutes an offence under the IPC, which the appellant himself has invoked through Section 340 Cr.P.C.

proceedings. The appellant's reliance on **Rajnish v. Neha** (Supra) is misconceived, as the expression 'and' therein must be read disjunctively as 'or', in line with settled principles of interpretation. It is further pointed out that the appellant's application under Section 340 has already been dismissed on merits.

7. Section 10 of the Contempt of Courts Act, 1971 refers to the power of a High Court to punish for contempt of its subordinate courts which is sanctioned by Article 215 of the Constitution of India. The proviso excludes the jurisdiction of the High Court only in cases where the act alleged to constitute contempt of a subordinate court are punishable as contempt under specific provisions of the Indian Penal Code, 1860, but not where such acts merely amount to offences of other description for which punishment has been provided in the IPC, 1860.

8. Before proceeding further, it is relevant to note that the appellant has initiated a contempt proceedings before the High Court under Section 10 of the Act wherein the learned Single Judge in its contempt jurisdiction has passed the following order. The relevant part of the order is extracted hereinbelow:

'4. It is evident from the pleading that application under Section 340 Cr.P.C. has already been filed and is pending before the Competent Court, in such circumstances, multiple proceeding not to be permitted. As in case, the Court is vacant then it is appropriate to move transfer application before the Chief Judicial Magistrate concerned.

5. In view of the above, the present contempt application is disposed of with liberty to applicant to move transfer application before the Chief Judicial Magistrate concerned for transfer of application under Section 340 Cr.P.C. pending before Civil Judge, Junior Division, FTC, (Women related offences). In case, such application is filed within a period of two weeks from today then it is expected from the Chief Judicial Magistrate to pass appropriate order on the application.'

9. The question is whether the observation of learned Single Judge that 'multiple proceedings not be permitted' defies the right of the appellant to pursue the two remedies as per the judgment of **Rajnish v. Neha** (Supra), wherein it was observed that for filing false affidavits, court may initiate proceedings under Section 340 CrPC and for contempt of court.

10. The power of the intra-court appeal has been conferred on this Court by Chapter VIII Rule 5 of the Rules, 1952 which reads as under:-

"Chapter VIII [5. Special appeal :- An appeal shall lie to the Court from a judgment (not being a judgment passed in the exercise of appellate jurisdiction) in respect of a decree or order made by a Court subject to the superintendence of the Court and not being an order made in the exercise of revisional jurisdiction or in the exercise of its power of superintendence or in the exercise of criminal jurisdiction [or in the exercise of the jurisdiction conferred by Article 226 or Article 227 of the Constitution in respect of any judgment, order or award]

(a) of a tribunal, Court or statutory arbitrator made or purported to be made in the exercise or purported exercise of jurisdiction under any Uttar Pradesh Act or under any Central

Act, with respect to any of the matters enumerated in the State List or the Concurrent List in the Seventh Schedule to the Constitution, or

(b) of the Government or any officer or authority, made or purported to be made in the exercise or purported exercise of appellate or revisional jurisdiction under any such Act of one Judge.}]'

11. From the perusal of the impugned order passed in contempt proceedings, it transpires that learned Single Judge had declined to initiate the contempt proceedings in order to curtail the multiplicity of proceedings as a proceeding under Section 379 of the BNSS was already filed and was pending before the competent court.

12. The issue with regard to maintainability of a special appeal relating to a contempt proceeding is no more res integra. The Supreme Court in **Midnapore Peoples' Coop. Bank Ltd.** (Supra) has culled out the following circumstances for filing special appeal against orders passed in contempt proceedings:

'11. The position emerging from these decisions, in regard to appeals against orders in contempt proceedings may be summarised thus:

I. An appeal under Section 19 is maintainable only against an order or decision of the High Court passed in exercise of its jurisdiction to punish for contempt, that is, an order imposing punishment for contempt.

II. Neither an order declining to initiate proceedings for contempt, nor an order initiating proceedings for contempt nor an order dropping the proceedings for contempt nor an order acquitting or exonerating the contemnor, is appealable under Section 19 of the CC Act. In special circumstances, they may be open to challenge under Article 136 of the Constitution.

III. In a proceeding for contempt, the High Court can decide whether any contempt of court has been committed, and if so, what should be the punishment and matters incidental thereto. In such a proceeding, it is not appropriate to adjudicate or decide any issue relating to the merits of the dispute between the parties.

IV. Any direction issued or decision made by the High Court on the merits of a dispute between the parties, will not be in the exercise of 'jurisdiction to punish for contempt' and, therefore, not appealable under Section 19 of the CC Act. The only exception is where such direction or decision is incidental to or inextricably connected with the order punishing for contempt, in which event the appeal under Section 19 of the Act, can also encompass the incidental or inextricably connected directions.

V. If the High Court, for whatsoever reason, decides an issue or makes any direction, relating to the merits of the dispute between the parties, in a contempt proceedings, the aggrieved person is not without remedy. Such an order is open to challenge in an intra-court appeal (if the order was of a learned Single Judge and there is a provision for an intra-court appeal), or by seeking special leave to appeal under Article 136 of the Constitution of India (in other cases).

(Emphasis added)

13. The co-ordinate bench of this Court in **Subhash Chandra** (Supra) relying upon the judgment of Supreme Court in **Midnapore Peoples' Coop. Bank Ltd.** (Supra) has held that generally special appeal under Rules, 1952 against the order of learned Single Judge in contempt

proceeding is not maintainable unless the contempt court oversteps its jurisdiction by deciding into the merits of the dispute and inter-alia observed that 'merits' refers to the substantive issues of the original case that led to the contempt proceedings. It encompasses the core legal and factual questions that were or are being contested in the original litigation. The relevant paragraphs of the judgment are quoted hereinbelow:

'46. Thus, it cannot be said as an inflexible rule that an intra-court appeal in no circumstance can be maintained. If an order passed in contempt jurisdiction has the trappings of a final order and/or it has the impact of diluting, varying the original order by which the disputes between the parties have been decided on merits or the Contempt Court touches the merit or passes an order beyond its scope then in such cases an intra court appeal can be maintained.

69. The pith and substance of the aforesaid discussion, the legal principles involved and circumstances when an appeal may lie under Section 19 of the Contempt of Courts Act, 1971 and when a Special Appeal may lie from an order passed in contempt jurisdiction can be summarized as under:-

(A) Section 19 (1) of the Contempt of Courts Act can be invoked only when the Contempt Court has exercised its jurisdiction to punish for contempt. The essence of this provision is to provide a remedy against decision where the court has taken a definitive action to penalize a contemnor. This includes orders that impose fines, imprisonment, or other punitive measures directly related to the contemptuous behavior. Interlocutory orders, which do not entail punishment for contempt, do not fall within the ambit of Section 19. Such orders may include directions to produce documents, file affidavits, or procedural directives necessary for the continuation of the contempt proceedings. These are routine judicial actions that facilitate the progress of the case but do not constitute a final determination on the issue of contempt. Routine orders passed during the pendency of contempt proceedings are also excluded from the scope of Section 19. These orders are typically procedural and administrative in nature, ensuring that the proceedings move forward without addressing the substantive issues of the original case or the merits of the contempt.

(B) The crux of the matter lies in the nuanced interpretation of what constitutes "merit" within the context of contempt proceedings, as referenced by the Supreme Court in the Midnapore Peoples Cooperative Bank Limited case. The term "merit" has not been defined in a straight jacket formula, leading to varying interpretations. However, a cumulative reading of the judgments provide clarity on several key aspects. In the Midnapore case, the Supreme Court held that in contempt proceedings, it is inappropriate to adjudicate or decide any issue related to the merits of the dispute between the parties. This principle aims to ensure that contempt proceedings do not encroach upon the substantive rights of the parties involved in the original dispute. The focus of contempt jurisdiction is to uphold the dignity and authority of the court, not to resolve the underlying dispute. The term "merit" in this context refers to the substantive issues of the original case that led to the contempt proceedings. It encompasses the core legal and factual questions that were or are being contested in the original litigation.

(C) Special appeals from the order or judgment of a single judge bench in contempt cases hinge on the distinction between addressing the merits of the original dispute and the conduct constituting contempt. The primary responsibility of the Contempt Court is to determine whether contempt has occurred and to impose appropriate sanctions if it has. The merits of the original controversy are outside the domain of the contempt court. However, when the Contempt Court

issues directions or discusses the merits of the original controversy, it oversteps its jurisdiction. In such cases, a special appeal would lie to the High Court. This ensures that the original substantive issues are not inadvertently decided within the limited scope of contempt proceedings, preserving the parties' rights to a fair adjudication of their dispute.

(D) The interpretation of each case depends on its specific facts and circumstances. Courts must carefully distinguish between orders that address the procedural aspects of contempt proceedings and those that encroach upon the substantive issues of the original case. This distinction is crucial to maintaining the integrity of contempt jurisdiction and ensuring that appeals under Section 19 of the Act of 1971 are appropriately limited to cases where punitive action for contempt has been taken.

Thus, Special appeals in contempt cases are warranted only when the Contempt Court oversteps its jurisdiction by addressing the merits of the original dispute, ensuring that the substantive rights of the parties are protected. The interpretation of each case must consider the specific facts and circumstances to uphold the integrity of contempt jurisdiction and provide appropriate remedies for aggrieved parties.'

(Emphasis added)

14. The coordinate bench of this court in **Vinod Kumar Gupta v. Shri Veer Bahadur Yadav** reported in 2023(7) ADJ 107 (DB) dealing with a similar issue has held that an order of Single Judge exercising contempt jurisdiction in a contingency, when contempt proceedings are not being initiated, is not amenable to an appeal under Chapter VIII Rule 5 of the Rules, 1952. The relevant paragraphs of the judgment are quoted hereinbelow:

'30. Further in the case of *Hemendra Swaroop Bhatnagar v. Sri P.S. Gosain*, 2006(1) ADJ 483 (DB), this Hon'ble Court had the occasion to consider the issue of maintainability of special appeal under Chapter VIII Rule 5 of the 1952 Rules against the judgment and order dropping the contempt proceedings wherein this Court has observed as under:

"7. Appeal under Section 19 is maintainable when the order is passed by Contempt Judge in exercise of jurisdiction to punish for contempt. In the present case the Contempt Judge has discharged the notice, hence, there is no question of filing of appeal under Section 19.

8. The question regarding maintainability of the special appeal against an order rejecting a contempt application or discharging a contempt has come for consideration before this Court earlier. A Division Bench judgment of this Court in *A.P. Verma, Principal Secretary, Medical Health and Family Welfare, U.P., Lucknow and others v. U.P. Laboratory Technicians Association, Lucknow and others*, 1998 (3) UPLBEC 2333, had considered the said question. That Division Bench held in the said judgment that special appeal against an order refusing to initiate contempt proceeding is not maintainable.

9....

10....

11. The learned contempt Judge while discharging the contempt notice has not issued any direction or passed any order. The submission of the appellant's counsel that learned Judge has decided an issue on merit also cannot be accepted. The learned contempt Judge has only taken into consideration the earlier judgments of this Court contempt of which was alleged. The learned contempt Judge after taking into consideration all facts and circumstances observed that from the facts there does not appear to be any wilful or deliberate disobedience committed either by the

Collector or by the Special Land Acquisition Officer. The order of contempt Judge discharging contempt notice cannot be said to be a judgment issuing any direction or deciding any issue on merits. "

33. As noticed above, the Hon'ble Apex Court and this Court has consistently held that an intra-Court appeal is not maintainable against the order of the learned Single Judge exercising contempt jurisdiction in a contingency, when the contempt proceedings are not being initiated. The reliance placed upon the judgment in the case of Durga Nagpal (supra) is misconceived and misplaced as in the said case, the Hon'ble Judges while exercising appellate jurisdiction were confronted with the situation where the contempt Court reviewed its own order after entertaining miscellaneous application for modification of the final judgment. The Division Bench opined that when accused are discharged and proceedings are closed, miscellaneous application for modification is not maintainable. In the said perspective, the Special Appeal was held to be maintainable. Since the present case originates from a judgment and order of the contempt Court declining to exercise contempt jurisdiction, thus, the said judgment is of no aid to the appellants.'

15. Before proceeding further this court would like to deal with the judgments that have been relied upon by the appellant. In **Rajnesh v. Neha** (Supra), the Hon'ble Supreme Court laid down a general caution that irresponsible pleadings may invite action under Section 340 Cr.P.C. or contempt, but did not mandate automatic initiation of such proceedings, particularly in cases of inadvertent or immaterial errors in disclosure affidavits.

16. We need not join issue with judgments of the Supreme Court in **The Secretary, Hailkandi Bar Association** (Supra) and **Board of Control for Cricket in India** (Supra) wherein the Supreme Court has stated that simultaneous proceedings of contempt and proceedings under Section 379 BNSS are possible. The above principles only allow a person to invoke both the jurisdictions simultaneously but that does not mean that the courts are bound to initiate action under both the provisions.

17. We make it further clear that we do not join issue with judgments cited in **M.S. Ahlawat** (Supra), **Dhananjay Sharma** (Supra) and **Pratibha** (Supra) wherein the courts have identified instances that would lead to the invocation of the contempt jurisdiction. With respect to the judgement of the Supreme Court in **Midnapore Peoples' Coop. Bank Ltd** (Supra), the judgment of Allahabad High Court in **Subhash Chandra** (Supra) and **Vinod Kumar Gupta** (Supra), we are at consensus at idem with the said judgments wherein the courts have held that a special appeal would be maintainable against the order of contempt court, if the contempt court has overstepped its jurisdiction and/or made a direction relating to the merits of the dispute in the original order, the contempt of which is being sought for.

18. It may be noted that the scope of jurisdiction of Contempt Court is to determine whether contempt is committed and to impose appropriate sanctions if it has been committed. The merits of the original controversy are outside the domain of the contempt court. However, when the Contempt Court issues directions or discusses on the merits of the original controversy, it oversteps its jurisdiction.

19. The learned Single Judge by observing that multiple proceedings cannot be permitted as a proceeding under Section 379 BNSS was already pending and giving liberty to approach the competent court to pursue the grievance therein exercising contempt jurisdiction has neither entered into the merits of dispute nor decided any question, inter alia, which may affect the valuable rights of the parties as filing contempt against a contemnor does not confer any right against which a special appeal can be filed.

20. There is another aspect of the matter, inasmuch as it has been vehemently argued by the learned counsel for the petitioner that the learned Single Judge, by conflating these observation of 'multiplicity of proceedings', with the direction of 'relegating the parties to pursue perjury application' has actually commented on the merits of the contempt petition and as such the present Special Appeal was maintainable. We are afraid that the said submissions cannot be suscribed by us in any manner as the observation and/or direction of the learned Single Judge are not even peripheral to the merits of the contempt petition. Arguendo, one cannot argue that these observation and/or direction amounts to refusal of the Contempt Court to exercise its jurisdiction and/or has a trapping of dismissal of the said petition. However, in both the cases, wherein the Contempt Court has refused to entertain and/or has rejected the contempt petition, neither an Appeal would lie under Section 19 of the Contempt of Courts Act, 1971 nor a Special Appeal under Chapter VIII Rule 5 of the Allahabad High Court Rules, 1952, as held in *Subhash Chandra* (Supra).

21. An appeal is a creation of statute and once the legislature in its wisdom has chosen not to provide for any remedy of appeal against an order passed, whereby the contempt court has declined to initiate contempt proceeding, then appeal cannot be construed to be maintainable as the proceedings under the Contempt of Courts Act are self-contained. Right of appeal has been conferred only on the contemnor under Section 19 of the Act who has been punished under the Act and in rest of the contingency there is no remedy of appeal. If there is no provision of appeal in the statute, one cannot take aid of any other provisions as such of the Rules as quando aliquid prohibetur ex directo, prohibetur et per obliquum, that is, what cannot be done directly cannot be done indirectly.

22. Upon sifting through the ratios laid down in a catena of judgments of the Supreme Court and the High Court, one may come to an indubitable finding that a special appeal under Chapter VIII Rule 5 of the Rules, 1952 is only maintainable if the learned Single Judge has overstepped its jurisdiction and jumped into deciding on merits of the earlier order. A special appeal against an order of contempt Court would not be maintainable if the learned Single Judge has declined to initiate the contempt proceeding without delving into the merits of the dispute.

23. In view of the factual and legal position without going into the merits of the order passed by the learned Single Judge as also the maintainability of contempt proceeding in respect of violation of guidelines laid down by the Supreme Court in *Rajnesh v. Neha* (Supra), we unhesitatingly hold that the present special appeal/intra court appeal filed under Chapter VIII Rule 5 of the Rules, 1952 is not maintainable and the same is *dismissed* without demur.

(2026) 4 ILRA 324
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 24.04.2026

BEFORE

THE HON'BLE RAJAN ROY, J.
THE HON'BLE ABDHESH KUMAR CHAUDHARY, J.

Special Appeal No. 353 of 2025

Smt. Deepika Tiwari

...Appellant

Versus

State of U.P. & Ors.

...Respondents

Issue for Consideration

- (1) Ambit of terms 'member of family' to include 'widowed daughter-in-law' in respect of the matter of granting compassionate appointment.
- (2) Entitlement of 'widowed daughter-in-law', who was not 'daughter-in-law' at the time of dying in harness of the deceased government servant, to get compassionate appointment.

Headnotes

(A) Service law – Compassionate appointment – Entitlement of widowed daughter-in-law – Earlier claim was rejected on the ground that the father-in-law was drawing the pension, which was set aside by the High Court remanding the matter to be decided as fresh – Now the appointment, as proposed by the Regional Committee, was cancelled by D.I.O.S. holding her not dependent of the Govt. employee – Challenged in Writ petition – Writ petition was dismissed holding that the death of the Government employee, having occurred prior to even the appellant having been married with her son would take away the appellant from the ambit of 'member of family' as defined in Regulation 103 of the Regulations on the date of such death – Validity challenged – Ambit of the word 'family' and relevancy of 'date of becoming widow' felt into consideration: (E-1)

Held: The term 'widowed daughter-in-law' as being included in the definition of members of family, is eligible *per se* for compassionate appointment as a teacher in the trained graduate category or on a non-teaching post, in the case of a deceased government employee, who died in harness – The legislature in its wisdom did not find a 'daughter-in-law' to be eligible for compassionate appointment, however, in contrast found a widowed daughter-in-law to be eligible, for a simple reason that in common parlance the wife (read daughter-in-law) is dependent on her husband (read son) for maintenance etc. [Para 19 and 20]

Further held: The date of being widow is a relevant factor to include a 'widowed daughter-in-law' within the definition of "family", so as to make her eligible to claim appointment on compassionate ground under the Regulations – The appellant has no right to claim any employment as a 'widowed daughter-in-law' because for her not being even a 'daughter-in-law' at the time of dying in harness of the deceased government servant, nor she could claim any right due to happening of a subsequent event of she being a 'widowed daughter-in-law', as she does not fall into the definition of 'member of family' as contemplated under Regulations 103. [Para 25 and 33]

Case Law Cited

Kumari Farha Naseem vs. State Of U.P. and Others, 2024:AHC:154724; Special Appeal Def. No. 73 of 2016, Kr. Vanshika Nigam vs. State Of U.P. and Others; U.P Power Corporation Urban Electricity Transmission Division-II, Allahabad vs. Urmila Devi, 2011 (3) ADJ 432; Vibha Tiwari vs. State of U.P & Others, 2024:AHC:49953-DB; Umesh Kumar Nagpal vs. State of Haryana, (1994) 4 SCC 138; Director Of Education

(Secondary) & Anr vs. Pushpendra Kumar & Others, (1998) 5 SCC 192; Union of India vs. B. Kishore, (2011) 13 SCC 131; Bihar Industrial Area Development Authority & Ors. vs. M/s Scope Sales Pvt. Ltd. & Anr., 2026 INSC 89 – **referred to.**

List of Acts

Regulations 103 to 107, issued under Section 16G of Chapter III of U.P. Intermediate Education Act, 1921; Uttar Pradesh Recruitment of Dependents of Government Servants Dying in Harness Rules, 1974 –Rule 2 (c).

List of Keywords

Compassionate appointment, Died in harness, Competent authority, Pension, 'Widowed daughter-in-law', Appointment, Member of family, Dependent, Qualification, Humanitarian approach, Liberal interpretation, Eligibility, Vested right, Grace, Financial hardship, Poverty, Ground of sympathy, Immediate support, Mutual dependency, Shared vulnerability, Sudden death, Protective discrimination, Perversity.

Case Arising From

Judgment and order dated 18.09.2025 passed in Writ A No. 10799 of 2025, Smt. Deepika Tiwari vs. State of U.P. and others.

Appearances for Parties

Advs. for the Appellant: Sanjay Misra.

Advs. for the Respondents: Ms. Isha Mittal (ACSC), Mudit Agarwal.

(Delivered by Hon'ble Abdhesh Kumar Chaudhary, J.)

1. The present Special Appeal has been preferred by the appellant under Chapter VIII, Rule 5 of the Allahabad High Court Rules, 1952 interdicting an order dated 18.09.2025, passed by the learned Single Judge of this Court in Writ-A No. 10799 of 2025 (*Smt. Deepika Tiwari versus State of U.P. and others*), whereby her claim for compassionate appointment in the capacity of a widowed daughter-in-law of the deceased government employee was dismissed.

2. Shorn of unnecessary details, admittedly one Smt. Sangeeta Bajpayee was working as an Assistant Teacher in Nari Shiksha Niketan Inter College, Chakbast Road, District Lucknow and she died in harness on 23.04.2021. The said Smt. Sangeeta Bajpayee was survived by two legal heirs namely (i) Uday Bhan Bajpayee - husband, who was a pensioner from U.P.P.C.L. and (ii) Nikhil Bajpayee - Son and unemployed.

3. After around two years, Nikhil Bajpayee, the son of the deceased government employee, filed an application staking his claim for appointment on compassionate ground vide his application dated 09.02.2023 and records reveal that the said application came to be rejected by the competent authority on 10th of April, 2023 on the ground that his father (husband of the deceased Sangeeta Bajpayee) was a pensioner in U.P.P.C.L.

4. In the interregnum, the son of the deceased Government employee, i.e. Nikhil Bajpayee married the appellant on 15th February 2023.

5. Unfortunately, Sri Nikhil Bajpayee left for his heavenly abode on 13th of May, 2023 and admittedly by that date he did not challenge his rejection to be appointed on compassionate ground and as such the said order of rejection has till date remained unchallenged.

6. Subsequently, the appellant vide an Application dated 04.06.2024 staked her claim for compassionate appointment in the capacity of being the 'widowed daughter-in-law' of Late Sangeeta Bajpayee, however, her stake was rejected by the competent authority, leading to filing of a Writ Petition No. 4738 of 2024 (say First Writ Petition). A Single bench of this Court vide an order dated 19.06.2024, disposed of the said petition by directing the respondents to consider the representation of the appellant, which came to be rejected vide an order dated 10.10.2024 primarily on the ground that her father-in-law i.e. husband of the deceased government employee Late Sangeeta Bajpayee, was drawing pension from U.P.P.C.L.

7. Obviously, the appellant was not happy with the said rejection order and as such laid her challenge before this Court in Writ-A No. 10461 of 2024 (say second Writ Petition), wherein Single Judge of this Court, while quashing the said order of rejection directed the competent authority to consider the claim of the Appellant afresh, keeping in view the judgment of *Kumari Farha Naseem V/s State Of U.P. And Others (Neutral Citation No. - 2024:AHC:154724)* and *Kr. Vanshika Nigam versus State Of U.P. And Others (SPECIAL APPEAL DEFECTIVE No. - 73 of 2016)* of this Court, which held that claim for compassionate appointment may not be rejected merely because of one of the spouses is drawing pension and also held that the adequacy of the means and resources available and the issue of dependency have to be considered by the competent authority, while granting or rejecting the claim of compassionate appointment.

8. The Respondent No.3 (D.I.O.S.), in view of the aforesaid direction of this Court, reconsidered the application of the petitioner and as such issued an appointment order dated 23rd of May, 2025 followed by a correct version on 29th of May, 2025 wherein the Appellant/petitioner came to be appointed on the post of Assistant Teacher (Zoology) on the basis of a report by the Regional Committee, apparently based on provisions of Regulations 103 to 107, issued under Section 16G of Chapter 3 of U.P. *Intermediate Education Act, 1921*.

9. Some directions were also issued by the Respondent No. 3 to Respondent No. 4 (the Institution) for allowing the Appellant/petitioner to join on the post of Assistant Teacher, after verifying the original documents. However, it seems the Institution raised objections dated 16.06.2025 to her appointment, as according to them, the Appellant was not the dependent of the Government employee- Smt. Sangeeta Bajpayee, leading to cancellation of her appointment by the D.I.O.S. (Respondent No.3) vide his letter dated 21.08.2025.

10. It is this cancellation, which led to filing of Writ Petition No. 10799/2025 (Third Writ Petition), wherein the learned Single Judge, while dismissing the plea of the Appellant held vide the impugned order dated 18.09.2025 that the death of the Government employee, Late Sangeeta Bajpayee having occurred prior to even the appellant having been married with her son would take away the Appellant from the ambit of 'member of family' as defined in Regulation 103 of the Regulations on the date of such death.

11. It is this order, which has been impugned in the present Special Appeal.

12. Heard Shri Sanjay Misra, learned counsel for the appellant and Ms. Isha Mittal, learned Additional Chief Standing Counsel for the State, as well as Shri Mudit Agarwal counsel for the respondent No.4- Institution.

13. It has been submitted that the appellant having been married after the death of her Late mother-in-law is wholly irrelevant and the findings are contrary to the amended Regulation Number 103, which expressly includes 'widow daughter-in-law' within the ambit of dependence, eligible for compassionate appointment. The learned Counsel in order to buttress his argument has relied on the full bench judgment of this Court in the case of ***U.P Power Corporation Urban Electricity Transmission Division-II, Allahabad Vs Urmila Devi; reported in 2011 (3) ADJ 432;*** to submit that a widowed daughter-in-law has been casted into the definition of family, so as to make her entitle for compassionate ground. It is vehemently argued by the learned Counsel that Regulations 103 explicitly includes 'widow daughter-in-law' without qualification of date of marriage and keeping in view the humanitarian object of compassionate appointment the present Appeal may be allowed.

14. It has been further submitted that a liberal interpretation has to be given to the word 'widow daughter-in-law' so as to protect the dependent widows from destitution. It is the submission of the learned Counsel that the learned Single Judge by adopting a hyper-technical approach has frustrated the legislative intent of Regulations 103, without taking a humanitarian approach and failed to understand that in fact, the appellant had stepped into the shoes of her husband, who was very much eligible to be appointed on compassionate ground. In order to highlight his argument that a liberal interpretation ought to be given to the word 'family', he has referred to a judgment of coordinate Division bench of this Court in the case of ***Vibha Tiwari V/s State of U.P & Others; (Neutral Citation: 2024:AHC:49953-DB)*** to submit that a liberal approach has to be taken by this Court in cases for compassionate appointment as in this case, although the definition of 'family' did not specifically contain 'daughter-in-law', however this Court considered the case of a daughter-in-law, for giving her appointment on compassionate appointment, keeping in view the circumstances of that case that the son was under some disability. Thus, it has been submitted that since the appellant is well qualified and having no source of income, the denial of her appointment amounts to overlooking the Constitutional mandate of a welfare State.

15. Per contra, the learned Additional Chief Standing Counsel, Ms. Isha Mittal has supported the impugned judgment and submitted that the learned Single Judge has painstakingly given a detailed judgment after discussing the relevant Regulations and the impugned order is a well reasoned and plausible order and does not requires any interference in this intra-court Appeal. She has relied on the judgment of Hon'ble Apex Court passed in ***Umesh Kumar Nagpal v. State of Haryana reported in 1994 (4) SCC 138;*** to explain the object and purpose behind any appointment made under compassionate grounds. According to her, none of the grounds exists for grating any relief to the Appellant. It has been also submitted by her that the family of Late Sangeeta Bajpayee did not face any immediate financial crisis and had been sustaining itself even after her demise from the pensions drawn by the husband from his erstwhile employer - U.P.P.C.L. As far as the appellant was concerned it has been argued that she was not even a member of the family of the deceased at the time of her death and therefore, was not covered under the definition of 'family' under the Rules and therefore, was not entitled to the benefit of to be appointed on compassionate

grounds. According to the learned Counsel, the present Appeal as being devoid of any merits may be dismissed.

16. Mr. Mudit Aggarwal, learned Counsel for the Nari Shiksha Niketan Inter College, has submitted that the Appellant is not covered under the definition of 'family' as defined under Rule 2 (c) of The Uttar Pradesh Recruitment of Dependents of Government Servants Dying in Harness Rules, 1974, and therefore, was not entitled for seeking appointment as family member in place of Late Smt. Sangeeta Bajpayee. According to him, the Legal Heir Certificate which was issued by the District Magistrate, Lucknow on 23.06.2021, listed only two Legal Heir namely, the husband and son of the deceased. According to him, it is on the basis of the said Legal Heir Certificate, that Nikhil Bajpayee, the son of the deceased government employee, claimed for his appointment on compassionate ground. It has been further submitted that the order of rejection dated 10.04.2023 was never challenged by Mr. Nikhil Bajpayee or even by the petitioner till date and for all intents and purposes the order dated 10.04.2023 decided the issue of compassionate appointment of legal heir of Late Sangeeta Bajpayee has attained finality. According to the learned Counsel, the orders passed by the learned Single Bench of this Court in the earlier two writ petitions were merely for deciding the representation and were innocuous in nature, as it did not adjudicate any rights of the appellant.

17. This Court has given an anxious thought to the various rival submission of the parties and this Court is of the view that the primary question, which falls for consideration in this intra-court Appeal would be :-

'Whether the date of being widow is a relevant factor to include a 'widowed daughter-in-law' within the definition of 'family', so as to make her eligible to claim appointment in compassionate ground under the Regulations?'

18. Before this Court embarks on a journey to determine the aforesaid issue, it would be pertinent to first enumerate the relevant Regulations relating to compassionate appointment as is founded in Regulations 103 to 107, issued under Section 16G of Chapter-III of U.P Intermediate Education Act, 1921. Since, these regulations have been already translated and extracted by the learned Single Judge in the impugned order, it would be advantageous to borrow and quote the same as herein below:

103- In case an employee, whether a teaching or non-teaching staff member, of a recognized aided institution (including a minority institution), who has been duly appointed following the prescribed procedure, dies in harness and the husband or wife (as the case may be) of the deceased employee is not already employed under the Central Government or a State Government or a Corporation owned or controlled by the Central Government or a State Government then one member of his/her family who is not already employed under the Central Government or a State Government or a Corporation owned or controlled by the Central Government or a State Government and who is not below 18 years of age, may be appointed either as a teacher in the Trained Graduate category or on a non-teaching post, if such person:-

(One) fulfills the educational or training qualifications prescribed for the post,

Provided further that if appointment is made to such a post for which Computer Operation and Typing has been prescribed as a mandatory qualification and the dependent of the deceased employee does not possess the requisite proficiency in Computer Operation and Typing then he shall be appointed to the post subject to the condition that within one year he shall obtain the CCC Certificate in Computer Operation awarded by DOEACC Society or any other certificate recognized by the Government equivalent thereto and also attain the required speed of 25 words per minute in Hindi typing and 30 words per minute in English typing, and if he fails to do so, his general annual increment shall be withheld and an additional period of one year shall be granted to acquire the requisite certificate in Computer Operation and the required typing speed, and if, even within the extended period, he fails to acquire the required certificate in Computer Operation and required typing speed, his services shall be terminated.

(Two) is otherwise qualified for government service.

Explanation:- *For the purposes of this Regulation, the term (c) members of the family of the deceased Government servant shall include the following relatives:*

- (i) Wife or husband;*
- (ii) Son or adopted son;*
- (iii) Daughters, (including adopted daughter) and widow daughter-in-law;*
- (iv) deceased Government servant's dependent unmarried brother, unmarried sister and widow mother, if the deceased Government servant was unmarried*
- (v) the aforementioned relatives of a missing Government servant who has been declared dead by a competent court.*

"Provided that if no person from among the aforementioned relatives of the deceased Government servant is available or if such a person is found to be physically or mentally unsuitable and thus be ineligible for appointment under Government service, then, only in such a case, the term family shall also include the dependent grandsons and unmarried granddaughters of the deceased Government servant."

104. Within seven days of the occurrence of death, the Management or the Principal or the Headmaster, as the case may be, of the recognized aided institution shall submit a report to the Inspector which shall include the name of the deceased employee, the post held, the pay scale, the date of appointment, the date of death, the name of the appointing institution and the names of the members of his/her family along with their educational qualification, age etc. The Inspector shall record the particulars of the deceased employee in a register maintained by him.

105. A member of the family of the deceased employee, as specified in Regulation 104, shall submit an application to the concerned Inspector for appointment according to the qualification, either to the post of Assistant Teacher or to a post in non-teaching cadre. The Committee shall consider the application and after the Committee recommends his appointment, the application shall be forwarded to the Management or the Principal or Headmaster, as the case may be, of the institution where the applicant is to be appointed in accordance with the provisions of Regulation 106, for issuance of the appointment order. The committee shall include the following:

- 1- District Inspector of Schools - **Chairman***
- 2- Finance and Accounts officer, (Secondary Education) - **Member***
- 3- Senior-most Principal, Government Inter College/ Government Girl's Inter College - **Member***

Provided that where the dependent of the deceased employee applies for appointment after the expiry of five years from the date of death and the State Government is satisfied that an undue hardship arises in a particular case due to prescribed time limit for making an application for employment, it may exempt or relax such requirements as it deems necessary to proceed in that case in a just and equitable manner:

Provided further that for the purpose of aforementioned proviso, the concerned person shall explain the reasons and furnish adequate justification in writing for the delay in applying for appointment after expiry of the prescribed time limit, along with necessary documents/evidence in support of such delay and the Government shall take appropriate decision after considering all facts related to the reasons of delay.

106. The appointment of a family member of the deceased employee shall, so far as possible, be made in the same institution where the deceased employee was serving at the time of his death. If there be no vacancy of Assistant Teacher or in non-teaching cadre in such institution then he shall be appointed in any other recognized aided institution of the district where such vacancy is available.

Provided that if no such vacancy exists in any recognized aided institution of the concerned district at that time then the case shall be referred to the Divisional Committee by the District Committee and the dependent of the deceased employee shall be appointed against a vacancy available in the Division.

Provided further that if no post be vacant at the Division level or if the dependent of the deceased employee seeks appointment in another Division then the case shall be referred to the Directorate, where it shall be considered by a Committee constituted at the Directorate level consisting the following:

1 Additional Director of Education (Secondary) Chairman

2 Joint Director of Education (Finance) Member

3 Deputy Director of Education (Secondary 2/ Secondary 3) Member

In the event of concurrence, following consideration by the Committee constituted at the Directorate level, the concerned District Committee shall be authorized to make appointment against the vacancy reported from the districts.

107. The recognized aided institution, to which the application has been forwarded by the Inspector for issuance of the appointment order, shall issue the appointment letter within one month from the date of receipt of application and inform the Inspector. If the appointment letter is not issued by the inspector within the prescribed period without reasonable grounds, the Director of Education shall take appropriate action against the Inspector on receipt of representation.

19. A facial reading of the aforesaid Regulation 103, leaves no doubt in mind that the term widowed daughter-in-law as being included in the definition of members of family, is eligible per se for compassionate appointment as a teacher in the trained graduate category or on a non-teaching post, in the case of a deceased government employee, who died in harness. However, the issue engaging the attention of this Court in the present Appeal and as also framed herein above is not to determine the eligibility of a widowed daughter-in-law for compassionate appointment, but to examine as to whether there is any relevancy of the date of becoming a widow of the said daughter-in-law and its effect.

20. The aforesaid issue gains prominence in the light of the fact that the phrase daughter-in-law is conspicuously absent from the definition of member of family juxtaposed with the phrase widowed daughter-in-law, which has been very well mentioned and made eligible. Thus, in a way the legislature in its wisdom did not find a daughter-in-law to be eligible for compassionate appointment, however, in contrast found a widowed daughter-in-law to be eligible, for a simple reason that in common parlance the wife (read daughter-in-law) is dependent on her husband (read son) for maintenance etc. and therefore, there was no requirement of naming the daughter-in-law also in the definition of member of family. Apparently, since son (read husband) has been made eligible as a member of family under the regulations, who can apply for compassionate appointment, it has purposely left out the daughter-in-law (read wife), however, the regulations contemplating an eventuality that, in case the son (read husband) has predeceased the government servant, who died in harness, has specifically mentioned the widow daughter-in-law (read wife of the deceased son) as a member of the family, so as to make her eligible for compassionate appointment. This analogy not only seems to be more logical and bonafide but also is in tandem with the ambitious humanitarian object behind any compassionate appointment under the Regulations.

21. According to this Court, when the son (read husband) is alive of a government employee, who died in harness, it is the son only and not the daughter-in-law, who is eligible to seek compassionate appointment. However, only in case the son predeceased the government servant, who died in harness, a widowed daughter-in-law, in absence of her husband would be eligible for compassionate employment. Further the phrase daughter-in-law is a status condition precedent of the phrase widowed daughter-in-law, in as much as to put it plainly, in order to gain the status of a widowed daughter-in-law, the said person has to first be a daughter-in-law.

22. There is another aspect of the matter, in as much as Regulations 104 in clear terms entails that within seven days of the occurrence of the death of the government employee, the institution concerned, ought to submit a report to the Inspector. As to what should the report contain, the said Regulations in no uncertain terms says that it should also include the names of members of his/her family along with their education, age, etc. Admittedly, since the Appellant (as she was not a widowed daughter-in-law) did not exist even remotely within the said stipulated time of seven days from the death of Sangeeta Bajpayee on 23.04.2021, there was no question of her name being included in the names of members of family of the deceased government servant. Further, this Court finds that the said Regulation has a purpose, because the concerned authority were required to take a call as to who are the dependent and most importantly to see their age and education, so that commensurate employment can be provided to the dependent, in order to tide over the sudden financial crisis and provide some kind of solace to the family member, at least economically, if not emotionally at this trying time. The exposition of law is required to be understood from the perspective that compassionate appointment is not a vested right but an act of grace, intended to provide a succour and alleviate the financial hardship of the family of the deceased government servant immediately after his/her death. Appointment on compassionate ground is a welfare measure and not a mode of employment, so as to create a vested right, as is wrongly tried to be contended by the learned Counsel for the Appellant.

23. It must be understood that the object underlying the provision for grant of compassionate employment is to enable the family of the deceased employee to tide over the sudden crisis, resulting due to death of the bread earner who has left the family in poverty and without any means of livelihood, although technically and normally this employment on the ground of sympathy is unconstitutional and hit by Article 14 and 16 of the Constitution of India. However, time and again the Hon'ble Supreme Court has observed that behind this kind of compassionate appointment, the object is not to give appointment but to extend the financial support. It is settled that the underlying idea is to make sure that in cases of distress of a family of a deceased employee, immediate support is provided to mitigate hardship. The said object and scope has been very well articulated by a decision of three Judge bench of the Hon'ble Supreme Court in the case of **Director Of Education (Secondary) & Anr vs Pushpendra Kumar & Others; reported in 1998 (5) SCC 192**; wherein interestingly, the Hon'ble Apex Court was considering an issue relating to appointment on compassionate grounds of dependents of teaching/non-teaching staff employed in non-Government recognized aided schools and intermediate colleges in the State of Uttar Pradesh who have died in harness under the aforesaid Regulations, which is subject matter of the present intra-court Appeal. The Apex Court observed as follows:

.....The object underlying a provision for grant of compassionate employment is to enable the family of the deceased employee to tide over the sudden crisis resulting due to death of the bread earner which has left the family in penury and without any means of livelihood. Out of pure humanitarian consideration and having regard to the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made for giving gainful appointment to one of the dependents of the deceased who may be eligible for such appointment. Such a provision makes a departure from the general provisions providing for appointment on the post by following a particular procedure. Since such a provision enables appointment being made without following the said procedure, it is in the nature of an exception to the general provisions. An exception cannot subsume the main provision to which it is an exception and thereby nullify the main provision by taking away completely the right conferred by the main provision. Care has, therefore, to be taken that a provision for grant of compassionate employment, which is in the nature of an exception to the general provisions, does not unduly interfere with the right of other persons who are eligible for appointment of seek employment against the post which would have been available to them, but for the provision enabling appointment being made on compassionate grounds of the dependent of a deceased employee. In Umesh Kumar Nagpal v. State of Haryana, 1994 (4) SCC 138, this Court has taken note of the object underlying the rules providing for appointment on compassionate grounds and has held that the Government or the public authority concerned has to examine the financial condition of the family of the deceased and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family

24. Given the aforesaid object and the Regulations applicable in the present case, admittedly, the Appellant was not a member of the family, nor was a person who was dependent on the deceased government employee, who died in harness, on the date of her death i.e. 23.04.2021. As a matter of fact, she was not even born in the family unit and came to be transplanted only on her marriage to the son of the deceased government servant, only subsequently on 15.02.2023. Thus, technically while the government servant was alive and on the date of her death, the appellant was

not even her daughter-in-law and therefore, no question arises of her being the widowed daughter-in-law , so as to claim compassionate appointment on the death of her mother-in-law.

25. Thus, this Court has no hesitation in holding that the date of being widow is a relevant factor to include a widowed daughter-in-law within the definition of family , so as to make her eligible to claim appointment on compassionate ground under the Regulations.

26. As far as the present case is concerned, it is available from records that the governments servant (Late Smt. Sangeeta Bajpayee) died in harness on 23.04.2021 and the Legal Heir Certificate dated 23.06.2021, issued by the District Magistrate enlisted merely two legal heirs of Late Sangeeta Bajpayee, namely (i) Shri Udai Bhan Bajpayee- Husband and (ii) Shri Nikhil Bajpayee -Son. The Appellant came to be introduced in the family only after 22 months on 15.02.2023, by her marriage to Shri Nikhil Bajpayee, the son of Late Sangeeta Bajpayee. Thus, on the date of the death of Late Smt. Sangeeta Bajpayee, the Appellant was admittedly not even her daughter-in-law .

27. As aforesaid, the Appellant gained the status of daughter-in-law only on 15.02.2023 and even then she did not gain any entry into the definition of member of family as contemplated in Regulation 103 and it is for this very reason that it was Mr. Nikhil Bajpayee, the son of Late Smt. Sangeeta Bajpayee applied for compassionate Appointment, which came to be rejected on 10.04.2023.

28. Record reveals that Mr. Nikhil Bajpayee left for his heavenly abode on 13.05.2023 and it was on his dying that the Appellant gained the status of widowed daughter-in-law and thus, found her entry into the definition of member of family .

29. Thus, the Appellant acquired the status of a widowed daughter-in-law only on 13.05.2023 on the basis of at least two subsequent events (i.e. the marriage and then, the death of Mr. Nikhil Bajpayee) and was not in existence as on the death of Late Sangeeta Bajpayee on 23.04.2021.

30. The term member of family found in explanation to Regulations 103 has to be necessarily interpreted to mean those members, who existed as a dependent at the time of the death of the government servant, who dies in harness, for in the view of this Court these members together constitute a composite family unit, bound by mutual dependency and shared vulnerability and the sole purpose for granting compassionate appointment to eligible family member is to provide a succor to this family unit, who are brought into a vulnerable situation by the sudden death of the government employee. It must be understood that this appointment is not conferred to the concerned member of the family unit because of her personal entitlement earned through merit or competitive examination or for that matter of acquiring some status subsequently in the family as is being sought to be done in the present case, but as a necessary concomitant to the sudden death of the person on whom the entire family including the person seeking employment on compassionate ground dependent.

31. Since, the Appellant was not even a member of the family unit, there is no question of her being dependent on Late Sangeeta Bajpayee at the time of her death.

32. Further, Regulation 105 entails that the dependent of the deceased government servant has to make an application to the concerned Inspector seeking appointment as per his/her qualification, which had to be considered in accordance with the provisions of Regulation 106 by the Committee. In the present case, the appellant could not have applied as per the said Regulation, as she never existed in the family at that point of time, nor was she a dependent nor was she a daughter-in-law, what to talk of a widowed daughter-in-law. According to this Court, it was only the son of the deceased government employee, who was eligible to seek appointment on compassionate ground, which as per the records had applied, but the same came to be rejected on 10.04.2023 and admittedly, no challenge had been made of the said rejection either by the son of the deceased, who passed away on 13.05.2023 or the present Appellant and as such as has been rightly pointed by the learned Counsel for the Respondent-State that the issue relating to compassionate appointment for dying in harness of Late Smt. Sangeeta Bajpayee stands closed vide the rejection order dated 10.04.2023 and has attained finality. Thus, this Court is unable to countenance as to when the husband of the appellant was found to be not entitled for appointment on compassionate ground, how can the wife (Appellant) be held to be eligible for the same, keeping in view that the claim of being the widowed daughter-in-law flows from the son of the deceased only.

33. This Court finds that the appellant has no right to claim any employment as a widowed daughter-in-law because for her not being even a daughter-in-law at the time of dying in harness of the deceased government servant, nor she could claim any right due to happening of a subsequent event of she being a widowed daughter-in-law, as she does not fall into the definition of member of family as contemplated under Regulations 103. Time and again the Courts have held that compassionate appointment has to be made as per the Rules. In the absence of any specific Rules of claiming as a dependent and a member of family on the basis of some subsequent event, this Court is unable to subscribe to the views and claim of the Appellant for compassionate appointment.

34. Moreover, it has to be also understood that the Hon'ble Supreme Court in the case of *Union of India v. B. Kishore; reported in (2011) 13 SCC 131*; reiterated that indigence of the dependents of the deceased employee is the fundamental condition to be satisfied under any scheme for appointment on compassionate ground and that if such indigence is not proved, grant of relief in furtherance of protective discrimination would result in a sort of reservation for the dependents of the employee dying-in-harness, thereby directly conflicting with the ideal of equality guaranteed under Articles 14 and 16 of the Constitution of India. In the present case, admittedly the Government Servant died in harness on 23.04.2021 and the Appellant came to be married to her son on 15.02.2023, thus, this Court finds sufficient force in the argument advanced by the learned Counsel for the institution that the very fact that the marriage was solemnized after two years of the death of the government servant, sufficiently indicates that there was no immediate financial crunch or crisis in the family as the dependent-son Mr. Nikhil Bajpayee not only sustained himself ably after the demise of her mother but also entered into a marriage, which in itself entails significant expenditure. Thus, even the ground of indigence of the dependents of the deceased government employee seems to be eluding and not available to the Appellant in the present facts and circumstances.

35. This Court does not find any viable ground to interfere in the matter as the view taken by the learned Single Judge seems to be a plausible and reasonable view, as it does not suffer from any

perversity. The learned Single Judge has not missed the woods for the tree in deciding the right of the Appellant, while taking a detailed analysis of the relevant Regulations applicable for compassionate appointment. Recently, the Hon'ble Supreme Court in the case of ***Bihar Industrial Area Development Authority & Ors. V/s M/s SCOPE Sales Pvt. Ltd. & Anr.; reported as 2026 INSC 89***; vide judgment and order dated 23.01.2026 has held as follows:

13. We must also bear in mind the nature and extent of jurisdiction that an intra-court appellate Bench of a high court exercise. Such appellate jurisdiction is conferred either under the Letters Patent or by the relevant statutory provisions. It is pertinent to note that both - Single Bench and Division Bench - exercise the same jurisdiction under Article 226 of the Constitution. In our view, the exercise of intra-court appellate jurisdiction is warranted only where the judgment or order under challenge is demonstrably erroneous or suffers from perversity. Such jurisdiction ought not to be invoked merely because another view is possible on the same set of facts, particularly where the view adopted by the Single Judge is a plausible and reasonable one. In other words, an intra-court appellate Bench ought not to substitute its own view, merely because such Bench considers its view to be better than the one taken by the Single Bench; so long as the view taken by the Single Bench is a plausible one, interference should stay at a distance.

36. For all the aforesaid reasons, the impugned judgment dated 18th of September, 2025 of the learned Single Judge is upheld and consequently, **the Appeal is dismissed.**

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

(2026) 4 ILRA 335
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 24.04.2026

BEFORE

THE HON'BLE RAJAN ROY, J.
THE HON'BLE SYED QAMAR HASAN RIZVI, J.

Special Appeal No. 420 of 2025
 Along with
 Other Connected Cases

M/s Waheguru Projects Pvt. Ltd. Lko. ...Appellant
Versus
M/s Arora Auto Center Lko. ...Respondent

Issue for Consideration

- (1) Maintainability of writ petition before the High Court, when the Securitization application in respect of the same issues was filed and pending before the Debt Recovery Tribunal.
- (2) Maintainability of writ petition on the matter arisen between two private parties.
- (3) Maintainability of writ petition before the Single Judge Bench of the High Court in absence of challenge of any order of the Debt Recovery Tribunal.
- (4) Maintainability of Special Appeal against an interim order passed in writ petition.

Headnotes

(A) Practice and procedure – Writ – Maintainability – Securitization application was filed before the Debt Recovery Tribunal – In respect of the same matter, writ petition was also filed and got an interim order for restoration of possession of the secured asset and continuity of business from the Single Judge Bench – Interim order was challenged in Special Appeal – In writ petition, the Stamp Reporter made objection that the matter is cognizable by the Division Bench, but the counsel made an endorsement that matter related with Single Judge Bench and he will explain the same before the Court – Permissibility – As no order of DRT was challenged, the maintainability of writ petition before Single Judge Bench felt into consideration: (E-1)

Held: The writ petition was not cognizable by a Single Judge Bench – As learned Counsel for the petitioner was present in Court we asked him to kindly demonstrate as to how the writ petitions were maintainable before the learned Single Judge Bench but he was completely at sea and could not offer any explanation what to say of an acceptable one. We deprecate such practice of making endorsements in response to the deficiency pointed out by the Reporting Section. [Para 9 and 35]

Further held: All issues pertaining to the recovery/securitization proceedings initiated by the financial institution/secured creditor... are pending consideration before the DRT/DRAT in various securitization applications etc., therefore, the writ petitions under Article 226 of the Constitution of India by the respondents-petitioners were apparently not maintainable. [Para 30]

(B) Constitutional law – Writ – Maintainability – Dispute arose between two private parties – Relief sought was against the private parties – Maintainability of writ petition felt into consideration: (E-1)

Held: While filing the writ petition, no order passed by the DRT was challenged, therefore, apparently, the writ petition was not maintainable as the subject matter in issue was the same as was already pending before the DRT, Lucknow and it was relating to a dispute between private parties, for this reason also the writ petitions were/are not maintainable. [Para 21]

Further held: Essentially the relief sought in the writ petition is against a private financial institution-asset reconstruction company, therefore, the writ petition, in view of the pronouncement of Hon'ble the Supreme Court in the *Phoenix ARC (P) Ltd. v. Vishwa Bharati Vidya Mandir...* is not maintainable for this reason also. [Para 40]

(C) Practice and procedure – Allahabad High Court Rules, 1952 – Ch. VIII, Rule 5 – Special Appeal – Maintainability against an interim order passed in writ petition – Interim order was amount to granting final relief – Scope of Special Appeal to interfere with felt into consideration: (E-1)

Held: As the learned Single Judge did not have jurisdiction to hear such a writ petition and as by the said impugned order veritably the proceedings pending before the DRT, Lucknow in various Securitization Applications (S.A.) have been preempted and a final relief of sorts has been ordered/granted by the impugned order, therefore, the appeals are maintainable. [Para 55]

Case Law Cited

Special Appeal No. 282 of 2025, Lucknow Development Authority vs. Mohammad Zaimul Islam and Another; Writ C No. 2119 of 2023, Hindustan Petroleum Corporation Limited vs. Union of India and Others decided on 07.04.2023; Writ C No. 12822 of 2025, M/S Education Academy and Others vs. District Magistrate District Sitapur and Others decided on 28.12.2025; Special Appeal No. 48 of 2026, S.B.I. Stressed Assets Recovery Branch and Another vs. M/s G.S.M. Bricks and Tiles and Others decided on 23.02.2026; Bombay Metropolitan Region Development Authority vs. Gokak Patel Volkart Ltd., (1995) 1 SCC 642; Om Prakash Saini v. DCM Ltd., 2010 11 SCC 622; Phoenix ARC (P) Ltd. vs. Vishwa Bharati Vidya Mandir, (2022) 5 SCC 345; State Bank of Travancore vs. Mathew KC, (2018) 3 SCC 85; Bajarang Shyamsunder Agarwal vs. Central Bank of India, (2019) 9 SCC 94; R.V. Bhupal Prasad vs. State of A.P., (1995) 5 SCC 698; Bharat Petroleum Corpn. Ltd. vs. Rama Chandrashekhara Vaidya, (2014) 1 SCC 657 – **referred to.**

List of Acts

Constitution of India – Article 226 and Article 227; Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 – Ss. 14, 17(1), 17(3) and 17(4); Petroleum Rules, 2002.

List of Keywords

Interim order, Securitization application, Restoration of possession, Secured asset, Maintainability, Jurisdiction, Single Judge Bench, Division Bench, Cognizable, Grossly erred, Loan, Same relief, Dispute between private parties, Interim Resolution Professional (IRP), Moratorium, Public Announcement, Physical possession, Financial institution, Secured Creditor, Cause of action, Remedy, Sale certificate, Confirmation of Sale, Different context, Statutory remedy, Recovery proceeding, Tenant, Lease, Borrower, Guarantor, Tenant in sufferance, Legal right, Trespassers, Lawful title, Perpetual lease, Adducing of evidence, Coercive action, Dehors, Obligation, Temporary structures, Mortgage deed, Legal representative.

Case Arising From

An interim order dated 28.11.2025 passed in Writ C No. 11302 of 2025, M/s Arora Auto Center & Others vs. State of U.P. & Others.

Appearances for Parties

Advs. for the Appellant: Sudeep Seth (Sr. Adv.), Pushkar Srivastava, Satendra Kumar Rai, L.P. Mishra, Prashant Kumar, Deepanshu Das, Sarvesh Kumar Tiwari, Sunil Kumar Chaudhary.

Advs. for the Respondents: Jaideep Narayan Mathur (Sr. Adv.), Dhruv Mathur (Sr. Adv.), Ashish Chaturvedi, Ms. Aishvarya Mathur, Anurag Srivastava, Nishant Shukla (ACSC), Puskar Srivastava.

(Delivered by Hon'ble Rajan Roy, J.)

1. Heard Shri Sudeep Seth, learned Senior Advocate assisted by Shri Pushkar Srivastava, Shri Satendra Kumar Rai, Sri L.P. Mishra along with Sri Prashant Kumar, Sri Deepanshu Das & Sri Sarvesh Kumar Tiwari, Advocates appearing on behalf of the appellants, Shri Jaideep Narayan Mathur, learned Senior Advocate assisted by Shri Ashish Chaturvedi, appearing on behalf of Respondent-BPCL, Shri Dhruv Mathur, learned Senior Advocate assisted by Ms. Aishvarya Mathur for the respondent-M/s Arora Auto Centre, Sri Anurag Srivastava, learned counsel for the applicant-Smt. Krishna Devi seeking impleadment in Special Appeal No.422 of 2025 and Sri Nishant Shukla, learned Additional Chief Standing Counsel who appears on behalf of the State-respondents.

2. This is a bunch of special appeals wherein Special Appeal No.420 of 2025 by M/s Waheguru Projects Pvt. Ltd. Lko. and Special Appeal No.424 of 2025 by Phoenix Arc Private Limited have been filed against the interim order dated 28.11.2025 passed in Writ C No.11302 of 2025 (M/s Arora Auto Center & Others vs. State of U.P. & Others).

3. Special Appeal No.421 of 2025 by M/s Waheguru Projects Private Limited and Special Appeal No.422 of 2025 by Phoenix Arc Private Limited have been filed against the interim order dated 28.11.2025 passed in Writ C No.11298 of 2025 (BPCL vs. State of U.P. & Others).

4. Special Appeals No.422 of 2025 and 424 of 2025 have been filed by the financial institution/secured creditor whereas Special Appeals No.420 of 2025 and 421 of 2025 have been filed by the auction purchaser.

5. By means of the interim orders dated 28.11.2025, learned Single Judge exercising the powers under Article 226 of the Constitution of India, during pendency of securitization application in respect of the same matter, has ordered for restoration of possession of the secured asset namely immovable property bearing Khasra No.131 admeasuring 32879 square feet situated at Shekhpur

Kasaila, Faizabad Road, Lucknow to the respondent-petitioner i.e Bharat Petroleum Corporation Limited (hereinafter referred to as 'BPCL') and its sub-lessee M/S Arora Auto Center, Lucknow within 24 hours after its possession had been taken by the Bank in pursuance to order under Section 14 of the SARFAESI Act, 2002 (hereinafter referred to as '**Act, 2002**') with a further observation/direction that the said respondent-petitioner shall be entitled to continue their business of retail/sale of petroleum products from the property in question.

6. The first and foremost question which falls for consideration is regarding the very maintainability of the aforesaid petitions before the learned Single Judge as no order of the DRT, Lucknow was challenged before the Writ Court. In the absence of challenge to any order of the DRT or any appellate order, a writ petition, assuming that it was otherwise maintainable, would not lie before a learned Single Judge Bench but would lie before a Division Bench in view of the orders of Hon'ble the Chief Justice dated 18.09.1981 which has been taken into consideration by a Division Bench of this Court in **Special Appeal No.282 of 2025 (Lucknow Development Authority vs. Mohammad Zaimul Islam and Another)**.

7. Even if, any order of the DRT was to be challenged, ordinarily a writ petition under Article 227 of the Constitution of India would be filed, regarding which, the learned Single Judge who has passed the impugned interim order did not have jurisdiction on the given day as per the roster determined by Hon'ble the Chief Justice of this Court. In fact, learned Single Judge has passed the impugned order in exercise of jurisdiction under Article 226 of the Constitution of India in a writ petition.

8. As original records of the aforesaid two writ petitions were tagged with these appeals, we have perused the same and found that the Reporting Section of this Court while passing the writ petitions required a bench copy to be filed by the petitioner as the matter was cognizable before a Division Bench and not a Single Judge Bench but the Counsel appearing for the petitioner in Writ C No.11302 of 2025 filed by the respondent M/S Arora Auto Center, Lucknow and its partner, made an endorsement-'matter related with Single Bench, Bench copy are not required explained before Hon'ble Court, if required' and in Writ C No.11298 of 2025 the noting made by the learned Counsel for the respondents-petitioners was-'Bench copy not required'.

9. As learned Counsel for the petitioner was present in Court we asked him to kindly demonstrate as to how the writ petitions were maintainable before the learned Single Judge Bench but he was completely at sea and could not offer any explanation what to say of an acceptable one. We deprecate such practice of making endorsements in response to the deficiency pointed out by the Reporting Section as noted hereinabove.

10. We further provide, as and when the Reporting Section finds that the matter is cognizable by a particular bench, whether a Single Judge Bench or a Division Bench in terms of the rules of the Court and/or order of Hon'ble the Chief Justice, then, irrespective of the noting made by learned Counsel, the Reporting/Listing Section should send the matter for consideration before the Bench which according to the Reporting/Listing Section has jurisdiction to hear the matter and it is before such bench that the Counsel appearing for the petitioner or the other side can raise a plea that the matter was cognizable by another bench but, there is no way that on mere asking or noting of the

learned Counsel for the petitioner, as has happened in this case, the Reporting/Listing Section should list the matter before a Bench which according to it did not have the jurisdiction in the matter. Jurisdiction of a Bench cannot be decided by noting of a learned Counsel. It has to be reported by the Reporting/Listing Section in terms of the order of Hon'ble Chief Justice etc., as referred hereinabove and the matter has to be listed accordingly.

11. Faced with this situation, Shri J.N. Mathur, learned Senior Counsel appearing for the respondents-petitioners submitted that he does not wish to join issue as regards jurisdiction of the learned Single Judge to hear the writ petitions and is willing to argue the writ petitions before this very Division Bench and accordingly, he proceeded to address the Court on the writ petitions also, in addition to the special appeals, that is why we heard and reserved our judgment on 13.03.2026 in respect of all the special appeals and both the writ petitions referred hereinabove. We may in this context quote the relevant part of our order dated 13.03.2026 passed in these appeals which reads as under:-

"3. We had tagged the writ petitions bearing Writ C No.11298 of 2025 and Writ C No.11302 of 2025 along with the appeals vide our order dated 12.02.2026. It is informed that thereafter some application for amendment was filed in the said writ petitions which were taken up before the learned Single Judge and which was allowed allegedly without any opportunity to the appellants before us to object the same and without the records of writ petition being available before the learned Single Judge. Certain objections have been raised with regard to allowing of the said amendment application. We do not express any opinion at this stage as we propose to deal with this aspect, if required, in our final order/ judgment. Sri Jaideep Narayan Mathur, learned Senior Counsel appearing for the respondents-petitioners submitted that the writ petitions filed by the respondents-petitioners be also heard along with these appeal and the same be decided as records of the writ petitions are already tagged with the appeals. With the consent of the parties, not only special appeals arising out of Writ C No.11298 of 2025 and Writ C No.11302 of 2025 but also the writ petitions have been heard, meaning thereby, now the aforesaid writ petitions shall not be listed before the learned Single Judge for any purpose, as, after hearing the parties, we are reserving our judgment not only in the appeals but also the writ petitions.

4. Judgment reserved.

5. The interim order already in operation in appeals shall continue to operate till delivery of judgment."

12. We have perused the interim order dated 28.11.2025 passed by learned Single Judge Bench as impugned in these special appeals and find that it had grossly erred in entertaining the said writ petitions not only for the reasons mentioned hereinabove but also otherwise, as, for the same reliefs as prayed in the writ petitions, securitization applications are pending before the Debt Recovery Tribunal, Lucknow (hereinafter referred to as 'DRT, Lucknow') at the behest of the respondents-petitioners.

13. In this context, we may now consider the writ petitions and in that context the securitization applications pending before the DRT at Lucknow as also the interim order passed by the Writ Court.

14. Writ C No.11298 of 2025 has been filed seeking the following reliefs:-

"i. Issue a writ, order or direction in the nature of certiorari quashing entire the entire securitization Proceedings initiated on the behest of predecessor of the Asset Reconstruction Company i.e. PHOENIX ARC Private Limited under the provisions of SARFAESI Act 2002 including the Notice Under section 13 (2) dated 31.05.2023 (Annexure No.6), Notice Under section 13 (4) dated 07.10.2023 (Annexure No.9), Sale Notice dated 15.06.2024 (Annexure No. 12) as well the Auction and sale of the the property admeasuring 32,879 Sq. Ft., Khasra No. 131, situated at Sheikhpura, Kasaila at Faizabad Road, Lucknow after declaring the entire securitization Proceedings as viod ab initio.

ii. Issue a writ, order or direction in the nature of certiorari quashing the pre-possession notice dated 09.10.2025 (Annexure No.19) issued under the signatures of Additional City Magistrate, IV Lucknow to Late Rani Devi for delivering the possession of the property after declaring the issuance of the Notice as illegal and viod ab initio.

iii. Issue a writ, order or direction in the nature of certiorari quashing the order dated 18.08.2025 (Annexure No.17) passed by Additional District Magistrate (T-G, Lucknow) under section 14 of the SARFAESI Act, 2002 against dead persons i.e Late Rani Devi and Late Krishna Devi.

iv. Issue a writ, order or direction in the nature of certiorari quashing the order/notice dated 31.10.2025 (Annexure No.21) issued by asset reconstruction company i.e. PHOENIX ARC Private Limited to the petitioner.

v. Issue a writ, order or direction in the nature of mandamus directing the opposite party to restore back the possession of the Plot admeasuring 32879 Sq. Ft situated at Khasra No. 131 at Shekhpur Khasaila at Faizabad Road Lucknow along with all its assets/immovable properties within the time frame as may deem fit a proper by this Hon'ble Court.

vi. Issue such other appropriate writ, order or direction which this Hon'ble Court may deem just and proper in the circumstances of the case may also be passed; and

vii. To award the cost of the writ petition to the Petitioner against the Opposite Parties."

15. The aforesaid writ petition has been filed by BPCL which claims to have a lease in its favour in respect of the secured asset. BPCL has filed a Securitization Application bearing S.A. No.909 of 2023 before the DRT, Lucknow under Section 17(1) of the Act, 2002 seeking the following reliefs:-

"(I) To set aside/quashed the entire securitization Proceedings initiated by the Respondent No.1, under the provisions of SARFAESI Act 2002 as far as it relates to the applicant.

(II) To declare the possession notice dated 07.10.2023 issued under Section 13(4) of SARFAESI Act read with rule 8(1) of the security interest (Enforcement) Rules 2002 and the notices issued under section 13(2) of SARFAESI Act involving the assets and structures of the applicant as invalid and illegal.

(III) Pass appropriate order/direction whereby directing the respondent No. 1 through its authorized officer/ agents not to take coercive measures against the applicant in relation to the property of the applicant mentioned in the Notice dated 07.10.2023 issued under Section 13(4) of SARFAESI Act read with rule 8(1) of the security interest (Enforcement) Rules 2002 till the disposal of the securitization application.

(IV) To declare the applicant herein as a bonafide tenant in respect of the leasehold property.

(V) To award cost of the present proceeding in favour of the applicant and against the Respondent.

(VI) To grant any other relief as this Hon'ble Tribunal may deem fit and proper under the circumstances of the case."

16. The aforesaid S.A. was filed by BPCL arraying Piramal Capital and Housing Finance Limited, the then secured creditor, Smt. Rani Devi and Smt. Krishna Devi, the guarantors of the loan amount. The borrower being Andes Town Planners Private Limited against which there was moratorium order in proceedings under the Insolvency and Bankruptcy Code, 2016 on account of which the secured creditor could not proceed against the borrower but could do so against the guarantors.

17. On a conjoint reading of the relief clause in S.A. No.909 of 2023 filed by BPCL and the writ petition filed by it, it is apparent that the reliefs were substantially similar and related to the measures/securitization proceedings initiated by the Bank under the Act, 2002 in respect of the same secured asset. The order dated 18.08.2025 passed by the Additional District Magistrate, Lucknow under Section 14 of the Act, 2002, the pre-possession notice dated 09.10.2025 in this regard and the consequential notice dated 31.10.2025 were also in the context of the same subject matter which was pending consideration before DRT, Lucknow. As such, veritably, the writ petition under Article 226 of the Constitution was filed by BPCL seeking essentially the same reliefs as has already been sought before the DRT, Lucknow in S.A. No.909 of 2023. Moreover, legal position is settled that an order passed under Section 14 of the Act, 2002 is amenable to challenge under Section 17 of the Act, 2002, therefore, a writ petition under Article 226 or a petition under Article 227 of the Constitution of India is not maintainable.

18. Further, BPCL filed another securitization application under Section 17 of the Act, 2002 bearing S.A. No.487 of 2024 arraying therein not only Piramal Capital and Housing Finance Limited which was already a party in the earlier securitization application bearing S.A. No.909 of 2023 but also arraying Omkara Assets Reconstruction Private Limited to which the loan had been assigned by Piramal Capital and Housing Finance Limited, and M/S Andes Town Planners Private Limited alongwith the guarantors referred hereinabove, who were already party in the earlier proceedings. The relief prayed for in S.A. No.487 of 2024 by BPCL is as under:-

"(I) To set aside/quashed the entire securitization Proceedings initiated by the Respondent No.1, under the provisions of SARFAESI Act 2002 as far as it relates to the applicant.

(II) Pass appropriate order/direction whereby directing the respondent bank through its authorized officer/agents not to take coercive measures against the applicant in relation to the property of the applicant mentioned in the Sale notice dated 15.06.2024 issued under Section 13(4) of SARFAESI Act read with rule 8(6) of the security interest (Enforcement) Rules 2002 till the disposal of the securitization application.

(III) To declare the applicant herein as a bonafide tenant in respect of the leasehold property.

(IV) To award cost of the present proceeding in favour of the applicant and against the Respondent.

(V) To grant any other relief as this Hon'ble Tribunal may deem fit and proper under the circumstances of the case."

19. As would be evident on a conjoint reading of the relief clause in S.A. No.487 of 2024 with the earlier securitization application bearing S.A. No.909 of 2023 and the pleadings therein which are on record, not only the cause of action and subject matter in issue was same but the relief clause was also same and the only difference was addition of new defendants/respondents in the proceedings. We do not say much except that it is for the DRT, Lucknow to see as to how this second securitization application was maintainable.

20. During pendency of securitization application bearing S.A. No.487 of 2024 an order passed on 18.08.2025 by the Additional District Magistrate, Lucknow under Section 14 of the Act, 2002, therefore, this order was also challenged by means of an amendment, which was allowed, therefore, the challenge to Section 14 of the Act, 2002 order dated 18.08.2025 is also pending before the DRT, Lucknow in the aforesaid securitization application, thus, for substantially the same relief as was sought in Writ C No.11298 of 2025, two securitization applications were already pending at the behest of BPCL before the DRT, Lucknow as already stated.

21. While filing the writ petition, no order passed by the DRT was challenged, therefore, apparently, the writ petition was not maintainable as the subject matter in issue was the same as was already pending before the DRT, Lucknow and it was relating to a dispute between private parties, for this reason also the writ petitions were/are not maintainable.

22. Not only this, the sub-lessee of BPCL i.e. M/S Arora Auto Center, Lucknow filed a securitization application bearing S.A. No.958 of 2023 before the DRT, Lucknow seeking the following reliefs:-

"(a) To quash the possession notice dated 07.10.2023 purported to be issued under Section-13 (4) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 in respect of Plot of Land admeasuring 32,879 sq. ft. Khasra No. 131, situated at Shikhpur Kasaila, at Faizabad Road, Lucknow alongwith entire present and future structure thereon, which is actual physical possession of the applicants under the dealer ship agreement since the year 1972 and the said a dealership agreement lastly renewed on 15.07.2020 owned by the applicants no. 4 morefully described in para 1 of this application).

(b) To set aside the proceedings initiated by the respondent no 1 under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 in respect of Plot of Land admeasuring 32,879 sq. ft. Khasra No. 131, situated at Shikhpur Kasaila, at Faizabad Road, Lucknow alongwith entire present and future structure thereon morefully described in para 1 of this application).

(c) Such other order as this Hon'ble Tribunal may deem fit and proper under the circumstances of the case so as to protect and safeguard the interest of the applicants may also be passed in the interest of justice."

23. The aforesaid securitization application was disposed of on 16.07.2024 by the DRT, Lucknow taking note of an order dated 02.03.2023 passed by National Company Law Tribunal, New Delhi in IB No.317/ND/2022 whereby Interim Resolution Professional (IRP) had been appointed and a moratorium and public announcement had been ordered by NCLT, New Delhi.

24. Being aggrieved by the said order M/S Arora Auto Center, Lucknow, the sub-lessee has already preferred an appeal under Section 18 of the Act, 2002 before Debt Recovery Appellate Tribunal, Allahabad impleading the guarantors, which is still pending and was also pending on the date of filing of the writ petition by it.

25. M/S Arora Auto Center, Lucknow has also preferred an application under Section 16(5) of Insolvency and Bankruptcy Code, 2016 for being impleadment as respondent in the proceedings before National Company Law Tribunal, New Delhi after dismissal of its S.A. on 16.07.2024.

26. After passing of the order of possession under Section 14 of the Act, 2002 dated 18.08.2025 by Additional District Magistrate, Lucknow, M/S Arora Auto Centre, Lucknow filed another securitization application bearing S.A. No.1067 of 2025 challenging the said order dated 18.08.2025, the sale notice dated 23.07.2025 and the sale certificate issued in favour of the auction purchaser M/S Waheguru Projects Private Limited, Lucknow and also praying that the bank should not take physical possession.

27. In S.A. No.1067 of 2025 an interim relief application was filed by M/S Arora Auto Center, Lucknow that till disposal of the said S.A., respondent may not take physical possession of the property in pursuance to the order passed by Additional District Magistrate, Lucknow and also not to issue sale certificate. This application was rejected on 01.11.2025 on the ground that the applicant was a sub-lessee of BPCL and has got only right through the latter and not independent of it whose two securitization applications were already pending for the same reliefs.

28. We are not aware as to whether the order of DRT dated 01.11.2025 has been challenged by M/S Arora Auto Center, Lucknow in appeal but it was certainly not challenged before the Writ Court out of which the special appeal bearing Special Appeal No.422 of 2025 arises.

29. In spite of the facts noticed above, the sub-lessee M/S Arora Auto Center filed a writ petition bearing Writ C No.11302 of 2025 seeking the following reliefs:-

"I. Issue a writ, order or direction in the nature of Certiorari quashing the notice under Section 13(2) of SARFAESI Act, 2002 dated 31.05.2023 and declaring it to be void ab initio to the extent that it relates to Smt. Krishna Devi and Late Smt. Rani Devi as contained in Annexure No. 1 to this writ petition.

II. Issue a writ, order or direction in the nature of Certiorari quashing the order passed under Section 13(4) of SARFAESI Act, 2002 dated 07.10.2023 and declaring it to be void ab initio to the extent that it relates to Smt. Krishna Devi and Late Smt. Rani Devi as contained in Annexure No. 4 to this writ petition.

III. Issue a writ, order or direction in the nature of Certiorari quashing the order passed under Section 14 of SARFAESI Act, 2002 dated 18.08.2025 passed by Additional District

Magistrate (T-G, Lucknow) under section 14 of the SARFAESI Act, 2002 and declaring it to be void ab initio to the extent that it relates to Smt. Krishna Devi and Late Smt. Rani Devi as contained in Annexure No. 9 to this writ petition.

IV. Issue a writ, order or direction in the nature of Certiorari quashing the Sale Notice dated 15.06.2024 and declaring it to be void ab initio pertaining to the property situated at Khasra no. 131, Shekhpur Kaisala, Faizabad Road, Lucknow Devi as contained in Annexure No. 6 to this writ petition.

V. Issue a writ, order or direction in the nature of Certiorari quashing the Auction notice dated 23.07.2025 and declaring it to be void ab initio pertaining to the property situated at Khasra no. 131, Shekhpur Kaisala, Faizabad Road, Lucknow Devi as contained in Annexure No. 10 to this writ petition.

VI. Issue a writ, order or direction in the nature of Certiorari quashing the order/notice dated 31.10.2025 issued by asset reconstruction company i.e. Phoenix Arc Private Limited to the petitioner as contained in Annexure No. 17 to this writ petition.

VII. Issue a writ, order or direction in the nature of Certiorari quashing the pre-possession notice dated 09.10.2025 passed by Additional District Magistrate (T-G, Lucknow) and and declaring it to be void ab initio as contained in Annexure No. 23 to this writ petition

VIII. Issue a writ, order or direction in the nature of Certiorari quashing the entire proceedings under SARFAESI Act, 2002 and declaring it to be void ab initio to the extent that it relates to Late Smt. Krishna Devi and Late Smt. Rani Devi.

IX. Issue a writ, order or direction in the nature of Mandamus to direct the Respondent to restore the possession of the petitioner over the property in question for the purposes of running its business.

X. Issue a writ, order or direction in the nature of Mandamus to absolve the petitioners of any liability in case there is any accident as a result of the leakage or explosion of hazardous materials which have been illegally possessed by the respondents.

XI. Issue a writ, order or direction in the nature of Mandamus to hold liable the respondents concerned who have illegally taken forcible possession of the said property.

XII. Issue a writ, order or direction in the nature of Mandamus to restrain the Respondent no. 5 from disposing off the petroleum products and other hazardous material forcibly taken from the said property.

XIII. Grant such other/further relief, as may be deemed just and appropriate in the facts and circumstances of the case.

XIV. Award costs in favour of the petitioners."

30. From what has been discussed hereinabove, it is evident that all issues pertaining to the recovery/securitization proceedings initiated by the financial institution/secured creditor, which was initially Dewan Housing Finance Corporation Limited which assigned the loan to Piramal Capital and Housing Finance Limited which in turn assigned it to Omkara Assets Reconstruction Private Limited and ultimately the loan came to be assigned to Phoenix Arc Private Limited which is one of the appellants before us, are pending consideration before the DRT/DRAT in various securitization applications etc., therefore, the writ petitions under Article 226 of the Constitution of India by the respondents-petitioners were apparently not maintainable.

31. BPCL claims itself to be the lessee of the secured asset and M/S Arora Auto Center, Lucknow is sub-lessee which is running a petrol pump on the said land.

32. Various submissions have been made by Shri J.N. Mathur on the merits of the issues involved which are already pending consideration before the DRT, Lucknow such as initiation of the proceedings illegally which were void, BPCL being kept in dark about the recovery proceedings, the mortgage deed said to have been executed by the guarantors being forged, fabricated and void ab-initio and that proceedings having been held against dead persons, however, all these issues are pending consideration before the DRT, Lucknow and we are only concerned with the question as to whether the two writ petitions were/are maintainable before the Writ Court during pendency of the proceedings before the DRT, Lucknow. The writ petitions were apparently not maintainable.

33. In fact, we have gone through the contents of the writ petitions and do not find any cause of action for the said petitions to have been filed, once the remedy under Section 17 of the Act, 2002 had already been availed by the respondents-petitioners by filing securitization applications under Section 17 of the Act, 2002 which are still pending. The writ petition of BPCL bearing Writ C No.11298 of 2025 was filed on 10.11.2025 after not only auction sale having been held by the financial institution in which M/S Waheguru Projects Private Limited, Lucknow was the highest bidder but the sale certificate had also been issued after confirmation of sale and after physical possession had also been handed over to the auction purchaser on 27.10.2025.

34. As already stated the writ petition was filed by BPCL for substantially the same relief regarding which S.A.s were already pending before DRT, Lucknow and in that writ petition, the learned Single Judge passed the impugned interim order for restoring the possession back as already referred hereinabove, which he could not have done.

35. Not only the writ petition was not cognizable by a Single Judge Bench but, even otherwise, the writ petitions were/are not maintainable. The legal position in this regard is very well settled by a catena of decisions of Hon'ble the Supreme Court and this Court. We may in this regard refer to Coordinate Bench judgment of this Court rendered in ***Writ C No.2119 of 2023; Hindustan Petroleum Corporation Limited vs. Union of India and Others, dated 07.04.2023; Writ C No.12822 of 2025; M/S Education Academy and Others vs. District Magistrate District Sitapur and Others, dated 28.12.2025; Special Appeal No.48 of 2026; S.B.I. Stressed Assets Recovery Branch and Another vs. M/s G.S.M. Bricks and Tiles and Others, dated 23.02.2026***, wherein various decisions of Hon'ble the Supreme Court have been considered which need not be reiterated.

36. We may emphasize that it is not a case where alternative statutory remedy under Section 17 of the Act, 2002 had not been availed by the respondents-petitioners and they filed a writ petition, assuming it could be filed, making out a case that it fell in any of the three or four exceptions carved out by Hon'ble the Supreme Court as discussed by a Coordinate Bench in its judgment dated 23.02.2026 rendered in Special Appeal No.48 of 2026 ***S.B.I. Stressed Assets Recovery Branch (supra)***, but, a case where the statutory alternative remedy had already been availed and during its pendency without there being any challenge to any order passed by the DRT before whom the

securitization proceedings were pending and without there being any appellate order passed in such proceedings or being challenged, a writ petition was filed under Article 226 of the Constitution of India which was not only entertained but an interim order as already referred hereinabove was passed. This is clearly against the settled law on the subject and all settled norms as regard maintainability of such petitions.

37. We may in this very context refer to decision of Hon'ble the Supreme Court passed in ***Bombay Metropolitan Region Development Authority v. Gokak Patel Volkart Ltd. reported in 1995 (1) SCC 642*** wherein a similar situation albeit in a different context had occurred and a writ petition had been filed and entertained after the petitioner had already availed a statutory remedy and during its pendency whereupon Hon'ble the Supreme Court observed as under:-

"12. The contention of the appellant in this appeal is that in the first place the writ petition should not have been entertained. The writ petitioner had an adequate alternative statutory remedy. The writ petitioner had in fact already taken advantage of alternative remedy provided by the statute and had preferred an appeal against the judgment of the Tribunal. While the said appeal was pending the writ petitioner invoked the writ jurisdiction of the Bombay High Court praying more or less the same remedy as was prayed in the appeal.

13. We are of the view that the point taken by the appellant is of substance. This is a case, where there is not only the existence of an alternative remedy but the writ petitioner actually had availed of that remedy. The writ petitioner's appeal before the statutory authority was pending. In that view of the matter this writ petition should not have been entertained."

38. The observations/ratio contained in the said judgment as quoted hereinabove applies to the case at hand on all its fours.

39. In similar circumstances, Hon'ble the Supreme Court in a case reported in ***2010 11 SCC 622; Om Prakash Saini v. DCM Ltd.*** disapproved the entertainment of a petition by the High Court under Article 226 and 227 of the Constitution of India after an effective alternative statutory remedy had already been availed. Paragraph No.13 and 14 of ***Om Prakash Saini (supra)*** are quoted below:-

"13. Admittedly, Respondent 1 had availed the alternative remedy available to it under Section 21 by filing an appeal against the order of the State Commission. During the pendency of the appeal, Respondent 1 chose to challenge the order of the State Commission by filing a petition under Article 227 of the Constitution, which was entertained by the learned Single Judge on the basis of the assurance given by the learned counsel that the appeal filed before the National Commission will be withdrawn. The order passed by the learned Single Judge on 21-3-2007 or the one by which the petition filed by Respondent 1 was finally disposed of does not contain any indication as to why the learned Single Judge thought it proper to make a departure from the rule that the High Court will not entertain a petition under Article 226 or 227 of the Constitution if an effective alternative remedy is available to the aggrieved person.

14. In our view, during the pendency of the appeal filed by Respondent 1 under Section 21 of the 1986 Act, the learned Single Judge was not at all justified in entertaining the petition filed under Article 227 of the Constitution merely because he thought that the State Commission did not

have the jurisdiction to entertain the complaint in view of the scheme sanctioned by the Company Judge under Section 391 read with Sections 392 and 394 of the Companies Act."

40. Further, in the absence of any challenge to any order passed by the DRT, Lucknow or the Debt Recovery Appellate Tribunal (hereinafter referred to as 'DRAT'), essentially the relief sought in the writ petition is against a private financial institution-asset reconstruction company, therefore, the writ petition, in view of the pronouncement of Hon'ble the Supreme Court in the ***Phoenix ARC (P) Ltd. v. Vishwa Bharati Vidya Mandir reported in (2022) 5 SCC 345*** is not maintainable for this reason also. We may in this context quote paragraph No.18 of the said authority:-

"18. Even otherwise, it is required to be noted that a writ petition against the private financial institution - ARC - the appellant herein under Article 226 of the Constitution of India against the proposed action/actions under Section 13(4) of the Sarfaesi Act can be said to be not maintainable. In the present case, the ARC proposed to take action/actions under the Sarfaesi Act to recover the borrowed amount as a secured creditor. The ARC as such cannot be said to be performing public functions which are normally expected to be performed by the State authorities. During the course of a commercial transaction and under the contract, the bank/ARC lent the money to the borrowers herein and therefore the said activity of the bank/ARC cannot be said to be as performing a public function which is normally expected to be performed by the State authorities. If proceedings are initiated under the Sarfaesi Act and/or any proposed action is to be taken and the borrower is aggrieved by any of the actions of the private bank/bank/ARC, borrower has to avail the remedy under the Sarfaesi Act and no writ petition would lie and/or is maintainable and/or entertainable. Therefore, decisions of this Court in Praga Tools Corpn. [Praga Tools Corpn. v. C.A. Imanuel, (1969) 1 SCC 585] and Ramesh Ahluwalia [Ramesh Ahluwalia v. State of Punjab, (2012) 12 SCC 331 : (2013) 3 SCC (L&S) 456 : 4 SCEC 715] relied upon by the learned counsel appearing on behalf of the borrowers are not of any assistance to the borrowers."

41. In the same judgment i.e. in ***Phoenix ARC (P) Ltd. (supra)***, applying the law laid down by Hon'ble the Supreme Court in the case of ***State Bank of Travancore vs. Mathew KC reported in (2018) 3 SCC 85***, it was held as under:-

"21. Applying the law laid down by this Court in Mathew K.C. [State Bank of Travancore v. Mathew K.C., (2018) 3 SCC 85 : (2018) 2 SCC (Civ) 41] to the facts on hand, we are of the opinion that filing of the writ petitions by the borrowers before the High Court under Article 226 of the Constitution of India is an abuse of process of the court. The writ petitions have been filed against the proposed action to be taken under Section 13(4). As observed hereinabove, even assuming that the communication dated 13-8-2015 was a notice under Section 13(4), in that case also, in view of the statutory, efficacious remedy available by way of appeal under Section 17 of the Sarfaesi Act, the High Court ought not to have entertained the writ petitions. Even the impugned orders passed by the High Court directing to maintain the status quo with respect to the possession of the secured properties on payment of Rs 1 crore only (in all Rs 3 crores) is absolutely unjustifiable. The dues are to the extent of approximately Rs 117 crores. The ad interim relief has been continued since 2015 and the secured creditor is deprived of proceeding further with the action under the Sarfaesi Act. Filing of the writ petition by the borrowers before the High Court is

nothing but an abuse of process of court. It appears that the High Court has initially granted an ex parte ad interim order mechanically and without assigning any reasons. The High Court ought to have appreciated that by passing such an interim order, the rights of the secured creditor to recover the amount due and payable have been seriously prejudiced. The secured creditor and/or its assignor have a right to recover the amount due and payable to it from the borrowers. The stay granted by the High Court would have serious adverse impact on the financial health of the secured creditor/assignor. Therefore, the High Court should have been extremely careful and circumspect in exercising its discretion while granting stay in such matters. In these circumstances, the proceedings before the High Court deserve to be dismissed."

42. As regards the contentions of Shri Mathur, learned Counsel appearing for BPCL as noticed herein, Shri Sudeep Seth, learned Senior Counsel appearing for the appellants in one of the appeals submitted that all these issues pertaining to validity of the recovery proceedings are the very subject matter of securitization applications filed by BPCL which are still pending, therefore, as they involve factual issues requiring evidence etc., they are to be seen in the said proceedings under Section 17 of the Act, 2002 and there is no way that during their pendency writ court can separately adjudicate on any of the said issues, certainly not at the behest of BPCL which is neither the borrower nor the guarantor but claims to be merely a tenant based on some lease that too one which has expired on 06.01.2025 after which its status is at best is that of a tenant in sufferance. He referred to the decision of Hon'ble the Supreme Court reported in **(2019) 9 SCC 94; Bajarang Shyamsunder Agarwal v. Central Bank of India** wherein the concept of tenant in sufferance has been considered and as per the said authority such tenants do not have any legal rights and are akin to trespassers. He also referred to another decision of Hon'ble the Supreme Court reported in **(1995) 5 SCC 698; R.V. Bhupal Prasad v. State of A.P.** wherein the same concept was considered and it was held that a tenant at sufferance is, therefore, one who wrongfully continues in possession after the extension of a lawful title. There is little difference between him and a trespasser. He also invited our attention to the provisions of Section 17(3) and 17(4) of Act, 2002 where the rights of such tenants are to be adjudicated by the DRT itself and the same cannot be raised nor adjudicated by the writ court in separate proceeding while the securitization proceedings are still pending. We do not express any opinion on that aspect except that all these issues can be raised and considered in the pending proceedings before DRT.

43. Shri Mathur further contended that in fact, the lease was a perpetual lease in view of the provisions contained in Burma Shell (Acquisition of undertakings in India) Act, 1976 as BPCL was a successor to Burma Shell Company. In response to which, appellants' Counsel Shri Seth relied upon a decision of Hon'ble the Supreme Court reported in **(2014) 1 SCC 657; Bharat Petroleum Corpn. Ltd. v. Rama Chandrashekhar Vaidya** to contend that any renewal of such lease envisaged under Section 5(2) is only a one time affair and there is no question of a second renewal in terms of the aforesaid statutory provision. He also submitted that reliance on the aforesaid provision is also misplaced as the Central Government has never acted upon it. We again do not express any opinion on that issue as this can be seen before the DRT itself. The learned Single Judge should not have entered into such issues during pendency of securitization proceedings while passing the interim order.

44. The learned Single Judge has veritably entered into merits of the issues which are pending consideration before the DRT, Lucknow in several securitization applications filed by the respondents-petitioners which he could not have done. The learned Single Judge apparently could not have entered into the merits of the issues which were pending consideration before the DRT and could not have rendered his opinion on the same that too at the interim stage in the manner in which he has done. Factual issues requiring adducing of evidence and their appreciation have been considered and opinion expressed by the learned Single Judge which could not have been done. The learned Single Judge Bench has also been persuaded by the fact as if the proceedings were against a dead person oblivious of the fact that it is the petitioners before it who had initiated the securitization applications impleading the guarantors some of whom had allegedly died. How far the proceedings were maintainable or not maintainable? How far the property was owned jointly by the guarantors etc.?, are all issues which can be thrashed out in the pending securitization proceedings itself and there is no occasion for this Court to entertain the writ petitions any further.

45. Shri Mathur also relied upon certain orders passed by the DRT, Lucknow to contend that there was an interim order operating when coercive action de hors the said interim order was taken at the behest of the financial institution by the Additional District Magistrate in issuing pre-possession notice, the order under Section 14 of the Act, 2002 and taking possession of the secured asset, therefore, according to him, this is also one of the reasons as to why the writ court should interfere in the matter.

46. Responding to it learned Counsel for the appellants submitted that the interim order was not at all operating on the date on which the possession order was passed and possession was taken. No application was filed by the respondents-petitioners for extension of the interim order and, in fact, they accepted the situation that there was no interim order as is evident from their own conduct where they had filed an application bearing IR No.3157 of 2025 seeking interim relief before the DRT, Lucknow in the pending securitization application bearing S.A. No.487 of 2024 for restraining the respondent F1-financial institution from taking physical possession of the secured asset, therefore, the contention that there was an interim order operating is absolutely misconceived.

47. We have perused the copy of the order sheet placed before us and find that on 22.10.2024 in S.A. No.487 of 2024 which was the second S.A. filed by BPCL as already noticed earlier, an interim order passed granting opportunity to the Bank to file counter affidavit subject to the condition that the respondent-Bank will not take any coercive measure till the next date fixed. On 05.03.2025, the order passed does not speak of any extension of interim order passed earlier but on 01.04.2025, the order of the DRT, Lucknow in the said S.A. No.487 of 2024 is inter alia to the effect 'IR, if any is extended'. Shri Seth submitted as there was no IR subsisting on 01.04.2025, therefore, the contention that it had been extended is misconceived. Whereas, Shri Mathur says that the law is clear that unless specifically vacated, a time bound IR granted earlier, continues. On 03.04.2025 also the interim order was extended on the same terms i.e. 'IR, if any is extended'. Now, there is a dispute that as to whether there was interim order subsisting on the said dates or not, nevertheless, on 03.07.2025, there is no order extending the IR and thereafter, on 18.08.2025, the Additional District Magistrate passed the order under Section 14 of the Act, 2002, therefore, the contention of Shri Seth is that on the said date there was no interim relief and this is how BPCL

also understood the situation otherwise it would have filed an application for extension of the IR instead it filed an application bearing No.3157 of 2025 as discussed hereinabove seeking interim relief for restraining the financial institution from taking physical possession of the secured asset as noticed in the order of the DRT, Lucknow dated 02.09.2025 which passed an order for its listing on 22.09.2025 for hearing on interim relief.

48. We are of the opinion that all these issues will have to be raised before the DRT, Lucknow in the pending securitization applications. The BPCL itself does not appear to have pursued the matter before DRT, Lucknow diligently as is evident from the facts as noticed hereinabove. We say no more on this issue.

49. As regards contention of Shri Mathur that huge amount of petrol is lying in the petrol tanks thereby posing a danger to the security of the entire premises and as it is an essential commodity, therefore, for this reason also, the writ court should interfere in the matter, in response, Shri Seth has invited our attention to the Petroleum Rules, 2002 to submit that suitable arrangements can be made under the said rules for removing the petroleum lying in the tanks in the premises in question. He also invited our attention to various notices sent to BPCL for doing the needful in this regard, all of which have gone unheeded and instead of acting upon it, the writ petition was filed.

50. We are of the opinion that so far as petroleum lying in the tanks is concerned certainly this is a matter which requires attention of all the concerned including BPCL and its sub-lessee, we, therefore, provide that if the respondents-petitioners i.e. BPCL and M/S Arora Auto Center, Lucknow want that the petroleum should be taken out from the said tanks then they can approach the concerned authorities under the aforesaid rules, who shall be obliged to the needful promptly so that the petroleum lying there does not remain there for long and is taken out and is utilized as per law.

51. It was also the contention of Shri Mathur that under the lease there are structures existing on the premises to which BPCL has a right and interest but this aspect has also been lost sight of. Dr. L.P. Mishra and Shri Seth invited our attention to the condition of the lease deed which had already expired on 06.01.2025, according to which, BPCL was under the obligation to remove the structures on expiry of the lease. It was also their submission that these are temporary structures and none of the appellants have any objection if BPCL wants to remove those structures and take them away. They accede to this extent. We are also, therefore, of the view that if BPCL or M/S Arora Auto Center, Lucknow as the case may be want to remove the said structures, they are free to do so unless of course they want to contest the matter before the DRT, Lucknow in which case it is open for them to do so.

52. As regards validity of the mortgage deed dated 01.10.2014 which was sought to be addressed before us by Shri Mathur, this is also an issue which can be raised before the DRT, Lucknow in the pending proceedings as far as otherwise permissible in law. Learned Single Judge obviously erred in entering into these aspects regarding which he had no jurisdiction.

53. One of the guarantors i.e. Smt. Krishna Devi has filed an intervention application stating that she is not aware of the mortgage deed whereas, the Counsel for the appellant submitted that

notices issued to Smt. Krishna Devi were served repeatedly but she did not appear deliberately and now she is siding with the so called lessee for ulterior reasons. Smt. Krishna Devi is already a party in the securitization application but has not put in appearance there although she has knowledge of the proceedings as accepted by Shri Anurag Srivastava her Counsel in January, 2026. Learned Counsel for the appellants also submitted that other legal representatives of other guarantors/ stakeholders have also filed applications stating that the mortgage deed had been executed. We do not wish to enter into these controversies which are all subject matter of the proceedings pending before the DRT, Lucknow. In fact, learned Single Judge should also not have entered into the same. We are constrained to observe that BPCL and M/S Arora Auto Center, Lucknow themselves filed the securitization application impleading Smt. Rani Devi who, as claimed, had died. Even in the writ petition the said two persons Smt. Rani Devi and Smt. Krishna Devi were impleaded, therefore, the learned Single Judge has lost sight of this aspect of the matter that it is BPCL and M/S Arora Auto Center, Lucknow who have also initiated proceedings against a dead person, if it is so. All these issues are open for consideration by the DRT, Lucknow. In this context we had passed an order on 13.03.2026 and say nothing further.

54. The writ petition by the sub-lessee M/S Arora Auto Center, Lucknow was especially not maintainable as its securitization applications had been dismissed against which appeals have been preferred before the Debt Recovery Appellate Tribunal which are still pending.

55. As regards maintainability of the special appeals are concerned, the interim order(s), for the reasons given hereinabove are apparently without jurisdiction as the learned Single Judge did not have jurisdiction to hear such a writ petition and as by the said impugned order veritably the proceedings pending before the DRT, Lucknow in various Securitization Applications (S.A.) have been preempted and a final relief of sorts has been ordered/granted by the impugned order, therefore, the appeals are maintainable and not much of an objection was raised by learned Counsel for the respondents-petitioners in this regard.

56. In view of the above discussions and observations, we are not only of the opinion that the interim order passed by the learned Single Judge is not sustainable and is liable to be quashed but the writ petitions itself are not maintainable before the High Court under Article 226 of the Constitution of India. We, accordingly **allow** all the special appeals and quash the interim order dated 28.11.2025 passed in Writ C No.11298 of 2025 (Bharat Petroleum Corporation Limited vs. State of U.P. and Others) and Writ C No.11302 of 2025 (M/S Arora Auto Center and Others vs. State of U.P. and Others). The writ petitions bearing Writ C No.11298 of 2025 (Bharat Petroleum Corporation Limited vs. State of U.P. and Others) and 11302 of 2025 (M/S Arora Auto Center vs. State of U.P. and Others) are **dismissed**.

57. Copy of this judgment be sent to Registrar General and Senior Registrar of this Court at Allahabad and Lucknow respectively, for compliance.

58. Let a copy of this order be placed on the records of Writ C No.11298 of 2025 and Writ C No.11302 of 2025.

(2026) 4 ILRA 352
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 23.04.2026

BEFORE

THE HON'BLE IRSHAD ALI, J.

Writ-A No. 403 of 2010

Rama Shankar Tiwari s/o Jagat Narain Tiwari ...Petitioner
Versus
Central Bank & Anr. ...Respondents

Issue for Consideration

- (1) Effect of non-supply of relied documents, and not providing evidences and opportunity of cross examination before dismissing from service.
- (2) Applicability of Regulation 21(B) of Canara Bank Service Code in the matter of imposing punishment of dismissal.

Headnotes

(A) Service law – Dismissal – Principle of natural justice – Applicability – Charge of involving in a criminal case – Petitioner was acquitted – However, he was served charge sheet – Though copy of evidences were sought, but respondent failed to provide it – No opportunity of cross examination was provided – Effect – Applicability of Regulation 21(B) of Canara Bank Service Code felt into consideration: (E-1)

Held: The denial of adequate opportunity to defend, coupled with non-supply of relied upon documents, strikes at the very root of a fair inquiry. It is well settled that any order founded upon such vitiated inquiry cannot be sustained – The inquiry, therefore, has been conducted in clear breach of fair procedure, rendering the entire proceedings arbitrary and unsustainable in the eyes of law – The disciplinary authority failed to afford a reasonable opportunity of hearing to the petitioner at the stage of final decision. Even though issuance of second show cause notice may not be expressly provided, the requirement of fair hearing mandates that the delinquent employee be made aware of the findings of the inquiry and be given an opportunity to respond. The failure to do so further vitiates the impugned orders. [Para 20, 21 and 24]

Further held: Regulation 21(B), clearly indicates that in a case where an employee is acquitted, even if departmental proceedings are contemplated, the ultimate punishment, if any, could only be termination with notice pay and not dismissal from service, and the period of suspension is liable to be treated in the manner provided therein. The action of the respondents in imposing the extreme penalty of dismissal, therefore, is contrary to the statutory provisions governing the field and is wholly without jurisdiction. [Para 23]

Case Law Cited

Writ Petition No. 12326 of 2017, Eknath Shankar Kamble vs. Chief Executive Officer, Zilla Parishad, Sangli and others decided on 08.06.2023 (Bombay High Court). – **referred to.**

List of Acts

Canara Bank Service Code – Chapter XI Regulation 4; Regulation 21(B) .

List of Keywords

Suspension, Criminal case, Acquittal, Reinstatement in service, Departmental proceeding, Charge sheet, Copy of evidences, Arbitrary, Cross examination, Principle of natural justice, Explanation, Dismissal, Infirmary,

Illegality, Benefit of doubt, Reasonable opportunity of hearing, Documentary evidences, Unproved and undisclosed materials.

Case Arising From

Impugned dismissal order dated 18.03.2008 passed by respondent No. 2 and the appellate order dated 24.12.2008 passed by respondent No. 1.

Appearances for Parties

Advs. for the Appellant: C. B. Pandey (Sr. Adv.) Manoj Kumar Dwivedi, Ms. Arundhati Thakur, Sunil Sharma, Chandra Bhushan Pandey.

Advs. for the Respondents: Vinay Shanker.

(Delivered by Hon'ble Irshad Ali, J.)

1. Heard Sri C.B. Pandey, learned Senior Counsel for the petitioner assisted by Sri Manoj Kumar Dwivedi and Ms. Arundhati Thakur, learned counsel for the petitioner and Sri Vinay Shanker, learned counsel for respondent - Bank.

2. By means of present writ petition, the petitioner is challenging the order dated 18.03.2008 passed by respondent No.2 as well as appellate order dated 24.12.2008 passed by respondent No.1 contained as Annexures 1 & 2 to the writ petition.

3. Factual matrix of the case is that the petitioner while working as Special Assistant in Sultanpur Branch transferred to Kurwar Branch of the Bank. On 22.11.1996, he was suspended from service. On 28.12.1996, a FIR was lodged against him. In the year 2000, the petitioner filed Writ Petition No.1379 (S/S) of 2000 challenging the impugned order of suspension, which was disposed of vide order dated 22.10.2005.

4. In pursuance to FIR, in criminal trial of criminal Case No.66 of 2004, the petitioner was acquitted vide order dated 24.11.2005. After acquittal, the petitioner submitted an application on 20.02.2006 before respondent No.2 through respondent No.4 stating for reinstatement of service.

5. The petitioner received a letter dated 13.04.2006 from respondent No.2 informing him that since departmental proceedings are contemplated against him, his suspension is being continued.

6. In year 2006, the petitioner filed Writ Petition No.4822 (S/S) of 2006 challenging the order of suspension dated 22.11.1996. On 18.05.2006, the petitioner was served with a charge sheet and given several representations to the respondents to provide copy of evidences. However, he has not been provided copies of evidences.

7. On 16.10.2008, Central Information Commission gave direction to the respondents to provide copy of evidences. On 18.05.2006, in absence of copy of evidences, the petitioner submitted his reply to the charge sheet. The inquiry was conducted in an arbitrary manner and during whole inquiry only one witness Sri Shreenivas Srivastava - account holder was produced.

8. On 08.03.2007, a show cause notice was served to the petitioner, whereby the date of personal hearing was fixed on 14.03.2008 at Lucknow. The petitioner vide letter dated 12.03.2008 informed the respondent No.2 that he is unable to present himself on 13th and 14th of the month.

9. In year 2008, the petitioner filed Writ Petition No.1545 (S/S) of 2008 for direction to the respondents to provide copy of evidences. The writ petition was dismissed on the ground that respondents have already passed the dismissal order.

10. Against the order of dismissal dated 18.03.2008, the petitioner filed appeal to the General Manager, Canara Bank, which was rejected vide order dated 24.12.2008, against which the present writ petition has been preferred.

11. Assailing the impugned orders, submission of learned counsel for the petitioner is that in the impugned orders provisions of rules referred at Chapter XI Regulation 4 of Canara Bank Service Code is not applicable to the case of the petitioner. In respect of acquittal in criminal case, provisions of Regulation B of Section 21 is applicable, which lays down following provisions:

"(b) the employee is acquitted, it shall be open to the Deputy General Manager of Circle Office / International Division/ Inspection Department / The Assistant General Manager of Personnel Wing, Head Office, to proceed against him under the provisions set out herein above regarding misconducts. If after enquiry it is decided not to continue the employee in service, he shall be liable only for termination of service with three month's pay and allowances in lieu of notice; and he shall be deemed to have been on duty during the period of suspension, if any, and shall be entitled to full pay and allowances minus such subsistence allowance as he has drawn and all other privileges for the period of suspension.

Provided that if the employee be acquitted by being given the benefit of doubt, he may be paid such portion of such pay and allowances as the Deputy General Manager of Circle Office / International Division / Inspection Department / The Assistant General Manager of Personnel Wing, Head Office, may deem proper, and the period of his absence shall not be treated as period spent on duty unless the Deputy General Manager of Circle Office/International Division/Inspection Department/ The Assistant General Manager of Personnel Wing, Head Office, so direct."

therefore, his submission is that the order of dismissal is wholly illegal and without jurisdiction.

12. He next submitted that the inquiry committee has not provided opportunity to file reply after providing evidences relied upon by the disciplinary authority. In spite of repeated attempts to supply copy of evidences relied upon, the same was not made available to the petitioner nor the reply submitted by the petitioner has ever been considered while concluding the inquiry, therefore, his submission is that without hearing the petitioner on charges and without cross examination of witnesses, who were 14 in number, the inquiry report vitiates in law and the order passed on the basis of said inquiry is wholly without jurisdiction and is per se illegal.

13. He further submitted that although under the rules there is no provision to issue second show cause notice along with inquiry report, even then to avoid non compliance of principles of

natural justice, the disciplinary authority would have been provided second show cause notice along with inquiry report seeking explanation from the petitioner, which has not been done in the present case, therefore, his submission is that the order being passed on violation of principles of natural justice is not sustainable in the eyes of law and is liable to be set aside.

14. His last submission is that the order of dismissal awarded in the case of the petitioner is wholly illegal and cannot be passed in case the petitioner has been acquitted in the criminal case, therefore, the order impugned is per se illegal and is liable to be set aside by this Court. In support of his submissions, he placed reliance upon a judgment of Bombay High Court in the case of **Eknath Shankar Kamble Vs. Chief Executive Officer, Zilla Parishad, Sangli and others; Writ Petition No.12326 of 2017 decided on 08.06.2023.**

15. On the other hand, learned counsel for the respondent - Bank submitted that although 14 witnesses, whose account numbers were found to be illegal were not examined as witnesses, the order impugned has been passed on the basis of documents available on record, therefore, his submission is that there is no illegality in the order of dismissal and the same is just and valid.

16. He next submitted that the impugned order of dismissal has been passed under Chapter XXI Rule 4(B) of Rules / Regulations, which does not suffer from any infirmity or illegality and submitted that the respondent - Bank has not committed any error in passing the impugned orders.

17. I have considered the submissions advanced by learned counsel for the parties and perused the material on record as well as law report cited by learned counsel for the petitioner.

18. To resolve the controversy involved in the matter, relevant portion of the judgment relied upon by learned counsel for the petitioner is being quoted below:

"32. I am conscious that the decision in the case of B.S. Sawai (supra), was rendered in a different fact situation, wherein the employee was prosecuted for an offence punishable under Section 302 of the Penal Code, 1860 In the case of Manohar Shankar Dhoke (supra), in addition to acquittal in the criminal case, the employee therein was also exonerated in a disciplinary inquiry and that constituted an additional circumstance. However, the fact remains that mere use of the expression 'benefit of doubt' in the judgment of criminal court, by itself, would not deprive the employee from claiming that the acquittal was 'honourable' or 'clean'. If in the totality of the circumstances, the court comes to the conclusion that the acquittal of an employee is after consideration of the entire material and recording categorical finding that the guilt is not proved, the fact that the criminal court had also used an expression 'benefit of doubt' in the judgment would not constitute an impediment in inferring 'honourable acquittal'."

19. Having considered the rival submissions advanced by learned counsel for the parties, I have perused the material available on record and the judgment relied upon by learned counsel for the petitioner.

20. This Court finds that the disciplinary proceedings initiated against the petitioner stand vitiated on account of gross violation of principles of natural justice. Admittedly, though the charges were based upon documentary evidences and statements of as many as 14 account holders, neither the copies of such evidences were supplied to the petitioner despite repeated requests and even directions of the Central Information Commission, nor the said witnesses were produced for cross-examination. The inquiry, therefore, has been conducted in clear breach of fair procedure, rendering the entire proceedings arbitrary and unsustainable in the eyes of law.

21. This Court further finds substance in the submission of learned counsel for the petitioner that the reply submitted by the petitioner to the charge-sheet, in absence of relevant documents, could not have been meaningfully considered. The denial of adequate opportunity to defend, coupled with non-supply of relied upon documents, strikes at the very root of a fair inquiry. It is well settled that any order founded upon such vitiated inquiry cannot be sustained.

22. So far as the effect of acquittal in the criminal case is concerned, it is not in dispute that the petitioner has been acquitted by the competent criminal court after full trial. In light of the law laid down in **Eknath Shankar Kamble Vs. Chief Executive Officer, Zilla Parishad, Sangli and others (Supra)**, as relied upon by learned counsel for the petitioner, even where the expression “benefit of doubt” is used, the Court is required to examine the nature of acquittal in its entirety. In the present case, the acquittal is based on consideration of the entire evidence and failure of prosecution to establish guilt, which, in effect, amounts to a clean acquittal. Thus, the respondents were required to proceed strictly in accordance with the applicable service regulations.

23. A perusal of the relevant provisions of the Canara Bank Service Code, particularly Regulation 21(B), clearly indicates that in a case where an employee is acquitted, even if departmental proceedings are contemplated, the ultimate punishment, if any, could only be termination with notice pay and not dismissal from service, and the period of suspension is liable to be treated in the manner provided therein. The action of the respondents in imposing the extreme penalty of dismissal, therefore, is contrary to the statutory provisions governing the field and is wholly without jurisdiction.

24. This Court also finds that the disciplinary authority failed to afford a reasonable opportunity of hearing to the petitioner at the stage of final decision. Even though issuance of second show cause notice may not be expressly provided, the requirement of fair hearing mandates that the delinquent employee be made aware of the findings of the inquiry and be given an opportunity to respond. The failure to do so further vitiates the impugned orders.

25. The submissions advanced by learned counsel for the respondent-Bank that the findings are based on documentary evidence alone cannot be accepted in view of the fact that such documents were never supplied to the petitioner, nor proved in accordance with law. Reliance on such unproved and undisclosed material is impermissible and cannot form the basis of a valid disciplinary action.

26. In view of the aforesaid discussion and for the reasons recorded hereinabove, this Court is of the considered opinion that the impugned order dated 18.03.2008 passed by respondent No.2 as

well as the appellate order dated 24.12.2008 passed by respondent No.1 are unsustainable in law and are liable to be quashed.

27. Accordingly, the writ petition succeeds and is **allowed**.

28. The impugned orders dated 18.03.2008 and 24.12.2008 are hereby quashed. The respondents are directed to reinstate the petitioner in service forthwith with all consequential benefits in accordance with law. However, it shall be open to the respondents to proceed afresh, if so advised, strictly in accordance with law and after affording due opportunity to the petitioner.

29. No order as to costs.

(2026) 4 ILRA 357
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 28.04.2026

BEFORE

THE HON'BLE MANJU RANI CHAUHAN, J.

Writ-A No. 4474 of 2016

Luxmi Shankar Tiwari & Anr.

...Petitioners

Versus

State of U.P. & Ors.

...Respondents

Issue for Consideration

- (1) Entitlement of payment of salary on the strength of appointment, which was found void ab initio as the same was granted to a minor person.
- (2) Effect of practicing suppression of material particulars, while seeking discretionary relief under Article 226 of the Constitution of India.

Headnotes

(A) Service law – Payment of salary – Constitution of India – Article 226 – Writ – Suppression of material facts – Post of Peon and Clerk – Age limit – Eligibility – Both the petitioners were minor on the date of appointment – In the writ petition, the date of appointment was differently mentioned from the date recorded in appointment schedule –Effect – Issue of effect of suppression of material particulars, while seeking discretionary relief under Article 226 of the Constitution of India also felt into consideration: (E-1)

Held: The inconsistency in their pleadings with regard to the date of appointment, initially asserted to be the year 1977 and subsequently altered to 1980, is not a mere trivial or inadvertent discrepancy, but one that strikes at the very root of their claim. Such mutually destructive stands clearly betray a calculated attempt to improve upon the case and to mislead the Court. It is a well-settled principle of law that a litigant invoking the extraordinary and equitable jurisdiction of this Court is under a solemn obligation to disclose full, true, and correct facts. Any suppression, concealment, or distortion of material particulars disentitles such a litigant from seeking discretionary relief under Article 226 of the Constitution of India. [Para 51]

Further held: Any appointment of a minor to a post in an institution is impermissible and void ab initio – The appointments in question are ex facie in clear violation of the mandatory statutory provisions governing recruitment – Such fundamental lapses go to the root of the matter and render the entire selection process

vitiated. It is well settled that any appointment made in contravention of statutory rules is illegal, void, and unenforceable in the eyes of law, and no legal right can be claimed on the basis thereof – The petitioners have failed to establish the legality of their appointments; no financial sanction or approval was ever accorded, and the managerial return itself stood rejected by the competent authority. [Para 53, 56, 57 and 59]

Case Law Cited

Ram Ashish Chaudhary and others vs. State of U.P. and others, 2003 (1) ESC 170 (All) – **referred to.**

List of Acts

Constitution of India – Article 226; UP Recognized Basic Schools (Junior High School) (Recruitment and Conditions of Service of Ministerial Staff and Group 'D' Employees) Rules, 1984 – Rule 4 and 6.

List of Keywords

Grant-in-aid list, Three language formula, Kith and kin, Undue benefits, Material piece of evidence, Financial sanction, Managerial return, Competent authority, Dehors the statutory Rules, Interpolation, Fabrication, Scrutiny, Temporary recognition, Inconsistency, Inherently improbable, Legally untenable, Age criteria, Minimum qualification, Minor, Documentary evidence, Manipulation, Credibility, Misrepresented material facts, Impermissible in law, Inadvertent discrepancy, Extraordinary and equitable jurisdiction, Suppression, Concealment, Distortion of material particulars, Discretionary relief, Illegal, Void, Public post, Inception, Mandatory procedure for selection, Legitimize acts, Fraught, Material inconsistencies, State exchequer.

Case Arising From

Impugned order dated 20.12.2014 passed by the Director of Education (Basic), Uttar Pradesh.

Appearances for Parties

Advs. for the Appellant: Kamlesh Kumar Yadav, Kailash Singh Kushwaha, Kalpna Upadhyay, P. K. Upadhyay.

Advs. for the Respondents: Shailendra Singh (SC), Jitendra Singh, Nisheeth Yadav, Raj Kumar Dhama.

(Delivered by Hon'ble Manju Rani Chauhan, J.)

1. Heard Mr. Kamlesh Kumar Yadav, learned counsel for the petitioners and Mr. Shailendra Singh, learned Standing Counsel for the State.

2. The present writ petition has been instituted by the petitioners praying for issuance of a writ, order or direction in the nature of certiorari for quashing the impugned order dated 20.12.2014 passed by the Director of Education (Basic), Uttar Pradesh, respondent no.2. A further prayer has been made for issuance of a writ in the nature of mandamus commanding the respondents not to interfere in the functioning and discharge of duties of the petitioners pursuant to the aforesaid impugned order, and to ensure payment of their salary regularly, including arrears from the date the same became due, within a stipulated period.

3. Placing the brief facts of the case, learned counsel for the petitioners submits that petitioner no. 1 is working as a Class IV employee and petitioner no. 2 as a Class III employee in a Junior High School, namely Shiv Durgeshwar Mahabir Poorva Madhyamik Vidyalaya, Ashwari, District Varanasi. It is further submitted that the said institution was brought on the grant-in-aid list vide order dated 02.12.2006.

4. It is contended that the petitioners were initially appointed on 1.7.1980 and their appointments came to be duly approved by the District Basic Education Officer vide order dated 31.08.1987. In the said approval order, the name of petitioner no. 1 finds place at serial no. 7, whereas the name of petitioner no. 2 is reflected at serial no. 4.

5. It is further submitted that subsequently, when the relevant papers were forwarded on 21.07.2005 under the three-language formula, the names of the petitioners were duly reflected therein, showing petitioner no. 1 as a Class IV employee and petitioner no. 2 as a Class III employee. It is contended that the said documents lend further corroboration to the status and continuance of the petitioners in service.

6. Learned counsel has also drawn attention of the Court to the attendance register placed on record, which prima facie demonstrates that the petitioners have been continuously working as non-teaching staff in the institution in question.

7. It is further submitted by learned counsel for the petitioners that at the time when the institution was brought on the grant-in-aid list, the then Manager, in collusion with certain persons appointed on account of kith and kin, manipulated and fabricated the relevant records pertaining to the petitioners, so as to falsely project them as Assistant Teachers, despite the fact that they were, in reality, serving as non-teaching staff in the institution.

8. It is submitted that since the posts of the petitioners were altered in the official records by the then Manager with a view to extend undue benefit to his kith and kin, the petitioners were constrained to approach this Court by filing Civil Miscellaneous Writ Petition No.25487 of 2008 (Parshu Ram and others vs. State of U.P. and others).

9. The said writ petition was disposed of by this Court vide judgment and order dated 23.04.2012, whereby the Director of Education (Basic), U.P., Lucknow was directed to examine the matter and take an appropriate decision with regard to the grant-in-aid status of the institution, and to communicate the decision so taken to the petitioners as well as to the Committee of Management.

10. It is submitted that in purported compliance of the aforesaid order, the impugned order has been passed by the authority concerned, placing reliance upon the aforesaid fabricated documents.

11. It is submitted that the impugned order is wholly arbitrary, illegal and unsustainable in the eyes of law, being in clear violation of the directions issued by this Court in Civil Miscellaneous Writ Petition No. 25487 of 2008.

12. It is further submitted that the petitioners were initially appointed as Peon and Clerk, respectively, in the institution in question. Learned counsel contends that the provisions of the Uttar Pradesh Recognized Basic Schools (Junior High School) (Recruitment and Conditions of Service of Ministerial Staff and Group 'D' Employees) Rules, 1984 are not applicable to the appointments of the petitioners, inasmuch as the said Rules are prospective in nature and came into force subsequent to the date of their initial appointments.

13. It is submitted that the petitioners were initially appointed on 01.07.1980 on the posts of Peon and Clerk, respectively, in the institution in question. However, it is alleged that the then Manager, with a view to extend undue benefit to his kith and kin, manipulated and interpolated the records relating to the appointments of the petitioners after the institution was brought on the grant-in-aid list, with the intent to displace the petitioners and accommodate his own nominees in their place.

14. It is further submitted that the impugned order has been passed in complete disregard of the inquiry report submitted by respondent no. 3, which has not been duly considered by the authority while arriving at the impugned decision.

15. It is submitted that the Manager of the institution prepared forged and manipulated records by altering the designation of the petitioners from Peon and Clerk to that of Assistant Teachers. In such circumstances, respondent no. 2 ought not to have placed reliance upon such disputed documents while passing the impugned order, particularly when the authenticity of those records was itself under serious challenge.

16. It is further submitted that respondent no. 3, after conducting a spot inspection, submitted an inquiry report categorically recording that the petitioners were in fact working in the institution in question. However, the said inquiry report, being a material piece of evidence, has not been duly considered by the authority while passing the impugned order, rendering the same vitiated for non-consideration of relevant material.

17. Learned counsel appearing for respondent no. 4, on the other hand, submits that after the institution was brought on the grant-in-aid list in the year 2006, a managerial return was forwarded by the Manager of the institution for approval of the list of teachers who were allegedly working in the institution on the date it was taken on grant-in-aid.

18. It is contended that the said managerial return was subjected to scrutiny by a three-member District Level Committee comprising the Finance and Accounts Officer, the Basic Shiksha Adhikari, and the Senior Block Education Officer. Upon due examination, the Committee found the same to be not in accordance with law and rejected it. Consequently, the said proposal was not forwarded to the Regional Level Committee for financial approval.

19. It is further submitted that no financial sanction or approval was ever granted by the competent authority with respect to the said managerial return, and the same stood rejected by the District Level Committee vide order dated 28.09.2006.

20. Challenging the aforesaid list teachers of the institution, namely Parshu Ram and others, filed Civil Miscellaneous Writ Petition No. 25487 of 2008 before this Court. The said writ petition was disposed of vide order dated 23.04.2012, whereby a direction was issued to the competent authority to examine the claim of the petitioners therein and to take an appropriate decision in accordance with law.

21. It is further submitted that in compliance of the aforesaid order, the Director of Basic Education undertook a detailed scrutiny of the appointments of all such teachers whose names were included in the managerial return. Upon such examination, it was found that the appointments had been made dehors the applicable rules and were not in consonance with the prescribed procedure. Consequently, the impugned order dated 20.12.2014 came to be passed.

22. In view thereof, it is contended that since the appointments were found to be illegal and not duly approved, no liability could be fastened upon the State to release salary to such persons from the State exchequer.

23. A perusal of the records placed on behalf of the Management indicates that the teachers concerned have submitted separate representations seeking to establish that approval was granted vide order dated 31.03.1987. However, it is noteworthy that two different documents bearing the same reference number have been brought on record, each purporting to grant approval, but containing materially different lists of teachers and ministerial staff.

24. This apparent discrepancy gives rise to serious doubt regarding the genuineness and authenticity of the documents relied upon, and prima facie suggests interpolation or fabrication at some stage. In such circumstances, the matter warrants cautious scrutiny, as the possibility of forgery or manipulation of records by interested parties cannot be ruled out.

25. It is further submitted that pursuant to the directions issued by this Hon'ble Court, a fresh inquiry was conducted by the Assistant Basic Shiksha Adhikari, and a detailed report dated 05.12.2016 has been brought on record. The said report records that upon spot inspection of the institution, the petitioners were not found to be working on the posts of Clerk and Peon.

26. It is further noted in the report that the attendance register of the institution does not reflect the presence of the petitioners for the period from July, 2016 to December, 2016, which was also placed before the inspecting authority. The report further refers to written resignations allegedly tendered by Parmeshwar Singh on 25.06.1987 and by Lakshmi Shankar Tiwari on 25.05.1987.

27. On the strength of the aforesaid material, it is sought to be contended that the petitioners were not working in the institution as Clerk and Peon.

28. It was further brought to the notice of the authority that subsequent to the alleged resignation of the petitioners, fresh appointments had already been made on the said posts.

29. Learned counsel for the respondents further submits that the petitioners have sought to set up a case that they were appointed as Peon and Clerk, respectively, on 01.07.1980, at a time when the institution was unaided. It is contended that the institution was granted temporary recognition on 04.03.1981, and thereafter, permanent recognition was accorded on 02.09.1985.

30. It is further submitted that petitioner no. 2 claims to have been appointed as Clerk on 01.07.1980, whereas his date of birth is recorded as 08.06.1967. As such, he would have been only about 13 years of age at the time of the alleged appointment. This glaring inconsistency, according

to the learned counsel, renders the claim set up by petitioner no. 2 inherently improbable and legally untenable, thereby casting serious doubt on the veracity of his appointment.

31. Learned counsel for the respondents further submits that the Uttar Pradesh Recognized Basic Schools (Junior High School) (Recruitment and Conditions of Service of Ministerial Staff and Group 'D' Employees) Rules, 1984 prescribe the qualifications and eligibility conditions for appointment to the post of Clerk. In particular, Rule 6 provides that a candidate seeking recruitment to any of the posts under the said Rules must have attained the age of 18 years and must not exceed 30 years of age as on the first day of July following the year in which the vacancy is notified.

32. It is further provided that the upper age limit is relaxable by five years in the case of candidates belonging to Scheduled Castes, Scheduled Tribes, and Dependants of Freedom Fighters, or as may be provided by the State Government from time to time.

33. Learned counsel for the respondents further submits that Rule 4 of the Uttar Pradesh Recognized Basic Schools (Junior High School) (Recruitment and Conditions of Service of Ministerial Staff and Group 'D' Employees) Rules, 1984 prescribes the minimum qualifications for appointment to the post of Clerk, which require a candidate to have passed the Intermediate examination or its equivalent, along with a minimum typing speed of 30 words per minute in Hindi. Insofar as Group 'D' employees are concerned, the minimum qualification prescribed is passing Class V from an institution recognized by the State of Uttar Pradesh or an equivalent examination.

34. In view of the aforesaid statutory requirements, it is contended that a person aged about 13 years could neither possess the requisite educational qualifications nor satisfy the minimum age criteria, and therefore, could not have been legally appointed on the post of Clerk or even as a Class IV employee.

35. Learned counsel for the respondents further submits that the petitioners cannot be permitted to rely upon such documents, the authenticity whereof is itself under serious doubt. It is contended that the mandatory procedure prescribed for recruitment to the posts of Peon and Clerk has not been followed in the present case. No documentary evidence has been brought on record to establish issuance of any advertisement, intimation of vacancy to the Basic Shiksha Adhikari, participation of the nominee of the Basic Shiksha Adhikari in the selection committee, or compliance of other statutory preconditions as contemplated under the Rules of 1984.

36. In view thereof, it is argued that the records relied upon by the petitioners for claiming salary from the State exchequer are wholly unreliable and appear to be fabricated, and consequently, no right can be claimed on the basis of such documents.

37. Learned counsel for the respondents further submits that the petitioners had earlier claimed, in Civil Miscellaneous Writ Petition No. 25487 of 2008, that they had been working in the institution since the year 1977, as is evident from the pleadings and as noticed in the order dated 23.04.2012 passed by this Court.

38. However, in the present proceedings, the petitioners have set up an altogether different case by asserting that their appointments were made on 01.07.1980.

39. It is contended that this inconsistency in the stand taken by the petitioners clearly indicates that they have sought to improve upon their case by introducing a new version of facts, which, according to the learned counsel, demonstrates manipulation and undermines the credibility of their claim.

40. Learned counsel for the respondents further submits that after the institution was brought on the grant-in-aid list, the managerial return was forwarded for financial approval before the Regional Level Committee. However, the same was rejected, and consequently, no employee of the institution was held entitled to receive salary from the State exchequer.

41. It is further contended that the petitioners have claimed to have been appointed as Clerk and Peon in the institution on 01.07.1980 (as asserted), which is wholly contrary to law, inasmuch as the mandatory procedure prescribed for such appointments was not followed. The alleged appointments are, therefore, dehors the statutory rules, and no legal right accrues to the petitioners on the basis thereof. Accordingly, it is submitted that the petitioners are not entitled to any relief as claimed in the present writ petition.

42. It is submitted by learned counsel appearing for the respondent-Committee of Management that in Writ Petition No. 25487 of 2008, the petitioners themselves have categorically stated that petitioner no. 2 had joined the institution in the year 1977. In support thereof, a copy of the appointment schedule was annexed, wherein the date of birth of petitioner no. 2 has been recorded as 08.06.1967, and the date of initial appointment has been shown as 01.07.1977. Evidently, on the said date, petitioner no. 2 was merely about 10 years of age.

43. In the present writ petition, however, a different stand has been taken, and the date of appointment of petitioner no. 2 is now sought to be shown as 01.07.1980. Even if the said date is accepted, petitioner no. 2 would still be below 18 years of age at the time of alleged appointment.

44. Such inconsistent and contradictory pleadings, coupled with the fact that in both instances petitioner no. 2 was admittedly a minor and thus ineligible for appointment to any post in the institution, clearly indicate that the petitioners have misrepresented material facts and have attempted to mislead this Hon'ble Court as well as the respondent authorities. The conduct of the petitioners, therefore, prima facie amounts to playing fraud upon the Court.

45. Learned Standing Counsel, Mr. Shailendra Singh, has placed reliance upon the judgment rendered in **Ram Ashish Chaudhary and others vs. State of U.P. and others, reported in 2003 (1) ESC 170 (All)** wherein a Division Bench of this Court has categorically held that any appointment made in favour of a minor is per se illegal and void in the eyes of law.

46. Learned counsel appearing for the respondent-Committee of Management, while denying the averments made in paragraph 6 of the writ petition, submits that no such Tribhasha Anudaan was ever granted by the State Government to the institution in question on 21.07.2005, and the

document relied upon by the petitioners is wholly fabricated and has been brought on record with a fraudulent intent.

47. It is further submitted that a bare perusal of the said document reveals that the date of birth of petitioner no. 2 has been shown as 08.06.1967, while his date of appointment is indicated as 01.07.1980. Even on the face of it, such an appointment would be impermissible in law, as the petitioner was admittedly below the legally permissible age for appointment at the relevant time.

48. Moreover, any document pertaining to the alleged selection and appointment of the petitioners is in clear contravention of the provisions of the applicable Rules of 1984, and therefore cannot be relied upon for any legal sanctity.

49. Learned counsel for the respondent-Committee of Management has further submitted that the alleged appointments of the petitioners, even if assumed to have been made, are in clear violation of the provisions of Rules 7, 9, 10 and 11 of the Rules, 1978, as well as Rules 13, 14, 15 and 16 of the Rules, 1984. Consequently, such appointments are wholly illegal and void ab initio in the eyes of law.

50. Heard learned counsel for the parties and perused the material available on record.

51. This Court is constrained to observe that the petitioners have failed to approach the Court with clean hands. The inconsistency in their pleadings with regard to the date of appointment, initially asserted to be the year 1977 and subsequently altered to 1980, is not a mere trivial or inadvertent discrepancy, but one that strikes at the very root of their claim. Such mutually destructive stands clearly betray a calculated attempt to improve upon the case and to mislead the Court. It is a well-settled principle of law that a litigant invoking the extraordinary and equitable jurisdiction of this Court is under a solemn obligation to disclose full, true, and correct facts. Any suppression, concealment, or distortion of material particulars disentitles such a litigant from seeking discretionary relief under Article 226 of the Constitution of India. The conduct of the petitioners, therefore, renders them undeserving of any indulgence from this Court.

52. Even if the version set up by the petitioners is accepted *arguendo*, it remains an admitted and incontrovertible position that petitioner no. 2 was below 18 years of age at the time of the alleged appointment. An appointment of a minor to a public post is *per se* illegal, void, and non est in the eyes of law. Such an appointment lacks legal sanctity from its very inception and is liable to be treated as nullity.

53. It is a settled principle of law that any appointment of a minor to a post in an institution is impermissible and void ab initio. The Division Bench judgment in **Ram Ashish Chaudhary (supra)** unequivocally affirms this legal position.

54. It is a settled principle that no right, whether equitable or legal, can flow from an act which is void ab initio. Consequently, any claim founded upon such an inherently illegal appointment is wholly unsustainable and cannot be countenanced by this Court.

55. Furthermore, the respondents have rightly contended that the alleged appointments are in flagrant violation of the statutory provisions governing recruitment, namely, the Rules of 1978 and the Rules of 1984. The said Rules prescribe a mandatory procedure for selection and appointment, including issuance of proper advertisement, constitution of a duly constituted selection committee, and approval by the competent authority. Non-compliance with such mandatory requirements vitiates the entire selection process and renders the appointments wholly illegal and unsustainable in the eyes of law.

56. The appointments in question are *ex facie* in clear violation of the mandatory statutory provisions governing recruitment. There is nothing on record to demonstrate compliance with the essential procedural requirements, such as issuance of a proper advertisement inviting applications, constitution of a duly constituted selection committee, participation of authorized nominees of the competent authority, or grant of approval by the competent authority.

57. Such fundamental lapses go to the root of the matter and render the entire selection process vitiated. It is well settled that any appointment made in contravention of statutory rules is illegal, void, and unenforceable in the eyes of law, and no legal right can be claimed on the basis thereof.

58. A perusal of the record reveals the existence of conflicting documents bearing identical reference numbers yet containing materially divergent particulars. Such inconsistencies give rise to grave and legitimate doubts regarding their authenticity and genuineness. The document dated 21.07.2005, heavily relied upon by the petitioners, does not inspire confidence and appears to have been introduced with the oblique intent of lending an artificial veneer of legitimacy to an otherwise untenable claim.

59. It is a well-settled principle of law that no claim for salary can be sustained against the State exchequer unless the appointment in question is lawful and duly approved by the competent authority. In the present case, the petitioners have failed to establish the legality of their appointments; no financial sanction or approval was ever accorded, and the managerial return itself stood rejected by the competent authority. In such circumstances, the claim for payment of salary is wholly misconceived and legally untenable.

60. The law is unequivocal that no right can accrue from an illegal appointment, and the Courts cannot be called upon to recognize or legitimize acts which are void *ab initio*. It is equally well settled that equitable considerations, howsoever compelling, cannot be permitted to override or dilute the mandate of statutory provisions.

61. In view of the foregoing discussion, this Court is of the considered opinion that the petitioners have miserably failed to establish the legality or validity of their alleged appointments. Their claims are fraught with material inconsistencies and suffer from a clear lack of credibility. The impugned order, upon careful scrutiny, does not suffer from any illegality, perversity, or infirmity warranting interference by this Court in exercise of its writ jurisdiction.

62. Consequently, the petitioners are not entitled to any relief, including the claim for payment of salary from the State exchequer.

63. The writ petition, being devoid of merit, is accordingly **dismissed**.

(2026) 4 ILRA 366
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 23.04.2026

BEFORE

THE HON'BLE IRSHAD ALI, J.

Writ-A No. 5028 of 2012
 And
 Other Connected Cases

Aanjaney Tripathi & Ors.

...Petitioners

Versus

State of U.P. & Ors.

...Respondents

Issue for Consideration

- (1) Applicability of the principle of natural justice and principles of *audi alteram partem* before passing the impugned order of cancellation of selection process.
- (2) Validity of the impugned order of cancellation of entire selection process without making segregation between tainted and non-tainted candidates.

Headnotes

(A) Service law – Selection and appointment – Cancellation – Principle of natural justice – Principles of *audi alteram partem* – Applicability – Post of Principal and Assistant Teacher in Sanskrit Schools – Selection process was duly held and Committee of management issued appointment letter – Petitioners were also started payment of salary – However, after time the DIOS withheld the salary – No show cause notice was issued, no opportunity of hearing was given, and no enquiry was conducted – Effect – Joint Director, vide impugned order, cancelled the entire selection process – Validity challenged: (E-1)

Held: It is a settled principle of law that any order having civil consequences must conform to the principles of *audi alteram partem*. The impugned order which has resulted in termination of service and deprivation of salary, has been passed in flagrant violation of such principles and is therefore vitiated in law – The impugned order dated 25.06.2012 has been passed by the opposite party no. 2 in a wholly arbitrary, illegal manner without issuing any notice whatsoever and in complete violation of principles of natural justice. The said order proceeds to cancel the entire selection process without recording any specific finding of irregularities or manipulation in the selection of the petitioners/ Assistant Teachers, except with respect to three individuals namely Sri Brijesh Kumar, Ms. Ragini Rai and Sri Ajay Kumar Yadav without any segregation between tainted and non-tainted candidates. [Para 48 and 50]

(B) Constitution of India – Article 14 – Right to equality – Cancellation of entire selection process – Failure to make segregation between tainted and non-tainted candidates – Effect: (E-1)

Held: No attempt has been made to segregate tainted candidates from untainted candidates, nor has any finding has been recorded against the petitioners. It is settled law that innocent candidates cannot be penalized for alleged irregularities of others. The blanket cancellation is thus arbitrary, disproportionate and violative of Article 14 of the Constitution of India – To treat the innocent and the wrongdoers equally by subjecting the former to the consequence of the cancellation of the entire process would be contrary to Article 14 because unequals would then be treated equally. [Para 52]

Case Law Cited

State of Assam and others v. Arabinda Rabha and others, (2025) 7 SCC 705 – **referred to.**

List of Acts

Constitution of India – Article 14 and 21; UP Board of Secondary Sanskrit Education (Appointment and Conditions of Service of Heads of Institution, Teachers and Other Employees of the Institution) Regulations, 2009 – Regulation 15.

List of Keywords

Procedure for selection, Advertisement, Complaint, Representation, Due publicity, Transparency, Legitimate and enforceable right, Cancellation of selection, Stoppage of salary, Preliminary enquiry, Issuing the notice, Opportunity of hearing, Principle of natural justice, Segregation between tainted and non-tainted candidates, Malpractice, Departmental enquiry, Doctrine of proportionality, Arbitrary, Unreasonable, Withholding of salary, Severe financial hardship, Authority of law, Unjust, Interpolation, Manipulation, Conclusive adjudication, Mass irregularity, Forgery, Irrelevancies, Credibility, Legitimacy of the process, Segregation, Principle of *audi alteram partem*.

Case Arising From

Impugned order dated 25.06.2012 passed by the Director of Education (Secondary), U.P., Lucknow cancelling the entire selection process.

Appearances for Parties

Advs. for the Appellant: Amrendra Nath Tripathi (Sr. Adv.), Sanjeev Kumar Mishra, Ajay Pratap Singh, Ms. Radhika Singh, Sant Prasad Singh, Ms. Richa Mishra.

Advs. for the Respondents: Kuldeep Pati Tripathi (AAG), Kushal Verma (SC).

(Delivered by Hon'ble Irshad Ali, J.)

1. Heard Shri Amrendra Nath Tripathi, learned Senior Advocate assisted by Shri Sanjeev Kumar Mishra, learned counsel for the petitioners, Ms. Radhika Singh, learned Advocate along with Ms. Richa Mishra, both appearing for the petitioners and Shri Kuldeep Pati Tripathi, learned Additional Advocate General assisted by Shri Kushal Verma, learned counsel for the respondents-State.

2. This bunch of writ petitions is being decided by means of a common judgment and order treating Writ-A No.5028 of 2012 to be leading writ petition and the judgment and order passed therein, shall be equally applicable to all the connected writ petitions.

3. By means of the present writ petition, the petitioners have prayed for the following reliefs:

(I) issue a writ, order or direction in the nature of Certiorari thereby quashing the impugned order dated 25.6.2012 passed by the Director of Education (Secondary), U.P., Lucknow (opposite party no.2) contained as Annexure no.1 so far as it relates to the petitioners.

(II) issue a writ, order or direction in the nature of Mandamus commanding the opposite parties not to create hindrance in the functioning of the petitioners on the post of Assistant teacher in Sanskrit institutions.

(III) issue a writ, order or direction in the nature of Mandamus commanding the opposite parties especially opposite party no.3 (Joint Director of Education, Azamgarh Division, Azamgarh)

to ensure the payment of salary to the petitioners on the post of Assistant Teacher regularly each and every month along with arrears.

(IV) issue any writ order or direction which this Hon'ble Court may deem fit and proper under the circumstances of the case.

(V) allow the writ petition with costs in favour of the petitioners."

4. Factual matrix of the case is that the State Government issued notification on 15.1.2010 in respect of the Sanskrit Schools viz. The Uttar Pradesh Board of Secondary Sanskrit Education (Appointment and Conditions of Service of Heads of Institution, Teachers and Other Employees of the Institution) Regulations, 2009 in which the procedure for the selection on the post of Assistant Teacher and Principal/ Headmaster in Sanskrit Schools, has been mentioned.

On 20.9.2011, the vacancy was published in daily newspaper viz. Pioneer by the Regional Deputy Inspector of Sanskrit Schools regarding the Head of the Institutions. On 27.9.2011, the vacancy was published in the daily newspaper viz. Amgar Ujala by the Regional Deputy Inspector of Sanskrit Schools regarding the Assistant Teacher of the Institutions.

The petitioners being fully eligible and qualified for the post of Assistant Teacher applied for the same and also completed all the formalities as required in the advertisement. It is also submitted that the petitioners appeared in all the selection process and declared successful for the selection committee for the post of Assistant Teacher.

On 12.12.2011, the Joint Director of Education, Azamgarh Division, Azamgarh issued panel for the appointment of the petitioners on the post of Assistant Teacher. The appointment letter was issued in favour of the petitioners by the Manager, Committee of Management by following the panel issued by the Joint Director of Education, Azamgarh Division, Azamgarh. In pursuance to the appointment letter, the petitioners have reported their joining.

On 26.3.2012, the Director of Education (Secondary), U.P., Lucknow passed an order by which the salary of the petitioners has been stopped by a common order on the basis of the some complaints. Feeling aggrieved with the order dated 26.3.2012 passed by the opposite party no.2, the petitioners approached to this Court by challenging the impugned order dated 26.3.2012 passed by the Director of Education (Secondary), U.P., Lucknow and this Hon'ble Court pleased to pass interim order in the aforesaid writ petitions.

On 4.4.2012, one writ petition bearing No. Writ-A No.16645/2012 (Smt. Kiran Gupta and others v. State of U.P. and others) was filed before this Hon'ble Court at Allahabad and this Hon'ble Court vide order dated 4.4.2012 directed the Director of Education to decide the representation of that writ petitions.

On 25.6.2012, by taking shelter of the aforesaid order passed by this Hon'ble Court, opposite party no.2 cancelled the whole selection process without affording any opportunity of hearing or show cause notice to the petitioners in most illegal and arbitrary manner.

5. Ms Radhika Singh, learned counsel for the petitioners submitted that the State Government issued a notification dated 15.01.2010 (Annexure No.2 at page no.22-36 of writ petition) introducing the Uttar Pradesh Board of Secondary Sanskrit Education (Appointment and Conditions of Service of Heads of Institution, Teachers and other Employees of the Institutions) Regulations, 2009 which governs the procedure for appointment of Assistant Teachers and Principles in Sanskrit Institution, including the Institutions in question.

6. Learned counsel for the petitioners next submitted that in furtherance of the statutory framework prescribed under the aforesaid Regulations, vacancies relating to the post of Head of Institution were duly published on 19.09.2011 and 20.09.2011 in the widely circulated daily newspaper Pioneer by the Regional Deputy Inspector of Sanskrit Schools, thereby inviting applications from eligible candidates in accordance with the prescribed procedure. The said publication ensured due publicity and transparency in the selection process and was strictly in compliance with the mandatory requirements of the applicable Regulations governing such appointments.

7. Learned counsel for the petitioners next submitted that in continuation of the recruitment process and in strict compliance with the provisions of the applicable Regulations, vacancies for the post of Assistant Teacher were duly published on 27.9.2011 in the widely circulated daily newspaper 'Amar Ujala' by the Regional Deputy Inspector of Sanskrit Schools, thereby inviting applications from eligible candidates. The said advertisement ensured adequate publicity and transparency and formally initiated the selection process for appointment to the post of Assistant Teacher in the institutions concerned.

8. Learned counsel for the petitioners next submitted that pursuant to the advertisements issued, the duly constituted Selection Committee conducted the Selection proceedings on 20.11.2011 in strict adherence to the procedure prescribed under the applicable Regulations. The proceedings of the Selection Committee clearly establish that the entire selection process was conducted in a fair, transparent and lawful manner, without any arbitrariness, procedural irregularity or illegality whatsoever, and in complete compliance with the statutory framework governing such selections.

9. Learned counsel for the petitioners next submitted that upon completion of the selection process, the Joint Director of Education, Azamgarh Division, Azamgarh in exercise of his lawful authority issued the final selection panel dated 12.12.2011 recommending the names of the petitioners for appointment to the post of Assistant Teacher in the respective institutions. The issuance of the said panel was in conformity with the prescribed statutory procedure and conferred a legitimate and enforceable right upon the petitioners to be appointed on the said posts.

10. Learned counsel for the petitioners next submitted that in pursuance of the duly approved selection panel dated 12.12.2011, the respective Committees of Management of the concerned institutions issued appointment letters on 23.12.2011 in favour of the petitioners, thereby formally appointing them to the post of Assistant Teacher. The said appointments were made strictly in accordance with the applicable Regulations and upon due approval of the competent authority, thereby conferring valid and lawful status of service upon the petitioners.

11. Learned counsel for the petitioners next submitted that the petitioners joined their respective posts on 24.12.2011 and commenced discharge of their duties in the institutions concerned without any interruption or objection from any authority. Upon joining, the petitioners continuously performed their assigned responsibilities and were regularly paid salary in accordance with the applicable rules, thereby affirming the validity and subsistence of their appointments.

12. Learned counsel for the petitioners next submitted that to the utter shock and prejudice of the petitioners, the Director of Education (Secondary), U.P., Lucknow issued a communication dated 26.03.2012 whereby on the basis of certain complaints alleging irregularities in the selection process, the concerned authorities were directed to produce the entire records relating to the selection and submit a factual report. The said communication merely initiated a preliminary enquiry and did not contained any finding of illegality or any direction for cancellation of selection or stoppage of salary. However, despite the limited scope of the said communication, the subordinate authorities, the District Inspector of Schools proceeded to withhold the salary of the petitioners without any independent order, without issuing any notice and without affording any opportunity of hearing, thereby acting arbitrary and beyond the scope of the said communication. The said action is wholly illegal, without jurisdiction and in gross violation of the principles of natural justice.

13. Learned counsel for the petitioners next submitted that in a separate matter i.e. Writ-A No.16645 of 2012 (Smt. Kiran gupta and others v. State of U.P. and others) filed by certain unselected candidates, challenging advertisement no.6 of 2011 pertaining to the post of Principal and advertisement no.7 of 2011 pertaining to the post of Assistant Teacher, the Hon'ble Court at Allahabad vide order dated 04.04.2012 was pleased to dispose of the writ petition with a direction to the Director of Education (Secondary), U.P., Allahabad to consider and decide the representation of the petitioners therein by passing a reasoned and speaking order.

14. Learned counsel for the petitioners next submitted that the aforesaid order was limited in scope and merely required consideration of the grievance of the petitioners therein at the departmental level. The said order neither authorized the cancellation of the entire selection process nor permitted dispensing with the mandatory requirement of affording opportunity of hearing to the affected candidates. However, the said order has subsequently been misinterpreted and wrongly relied upon by the authorities while passing the impugned order dated 25.06.2012.

15. Learned counsel for the petitioners next submitted that being aggrieved by the action of the respondents and communication letter dated 26.03.2012 issued by the Director of Education (Secondary), U.P., Lucknow, the petitioners approached the Hon'ble Court by filing several writ petitions including Writ Petition No.2744(S/S) of 2012. The Hon'ble Court vide order dated 29.05.2012 after considering the facts and circumstances of the case, was pleased to issue notice and grant interim protection to the petitioner by extending the benefit of order passed in Priyanka Singh v. State of U.P. and others. The Hon'ble Court observed that in the absence of any specific order against individual candidates the payment of salary could not be withheld merely on the basis of a general direction and accordingly directed that the petitioners shall be entitled to receive salary during the pendency of the proceedings subject to further orders.

16. Learned counsel for the petitioner next submitted that impugned order dated 25.06.2012 has been passed by respondent no.2 in wholly arbitrary, illegal and high-handed manner, without issuing any notice whatsoever and in complete violation of the principles of natural justice. The aid order proceeds to cancel the entire selection process without recording any specific finding of irregularity or manipulation in the selection of the petitioners/ Assistant Teachers, except with respect to three individuals namely Sri Brijesh Kumar, Ms.Ragini Rai and Sri Ajay Kumar Yadav

in a connected matter. Despite this, the respondent has mechanically cancelled the entire selection of Assistant Teachers not only in Azamgarh Division but also in other divisions, namely Faizabad, Devipatan, Gorakhpur and Basti, thereby visiting all selected candidates with the consequences of alleged irregularities pertaining to a few individuals, without any segregation between tainted and non-tainted candidates.

17. Learned counsel for the petitioner next submitted that the advertisements for the posts of Principal and Assistant Teacher were separate and independent and the petitioners being duly selected candidates cannot be treated at par with any alleged irregularities. Even as per the findings of the Hon'ble High Court, the alleged malpractices were confined exclusively to the selection of Principals and had no application whatsoever to the selection of Assistant Teachers.

18. Learned counsel for the petitioner next submits that the Director has clearly usurped powers under the garb of Regulation 15 of the U.P. Board of Secondary Sanskrit Education (Appointment and Conditions of Service of Heads of Institution, Teachers and Other Employees of the Institution) Regulations, 2009 which does not confer authority to cancel a completed selection after appointments have been made and candidates have joined their duties. The services of the petitioners, having already crystallized, could not have been terminated except in accordance with the procedure prescribed under Chapter VI of the said Regulations.

19. Learned counsel for the petitioner next submitted that the power to impose punishment, including termination or dismissal, vests only with the Regional Joint Director of Education under Regulation 53, whereas the Director (opposite party no.3) functions merely as an Appellate Authority. However, in the present case, the Director has illegally assumed the role of disciplinary authority and has passed the impugned order without conducting any departmental enquiry, without issuing any chargesheet and without affording any opportunity of hearing, rendering the impugned action wholly without jurisdiction, arbitrary and liable to be set aside.

20. Learned counsel for the petitioner next submitted that the respondents have failed to maintain any distinction or segregation between tainted and untainted candidates and have further not adhered to the established principles of the doctrine of proportionality as well as the Doonesbury principle. Had the respondents followed the procedure and guidelines laid down by the Apex Court, the impugned selection process would not have suffered from such infirmities.

21. Learned counsel for the petitioner next submitted that the respondents, by no stretch of imagination, can justify their actions by placing reliance upon advertisement no.6 of 2011 which pertains to the appointment of Principals. The said advertisement was subjected to judicial scrutiny and was held questionable vide order dated 25.10.2013 passed by the Hon'ble Court. However, it is pertinent to note that the Hon'ble High Court, in its findings, only observed the presence of overwriting in the examination process relating to the post of Principals.

22. Learned counsel for the petitioner next submitted that most importantly, with regard to the post of Assistant Teachers, no questions were raised, nor were any discrepancies found or recorded by the Hon'ble High Court. Therefore, the advertisement relating to the post of Assistant Teachers could not have been cancelled on the basis of the aforesaid order, which was confined only to the

post of Principal. Consequently, the respondents cannot rely upon the said order to justify the irregularities in the present selection process, which is otherwise arbitrary, unreasonable and unsustainable in the eyes of law.

23. Learned counsel for the petitioner next submitted that in view of the settled position of law, the impugned order dated 25.06.2012 which proceeds to cancel the entire selection of Assistant Teachers without any segregation without any finding against the petitioners and without affording any opportunity of hearing ex facie arbitrary and liable to be set aside.

24. Learned counsel for the petitioner next submitted that as a direct and inevitable consequence of the impugned order dated 25.06.2012 the petitioners have been illegally deprived of their service rights, inasmuch as their services stood effectively terminated without any lawful order of termination or adherence to due process of law. Despite the same, the petitioners have continuously been discharging their duties in the respective institutions and their services are being taken by the authorities till date without payment of salary. The withholding of salary, despite extraction of work, amounts to gross exploitation and is wholly arbitrary and unjust.

25. Learned counsel for the petitioner next submitted that the salaries of the petitioners have been arbitrarily withheld causing severe financial hardship and grave prejudice not only to the petitioners but also to their families. The said action of the respondents is violative of Articles 14 and 21 of the Constitution of India, as it deprives the petitioners of their livelihood without authority of law and compels them to work without remuneration which is impermissible in law.

26. Learned counsel for the petitioner next submitted that the entire sequence of events, as narrated hereinabove, unequivocally establishes that the petitioners were duly selected and appointed through a fair, transparent and lawful process strictly in accordance with the governing statutory Regulations, and had validly joined and commenced their services. However, despite such lawful appointment, the petitioners have been arbitrarily and illegally deprived of their service and salary by virtue of the impugned order dated 25.06.2012 which has been passed in gross violation of the principles of natural justice, without issuance of any notice, without affording any opportunity of hearing and without conducting any enquiry whatsoever. The said action of the respondents is thus wholly unjust, without jurisdiction and liable to be set aside by the Hon'ble Court.

27. Learned counsel for the petitioner next submitted that the impugned order dated 25.06.2012 was challenged before the Hon'ble High Court by two distinct sets of candidates, namely those selected on the post of Principal before the Allahabad High Court and those selected on the post of Assistant Teacher, including the petitioners herein before the Lucknow Bench. The Hon'ble Allahabad Bench in Writ-A No.45441 of 2012 vide judgment dated 18.01.2013 dismissed the writ petitions filed by candidates selected on the post of Principal.

However, a careful perusal of the said judgment clearly demonstrates that the entire controversy before the Hon'ble Court was confined exclusively to the selection and appointment on the post of Principal and the adjudication was undertaken only with respect to the selection process of Principals.

The Hon'ble Court, after summoning and examining the original records, recorded findings regarding alleged interpolation and manipulation in the marks awarded to candidates for the post of Principal, as reflected in the detailed charts forming part of the judgment.

Importantly, there is no finding whatsoever recorded in the said judgment in relation to the selection of Assistant Teachers under consideration before the Hon'ble Court. As such, the findings returned in the judgment dated 18.01.2013 are confined only to the selection of Principals and cannot, in any manner, be extended or applied to the independent and distinct selection process of Assistant Teachers, including that of the petitioners herein.

28. Learned counsel for the petitioners next submitted that both the aforesaid Special Appeals arose out of and were confined exclusively to the dispute relating to the selection and appointment on the post of Principal and the adjudication therein was limited only to the issues concerning the selection process of Principals. The Hon'ble Division Bench, while dismissing the appeals, did not examine or adjudicate upon the selection process of Assistant Teachers and the finding recorded therein pertains solely to the alleged irregularities in the selection of Principals. Accordingly, the said judgments are clearly distinguishable on facts and law and cannot be applied to the independent and distinct selection process of Assistant Teachers, including that of the petitioners herein.

29. Learned counsel for the petitioners next submitted that the entire adjudication undertaken by the Hon'ble Division Bench was confined only to the selection process of Principals, and the findings recorded therein are exclusively in relation to the alleged irregularities in the selection of Principals. No finding whatsoever has been recorded in respect of the independent and distinct selection process of Assistant Teachers, including that of the petitioners herein and therefore, the said judgment cannot be applied to the present case.

30. Learned counsel for the petitioners next submitted that the Hon'ble Court did not independently adjudicate upon or examine the selection process of Assistant Teachers, but dismissed the writ petitions primarily on the basis of the findings recorded by the Allahabad Bench in respect of the selection of Principals. Therefore, the said judgment cannot be treated as a conclusive adjudication on the independent and distinct selection process of Assistant Teachers, including that of the petitioners herein.

31. Learned counsel for the petitioners next submitted that the aforesaid proceedings before the Hon'ble Supreme Court arose out of and were confined to the dispute relating to the selection on the post of Principal, and the dismissal of the Special Leave Petition was in the context of findings recorded with respect to the selection of Principals alone. No adjudication whatsoever has been undertaken in respect of the independent and distinct selection process of Assistant Teachers, including that of the petitioners herein and therefore, the said has no application to the present case.

32. In support of her submission, learned counsel for the petitioners placed reliance upon the judgment in the case of **State of Assam and others v. Arabinda Rabha and others reported in (2025)7 Supreme Court Cases 705**.

33. On the other hand, learned Additional Advocate General submitted that there was only one Selection Committee for both posts that is of Principal and Assistant Teacher. The plea of two Selection Committee is after-thought of the petitioners.

34. Learned AAG next submitted that Hon'ble Single Judge deciding the Writ-A No.45441 of 2012 and Writ-A No.47323 of 2012 had examined the entire record which was one record relating to selection of Principal as well as of Assistant Teacher and found cutting in the marks awarded by the Members of the Selection Committee to give favour to some.

35. Learned AAG next submitted that the plea of the petitioners that the cancellation of their selection is in violation to Chapter 6 of the Regulations 2009 is not tenable for the reason that the entire selection is quashed under Regulation 15 of the Regulation, 2009 and it is not the case of punishment etc. where the provisions of Chapter 6 of the Regulations, 2009 are applicable.

36. Learned AAG next submitted that Hon'ble Supreme Court in re: Krishna Yadav v. State of Haryana reported in (1994)4 SCC 165 had held that records of selection was destroyed. On the background the Hon'ble Supreme Court had held that it is not possible to decide the case one way or other so the Hon'ble Supreme Court proceeded to decide the case on the basis of the CBI Report.

37. Learned AAG next submitted that Hon'ble Supreme Court came to the conclusion that there was mass irregularity and forgery in selection. Hence, the Hon'ble Supreme Court set aside the entire selection and yet further held that the effect of the setting aside the selection process is that the persons so selected would be required to disgorge the benefit of ill gotten gains.

38. Having heard the rival submissions of learned counsel for the parties, I have perused the material available on record as well as case-law cited by learned counsel for the petitioners.

39. To resolve the controversy involved in the present writ petition, operative portion of judgment rendered in the case of **Arabinda Rabha (supra)** relied upon by learned counsel for the petitioner is extracted here-in-below:

"53. There were no serious grievances of malpractices in Rajesh P.U.. In fact, this Court held that:

"6. ... Applying a unilaterally rigid and arbitrary standard to cancel the entirety of the selections despite the firm and positive information that except 31 of such selected candidates, no infirmity could be found with reference to others, is nothing but total disregard of relevancies and allowing to be carried away by irrelevancies, giving a complete go-by to contextual considerations throwing to the winds the principle of proportionality in going farther than what was strictly and reasonably to meet the situation."
(emphasis supplied)

It was concluded that:

"6. the competent authority completely misdirected itself in taking such an extreme and unreasonable decision of cancelling the entire selections, wholly unwarranted and unnecessary even on the factual situation found too, and totally in excess of the nature and gravity

of what was at stake, thereby virtually rendering such decision to be irrational.” (emphasis supplied)

54. Para 35 of the decision in Sachin Kumar has been relied on. There, this Court held that:

“35. In deciding this batch of SLPs, we need not reinvent the wheel. Over the last five decades, several decisions of this Court have dealt with the fundamental issue of when the process of an examination can stand vitiated. Essentially, the answer to the issue turns upon whether the irregularities in the process have taken place at a systemic level so as to vitiate the sanctity of the process. There are cases which border upon or cross over into the domain of fraud as a result of which the credibility and legitimacy of the process is denuded. This constitutes one end of the spectrum where the authority conducting the examination or convening the selection process comes to the conclusion that as a result of supervening event or circumstances, the process has lost its legitimacy, leaving no option but to cancel it in its entirety. Where a decision along those lines is taken, it does not turn upon a fact-finding exercise into individual acts involving the use of malpractices or unfair means. Where a recourse to unfair means has taken place on a systemic scale, it may be difficult to segregate the tainted from the untainted participants in the process. Large-scale irregularities including those which have the effect of denying equal access to similarly circumstanced candidates are suggestive of a malaise which has eroded the credibility of the process. At the other end of the spectrum are cases where some of the participants in the process who appear at the examination or selection test are guilty of irregularities. In such a case, it may well be possible to segregate persons who are guilty of wrongdoing from others who have adhered to the rules and to exclude the former from the process. In such a case, those who are innocent of wrongdoing should not pay a price for those who are actually found to be involved in irregularities. By segregating the wrongdoers, the selection of the untainted candidates can be allowed to pass muster by taking the selection process to its logical conclusion. This is not a mere matter of administrative procedure but as a principle of service jurisprudence it finds embodiment in the constitutional duty by which public bodies have to act fairly and reasonably. A fair and reasonable process of selection to posts subject to the norm of equality of opportunity under Article 16(1) is a constitutional requirement. A fair and reasonable process is a fundamental requirement of Article 14 as well. Where the recruitment to public employment stands vitiated as a consequence of systemic fraud or irregularities, the entire process becomes illegitimate. On the other hand, where it is possible to segregate persons who have indulged in malpractices and to penalise them for their wrongdoing, it would be unfair to impose the burden of their wrongdoing on those who are free from taint. To treat the innocent and the wrongdoers equally by subjecting the former to the consequence of the cancellation of the entire process would be contrary to Article 14 because unequals would then be treated equally. The requirement that a public body must act in fair and reasonable terms animates the entire process of selection. The decisions of the recruiting body are hence subject to judicial control subject to the settled principle that the recruiting authority must have a measure of discretion to take decisions in accordance with law which are best suited to preserve the sanctity of the process. Now it is in the backdrop of these principles, that it becomes appropriate to advert to the precedents of this Court which hold the field.”

(emphasis supplied)

55. What follows from the above is that each case has to be decided on its own peculiar facts. It has to be pleaded and proved to the satisfaction of the Court that the decision of the recruiting authority (to cancel the entire process because of wrongdoing by some tainted elements

and not save a part of the process, to the extent it could be saved, to the utter detriment of the interests of the innocent) is wholly disproportionate to the risk and overly severe relative to what is at stake, thereby virtually rendering such decision to be irrational.

56. *Based on what has been discussed in the paragraphs preceding consideration of the authorities cited by Mr Goswami, the appellants' decision in cancelling the entire selection process initiated vide the advertisement dated 23-7-2014 relying on the note of the PCCF dated 4-7-2016, and not part of it, in our considered opinion, does not seem to be either arbitrary or unreasonable or without any sense of proportion. Since the earlier process did border on fraud, in the light of the reservation policy not being respected and observance of the decisions of this Court (that meritorious reserved category candidates are entitled to be accommodated in the open category) in breach, there was a brazen violation which was sought to be corrected and, if we may say, justifiably so. It has not been proved to our satisfaction that the impugned decision of cancelling the select list is the neat result of an injudicious exercise of discretion and was ill-directed in the guise of achieving the sanctity of the entire selection process.*

57. *The broad issue and Issue (a) (see para 20.1) are, thus, answered in favour of the appellants by holding that the impugned decision of cancellation was neither unjustified nor was one which could be upset by applying the doctrines of either *Wednesbury [Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn., (1948) 1 KB 223 (CA)]* unreasonableness or proportionality.*

58. *Since we find Question (b) (see para 20.2) to be a question of frequent occurrence engaging the courts of law, it is considered fruitful to take it up for an answer now. It has been argued that by dint of mere empanelment/enlistment of an aspirant's name for filling up a public post, no right accrues in favour of such an aspirant to move the writ court for redress. We do not consider that an empanelled or a selected candidate has absolutely no right to move the writ court.*

59. *We are conscious of the line of decisions of this Court and have noted some of them here, which lay down the law that mere empanelment/enlistment does not result in accrual of any indefeasible right in favour of such empanelled/selected candidate as well as the law that the employer may, in its wisdom, either decide to cancel the select list or not carry on the process further resulting in the notified/advertised vacancy/vacancies not being filled up pursuant to the selection process, which has been conducted. What it means is that an empanelled/selected candidate can claim no right of appointment, if the State has cogent and germane grounds for not making the appointment. However, at the same time, it is also the law that the appointing authority cannot ignore the select panel or decline to make the appointment on its whims. Shankarsan Dash cautions that the State has no licence to act in an arbitrary manner. In *R.S. Mittal v. Union of India*, a coordinate Bench held that when a person has been selected by the Selection Board and there is a vacancy which can be offered to him, keeping in view his merit position, then, ordinarily, there is no justification to ignore him for appointment and that there has to be a justifiable reason to decline to appoint a person who is on the select panel. The position in law finds reiteration in a decision of recent origin in *Dinesh Kumar Kashyap v. South East Central Railway*, where the majority held that the employer must give cogent reasons for not appointing selected candidates."*

40. *Perusal of the above-extracted judgments shows that apply a unilaterally standard to cancel the entirety of the selections despite the firm and positive information that no infirmity could be found with reference to others is nothing but total disregard of irrelevancies and allowing to be carried away by irrelevancies, giving a complete go-by to contextual considerations throwing to the*

winds the principle of proportionality in going farther than what was strictly and reasonably to meet the situation.

41. It also shows that there are cases which border upon or cross over into the domain of fraud as a result of which the credibility and legitimacy of the process is denuded. This constitutes one end of the spectrum where the authority conducting the examining or convening the selection process comes to the conclusion that as a result of supervening event or circumstances, the process has lost its legitimacy, leaving no option but to cancel it in its entirety. Where a decision along those lines is taken, it does not turn upon a fact-finding exercise into individual acts involving the use of malpractices or unfair means. Where a recourse to unfair means has taken place on a systemic scale, it may be difficult to segregate the tainted from the untainted participants in the process. Large-scale irregularities including those which have the effect of denying equal access to similarly circumstanced candidates are suggestive of a malaise which has eroded the credibility of the process. At the other ends of the spectrum are cases where some of the participants in the process who appear at the examination or selection test are guilty of irregularities. In such a case it may well be possible to segregate persons who are guilty of wrongdoing should not pay a price for those who are actually found to be involved in irregularities.

42. Perusal of the record shows that the State Government issued a notification dated 15.1.2010 which governs the procedure for appointment of Assistant Teachers and Principals in Sanskrit Institution including the Institutions in question. Vacancies relating to the post of Head of the Institution were duly published on 19.09.2011 and 20.09.2011 in the daily newspaper 'Pioneer'. Thereafter, vacancies for the post of Assistant Teacher were published on 27.09.2011 in the daily newspaper 'Amar Ujala'. On 20.11.2011, the Selection Committee conducted the selection proceedings and after that, Joint Director of Education, Azamgarh Division, Azamgarh issued the final selection panel dated 12.12.2011 recommending the names of the petitioners for appointment on the post of Assistant Teachers in the respective Institutions.

The respective Committee of Management of the concerned Institution issued appointment letters to the petitioners and the petitioners joined their posts on 24.12.2011 and discharged their duties in the Institutions and paid salary regularly.

The Director of Education (Secondary), U.P., Lucknow issued a communication dated 26.03.2012 whereby on the basis of certain complaints alleging irregularities in the selection process, concerned Authorities were directed to produce the entire record. Thereafter, the District Inspector of Schools proceeded to withhold the salary of the petitioners on the basis of communication and without issuing any independent orders and without affording opportunity of hearing.

Unselected candidates challenging Advertisement No.6 of 2011 pertaining to the post of Principal and Advertisement No.7 of 2011 pertaining to the post of Assistant Teacher filed Writ-A No.16645 of 2012 titled 'Smt. Kiran Gupta and others v. State of U.P. and others' wherein the Hon^{ble} High Court at Allahabad vide order dated 4.4.2012 was pleased to dispose of the writ petition with a direction to the Director of Education (Secondary), U.P., Allahabad to consider and decide the representation of the petitioners by passing a reasoned and speaking order.

Thereafter, petitioners approached this Court by filing several writ petitions including Writ Petition No.2744(SS) of 2012 challenging communication letter dated 26.03.2012 issued by

the Director of Education (Secondary), U.P., Lucknow wherein vide order dated 29.5.2012, this Court was pleased to issue notice and grant interim order.

Thereafter, an order dated 25.06.2012 which is impugned in this writ petition has been passed by the Director of Education (Secondary), U.P., Lucknow cancelling the entire selection process.

43. I have examined the entire materials on record in the light of the judgments relied upon by learned counsel for the petitioners.

44. On examination, it is found that record in regard to the selection on the post of Principal has been produced by the respondents at every stage of adjudication, but no record in regard to selection on the post of Assistant Teachers has been produced at any stage of adjudication either before this Court or before Hon^{ble} High Court at Allahabad.

45. Vide order dated 10.09.2019, this Court granted time to counsel for the respondents to file supplementary counter affidavit by making specific averments about record of selection of Assistant Teachers and in pursuance thereof, supplementary counter affidavit has been filed to the effect that record of selection of Assistant Teachers is also missing and an F.I.R. has been lodged against a dead person which reflects misrepresentation of fact before this Court.

46. It is admitted position between the parties that the record in regard to selection on the post of Assistant Teachers has never been produced before this Court, Division Bench of this Court and High Court at Allahabad for adjudication and the record only in regard to selection on the post of Principal has been produced for consideration.

47. On a pointed query made to learned AAG that was there separate vacancy in regard to Assistant Teacher; selection process was separately concluded, he said that there was separate vacancy in regard to Assistant Teacher and selection process was conducted separately.

48. It is also found that the impugned order dated 25.06.2012 has been passed by the opposite party no.2 in a wholly arbitrary, illegal manner without issuing any notice whatsoever and in complete violation of principles of natural justice. The said order proceeds to cancel the entire selection process without recording any specific finding of irregularities or manipulation in the selection of the petitioners/ Assistant Teachers, except with respect to three individuals namely Sri Brijesh Kumar, Ms. Ragini Rai and Sri Ajay Kumar Yadv without any segregation between tainted and non-tainted candidates.

49. In the case of **Arabinda Rabha (supra)**, the Hon^{ble} Supreme Court categorically held that where allegations of irregularities are confined to a limited number of candidates, the authorities are under a legal obligation to segregate tainted candidates from untainted ones, and blanket or wholesale cancellation of the entire selection process, without such segregation is arbitrary and unsustainable in law. It has also been emphasized that innocent and duly selected candidates cannot be made to suffer for alleged irregularities attributable to others or to the administrative authorities themselves. In this view of the matter, the judgment relied upon by

learned counsel for the petitioners is fully applicable to the present facts and circumstances of the case.

50. It has also been held in a catena of judgments that even in cases of alleged irregularities, compliance with the principles of natural justice and no adverse action affecting the rights of selected candidates can be taken without affording them an opportunity of hearing. Where the records are either missing or manipulated due to lapse of such uncertainty cannot be shifted upon the candidates and the State must bear the consequences of its own failure.

In these circumstances, the impugned order dated 25.06.2012 is liable to be set aside on the ground that it has been passed in complete violation of the principles of natural justice. No show cause notice was ever issued to the petitioners, no opportunity of hearing was afforded, and no enquiry whatsoever was conducted prior to passing the impugned order. It is a settled principle of law that any order having civil consequences must conform to the principles of *audi alteram partem*. The impugned order which has resulted in termination of service and deprivation of salary, has been passed in flagrant violation of such principles and is therefore vitiated in law.

51. It is also very important to mention here that the impugned order has been passed by an Authority wholly lacking jurisdiction under the governing Regulations. The Director (Secondary Education) is neither the appointing authority nor the disciplinary Authority under the Regulations. The power to impose punishment, including termination or dismissal, vests exclusively with the Regional Joint Director of Education under Regulation 53, whereas the Director functions only as an Appellate Authority. Once the selection process stood completed and the petitioners had already joined service, the Director had no authority to cancel the entire selection. The impugned action is thus *ultra vires* and without jurisdiction.

52. The impugned order also suffers from the vice of arbitrariness inasmuch as the entire selection across five divisions has been cancelled on the basis of alleged irregularities pertaining to only a few individuals. No attempt has been made to segregate tainted candidates from untainted candidates, nor has any finding been recorded against the petitioners. It is settled law that innocent candidates cannot be penalized for alleged irregularities of others. The blanket cancellation is thus arbitrary, disproportionate and violative of Article 14 of the Constitution of India.

Where it is possible to segregate persons who have indulged in malpractices and to penalise them for their wrongdoing, it would be unfair to impose the burden of their wrongdoing on those who are free from taint. To treat the innocent and the wrongdoers equally by subjecting the former to the consequence of the cancellation of the entire process would be contrary to Article 14 because unequals would then be treated equally.

53. The requirement that a public body must act in fair and reasonable terms animates the entire process of selection. The decision of the recruiting body are hence subject to judicial control subject to the settled principle that the recruiting authority must have a measure of discretion to take decisions in accordance with law which are best suited to preserve the sanctity of the process.

Now it is in the backdrop of these principles that it become appropriate to advert to the precedents of this Court which hold the field.

54. The impugned order dated 25.06.2012 which proceeds to cancel the entire selection of Assistant Teachers without any segregation, without any finding against the petitioners and without affording opportunity of hearing, is ex facie arbitrary, illegal and is liable to be set aside.

55. Considering in totalities of the facts and circumstances of the case, this Court is of the considered opinion that there is no finding whatsoever recorded in the judgment passed by the High Court at Allahabad in relation to the selection of Assistant Teachers, nor was the selection of Assistant Teachers under consideration before the Court. This Court is also of the considered opinion that the findings returned in the judgment dated 18.01.2013 are confined only to the selection of Principals and cannot, in any manner, be extended or applied to the independent and distinct process of Assistant Teachers, including that of the petitioners.

56. Accordingly, all the writ petitions succeed and are allowed. Impugned order dated 25.6.2012 passed by the Director of Education (Secondary), U.P., Lucknow (respondent no.2) as contained in Annexure no.1 to the writ petition is quashed only so far it relates to the selection of Assistant Teachers.

57. However, the respondents are directed to release and disburse the entire outstanding salary and all consequential dues payable to the petitioners from September, 2017 till date, forthwith, as the petitioners have been continuously discharging their duties without payment within a period of three weeks from the date of production of a certified copy of this order and pay regular salary month by month.

(2026) 4 ILRA 380
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 29.04.2026

BEFORE

THE HON'BLE MRS. MANJU RANI CHAUHAN, J.

Writ-A No. 24985 of 2017
 With
 Writ-A No. 7819 of 2020 And 13532 of 2018

Manoj Kumar & Ors.

...Petitioners

Versus

State of U.P. & Ors.

...Respondents

Issue for Consideration

- (1) Entitlement of Part-time Instructors to get renewal of service.
- (2) Validity of the impugned order refusing grant of renewal to the Part-time Instructors on the ground that the strength of students was reduced below one hundred.

Headnotes

(A) Service law – Renewal of service – Entitlement – Part-time instructors were disengaged from service on the ground that the strength of students was reduced below one hundred – Validity challenged – Plea raised that no such condition is mentioned in the GO dated 31.01.2013 to not to renew appointment in the event the strength of students decreases below 100 – Permissibility: (E-1)

Held: The engagement is purely contractual, ordinarily for a fixed term of 11 months, and is subject to renewal upon fulfillment of the conditions stipulated in Clause 6 of the Government Order. The renewal of part-time instructors is contingent upon the availability of requisite students' strength, existence of requirement/ vacancy, and satisfactory performance and verification of the instructor concerned. [Para 18]

Further held: Solely, a part-time instructor be not held responsible for reduction in students strength. His/her role is to impart teaching to the students and not to manage other institutional affairs, thus, the disengagement of a part-time instructor on the ground of drop in numbers of students is not only arbitrary but also unjust as there are several other factors also, which may often be out of his/ her control and contribute in declining students strength – Although no enforceable right of renewal accrues to the petitioners where the foundational condition of student strength of 100 or more is not satisfied, yet in light of the apparent inconsistency in implementation and in order to ensure fairness in administrative action, it would be appropriate to remit the matter to the competent authority for reconsideration. [Para 20 and 21]

Case Law Cited

U.P. Junior High School Council Instructor Welfare Association vs. State of UP and others, 2026 SCC Online SC 147; 2026 INSC 117; Jaggo vs. Union of India and others, 2024 SCC Online SC 3826; Writ A No. 7819 of 2020, Neetu vs. State of U.P. & others; Writ A no. 49746 of 2017, Pradeep Kumar and 9 others vs. State of U.P. and others decided on 27.11.2018 – **referred to.**

List of Acts

Constitution of India – Article 21-A; Right of Children to Free and Compulsory Education Act, 2009 – Ss. 19 and 25; Government Order dated 31.01.2013 – Clause 6.

List of Keywords

Part-time Instructor, Renewal of service, Termination, Reasoned and speaking order, Strength of service, difference of nomenclature, Reduced strength of students, Reduction of students strength, Exploitation, Temporary labels, Lack of career progression, Denial of basic rights and benefits, Dignity, Security, Development, Contractual engagement, Disengagement of a part-time instructor, Drop in numbers of students, Apparent inconsistency in implementation, Fairness in administrative action.

Case Arising From

Impugned order dated 16.03.2018 passed by the respondent no. 4 refusing to renew the services of the petitioners.

Appearances for Parties

Advs. for the Appellant: Akhilesh Kumar Pandey, Durga Tiwari, Sanjay Kumar.

Advs. for the Respondents: Ajeet Singh, Pankaj Kumar Singh, L.M. Singh (SC), Saurabh Sachan (BH), Ritesh Singh (BH), Ms. Rishu Mishra, N. K. Pandey.

(Delivered by Hon'ble Mrs. Manju Rani Chauhan, J.)

1. Heard Mrs. Durga Tiwari and Mr. Sanjay Kumar, learned counsel for the petitioners, Mr. L.M. Singh, learned Standing Counsel for the State, Mr. Saurabh Sachan holding brief of Mr. Ajeet Singh and Mr. Ritesh Singh holding brief of Ms. Rishu Mishra and Mr. N.K. Pandey, learned counsel for the respondents.

2. In the above-mentioned three petitions, the petitioners have sought relief for their continuance as part-time instructors in their respective districts. By the orders impugned, renewal of services of the petitioners on the post of part-time instructors has been terminated on the ground that the strength of students has reduced below one hundred.

3. The petitioners have approached this Court claiming that in furtherance of the constitutional goal as enshrined under Article 21A of the Constitution of India, the Central Government has framed an Act in the name of Right of Children to Free and Compulsory Education Act, 2009. In furtherance of the said Act, the State Government issued Government Order dated 31.01.2013 sanctioning 41307 posts of part time instructors for imparting education i.e. Art Education, Health and Physical Education and Work Education. The State Government in pursuance of the said Government Order dated 31.01.2013 issued an advertisement inviting applications from eligible candidates for appointment on the posts of part time instructors. The petitioners being eligible, applied and were selected on the post of part time instructors.

4. To understand the controversy, facts of each petition are being enumerated, in brief, separately, which are as follows:

4.1 The petitioners in Writ-A No. 24985 of 2017 were engaged for the academic session 2013-14 on the posts of part-time instructors. Their services were renewed up till 2015-16, however, no renewal was made for the academic session 2016-17 on the ground that strength of students in their institutions had gone below 100. Aggrieved therefrom, they preferred **Writ-A No. 57096 of 2016**. The said writ petition was disposed of by order dated 05.12.2016, wherein a direction was issued to the petitioners to file individual applications before the competent authority raising all their grievances, which were directed to be decided by a reasoned and speaking order. Petitioner's representations have been rejected by the order impugned, which is being assailed in the writ petition.

4.2 The petitioner - Neetu in Writ-A No. 7819 of 2020 was appointed as part-time instructor for Art Education in Upper Primary School, Panwari, Gunnaur, District Sambhal. Her services were renewed from time to time up till the academic session 2017-2018. However, her services have not been renewed for the academic session 2019-2020. Thereafter, the petitioner submitted an application on 04.11.2019 before respondent no. 3, but the same has failed to elicit any response.

4.3 The petitioners in Writ-A No. 13532 of 2018 were initially appointed as part-time instructors on 29.06.2013. Their services were renewed from time to time up till the academic session 2017-18, however, pursuant to order dated 28.10.2017, the respondent authorities stopped the teaching work and marking attendance in the concerned register. Aggrieved thereby the petitioners filed Civil Misc. Writ Petition No. 1393 of 2018, which was disposed by order dated 11.01.2018 with a direction to the authority concerned to decide petitioners' claim/ representation. Pursuant thereto, the respondent no. 4 has passed the impugned order dated 16.03.2018 which is impugned in the present writ petition.

5. Learned counsel for the petitioners submit that no such condition is mentioned in the Government Order dated 31.01.2013 or any subsequent orders or circulars, where, in the event the strength of students decreases below 100, the appointment of the part-time instructors shall not be

renewed. As per Sections 19 and 25 and the Schedule appended to the Right of Children of Free and Compulsory Education Act, 2009, where students were more than 100, the part-time teachers were to be appointed. The renewal of part time instructors is governed by Clause-6 of the Government order dated 31.01.2013, which reads as follows:

“6. अंशकालिक अनुदेशकों का कार्यकाल--

(1) अंशकालिक अनुदेशकों का कार्यकाल अधिकतम 11 माह का होगा एवं किसी भी शैक्षिक सत्र में 31 मई को स्वतः समाप्त हो जायेगा तदनुसार अंशकालिक अनुदेशकों को 31 मई तक मानदेय देय होगा।

(2) अंशकालिक अनुदेशकों के नवीनीकरण की कार्यवाही प्रत्येक वर्ष संविदा समाप्त होने के कम से कम एक माह पूर्व अवश्य प्रारम्भ की जाये एवं जिलाधिकारी की अनुमति से नवीनीकरण की कार्यवाही सुनिश्चित की जाये।

(3) जिन अंशकालिक अनुदेशकों की सेवाएं उपयुक्त न पाई जाये उनके सम्बन्ध में पत्रावली पर साक्ष्य सहित आकलन किया जाये। एकाएक सेवा समाप्त न की जायेगी अपितु ऐसे कर्मों को अपनी सेवा में सुधार लाने के लिये सुझाव / चेतावनी जिलाधिकारी की अनुमति से जिला बेसिक शिक्षा अधिकारी द्वारा लिखित रूप में दी जायेगी। यदि अनुदेशक की सेवाएं अनुपयुक्त पायी जाती है तो जिलाधिकारी के पूर्व अनुमोदन से जिला बेसिक शिक्षा अधिकारी द्वारा उसे एक माह का नोटिस देकर सेवाओं को समाप्त किया जायेगा।

(4) गंभीर अनुशासनहीनता की स्थिति में यदि सेवा समाप्त करने की आवश्यकता प्रतीत होती है तो जिला बेसिक शिक्षा अधिकारी द्वारा पुष्ट प्रमाणों सहित स्वतः स्पष्ट प्रस्ताव जिलाधिकारी को प्रस्तुत किया जायेगा। संविदा समाप्ति हेतु निर्गत आदेश जिलाधिकारी के अनुमोदन के उपरान्त ही मान्य होगा।“

6. As per the aforesaid condition, there was no requirement of rejecting the renewal of services of the petitioners, in case students' strength in the institution goes below 100. The strength of students prescribed in the Schedule is only for the purposes of initial inspection of the institution, in which part-time instructors are to be appointed.

7. Learned counsel relying upon a judgment of Apex Court in the case of **U.P. Junior High School Council Instructor Welfare Association v. State of Uttar Pradesh and others**, submits that while deciding the issue regarding enhancement of honorarium, the Court has observed that the part-time instructors / teachers appointed pursuant to the relevant Government order are to be treated at par with other teachers as they possess the basic educational qualification and eligibility as set out by the National Council for Teacher Education⁵ which are at par with the norms laid down for appointment of regular teachers.

8. It has been further observed in the aforementioned case that part-time contractual instructors/ teachers appointed by the State Government under the Scheme are in no way inferior to the regular teachers or the Assistant Teachers appointed otherwise under the scheme. The Apex Court has gone to the extent of observing that the part-time contractual instructors/ teachers cannot be treated as part time teachers even though they are described as such so far. It is for the simple reason that Clause 5 of their service contract stipulates that they are being appointed with the condition that they would not directly or indirectly take up any part time appointment or full-time job anywhere else. The moment Government prohibits these instructors/teachers from taking any part time or full-time job anywhere else, they should de facto be treated as full time teachers. Thus, it is only a difference of the nomenclature hence the rejection of renewal on the basis of reduced strength of students is bad in the eyes of law.

9. Learned counsel for the petitioners further submit that that the petitioners have worked for more than three years and their renewal has been rejected on a non-existent ground i.e. reduction of students strength below 100, about which there is no whisper in the Government Order, pursuant to which they have been appointed, and also neither in any of the provisions as framed under the RTE Act, 2009 nor by the norms as set out by the NCTE.

10. Learned counsel for the petitioners has also relied upon a judgement of the Apex Court in the case of **Jaggo v. Union of India and others**, wherein it has been observed that it is a hard reality that temporary employees, particularly in Government institutions often face multifaceted forms of exploitation which include misuse of “temporary labels”, “lack of career progression” and “denial of basic rights and benefits”. It further observed that employees engaged for work which is essentially recurring and integral to the functioning of an institution are often labeled as “temporary” or “contractual” employees even though their roles mirror those of regular employees. Such deceptive description of the employees deprives them of their dignity, security and benefits that other regular employees are entitled to, despite performing identical duties. These employees often find themselves excluded from opportunities for skill development, promotions or incremental pay raises, and they remain stagnant in their roles. They are deprived of fundamental benefits such a pension, provident fund, health insurance and paid leave even though they work for decades resulting in social insecurity.

11. Learned counsel for the petitioner appearing in the connected petition i.e. **Writ-A No. 7819 of 2020**, relied upon a judgement of this Court passed in the case of **Pradeep Kumar and 9 others v. State of U.P. and 4 others**, as decided on 27.11.2018, wherein the order cancelling renewal has been set aside directing the authorities to consider the appointment of the petitioners therein as part time instructors in case they apply in pursuance of any future advertisement. In the **Special Appeal Defective No. 414 of 2019**, a Division Bench of this Court modified the order passed by the writ Court dated 27.11.2018 to the extent that the authorities were directed to consider the candidature of the petitioners/ appellants therein for renewal of contract as per Clause-6 of the Government Order dated 31.01.2013.

12. Learned counsel for the petitioners submit that initially the petitioners were appointed for a period of 11 months and their services were renewed only after finding that they had put in satisfactory service. In case of any complaint or unsatisfactory work, if done by the part time

instructors, a notice should have been given to them and after approval by the District Magistrate, action of giving warning or dispensing with their services, would have been taken.

13. Learned counsel for the petitioners further contend that in view of the above the impugned order is liable to be set aside.

14. Learned counsel for the respondents submits that under the RTE Act, 2009, the Schedule of Sections 19 and 25 clearly mandates where the number of students in the institution is more than 100, the aforesaid provision will apply and one teacher for every thirty-five children, and for those subjects 01-01 part time instructor will be appointed on the basis of contract, but if the condition specified in the Act regarding number of students is not fulfilled, the aforesaid will not apply and no part time instructor will be appointed. One such issue came before the Court, and in pursuance of the directions issued by the Court, a District Level Committee looked into scheme of part time instructors therein, and held if the number of students is more than 100, services of the part time teachers will be renewed.

15. The judgments as relied upon by learned counsel for the petitioners in Writ-A No. 7819 of 2020 do not relate to the issue in question as in those cases due to unsatisfactory services of part-time instructors, the renewal was not done.

16. The deterioration in the strength of students can be interpreted in so many words as non-satisfactory services of the petitioners hence there is no illegality in the order impugned.

17. I have considered the submissions advanced by learned counsel for the parties and perused the record.

18. Upon perusal of the Government Order dated 31.01.2013, it is evident that the scheme provides for engagement of part time instructors on the basis of student strength, generally at the ratio of one instructor per 100 students. The engagement is purely contractual, ordinarily for a fixed term of 11 months, and is subject to renewal upon fulfillment of the conditions stipulated in Clause-6 of the Government Order. The renewal of part-time instructors is contingent upon the availability of requisite students□ strength, existence of requirement/ vacancy, and satisfactory performance and verification of the instructor concerned.

19. The scheme being need-based, the continuation of engagement is intrinsically linked with the existence of such need. Once the students□ strength falls below the prescribed threshold, the very basis of engagement ceases to exist. In such circumstances, the respondents cannot ordinarily be compelled to continue the engagement, as the same would be contrary to the governing policy. It is a settled principle of law that a contractual appointee does not have a vested right to renewal or continuation unless such right is specifically conferred by statute or policy, which is not the case herein. However, this Court finds substance in the contention of learned counsel for the petitioners that similarly situated persons have been permitted to continue despite identical circumstances. Furthermore, a perusal of the Government Order dated 31.01.2013 does not specifically stipulate in Clause-6 that upon reduction of students strength below the prescribed limit, the services of part-time instructors shall, mandatorily not be continued.

20. If a school loses students strength, it may be considered as a failure on the part of entire teaching staff and not only on the part of part-time instructors. Thus, to achieve the real object of the RTE Act, 2009, facilities in Government institutions should be improved to make them more competitive with private institutions, which would surely be helpful in maintaining students strength. Solely, a part-time instructor be not held responsible for reduction in students strength. His/ her role is to impart teaching to the students and not to manage other institutional affairs, thus, the disengagement of a part-time instructor on the ground of drop in numbers of students is not only arbitrary but also unjust as there are several other factors also, which may often be out of his/ her control and contribute in declining students strength.

21. Although no enforceable right of renewal accrues to the petitioners where the foundational condition of student strength of 100 or more is not satisfied, yet in light of the apparent inconsistency in implementation and in order to ensure fairness in administrative action, it would be appropriate to remit the matter to the competent authority for reconsideration.

22. Accordingly, the orders impugned dated 20.02.2017 and 16.03.2018 are quashed. The concerned competent authorities are directed to consider the case of the petitioners afresh, in accordance with law, keeping in view the observations made hereinabove as well as the principles laid down by the Apex Court in **U.P. Junior High School Council Instructor Welfare Association (supra)** and **Jaggo (supra)**, and to pass a reasoned and speaking order within a period of six weeks from the date of production of a certified copy of this order.

23. The writ petitions are, accordingly, disposed of.

24. No order as to costs.

(2026) 4 ILRA 386
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 23.04.2026

BEFORE

THE HON'BLE SAURABH SHYAM SHAMSHERY, J.

Writ- B No. 6873 of 1979
 With
 Writ-B No. 5560 of 1979 & 4008 of 1979

Sarju & Ors.

...Petitioners
Versus

D.D.C. & Ors.

...Respondents

ISSUE FOR CONSIDERATION

Whether sale deeds executed by the mother, acting as guardian of her minor sons, in respect of their shares in ancestral holdings without permission of the competent court and not for the

benefit of the minors but for repayment of debts incurred by their deceased father, were void or merely voidable; and whether the sons, after attaining majority, could claim co-tenancy rights in the disputed plots during consolidation proceedings despite having failed to challenge or repudiate such sale deeds within a reasonable time.

HEADNOTE

U.P. Consolidation of Holdings Act, 1953 – ss.9-A(2), 48 – U.P. Zamindari Abolition and Land Reforms Act, 1950 – Sale of minor’s share by mother acting as guardian – Adya Shanker, Kripa Shanker and Radhe Mohan filed objections under Section 9-A(2) claiming rights in the disputed plots on the ground that the land was ancestral property and that sale deeds executed by Mst. Chamela Devi and others included shares belonging to the objectors – It was pleaded that Mst. Chamela Devi had executed the sale deeds without permission of the competent court and that the transfers were not for the benefit of the minors but for repayment of debts incurred by their deceased father – Consolidation Officer partly allowed the objections and determined shares of the parties – Settlement Officer of Consolidation allowed the appeals filed by the vendees and restored the basic year entries holding that the objectors had failed to challenge the sale deeds within the prescribed period after attaining majority – Deputy Director of Consolidation, in revision, restored the order of the Consolidation Officer holding that Mst. Chamela Devi had no authority to transfer the shares of her minor sons and that their rights in the ancestral property had not been extinguished – Challenge in writ jurisdiction – Justification:

Held: Held: Mst. Chamela had executed sale deeds of the shares of her minor children also without any permission of the competent authority and that the purpose of the sale deeds was not for any benefit of the minor children rather to repay debt taken by her late husband – Nature of such sale deeds was voidable – *A voidable transaction executed by the guardian of the minor can be repudiated and ignored by the minor within time on attaining majority either by instituting a suit for setting aside the voidable transaction or by repudiating the same by his unequivocal conduct* – In the instant case, Adya Shanker and Kripa Shanker could have questioned the sale deeds when they became major, though they did not take any effort to challenge them for many years – Adya Shanker and Kripa Shanker became major in the years 1962 and 1965 respectively but did not take any steps when they attained majority and did not repudiate the voidable transactions by their conduct – A suit instituted by them was also dismissed – They, therefore, lost their rights, if any, in the land sold by their mother.

Court further held that the finding of the Revisional Authority that the mother of the minor children had no right to execute the sale deeds would not be sufficient – A further consideration was required as to whether the minor children had taken any step to challenge the sale deeds or had repudiated the voidable transactions by any conduct after attaining majority – Since that aspect was not considered, findings recorded by the Deputy Director of Consolidation were not legally justified – Order of Deputy Director of Consolidation set aside – Writ petitions allowed – Consolidation Officer directed to redistribute shares in accordance with law. (E-5)

[Paras 18, 19, 20, 21, 23]

CASE LAW CITED

K.S. Shivappa v. Smt. K. Neelamma, 2025 INSC 1195 : 2025 SCC OnLine SC 2149;
 Shivraji v. Deputy Director of Consolidation, 1997 (88) RD 562;
 Savitri Devi v. IInd Additional District and Sessions Judge, Deoria, 1997 (31) All LR 367;
 Ram Deen Kori and others v. Deputy Director of Consolidation and others, 2005 (99) RD 680;
 Surendra Pal v. D.D.C., Meerut, 2020 (3) AWC 2985;
 Kuppalu Obul Reddy v. Bonala Venkata Narayana Reddy, (1984) 3 SCC 447;

Amirtham Kudumbah v. Sarnam Kudumban, (1991) 3 SCC 20;
Vishwambhar v. Laxminarayan, (2001) 6 SCC 163;
Nangali Amma Bhavani Amma v. Gopalkrishnan Nair, (2004) 8 SCC 785;
Ram Chandra Singh v. Savitri Devi, (2004) 12 SCC 713;
Saroja v. Santhilkumar, (2011) 11 SCC 483;
Murugan v. Kesava Gounder, (2019) 20 SCC 633;
Jamila Begum v. Shami Mohd., (2019) 2 SCC 727.

List of Acts

U.P. Consolidation of Holdings Act, 1953;
U.P. Zamindari Abolition and Land Reforms Act, 1950.

List of Keywords

Ancestral property; Minor's share; Guardian sale; Repudiation of sale deed; Consolidation proceedings; Co-tenancy rights; Ancestral holding; Revenue records; Sale by mother; Legal necessity; Void and voidable transactions; Limitation; Non-repudiation.

CASE ARISING FROM

From the order dated 25.05.1979 passed by the Deputy Director of Consolidation, Varanasi in Revision arising out of the order dated 14.02.1978 passed by the Settlement Officer of Consolidation and the order dated 22.12.1976 passed by the Consolidation Officer.

Appearances for Parties

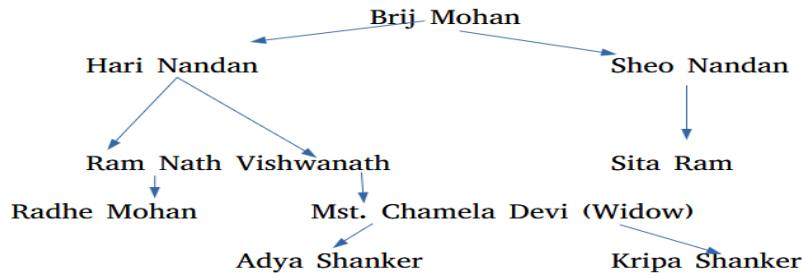
Advs. for the Petitioner: Anil Kumar Singh, Jagdish Singh, Sushma Devi

Advs. for the Respondents: Manish Kumar Srivastava, S.C.

(Delivered by Hon'ble Saurabh Shyam Shamshery, J.)

1. Petitioners in all writ petitions have purchased lands through various sale deeds executed by different family members of pedigree of one Brij Mohan of different Gata of Khata Nos. 43, 43(Kha), 44(Ga), 62, 68, 60, 63 and 58 of village Sindhora, Pargana Kolasla, District Varanasi (hereinafter referred as 'disputed plots').

2. For proper understanding, undisputed pedigree of said Brij Mohan is quoted below :-



3. Adya Shanker, Kripa Shanker and Radhe Mohan have filed objections u/s 9A(2) of U.P. Consolidation of Holdings Act, 1953 (UPCH Act) and claimed shares in disputed plots on basis of an allegation that it was an ancestral property in the hands of their father Ram Nath and his brother namely Vishwanath and they were entitled to their share as they born before date of vesting and sale deed executed in favour of vendees so far as father of Radhe Mohan was concerned (i.e. Ram Nath) as well as sale deed executed by mother of Adya Shankar and Kripa Shankar was concerned and that their right as minor ought to have been retested in regard to their respective share, was illegal and they claimed their respective share on disputed plots.

4. All vendees i.e. petitioners have contested objections that disputed plots were not an ancestral land. It was their personal acquisition and all sale deeds were valid and legal. Objectors have no share in disputed plots.

5. The Consolidation Officer considered respective objections and framed as many as 23 issues in relation to different Khatas and after considering statement of witnesses, held that widow Chamela Devi had no right to sale shares of Adya Shanker and Kripa Shanker being her minor sons at relevant time as well as that land sold by Ram Nath and Vishwanath have also included shares of Sheo Nandan and accordingly they have sold land in excess of their respective shares, therefore, accordingly distributed shares to all parties. For reference, relevant part of the order dated 12.12.1976 is quoted below :-

उपरोक्त तथ्यों एवं कागजात को देखने से यह स्पष्ट हो जाता है कि राम नाथ व विश्वनाथ ने गाटा संख्या ३१२/०-७९१। २८०।०९०। ६४०। ०-५५, ६४४।१-३५ की बेहक संकठा, रामनाथ कामता राम कुवंर शड़व कुमार, चि० रंजीत को किया है। और गाटा सं० ६८८।-५२, ६५०।-१९ का बयनामा राधे मोहन व मु० चमला में बहक कामता, राम कुवर शड़व कुमार चि रंजीत किया है।

गाटा नं० ७७६।-३१, ७७७।-२ का बयनामा राधे मोहन व चमेला देवी ने बहक रामा सिंह दिनांक १५-६-७५ को किया है। गाटा संख्या ९३२।१।-२९ का बयनामा राम नाथ व विश्वनाथ ने बहक हारी किया है।

गाटा नं० ९४९।-५८ का बयनामा रामनाथ व विश्वनाथ ने बहक विपति किया है।

गाटा नं० १०४१।-९५ का बयनामा राधे मोहन व चमेला देवी बहक हुबराज किया है।

गाटा नं० ०६८१७-०४स ६८३। ०११९, ११०१।११९, ११०२।१-३९ बयनामा राधे मोहन व मु० चमेला ने बहक सरजू सत्य नारायन बकुआ किया है।

खतौनी १३०९ फ० में खाता संख्या १० में विवादित भूमि हरनन्दन व शिवनन्दन के नाम व हिस्सा बराबर दर्ज है।

राम नाथ व विश्वनाथ को शिवनन्दन का हिस्सा वरासत में मिला और अपना हरनन्दन का पैतृक था जो की वरासत में मिला।

इस प्रकार से रामनाथ व विश्वनाथ को १/२ हिस्सा अपने बाप के मरने के बाद वरासतन मिला और आद्या हिस्सा शिवनन्दन का मिला। जो १/२ भाग हरनन्दन को मिला उसने राम नाथ व उनके लड़के राधे मोहन का आधे में बराबर बराबर हुआ और जो विश्वनाथ को मिला। उसमें विश्वनाथ आद्या शंकर व कृपा शंकर का बराबर बराबर मिला।

इससे यह स्पष्ट होता है कि राम नाथ व विश्वनाथ ने जो बयनामा किया उसमें बयनामा दौरान के शिवनन्दन वाला आधा भाग तो मिल ही गया । राम नाथ के हिस्से में १/२ रामनाथ का और १/२ राधे मोहन का होता है तथा विश्वनाथ वाले हिस्से में १/२ भाग में विश्वनाथ आद्या शंकर , कृपा शंकर का बराबर-बराबर होता है ।

मु० चमेला को आद्या शंकर कृपा शंकर के हिस्से के भाग का वयनामा करने का कोई अधिकार नहीं था ।

उपरोक्त वाद विवाद एवं तथ्यों से यह स्पष्ट हो जाता है कि गाटा संख्या ३१२। -७६, २८०। -९० , ६४०। -५५, ६४४। १-३५ में राधे मोहन आद्या शंकर कृपा शंकर का नाम बतौर सहखातेदार के अंकित होना चाहिए और इसमें आद्या शंकर का १/१२ कृपा शंकर १/१२ और राधे मोहन का १/८ अंश होगा।

गाटा नं० ६८८। -५२, ६५०। -१९ में आद्या शंकर व कृपा शंकर का नाम भी बतौर सहखातेदार दर्ज होगा और इसमें क्रमशः आद्या शंकर १/८ और कृपा शंकर का १/८ अंश होगा।

गाटा संख्या ६२ गाटा संख्या ७७६। ०-३१ , ७७७। ०-२७ में आद्या शंकर व कृपा शंकर का नाम बतौर सहखातेदार दर्ज होना चाहिए तथा इसमें आद्या शंकर का १/८ और कृपा शंकर का १/८ अंश होगा। गाटा संख्या ९३२। १।-२६ में आद्या शंकर कृपा शंकर राधे मोहन का नाम बतौर सह खातेदार दर्ज होगा तथा इसमें आद्या शंकर का १/१२ कृपा शंकर का १/१२ और राधे मोहन का १/८ भाग होगा। तथा इसी प्रकार गाटा संख्या ९४९। ०५८ में भी आद्या कृपा शंकर राधे मोहन का नाम बतौर सहखातेदार दर्ज होगा और इसमें आद्या शंकर का १/१२ और कृपा शंकर का १/१२ और राधे मोहन का १/८ अंश होगा।

खाता नं०६३ के गाटा नं० १०४२। -६५ में आद्याशंकर , कृपा शंकर का नाम बतौर सहखातेदार दर्ज होगा और इसमें आद्या शंकर का १/८ तथा कृपा शंकर का १/८ भाग होगा।

खाता नं०५८ के गाटा नं०६८९। ०-०४, ६८३। ०-१९ , ११०१। १-१९ , ११०२। १-३९ में आद्या शंकर व कृपा शंकर का नाम बतौर सहखातेदार दर्ज होगा और इसमें आद्या शंकर का १/८ और कृपा शंकर का १/८ भाग जो इस प्रकार से वाद बिन्दुओं का निस्तारण हो जाता है।

अतः आदेश हुआ कि खाता नं०४३।ख।, ४३८। के गाटा नं०३१२ । -७९, २८०। ०-९०, ६४०। ०-५५। ६४४। १-५५ में मैं संकठा आदि लिखित खातेदारान के नाम के साथ राधे मोहन पुत्र राम नाथ, आद्या शंकर पुत्र गण विश्वनाथ का नाम बतौर सहखातेदार दर्ज किया जाय तथा इसका

विभाजन इस प्रकार किया जाय ।

- १- राधे मोहन १/८ भाग एक बटा आठ
- २- कृपा शंकर १/१२ भाग एक बटा बारह
- ३- आद्या शंकर १/१२ भाग एक बटा बारह
- ४- संकठा १७/१२० भाग सत्रह बटा एक सौ बीस
- ५- राम नाथ १७/१२० भाग सत्रह बटा एक सौ बीस
- ६- कमला १७/१२० भाग सत्रह बटा एक सौ बीस
- ७- राम कुवर १७/१२० भाग सत्रह बटा एक सौ बीस
- ८- शिव कुवर १७/१२० भाग सत्रह बटा एक सौ बीस

खाता संख्या ४३ ग गाटा सं० ६८८। ०-५२, ६५०। -१९ में कामता आदि के नाम साथ कृपा शंकर पुत्र गण विश्वनाथ का नाम भी बतौर सहखातेदार दर्ज किया जाय तथा इसका विभाजन इस प्रकार किया जाय-

- १- आद्या शंकर १/८ भाग एक बटा आठ
- २- कृपा शंकर १/८ भाग एक बटा आठ
- ३- कामता १/४ भाग एक बटा चार
- ४- राम कुवर १/४ भाग एक बटा चार
- ५- शिव कुमार १/४ भाग एक बटा चार ।

खाता संख्या ६२ के गाटा संख्या ७७६।०-३१, ७७७।०-२७ में आद्या शंकर, कृपा शंकर पि० विश्वनाथ का नाम बतौर सहखातेदार दर्ज किया जाय तथा इसका विभाजन इस प्रकार किया जाय ।

- १- आद्या शंकर १/८ भाग एक बटा आठ ।
- २- कृपा शंकर १/८ एक बटा आठ ।
- ३- रामा आदि ३/४ भाग तीन बटा चार ।

खाता संख्या ६८ के गाटा नं० ९३२। १-२९ में आद्या शंकर कृपा शंकर पि० विश्वनाथ व राधे मोहन पुत्र राम लाल का नाम बतौर सहखातेदार दर्ज किया जाय तथा इसका विभाजन इस प्रकार हो ।

- १- आद्या शंकर १/१२ भाग एक बटा बारह ।
- २- कृपा शंकर १/१२ भाग एक बटा बारह ।
- ३- राधे मोहन १/८ एक बटा आठ ।
- ४- होरा १७/२४ भाग सत्रह बटा चौबीस ।

खाता संख्या ६० के गाटा नं० ९४०। -५८ में आद्या शंकर , कृपा शंकर पुत्र गण विश्वनाथ व राधे मोहन व राम नाथ का नाम बतौर सहखातेदार दर्ज किया जाय तथा इसका विभाजन इस प्रकार हो ।

- १- आद्या शंकर १/१२ भाग एक बटा बारह ।
- २- कृपा शंकर १/१२ भाग एक बटा बारह
- ३- राधे मोहन । १/८ एक बटा आठ
- ४- जोपत १७/२४ भाग सत्रह बटा चौबीस

खाता संख्या ६३ के गाटा नं० १०४१। ९५ में आद्या शंकर कृपा शंकर पुत्र गण विश्वनाथ का नाम बतौर सहखातेदार दर्ज किया जाय तथा इसका विभाजन इस प्रकार हो ।

१- आद्या शंकर १/८ भाग एक बटा आठ ।

२- कृपा शंकर १/८ भाग एक बटा आठ ।

३- रघुनाथ पु० साधो उर्फ शिव नाथ पुत्र राज पुत्र विश्वनाथ पुत्र गण राम प्रसाद २/४ भाग ।

खाता ५८ के गाटा नं० ६८१।०-४०, ६८३।०-१९ ११०१। १-१९ ११०२। १-३९ में आद्या शंकर कृपा शंकर पुत्र गण विश्वनाथ का नाम बतौर सहखातेदार दर्ज किया जाय तथा इसका विभाजन इस प्रकार हो ।

१- आद्या शंकर १/८ भाग एक बटा आठ

२- कृपा शंकर १/८ भाग एक बटा आठ ।

३- सरजू १/४ भाग एक बटा चार

४- सत्य नारायन १/४ भाग एक बटा चार ।

५- बबुआ १/४ भाग एक बटा चार ।

शेष आपत्तियां सूर्यबली आदि व गणेश आदि खारिज की जाती है फरीकेन सूचित हों। अमल दरामद मिसिल दफ्तर हो यहाँ आदेश वाद संख्या २६ लगायत ४७ पर भी लागू हो ।

ह०/ राम नयन सिंह

सो ओ २२-१२-१९७६।

6. Against aforesaid order dated 12.12.1976, six Appeals were filed by different vendees and one by Adya Shanker also. The Settlement Officer of Consolidation had allowed Appeal Nos. 3990 (Sankatha vs. Lallua), 3989 (Raghunath vs. Adya), 3999 (Raka vs. Adya), 3998 (Vipat vs. Adya), 3997 (Hori vs. Adya), however, Appeal No. 4083 (Adya vs. Sankatha) was rejected and accordingly, shares were re-distributed. For reference, relevant part of order of S.O.C. is quoted below :-

दोनो पक्षो के विद्वान अभिवक्ता के तर्कों के सुनने के बाद निष्कर्ष पर पहुचा हूँ कि बैनामा राम नाथ विश्वनाथ ने १९५५-५६ में किया है, बैनामे के आधार पर दाखिल खारिज होकर अपीलकर्ता का नाम अंकित हो चुका है। राम नाथ विश्वनाथ, राधे मोहन, आद्या शंकर कृपा शंकर के पिता थे और उन्होंने १९५५-५६ में ही बैनामा कर दिया बैनामों के आधार पर बदर कब्जे में है। रामनाथ, विश्वनाथ भूमिधर हो जाने के बाद बैनामे करने के हकदार हो जाते हैं। यू०पी० जमींदारी विनाश अधिनियम के लागू हो जाने के बाद हिन्दू कानून इस भूमि में लागू नहीं करेगा। क्योंकि वह एक स्पेशल एक्ट बनाया गया था राम नाथ विश्वनाथ को बैनामा किया । उनके वारिसान का कोई अंश नहीं होता । क्योंकि १९५५ से बादी का बेदार काबिज है और उसका नाम खाते में दर्ज हो चुका है। इस प्रकार एडवर्स पजेशन में होने की वजह से वादी का हक पूर्ण हो जाता है।

जहाँ तक तीन खातों में खाता संख्या ४३घ, ६२, ६३ के बैनामे का प्रश्न है। उस समय राधे मोहन बालिग होकर बैनामा किया है। और आद्या , कृपा शंकर की तरफ से मु० चमेली ने बैनामा लिखा है और यह बैनामा चमेली नाबालिग की संरक्षिका थी क्योंकि वह उसकी माता भी थी आद्या ने अपने बयान में अपने

खानदान का सजरा दिया है। और कहा कि आराजी निजाई उनकी मौरूसी जायदाद है। उनका अंश विवादित खातों में बताया है। जिरह में गवाह ने बताया कि जब पिता मरे तब दोनों भाई छोटे थे। खाने खर्च की व्यवस्था माँ करती थी उसके बड़ी बहन की शादी माँ के संरक्षण में हुयी उसकी माँ के पास खेती बारी के अलावा और कोई कारोबार नहीं है। यह भी कहा कि माँ से धोखे से फर्जी बैनामा करा लिया है। जिसको दावा किया गया था। नाबालिगी में हम लोगों का सारा कारोबार उसकी माँ करती थी। जो इन्तजाम उसकी माँ करती थी हम लोगों के हित में करती थी इस प्रकार आदया के बयान से स्पष्ट है कि बैनामा मु० चमेली ने बतौर संरक्षिका किया है। उसने बैनामा नाबालिगों के फायदे के लिये किया गया आदया के पिता के मरने के बाद नाबालिगों को देख भाल का भार चमेली के ऊपर था और उन्होंने गवाहों से रुपया लेकर जमीन बेच दिया। इसलिये बैनामा नाबालिगों के फायदे के लिये किया गया। आदया के बयानों से यह बात भी स्पष्ट है कि उनकी नाबालिगों में उनकी माँ ही संरक्षिका थी। इससे यह साबित हो जाता है कि राधे मोहन ने बालिग होने पर बैनामा किया है तथा नाबालिगों की तरफ से मु० चमेली ने सही बैनामा किया है आदया की पैदाइश दिनांक १५-१-४४ में लिखी गयी है और कृपा शंकर १९४७ में लिखा गया है। आदया १९६२ में बालिग हो गये और कृपा शंकर १९६५ में बालिग हुये। बालिग होने के तीन साल के अन्दर ही उन्हें बैनामा खारिज करने का मुकदमा करना चाहिए था किन्तु उन्होंने समय के अन्दर बैनामा खारिज करने का दावा नहीं किया। इसलिये उनके जो भी अधिकार थे वह समाप्त हो जाते हैं। इस सम्बन्ध में आर० डी० १९७२ पेज ४५१ का हवाला दिया गया कि अगर आक्यूपेन्सी टेनेन्सी का बैनामा हुआ है और दो वर्ष के अन्दर कोई मुकदमा बालिग होने पर नहीं किया गया है तो बैनामा लेने वाले का अधिकार पूर्ण हो जाता है। ए आई आर १९५१ सुप्रीम कोर्ट पेज ४७० पर दी गयी नजीर का उल्लेख किया गया। जिसमें यह कहा गया है कि एडवर्स पजेशन सेल डीड इनवैलीड होने पर अधिकार पूर्ण हो जाता है कि और इस सम्बन्ध में बार काउंसिल १९७२ पेज ३१८ की रूलिंग का भी हवाला दिया गया जिसमें कहा गया है कि एडवर्स पजेशन से सेल डीड इनवैलीड होने पर अधिकार पूर्ण हो जाता है और इस सम्बन्ध में बार काउंसिल १९७२ पेज ३१८ की रूलिंग का भी हवाला दिया गया। जिसमें कहा गया है कि बैनामा लेने वाले का कब्जा बैनामा करने वाले के विरुद्ध एडवर्स माना जायेगा और वह दस्तावेज डिनाई करते हैं। इस तरह से इन दस्तावेज बैनामा के कागजात को देखने से स्पष्ट हो जाता है कि हिन्दू ला नेशन जमींदारी विनाश अधिनियम के बाद लागू नहीं होगा। राम नाथ विश्वनाथ बैनामा लिखने के समय भूमिधर अंकित हो चुके हैं और उन्हें बैनामा लिखने के समय भूमिधर अंकित हो चुके हैं और उन्हें बैनामा लिखने का पूर्ण अधिकार था उनकी जायदाद में उनके लडकों का उस समय कोई अंश नहीं होता वे मरने के बाद ही उत्तराधिकार होता है। जिस भूमि का बैनामा रामनाथ विश्वनाथ ने किया है। उसमें कोई अंश राधे मोहन कृपा शंकर आदि को नहीं मिल सकता है। दूसरा वो बैनामा जो राधे मोहन मु० चमेली ने किया है। उक्त बैनामे में राधे मोहन ने बालिग होकर किया है और आदया कृपा शंकर की संरक्षिका चमेली देवी ने किया है। इन लोगों ने बालिग होने के तीन साल के अन्दर कोई निरस्तीकरण का दावा नहीं किया है। बैनामा चमेली ने वहैसियत संरक्षिका किया था और आदया आदि के फायदे के लिये किया है। बैनामा सही हुआ है। और इस तरह आदया कृपा शंकर का कोई हक नहीं मिल सकता है। क्योंकि उन्होंने समय के अन्दर कोई कार्यवाही नहीं किया है। जो दावा आदया ने सिविल कोर्ट में किया है उक्त दावा १९७० में किया गया जो मियाद बाहर है। क्योंकि दोनों भाई १९६९ में बालिग हो गये

और उक्त दावा भी दिनांक १६-११-७२ को निरस्त हो चुका है। जहाँ तक अपील संख्या ४०८३ का सम्बन्ध में यह बात स्पष्ट हो चुकी है कि राम नाथ विश्वनाथ ने मालिक होकर अपने अंश का बैनामा किया है और उनके लड़कों का कोई हक नहीं था और मुसम्मात चमेली देवी ने भी बतौर संरक्षिका बैनामा कर दिया है। अपीलकर्ताओं का कोई हक विवादित भूमि में नहीं होता है। इसलिये यह अपील निरस्त होने लायक है।

तदनुसार अपील संख्या ३९९०, ३९९८, ३९९९, ३९९७ स्वीकार की जाती है और अपील संख्या ४०८३ निरस्त की जाती है। चकबन्दी अधिकारी का आदेश समाप्त किया जाता है और आदेश दिया जाता है कि आधार वर्ष का इन्द्राज बदस्तूर रखा जाये। विभाजन निम्न प्रकार किया जाय।

गाटा संख्या २८० रकबा -९० एकड़ , ७१२ रकबा -७६ एकड़ ८४० रकबा -५५ एकड़ , ६४४ रकबा १-३५ एकड़ में संकठा राम नाथ, कामता राम कुवर शिव कुमार प्रत्येक १/५ अंश तथा गाटा संख्या ५८८ रकबा -५२ एकड़ ८५० रकबा -१९ एकड़ में कामता १/३ राम कुमार १/३ शिव कुमार १/३ विभाजित हो। गाटा संख्या ७७६, ७७७ रामा सिंह के नाम तनहा दर्ज रखा जाय। गाटा संख्या ९३२। १ होरी के नाम व पूर्ववत दर्ज रखा जाय। गाटा संख्या ९४९ विपत के नाम तनहा गाटा संख्या १०४१ रकबा -९५ एकड़ रघुनाथ , साधू , हुवराज के नाम पूर्ववत रखा जाय । गाटा संख्या ८८९ रकबा -०४ , ६८३ रकबा -१९ एकड़ ११०१ रकबा -१९ एकड़ ११०२। १ रकबा -३९ एकड़ में सरजू १/३ दर्ज किया जाय । यही आदेश अपील संख्या ३९८९ , ३९९९, ३९९८, ३९९७, ४०८३ पर भी लागू रहेगा ।

7. Adya Shankar, being aggrieved by aforesaid order, preferred a Revision No. 910/1978 before the Deputy Director of Consolidation and said Revision was allowed by an order dated 25.05.1979, and order passed by the Settlement Officer of Consolidation dated 14.02.1978 was set aside and shares were distributed amongst Adya Shanker and Kripa Shanker also and confirmed the distribution made by Consolidation Officer. For reference, entire order of D.D.C. passed in Revision is quoted below :-

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इस विवाद में निगरानीकर्ता द्वारा प्रस्तुत वंशावृक्ष पक्षों को मान्य है । वर्ष 1309 फ० के खतौनी उद्धरण में विवादित खाते की भूमि हरिनन्दन व शिवनन्दन कलवार के नाम बराबर हिस्सा में जिम्न 5 सरमोडयन अंकित है । इस प्रकार यह स्पष्ट है कि 1309 फ० तक बृजमोहन के दोनो पुत्र हरिनन्दन व शिवनन्दन समान रूप से इन भूखण्डों पर काबिज थे । इसके बाद 1359 के खतौनी उद्धरण में रामनाथ व विश्वनाथ पुत्रगण हरिनन्दन का नाम विवादित खातों की भूमि पर संयुक्त रूप से अंकित है । वर्ष 1309 व 1359 फ० के बीच के वर्षों में किसी भी वर्ष की राजस्व प्रविष्टि से सम्बन्धित खतौनी नहीं प्रस्तुत की गई है । जैसा कि उपरोक्त वंशावृक्ष से यह स्पष्ट होता है कि शिवनन्दन के पुत्र सीताराम निःसंतान मर गए । अतएव शिवनन्दन के हिस्से की भूमि भी हरिनन्दन को मिली । विद्वान अपीलीय न्यायालय में प्रस्तुत की गई मृत्यु रजिस्टर की प्रमाणित प्रतिलिपियों से स्पष्ट है कि शिवनन्दन वर्ष 1909 में सीताराम वर्ष 1919 में तथा हरिनन्दन वर्ष 1923 में मृतक हुये । शिव नन्दन के अंश के सम्बन्ध में पक्षों के विभिन्न तर्क हैं । निगरानीकर्ता का कथन है कि शिवनन्दन के पुत्र सीताराम के मृतक होने पर विवादित खातों के भूमि हरनन्दन को उत्तराधिकार के रूप में मिली तथा विपक्षीगण का कथन है कि शिवनन्दन व सीताराम का अंश

हरिनन्दन को उनके व्यक्तिगत क्षमता में मिला और इस प्रकार निगरानीकर्ता शिवनन्दन वाले 1/2 अंश पर सरहमुवड़यन की भूमि होने के कारण कोई अंश प्राप्त करने के अधिकार नहीं होते हैं। शिवनन्दन के मरने के बाद सीताराम उनके प्राकृतिक उत्तराधिकारी हुए थे और उस समय लागू उत्तराधिकार नियमों के आधार पर सीता राम की मृत्यु के बाद उनका कोई उत्तराधिकारी नहीं हुआ अपितु हरिनन्दन जो उसके चाचा थे, का नाम राजकीय अभिलेखों में अंकित हो गया। यह किन परिस्थितियों में हुआ इसका कोई साक्ष्य उपलब्ध नहीं है। फिर भी जो निष्कर्ष निकाला जा सकता है वह यह है कि सीताराम के 1/2 अंश को हरिनन्दन सहकृपक होने के कारण प्राप्त किये होंगे। इस प्रकार मेरा यह अभिमत है कि हरिनन्दन को विवादित खाते की सभी भूमि शिव- नन्दन व उसके पुत्र सीताराम के उत्तराधिकार के रूप में नहीं प्राप्त हुई थी। परन्तु उसका अंश उसका स्वतः अर्जित नहीं माना जायेगा। और तत्कालीन आभोग कानून के अनुसार हरिनन्दन को वर्ष 1919 में सम्पूर्ण अधिकार प्राप्त हो गए और विवादित भूखण्डों का स्वरूप पैतृक बना रहा। इस प्रकार हरिनन्दन के बाद विश्वनाथ को विवादित सभी भूखण्डों में समान रूप से प्राप्त हुआ।

अब प्रश्न उठता है कि क्या विश्वनाथ व राम नाथ की मृत्यु के बाद राधे मोहन व मु० चमेला देवी पत्नी विश्वनाथ की सरहमुवड़या की सम्पूर्ण भूमि को निगरानीकर्ता व उसके भाई कृपाशंकर के अंशों को भी विक्रय करने का कोई अधिकार था अथवा नहीं? पत्रावली पर उपलब्ध जन्मरजिस्टर के उद्धरण से स्पष्ट है कि आद्याशंकर 15-1-44 को तथा कृपाशंकर 5-1-1947 को जन्मे थे, जो निहित होने की तिथि के पूर्व की तिथियां हैं। निगरानीकर्ता के विद्वान अधिवक्ता ने 1966 आर०डी०, पृष्ठ 369 तथा 1967 आर०डी० पृष्ठ 191 में प्रतिपादित व्यवस्था के आधार पर यह तर्क प्रस्तुत किया कि आद्याशंकर व कृपाशंकर को राम नाथ व विश्वनाथ के जीवनकाल में ही 1/6 अंश प्राप्त था इन व्यवस्थाओं में माननीय उच्च न्यायालय ने यह मत प्रति- पादित किया है कि सरहमुवड़या की भूमि में हिन्दू कानून का विचार लागू नहीं होता और पिता को पुत्र के अंशों को बेचने का कोई अधिकार नहीं है। अतएव रामनाथ व विश्वनाथ द्वारा दिनांक 19-9-56, 27-6-55 तथा 15-6-55, 19-6-1956 को क्रमशः खाता सं० 43 ख 43 ग, 60 तथा 68 के सम्बन्ध में निष्पादित विक्रय पत्रों के आधार पर विपक्षी गण को केवल रामनाथ व विश्वनाथ के अंश ही अन्तरित हो सकते थे और इस अन्तरण के बाद विपक्षीगण व निगरानीकर्ता तथा उसके भाई की स्थिति सहखातेदार की हुई। अतएव विपक्षीगण, निगरानीकर्ता व उसके भाई के अंशों पर विरुद्ध कब्जे के आधार पर भी अपने अधिकार परिपक्व नहीं कर सकते हैं। निगरानी कर्ता के विद्वान अधिवक्ता ने यह तर्क प्रस्तुत किया कि विद्वान अपीलीय न्यायालय ने 1972 आर०डी०, पृष्ठ 1998 में प्रतिपादित व्यवस्था को अपने निष्कर्ष का आधार बनाकर कानून असंगत आदेश पारित किया है और उनके आदेश में हस्तक्षेप की आवश्यकता है इसी प्रकार मु० चमेला देवी पत्नी विश्वनाथ व राधे मोहन पुत्र राम नाथ ने दिनांक 15-4-61 व 15-6-57 को खाता सं० 43 व 62 व 63 के सम्बन्ध में निष्पादित विक्रय पत्रों के आधार पर विपक्षीगण के पक्ष में सम्पूर्ण अधिकार अन्तरित कर दिया परन्तु इन खातों में भी निगरानीकर्ता व उसके भाई का अंश था। जिस विक्रेताओं को अन्तरित करने का कोई भी अधिकार नहीं था। यह भी तर्क प्रस्तुत किया गया कि अन्तरण के वर्षों में निगरानी कर्ता व उसके भाई अवयस्क थे और बिना किसी सक्षम न्यायालय के आदेश के मु० चमेला देवी को उनके अंश बेचने का अधिकार नहीं था। इस आधार पर भी निगरानीकर्ता व उसके भाई का अंश विवादित खातों से समाप्त नहीं होता है।

विपक्षीगण की ओर से उनके विद्वान अधिवक्ता ने यह तर्क प्रस्तुत किया कि राधेमोहन व कृपाशंकर ने क्रमशः विद्वान चकबन्दी अधिकारी व विद्वान अपीलीय न्यायालय के आदेश के विरुद्ध कोई निगरानी नहीं प्रस्तुत की है। अतएव आद्याशंकर द्वारा प्रस्तुत यह निगरानी प्रागन्याय के सिद्धांत से बाधित है। इस तर्क की पुष्टि में विद्वान अधिवक्ता ने ए०आई० आर० 1966 सुप्रीमकोर्ट, पृष्ठ 1332 में प्रतिपादित व्यवस्था को अपना आधार बनाया। इस व्यवस्था में माननीय उच्चतम न्यायालय ने यह मत व्यक्त किया है कि यदि किसी प्रारम्भिक न्यायालय द्वारा एक ही वाद कारण के आधार पर दो समान वाद बिन्दु का निस्तारण गुण - दोष के आधार पर किया गया है और उस आदेश के विरुद्ध दो अपीले प्रस्तुत की गईं। जिसमें से एक प्रारम्भिक आधार पर जैसे अवधि अथवा अनुपस्थिति के कारण निरस्त हो गई तो दूसरी अपील के सम्बन्ध में प्रारम्भिक न्यायालय का आदेश अन्तिम नहीं हुआ प्रथम अपील में पारित आदेश दूसरी अपील में प्रागन्याय का प्रभाव रखेगा। इस व्यवस्था के सूक्ष्म अवलोकन से यह स्पष्ट होता है कि इस निगरानी में यह स्पष्ट रूप से लागू नहीं होती क्योंकि राधेमोहन ने विद्वान चकबन्दी अधिकारी के आदेश के विरुद्ध कोई अपील ही नहीं प्रस्तुत की थी। अतएव विद्वान अपीलीय न्यायालय तथा इस न्यायालय में अपने स्वत्व की बाबत की। इस प्रकार मैं विपक्षी के विद्वान अधिवक्ता के इस तर्क से सहमत नहीं हूँ। विपक्षीगण के विद्वान अधिवक्ता ने दूसरा तर्क यह प्रस्तुत किया कि राम नाथ व विश्वनाथ को उनके जीवनकाल में विवादित खातों की सम्पूर्ण भूमि को हस्तान्तरण करने का अधिकार था। क्योंकि आद्याशंकर ने अपने बयान में स्पष्ट कहा था कि उनके पिता व चाचा का विवादित खातों की भूमि में आधा आधा था। इस सम्बन्ध में मेरा विचार यह है कि अंशो का प्रश्न सदैव कानून का होता है और मात्र आद्याशंकर के कथन के आधार पर उनके अंश समाप्त नहीं हो जायेंगे। प्रश्न केवल यह है कि क्या विश्वनाथ को अपने अवयस्क पुत्रों के अंश को अपने जीवनकाल में बेचने का अधिकार था अथवा नहीं। यह सुनिश्चित व्यवस्था है कि सरहमुवइयन की सम्पत्ति में पुत्रों को, यदि वह निहित होने की तिथि के पूर्व पैदा हुए हो तो, अपने पिता के साथ समान रूप से अंश हुआ। इस विवाद में निगरानीकर्ता व उसके भाई वर्ष 1944 व 1947 में पैदा होने के कारण विवादित खातों में अपने पिता के साथ समान रूप से अधिकारी थे। पत्रावली पर उपलब्ध सभी विक्रय पत्रों के अवलोकन से यह स्पष्ट है कि वर्ष 1961 के पूर्व प्रतिपादित किए गए थे और उस समय तक निगरानीकर्ता व उसके भाई अवयस्क थे। आर०डी० 1968, पृष्ठ 365 में प्रतिपादित व्यवस्था के आधार पर पिता को अपने अवयस्क पुत्रों के अंश को कानूनी आवश्यकता की स्थिति में भी अन्तरित करने का कोई अधिकार नहीं प्राप्त है और ऐसे विक्रय पत्र स्वतः अपने में अवयस्कों के अंशो के सम्बन्ध में शून्य माने जाते हैं और उसके आधार पर क्रेतागण को कोई अधिकार नहीं मिलता। इस प्रकार यह स्पष्ट है कि विश्वनाथ व राम नाथ तथा बाद में मु० चमेली देवी व राधेमोहन को विवादित खातों में निगरानीकर्ता व उसके भाई के अंश को अन्तरित करने का कोई अधिकार नहीं था और उनके अधिकार इस आधार पर समाप्त नहीं हो सकते।

विपक्षीगण की ओर से उनके विद्वान अधिवक्ता ने यह तर्क प्रस्तुत किया था कि निगरानीकर्ता व उसके भाई ने वयस्क होने के बाद उपरोक्त विक्रय पत्रों के निरस्तीकरण के लिए कोई कार्यवाही नहीं की। विक्रय पत्र सदैव वायडबल अभिलेख होते हैं। जिनके निरस्तीकरण के लिए स्पेसिफिक रिलीफ एक्ट की धारा 31 के अन्तर्गत उपशम का अधिकार रहता है। उन्होंने अपने इस तर्क को ए०आई० आर० 1970 सुप्रीमकोर्ट,

पृष्ठ 1777 पर उल्लेखित व्यवस्था को आधार बनाया और यह तर्क प्रस्तुत किया कि वयस्क होने की तिथि के बाद से 12 वर्ष तक विपक्षीगण अभिलिखित रूप से कब्जे में रहने के कारण विरुद्ध कब्जे के आधार पर अपने अधिकार परिपक्व कर चुके। इस सम्बन्ध में उन्होंने यह तर्क प्रस्तुत किया कि उनका कब्जा मालिक है तथा निगरानीकर्ता व उसके भाई के जानकारी में है। अतएव विरुद्ध कब्जे का आधार परिपक्व होता है। म० चमेला देवी द्वारा निष्पादित विक्रय पत्रों का उल्लेख करते हुए विपक्षीगण के विद्वान अधिवक्ता ने यह तर्क प्रस्तुत किया कि हिन्दू माइनारिटी एण्ड गार्जियनशिप की धारा 8 के अन्तर्गत माता द्वारा अवयस्क पुत्रों के अंश बिना सक्षम न्यायालय की पूर्व अनुमति के अन्तरित करने का अधिकार होता है। परन्तु इसी धारा की उपखण्ड 3 के अन्तर्गत यदि कोई अभिलेख निष्पादित कर दिया जाता है तो वह अवयस्को द्वारा की गई कार्यवाही वायदेबुल होती है। इस प्रकार मु० चमेला देवी द्वारा निष्पादित विक्रय पत्रों को भी निगरानीकर्ता व उसके भाई ने वयस्क होने के बाद किसी सक्षम न्यायालय में चुनौती नहीं दी। अतएव यह जावेगा कि उन्होंने निर्धारित अवधि के अन्दर इनकार न करने से अपने अधिकार समाप्त कर दिए। यह भी तर्क प्रस्तुत किया गया कि निगरानीकर्ता व उसके भाई में वर्ष 1970 में मुंसिफ हवाली के न्यायालय में मुकदमा प्रस्तुत कर भूखण्ड सं० 667/1, 687/2 तथा 650 के सम्बन्ध में मु० चमेला देवी व राधेमोहन द्वारा विपक्षीगण के पक्ष में निष्पादित विक्रय पत्रों को निरस्त कराने के लिए वाद प्रस्तुत किया था, जो पक्षों की अनुपस्थिति में दिनांक 16-12-72 को निरस्त हो गया था और चूंकि उस समय भी यह वाद कालबाधित था। अतएव निगरानीकर्ता व उसके भाई को पुनः कोई अधिकार नहीं मिल सकता। पत्रावली पर उपलब्ध 1361 फ० के बाद से उद्धरणों से यह स्पष्ट होता है कि विवादित खातों की भूमि पर विपक्षीगण कब्जे में चले आए हैं और निगरानी कर्ता व उसके भाई कभी सह कब्जे में नहीं रहे। ट्रांसफर आफ प्रापर्टी एक्ट की धारा 54 के अन्तर्गत निष्पादित यदि कोई विक्रय पत्र अनियमित एवं गैरकानूनी होता है और उस अन्तरण के आधार पर क्रेतागण कब्जे में चले आते हैं तो उन्हें कोई अधिकार अन्तरित नहीं होते अपितु उनका कब्जा विरुद्ध न माना जाता है और इसी आशय की व्यवस्था के आधार पर विपक्षी के विद्वान अधिवक्ता का कथन है कि अन्तरणों के बाद विपक्षीगण विवादित खातों की भूमि पर विरुद्ध कब्जे के आधार पर अपना स्वत्व परिपक्व कर चुके हैं परन्तु मेरे विचार से यह व्यवस्था उन अनियमित अन्तरणों में लागू होती है जिनमें सम्पूर्ण अंश का अन्तरण किया गया हो। इस विवाद में जैसा कि ऊपर उल्लेख किया जा चुका है अन्तरण अभिलेखों के निष्पादन के समय निगरानीकर्ता व उसके भाई अवयस्क थे। अतएव उनके पिता व माता को उनके अंशों को विक्रय करने का अधिकार नहीं था और उनके अंशों की भूमि पर विक्रय विरुद्ध कब्जा का सिद्धांत नहीं लागू होना जाना जावेगा। क्रेता (विपक्षीगण) निगरानीकर्ता व उसके भाई के साथ सहखातेदार हुए। अतएव विद्वान अपीलीय न्यायालय ने निगरानीकर्ता व उसके भाई के स्वत्व के निर्धारण में विरुद्ध कब्जे के आधार पर अधिकार के परिपक्व होने का गलत निष्कर्ष निकाला है। उपरोक्त निष्कर्ष के परिप्रेक्ष्य में मेरा यह अभिमत है कि निगरानीकर्ता व उसके भाई, जो निहित होने की तिथि के पूर्व पैदा हुए थे और उन्हें विवादित खातों की भूमि जो ज०वि० के पूर्व सरमोडयन की थी, में उनको अपने पिता के साथ समान अंश प्राप्त था। बिना किसी कानूनी आवश्यकता के उन्हें अपने पुत्रों के अंश अन्तरित करने का अधिकार नहीं था। विद्वान अपीलीय न्यायालय ने अपने आदेश में उल्लेख किया है कि विश्वनाथ व मु० चमेला देवी ने अपने अवयस्क पुत्रों के लाभ के लिए अन्तरण किये क्यो कि उनकी अवयस्कता में नाबालिग

पुत्रों के देखरेख का भार उन्हीं पर था । अन्तरण अभिलेख के अवलोकन से यह स्पष्ट होता है कि विश्वनाथ द्वारा निष्पादित विक्रय पत्रों में यह उल्लेख है कि उन्हें अन्तरण की तिथियों पर अपने रोजगार की वृद्धि के लिए रुपये की आवश्यकता थी । मु० चमेली देवी द्वारा निष्पादित किए गए विक्रय पत्रों में यह उल्लेख है कि अन्तरण की आवश्यकता इसलिए पड़ी कि उन्हें कोआपरेटिव सोसाइटी व अन्य महाजनो के कर्ज की आवश्यकता है । इस प्रकार अन्तरण अभिलेखों में प्रदर्शित आवश्यकताएं किसी प्रकार से निगरानीकर्ता व उसके भाई, जो उस समय अवयस्क थे, के फायदे के लिए नहीं की गई थी और इस निष्कर्ष के परिप्रेक्ष्य में मेरा यह मत है कि विद्वान अपीलीय न्यायालय ने इस सम्बन्ध में निष्कर्ष निकालने में भूल की है । उपरोक्त प्रस्तरों में दिए गए निष्कर्षों के परिप्रेक्ष्य में निगरानी स्वीकार की जाती है । विद्वान अपीलीय न्यायालय का आदेश दिनांक 14-2-76 निरस्त किया जाता है । निगरानीकर्ता व उसके भाई कृपाशंकर का अंश विवादित खातो की भूमि में वही माना जाता है जो विद्वान चकबन्दी अधिकार ने अपने आदेश दिनांक 22-12-76 में निकाला था । खातो का विभाजन निम्न प्रकार होगा :-

खाता सं० 43 ख तथा 43 घ :- कृपाशंकर 1/12, आद्याशंकर 1/12 संकठा, कामता, रामकुवर, शिवकुवर व रामनाथ पुत्रगण रंजीत 1/6 प्रत्येक।

खाता सं० 68 :- आद्याशंकर व कृपाशंकर 1/12 प्रत्येक, हीरा 5/6

खाता सं० 7 :- आद्याशंकर व कृपाशंकर 1/12 प्रत्येक व विगत 5/6 अंश ।

शेष खातो के सम्बन्ध में विद्वान च०अ० द्वारा लगाए गए अंश की पुष्टि की जाती है । तदनुसार अभिलेखों में संशोधित किया जाय ।

दिनांक 25.05.1979

उप संचालक (चकबंदी)

वाराणसी

8. Aforesaid orders are challenged by vendees-petitioners in above referred three writ petitions so far as their respective part of purchased land in disputed plots is concerned and that widow of Vishwanath could sell shares of their two sons viz. Adya Shanker and Kripa Shanker when they were minor as well as Ram Nath father of Radhe Mohan and Radhe Mohan himself has sold their respective part of land and not beyond their respective legal rights.

9. Crux of argument of S/Sri Anil Kumar Singh, Jagdish Singh and Ashish Kumar Mishra, learned advocates for petitioners in Writ B Nos. 6873/1979, 5560/1979 and 4008/1979 were that widow of Vishwanath (Chamela Devi) has sold not only her shares but shares of her two minor sons also only for their welfare in order to repay loan amount, therefore, said transactions were protected. Her sons have not challenged concerned sale deeds within stipulated period when they became major as such they have relinquished their right, if any.

10. Learned advocates also submitted that revision petition was filed only on behalf of one Objector i.e. Adya Shanker, whereas Radhe Mohan and Kripa Shanker have not filed any revision petition, therefore, the D.D.C. has committed an error when he granted relief not only to Adya

Shanker but his brother Kripa Shanker and Radhe Mohan to some extent also. They have also disputed about allotment of shares provided by D.D.C. as well as C.O. for other shares.

11. Per contra, S/Sri Manish Kumar Srivastava, Ashish Kumar and Yaman Seth, learned advocates for respondents have supported impugned orders that D.D.C. has passed a very reasoned order. Once a share of one son was protected, its consequence shall follow i.e. interest of other son has to be protected. Each issue argued was well considered and the order was passed on basis of record.

12. To support their submissions, learned counsel for rival parties have placed reliance upon judgments of this court in the case of **Shivraji Vs. Deputy Director of Consolidation of Allahabad 1997 (88) RevDec 562**, **Savitri Devi Vs. Hnd Addl Dist & Session Judge, Deoria 1997 (31) All LR 367**, **Ram Deen Koeri and others Vs. Deputy Director of Consolidation and others 2005 (99) RD 680**, **Surendra Pal Vs. D.D.C., Meerut 2020 3 AWC 2985**, and Supreme Court in cases of **Kuppala Obul reddy Vs. Bonala Venkata Narayana Reddy (dead) through Lrs. (1984) 3 SCC 447**, **Amirtham Kudumbah v. Sarnam Kudumban, (1991) 3 SCC 20**, **Vishwambhar v. Laxminarayan, (2001) 6 SCC 163** **Nangali Amma Bhavani Amma Vs. Gopalkrishnan Nair and others (2004) 8 SCC 785**, **Nangali Amma Bhavani Amma v. Gopalkrishnan Nair, (2004) 8 SCC 785**, **Ram Chandra Singh v. Savitri Devi, (2004) 12 SCC 713**, **Saroja v. Santhilkumar, (2011) 11 SCC 483**, **Murugan v. Kesava Gounder, (2019) 20 SCC 633**, **Jamila Begum v. Shami Mohd., (2019) 2 SCC 727**.

13. I have considered above submissions and perused the records.

14. In present case, following facts are not much under dispute :-

(a) Pedigree as mentioned in para 2 of present judgment.

(b) Shivnandan (brother of Harinandan) died in 1909 and his son Sitaram died issue less in 1919. Subsequently Harinandan died in 1923.

(c) As per revenue records (Khatauni), Revenue entry was made after Sitaram, died issue less in 1919 i.e. his share from his father Shivnandan (predeceased) probably transferred to Harinandan (uncle) died subsequently. Nature of transfer was disputed but nature of land remains ancestral.

(d) Petitioners have not brought on record any Khatauni between 1309F-1359F, i.e. till 1959.

(e) Petitioners have claimed right over respective part of disputed plots on basis of different sale deeds executed by Ramnath and Vishwanath (Sons of Harinandan) in 15.06.1955, 27.06.1955 and on 19.09.1956 as well as by sale deed executed by Radhey Mohan (son of Ramnath) on 15.06.1957 and also by Chameli (widow of Vishwanath and mother of Adya Shankar (born in 1944) and Kripa Shankar (born in 1947)), (when both were admittedly minor) on 15.04.1961 qua to therein respective shares also.

(f) Adya Shankar became major in 1962, where as Kripa Shankar became major in 1965 and for first time they made objection to sale deeds executed by their mother in respect of their respective shares in the year 1976 during consolidation proceedings, though there is a reference of

a Civil Suit of year 1970, which was dismissed on 16.11.1972, though details of specific relief sought therein is not on record.

15. First issue was how share of Shivanandan, died in 1909 and his son died issue less in 1919, would devolve to Harinandan (brother of Shivanandan) or not and if the answer is yes, then it was due to inheritance being real brother or in his personal capacity as alleged by petitioners.

16. In order to answer the referred issues, the Court has to rely upon revenue record and to consider finding returned by authorities under UPOCH Act. According to revenue record after 1919 (i.e. after death of Shivanandan and her sole son Sitaram, who died issue less) name of Harinandan was recorded. No substantive material was brought on record that it was recorded for any other reason than being on basis of inheritance being ancestral land. Any reference that share of deceased Shivanandan and his son Sitaram (i.e. 1/2 share) was devolved to Harinandan through their personal interest cannot be accepted, being not based on any evidence. The DDC has in impugned order has though not returned specific finding about manner of transfer but finally concluded that firstly share of Shivanandan and his son was devolved to Harinandan and definitely not in individual capacity and secondly, nature of land in dispute always remains 'ancestral' and thirdly after Harinandan, his both son namely Ramnath and Vishwanath got equal share. Above finding of DDC being based on revenue records and legal interpretations, cannot be disturbed accordingly upheld.

17. Now the second issue is that whether after death of Vishwanath, Chamela (widow of Vishwanath) had any right to make sale deed qua to share of Adya Shankar and Kripa Shankar both being minor and sons of Vishwanath and Chamela and what would be the effect, when both minor children have not taken any effective steps to challenge sale deeds, after they become major till they filed objections in consolidation proceedings.

18. It is not under dispute that Mst. Chamela had executed sale deed of share of her minor children also without any permission of Competent Authority as well as purpose of sale deed was also not for any benefit of minor children rather to repay debt taken by her late husband, therefore, there were valid reasons for Adya Shanker and Kripa Shanker to question said sale deeds when they became major, though they have not taken any effort to challenge it for many years. Nature of such sale deeds is voidable. The Revisional Authority has held that Mst. Chamela had no right to execute sale deeds of the share of her minor children since it was not for a legal necessity being not for any benefit of minor children, therefore, said sale deeds were void-ab-initio.

19. In a very recent judgment passed by the Supreme Court in the matter of **K.S. Shivappa vs. Smt. K. Neelamma**, 2025 INSC 1195 : 2025 SCC Online SC 2149 wherein Supreme Court has referred various earlier judgments on the issue i.e. rights of a minor in such cases and for reference, relevant paragraph being para no. 32 is quoted below :-

32. In view of the above discussion, it can safely be concluded that a voidable transaction executed by the guardian of the minor can be repudiated and ignored by the minor within time on attaining majority either by instituting a suit for setting aside the voidable transaction or by repudiating the same by his unequivocal conduct.

20. In aforesaid circumstances and considering above referred undisputed facts that Adya Shanker and Kripa Shanker have not taken any steps when they became major in the year 1962 and 1965 respectively as well as have not taken any steps repudiating voidable transactions by their conduct and further a suit was also dismissed. They have lost their rights, if any, on the land which was sold by their mother.

21. The findings returned by Revisional Authority that mother of minor children had no right to make sale deed would not be sufficient, however, a further consideration was skipped from consideration that it has to be seen whether minor children have taken any step or challenged the sale deed or repudiating it by way of any conduct to set aside the voidable transactions. Therefore, findings returned by D.D.C. are not legally justified, hence, are set aside.

22. There is a reference of correction order dated 15.06.1979. Since this Court has already set aside the findings given by Deputy Director of Consolidation on above referred grounds, therefore, effect of above referred correction order would not have no legal consequence.

23. Accordingly, all writ petitions are **disposed of** with a further direction that concerned Consolidation Officer will distribute shares as per order passed by this Court.

(2026) 4 ILRA 401
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 29.04.2026

BEFORE

THE HON'BLE SHEKHAR B. SARAF, J.
THE HON'BLE ABDHESH KUMAR CHAUDHARY, J.

Writ C No. 1866 of 2026

M/s S.A. Enterprises

...Petitioner

Versus

R.B.I. & Ors.

...Respondents

ISSUE FOR CONSIDERATION

(1) Whether there exists any law or regulation of the Bank or of the Reserve Bank of India (R.B.I.) that empowers any Bank to declare an account suspicious and consequently, freeze the said account, if the annual income declared in the Account Opening form is less than the amount being credited in the said account.

(2) Whether a bank is empowered in law to freeze the bank account of its customer on its own volition merely on the ground that certain transactions appear suspicious, without any complaint, First Information Report, order of a competent authority or statutory authorization.

(3) Whether the provisions of Sections 12, 12AA and 17 of the Prevention of Money Laundering Act, 2002 authorise a bank, acting as a reporting entity, to freeze the bank account of a customer on account of an alleged suspicious transaction;

(4) Whether freezing of the petitioner's bank account without notice, without authority of law and without any criminal proceedings violated the petitioner's constitutional and legal rights and entitled him to de-freezing of the account and consequential relief.

HEADNOTE

Prevention of Money Laundering Act, 2002, ss.12, 12AA, 17 – Constitution of India – Arts.19(1)(g), 21, 226 – Indian Contract Act, 1872, s.171 – Banking law – Freezing of bank account by bank on its own volition – No FIR – No complaint – No order of competent authority – No direction by investigating agency – Amount of ₹23 lakhs credited in petitioner's current account – Bank treated transaction as "suspicious" on the ground that the petitioner had disclosed annual income of ₹5.76 lakhs while opening the account – Bank froze the account after receiving an e-mail from another bank alleging suspicious activity in the account of a third party – Bank relied upon Sections 12(2) and 12AA of the Prevention of Money Laundering Act, 2002 to justify freezing of the account – Petitioner contended that the account was frozen without authority of law, without notice and without any criminal proceedings – Justification :

Held: Freezing of a bank account is governed by Section 17 of the Act, and that too by the competent authority after the twin requirements of (i) possession of information and (ii) reasons to believe are duly satisfied. Section 12 of the Prevention of Money Laundering Act, 2002 merely casts a duty upon the reporting entity to maintain records and keep information confidential. Section 12 does not authorise or remotely concern freezing of a bank account by the banking company. Section 12AA merely relates to enhanced due diligence and does not contemplate freezing of a customer's account.

Banks do not have the power to freeze a bank account at their whims and discretion merely by terming any transaction as suspicious, without assigning any reason. The provisions of the Prevention of Money Laundering Act, 2002 cannot be self-invoked by the Bank to deny the legitimate right of a customer to operate his bank account. There ought to be some overt activity complained of against the customer. Where a designated authority approaches the Bank to take action against any account of its customer, the designated authority is also required to provide some proof of suspicious activities.

The Reserve Bank of India, by its Circular dated 2 July 2012 relating to the obligations of banks under the Prevention of Money Laundering Act, 2002, has provided in paragraph 2.16(2) relating to Suspicious Transaction Reports (STRs) that banks should not put any restrictions on the operation of accounts in respect of which an STR has been made. Thus, even where an STR has been lodged, the Bank is not authorised to freeze or restrict operation of the account. Any blanket or disproportionate freezing of bank accounts, particularly where the account holder is neither an accused nor even a suspect in the offence under investigation, is manifestly arbitrary, and in the teeth of the fundamental rights under Article 19(1)(g) and 21 of the Constitution of India, which encompass the right to livelihood and freedom to carry on trade and business.

The only instance when the bank can freeze an account in its own volition is when the bank has a lien on the said account by virtue of certain loans having been taken by the customer (see: Section 171 of the Contract Act, 1872). In the absence of such a lien no authority is present with a bank to stop the operation of an account of a customer.

The relationship between a banker and its customers is that of a trustee holding money on behalf of its customers. The duty of the bank is that of a trustee and not of any investigative agency with a roving eye. Bank cannot be allowed to transform into an archaic money lender who may accept the deposit and refuse its return to the depositor. The bank is permitted to freeze the account only for legitimate purposes and in accordance with law.

Respondent-Bank had no authority to freeze the petitioner's bank account on the basis of a suspicious transaction. There was no police complaint, no private complaint and no order of any competent authority. The petitioner was at least entitled to know the reason for freezing of his account. The Respondent-Bank was directed to de-freeze the petitioner's account forthwith. Considering that the arbitrary freezing had paralysed the petitioner's business, impaired his commercial goodwill and caused financial loss, costs of ₹50,000 were imposed upon the Respondent-Bank.

Writ petition was allowed. (E-5)

[Paras 14, 16, 18, 22, 26, 27, 31, 33]

CASE LAW CITED

Khalsa Medical Store Through Proprietor Yashwant Singh v. Reserve Bank of India Through Governor and Three Others, **2026 SCC OnLine All 164**;
OPTO Circuits (India) Ltd. v. Axis Bank, **(2021) 6 SCC 707**.

List of Acts

Constitution of India;

Prevention of Money Laundering Act, 2002;
Bharatiya Nagarik Suraksha Sanhita, 2023;
Indian Contract Act, 1872.

List of Keywords

Freezing of bank account; Bank acting as investigating agency; Suspicious transaction; Reporting entity; Prevention of Money Laundering Act, 2002; Section 12 PMLA; Section 12AA PMLA; Section 17 PMLA; Reserve Bank of India Circular dated 02.07.2012; Suspicious Transaction Report (STR); Banking relationship; Banker as trustee; Fiduciary relationship; Right to livelihood; Right to carry on trade and business; Article 21; Article 19(1)(g); De-freezing of bank account; Investigation by bank; Absence of FIR; Absence of complaint; Absence of competent authority's order; Section 171 of the Contract Act; Banker's lien; Arbitrary freezing; Compensation.

CASE ARISING FROM

Petitioners filed the writ petition seeking de-freezing of their current bank account, alleging that it had been frozen by the respondent-bank on suspicion of certain transactions without any complaint, FIR or order of a competent authority.

Appearances for Parties

Advs. for the Petitioner: Shrikant Mishra, Mansi Saxena

Advs. for the Respondents: **Vinay Shankar**.

(Delivered by Hon'ble Abdhesh Kumar Chaudhary, J.)

1. Heard Sri Shrikant Mishra, learned counsel appearing on behalf of the petitioners and Sri Vinay Shankar, learned counsel appearing on behalf of the respondents No. 2 and 3.

2. This is a petition seeking de-freezing of the bank account. However, interestingly the present bank account has not been frozen due to any cyber-crime as had been vogue these days but due to the metamorphosis of the current Bank into an Investigating agency. The act of the Bank in casually freezing the bank account of an individual besides being a serious breach of trust with its account holder also amounts to demoralizing business sentiment, losing faith in the financial system and most importantly having adversarial impact on the economic prosperity of any country.

3. The facts of the present case lie in a narrow compass in as much as the petitioner claims to be the sole proprietor of M/s S.A. Enterprises and is engaged in lawful business of sale and purchase of machineries relating to fisheries and allied works, and the firm is registered for Goods and Service Tax with the Government of India and also maintains a valid Bank account number 381702000000301 in the name of his firm in the Respondent-Indian Overseas Bank, Alambagh branch, Lucknow.

4. During the business activities of the firm, it is stated that on or about 16th January, 2026, an amount of ₹23 lakhs came to be transferred through R.T.G.S. by one Mrs. Anita to the petitioner, allegedly for purchasing of machineries. On the same day the petitioner withdrew an amount of ₹5 lakhs from the said bank account. It is the case of the petitioner that subsequently on 20th January, 2026, when he attempted to withdraw further amount from the bank account of his firm, he was informed orally by the Bank officials that the account had been frozen and no transaction could be permitted.

5. Apparently, the petitioner visited the Bank on several occasions, requesting them to de-freeze his account, however, the same did not find any favour with the Bank official, and as such the petitioner in order to ventilate his grievance, send a text message to the Bank Manager on 25th of January 2026 (available on record). The text messages were followed by a Complaint and Legal Notice to the Branch Manager on 9th of February 2026. Since the Bank officials did not oblige to de-freeze the bank account of the petitioner, the present writ petition has been filed before this Court, relying on a judgment passed by this Court in *Writ-C-No.12211 of 2025 (Khalsa Medical Store Through Proprietor Yashwant Singh versus Reserve Bank of India Through Governor and Three others)*.

6. Notice was issued to the Respondent-Bank and accordingly, a short counter affidavit came to be filed by them on 6th February, 2026 to which rejoinder was filed by the petitioner on 17th February, 2026. Accordingly, thereafter, the matter was taken for final disposal with the consent of the parties.

7. Mr. Shrikant Mishra, learned counsel for the petitioner has submitted that the petitioner is not implicated as accused in any matter nor is there any order from any competent authority to freeze the Bank account of his firm. According to him, there is no criminal or any other complaint raised against his bank account at any point of time, therefore, the Authorities could not have frozen his bank accounts and as such the very freezing of the bank account is illegal and bad in law. He further submits that neither any written notice or order or reason was ever communicated to the petitioner regarding freezing of his bank account and as such the action of the Respondent-Bank is arbitrary and in violation of the principles of natural justice. According to him, the illegal and arbitrary act of freezing of his bank account without any reasons has led the petitioner firm to suffer severe financial loss, loss of reputation, and disruption of business operations.

8. On the other hand, Mr. Vinay Shankar, learned counsel for the Respondent-Bank has submitted that the bank account of the petitioner was frozen due to certain suspicious transactions in the petitioner's account. According to him, the suspicion was due to the fact that although the petitioner had declared his annual income of ₹5.76 lakhs while opening his current account,

however, a huge amount of ₹23 lakhs came to be credited in his account and apparently, on the same day, an amount of ₹5,00,000 was transferred/withdrawn by the petitioner. The learned counsel relied upon the provisions of Section 12(2) of the Prevention of Money Laundering Act, 2002 to justify the freezing of the account. He further submits that the said freezing of the bank account has been done to protect the interest of the petitioner as well as to restrict further debit/transfer of any money in the said bank account. He also submitted that although a letter dated 20th February, 2026 was issued by the Bank to the petitioner to provide details of such transaction, however, the petitioner failed to comply with the said letter and it was on their own investigation that they came to learn that the said amount of ₹23 Lakhs was credited in the petitioner's current account by Bank of Maharashtra, under a loan extended to one Smt. Anita.

9. According to the learned Counsel, the said Bank of Maharashtra had noticed some suspicious activity in the account of Smt. Anita and as such has requested the Respondent-Bank to not release the said amount and refund the same to them as per E-mail dated 11th March, 2026. Thus, according to the learned counsel, as fraudulent and suspicious activities were visible in the account of the petitioner and in order to save the said money as a precautionary measure, the Respondent-Bank has frozen the bank account of the petitioner.

10. This Court has heard the learned Counsels for the parties at length and perused material on records.

11. As far as the opening of the current account with the Respondent-Bank on 30th of December 2025, and declaration of annual income of ₹5.76 lakhs in the form for Opening of Current Bank Account by the petitioner is concerned, the same is not under dispute. However, the issue is whether there exists any law or regulation of the Bank or of the Reserve Bank of India (R.B.I.) that empowers any Bank to declare an account suspicious and consequently, freeze the said account, if the annual income declared in the Account Opening form is less than the amount being credited in the said account. Although the said issue is axiomatic as far as the disposal of the present petition is concerned, however, keeping in mind that the counsel for the Bank had been harping on the said fact, this Court while hearing the present petition, invited the learned Counsel for the Bank to bring on records any such circular or address his argument on the said issue. However, the Respondent- Bank, neither filed any such document in his counter-affidavit nor was able to show any relevant provision in law relating to the said issue. This Court also does not find any guidelines/notification/circular/S.O.P. etc., of any Bank which specifically bars crediting of more amount than the annual income mentioned in the account opening form of the Bank. Further, this Court does not find anything unusual about the credit of ₹23,00,000/- into the account of the petitioner, within a period of 15 days from the opening of the current account or having withdrawn ₹5 lakhs on the same day, in the absence of any complaint of fraudulent activity from any quarter.

12. The fulcrum of the argument of the learned Counsel for the Respondent-Bank is that the account is suspicious and there is a requirement under law as per Section 12(2) of the Prevention of Money Laundering Act, 2002 to freeze the bank account, in case there is any suspicious transaction in the bank account, which according to the Respondent- Bank has been complained of by the Bank of Maharashtra. The said submission of the Respondent-Bank is two-fold, viz (i) Suspicious

transaction and (ii) requirement of law under Section 12(2) of the Prevention of Money Laundering Act, 2002.

13. This court proposes to deal with both the arguments in seriatim.

14. First and foremost, we are unable to countenance as to under what provision of law and as to under what authority, the Respondent-Bank can self-authorize itself to venture into a path of investigating the source of the amount of ₹23 lakhs which was credited in the petitioner's account. In any case we find that the Respondent-Bank investigated to find that the said ₹23 lakhs had been obtained by Smt. Anita by availing loan facility for carrying out fish business from Bank of Maharashtra. Respondent-Bank claims that the said Bank of Maharashtra noticed certain suspicious activity in the account of Smt. Anita and as such requested the Respondent-Bank to not release any amount from the bank account of the petitioner and refund the same to them. However, we find that there is neither any police complaint nor any private complaint to any authority in the present matter. Further, we also do not find any Court order or any material brought on record to show that there is any genuine issue relating to suspicious activity. On the contrary, we find that the material brought on record by the petitioner in his rejoinder-affidavit reveals that the current bank account of the said Mrs. Anita is functional and there had been no freezing of the said account. It is rather strange that the basis of alleged fraudulent or suspicious transaction in Mrs. Anita's bank Account i.e. the Bank of Maharashtra, had been made a foundational fact for freezing the bank account of the petitioner, however, the fact of the matter remains that the account of Bank of Maharashtra maintained by the said Mrs. Anita has not been frozen by Bank of Maharashtra itself. Further, it is noticed from the statement of account of the bank account of the said Mrs. Anita maintained at Bank of Maharashtra that the said Mrs. Anita had been carrying normal day-to-day transactions in her said bank account and there has been no action or complaint or for that matter any proposed recovery action whatsoever by the said Bank of Maharashtra against the said Mrs. Anita relating to her bank account or the loan extended to her. Thus, the very foundation for suspecting the bank account of the petitioner crumbles like a pack of cards. The submission of suspicious transaction is wholly illegal, ill-conceived and as such rejected.

15. We also find that the Respondent-Bank has heavily relied in their counter affidavit that Bank of Maharashtra has written some E-mail dated 11.03.2026 to the Respondent-Bank relating to some fraudulent transaction in the bank account of Mrs. Anita, thereby allegedly asking the Respondent-Bank to freeze the bank account of the petitioner. From a perusal of the aforesaid e-mail annexed along with the counter-affidavit of the Respondent Bank, it is clear that the said E-mail dated 11.03.2026 is in fact a reply to a query raised by the Respondent-Bank on 09.03.2026. This Court fails to understand, in the first instance under what law could the Bank start a self-declared investigation without there being any Complaint lodged by anyone, and secondly, if at all a query is put and some adversarial observation or request is made by a third-party Bank, then how on earth the Respondent-Bank could have obliged on the said request, breaching the trust between the Bank and the account holder. Apparently, it is borne from the records that not only the said request of Bank of Maharashtra is in the air and without any basis, however, the whole process is abortive as this Court is unable to find any subsequent action taken by the said Bank of Maharashtra pursuant to the E-mail reply dated 11.03.2026 sent to the Respondent-Bank. There is neither any complaint by the said Bank of Maharashtra nor any order from any Competent

Authority nor any proceedings has been initiated by the said Bank against the said Smt. Anita, for any fraudulent transfer as is mentioned in the reply E-mail dated 11.03.2026. Clearly, the E-mail has been self-generated by the Bank of Maharashtra without any complaint or order and merely to collude with the Respondent-Bank in their illegal acts and omissions of illegally freezing the bank account of the petitioner.

16. The learned counsel for the Bank has vehemently tried to justify the illegal act of the Bank by relying on Section 12(2) of the Prevention of Money Laundering Act, 2002 which again is misconceived and illegal. The learned counsel reiterated his submission as made in paragraph 4 of the counter-affidavit filed by the Respondent-Bank. Firstly, we note that Section 12(2) as quoted and mentioned at paragraph 4 of the Counter-Affidavit is at stark difference to the actual Section 12(2) of the Prevention of Money Laundering Act, 2002. Apparently, we find that Section 12 of the Act relates to casting a duty on reporting entity (Bank) to maintain records. Section 12(1) enjoins upon the Bank to keep the information confidential. Section 12(3) says that the said records has to be maintained and preserved for five years. This Court is rather amused as to how Section 12(2) or for that matter any of the sub-Sections of Section 12 of the Prevention of Money Laundering Act, 2002 has been sought to be made applicable and pressed into action. The said Section does not in any manner authorise or remotely concerns freezing of a bank account by the banking company itself. The entire Section 12 of Prevention of Money Laundering Act, 2002 can be perused for that reason, which is being delineated herein below, for a better understanding:-

'[12. Reporting entity to maintain records.'

(1) Every reporting entity shall'

(a) maintain a record of all transactions, including information relating to transactions covered under clause (b), in such manner as to enable it to reconstruct individual transactions;

(b) furnish to the Director within such time as may be prescribed, information relating to such transactions, whether attempted or executed, the nature and value of which may be prescribed;

(c)'2[* *]*

(d)'3[* *]*

(e) maintain record of documents evidencing identity of its clients and beneficial owners as well as account files and business correspondence relating to its clients.

(2) Every information maintained, furnished or verified, save as otherwise provided under any law for the time being in force, shall be kept confidential.

(3) The records referred to in clause (a) of sub-section (1) shall be maintained for a period of five years from the date of transaction between a client and the reporting entity.

(4) The records referred to in clause (e) of sub-section (1) shall be maintained for a period of five years after the business relationship between a client and the reporting entity has ended or the account has been closed, whichever is later.

(5) The Central Government may, by notification, exempt any reporting entity or class of reporting entities from any obligation under this Chapter.]'

17. Since, there had been no assistance from the learned counsel for the Bank as to in what circumstances, Section 12(2) has been quoted differently at paragraph 4 of the Counter-Affidavit, this Court in its quest for reaching to the bottom of the issue took upon itself to scan through the

various provisions of the Prevention of Money Laundering Act, 2002 and finds that as a matter of fact, the learned counsel for the Bank was actually trying to refer Section 12AA(2) for and in place of Section 12(2) of the Prevention of Money Laundering Act, 2002. Having noted the said controversy, it is the bounden duty of this Court to also deal with the provisions of Section 12AA of the Prevention of Money Laundering Act, 2002.

18. Apparently, Section 12AA of the Prevention of Money Laundering Act, 2002 relates to enhanced due diligence and lays down the compliance requirements for reporting entities. These requirements are aimed at preventing money laundering and terrorist financing and promoting a culture of compliance within reporting entities/Bank. Section 12AA(2) comes into play only when certain conditions as mentioned in 12AA(1) is not fulfilled. Further, it only says that the Bank would not allow the specified transaction to be carried out and evidently does not mention of not allowing any transaction or for that matter freezing the account. It should be well understood that under the provisions of Section 12 merely a duty is cast on the Bank as a reporting entity to maintain records and at time may not permit a particular (specified) transaction only, because the freezing of Bank Account is always under Section 17 of the Act and that too by the Competent Authority, after the twin test of (i) information being in possession and (ii) reasons to believe, is satisfied to the core. Further, this Court finds that the Respondent-Bank has failed to show as to what was the specified transaction, it was trying to abort and as to what conditions it failed as enumerated under Section 12AA(1) of the Prevention of Money Laundering Act, 2002. In any case, we are of the view that the transaction of the petitioner does not fall in any of the explanation of 'specified transaction' as appended to Section 12AA(4) of the Prevention of Money Laundering Act, 2002, which inter-alia states as follows:

'Explanation.' For the purposes of this section, "specified transaction" means'

(a) any withdrawal or deposit in cash, exceeding such amount;

(b) any transaction in foreign exchange, exceeding such amount;

(c) any transaction in any high value imports or remittances;

(d) such other transaction or class of transactions, in the interest of revenue or where there is a high risk or money-laundering or terrorist financing, as may be prescribed.'

19. *Arguendo*, if the Reporting Authority (Bank) is construed to have power to freeze any bank account and not a particular specified transaction, as is propagated to be done in the present case, a havoc like situation would be created and the entire financial system would come crumbling down for the simple reasons that besides the other investigative agency and the Courts, the Bank would also have power to freeze account at its whims and discretion by terming any transaction to be suspicious, without assigning any reason, which cannot be the intent of law.

20. This Court is unable to find any rationale or any nexus as to how the provisions of Prevention of Money Laundering Act, 2002 can be self-invoked by the Bank to deny the legitimate right of the petitioner to operate his Bank Account. There ought to be some overt activity complained of against the petitioner. The so called suspicious or fraudulent transaction as termed by the Respondent-Bank has also fallen flat for the reasons as mentioned herein above.

21. Further, this Court finds that as far as reporting of suspicious transaction is concerned, the Reserve Bank of India has issued circular dated 2nd of July 2012 relating to obligations of Banks under the Prevention of Money Laundering Act, 2002 wherein paragraph 2.16 (2) relating to Suspicious Transaction Reports (S.T.R.), of the said Circular clearly mentions that the Banks should not put any restrictions on operations in the accounts where S.T.R. has been made. The contents of the Circular would make for a good read, which is being delineated herein below:

'2.16 Cash and Suspicious Transaction Reports:-

[**]***

2. Suspicious Transaction Reports (S.T.R.)

i. While determining suspicious transactions, banks should be guided by definition of suspicious transaction contained in PMLA Rules as amended from time to time.

ii. It is likely that in some cases transactions are abandoned / aborted by customers on being asked to give some details or to provide documents. It is clarified that banks should report all such attempted transactions in STRs, even if not completed by customers, irrespective of the amount of the transaction.

iii. Banks should make STRs if they have reasonable ground to believe that the transaction involve proceeds of crime generally irrespective of the amount of transaction and/or the threshold limit envisaged for predicate offences in part B of Schedule of PMLA, 2002.

iv. As per extant instructions, a bank should not open an account (or should consider closing an existing account) when it is unable to apply appropriate CDD measures. It is clarified that in the circumstances when a bank believes that it would no longer be satisfied that it knows the true identity of the account holder, the bank should also file an STR with FIU-IND.

v. The Suspicious Transaction Report (STR) should be furnished within 7 days of arriving at a conclusion that any transaction, whether cash or non-cash, or a series of transactions integrally connected are of suspicious nature. The Principal Officer should record his reasons for treating any transaction or a series of transactions as suspicious. It should be ensured that there is no undue delay in arriving at such a conclusion once a suspicious transaction report is received from a branch or any other office. Such report should be made available to the competent authorities on request.

vi. In the context of creating KYC/AML awareness among the staff and for generating alerts for suspicious transactions, banks may consider the indicative list of suspicious activities contained in Annex E of the 'IBA's Guidance Note for Banks, 2005'.

*vii. Banks should not put any restrictions on operations in the accounts where an STR has been made. Moreover, it should be ensured that there is **no-tipping off** to the customer at any level.'*

22. In any case, this Court is clear in its mind that there ought to be some order from a competent authority like the investigating agency (Police), who have been authorized to freeze bank account during investigation in terms of Section 102 of the erstwhile Code of Criminal Procedure, 1973. However, even in those cases, the said freeze is subject to the orders of the Criminal Court. However, in the present case, the facts are absolutely different, wherein there is no such complaint or order. Even for that matter, time and again the Courts have held that merely because certain offences may have been committed by the customer, that cannot, by itself, constitute a lawful basis for a unilateral freezing or withholding of the petitioners' bank accounts.

23. Further, the Hon'ble Supreme Court in the case of ***OPTO Circuits (India) Ltd. v. Axis Bank and others, reported in (2021) 6 SCC 707***; wherein freezing of bank accounts was considered by the Hon'ble Supreme Court and it was held that freezing of bank accounts cannot be done in a casual manner. It is also pertinent to note that any blanket or disproportionate freezing of bank accounts, particularly where the account holder is neither an accused nor even a suspect in the offence under investigation, is manifestly arbitrary, and in the teeth of the fundamental rights under Article 19(1)(g) and 21 of the Constitution of India, which encompass the right to livelihood and freedom to carry on trade and business.

24. It should be well understood that the Respondent-Bank acts as a trustee when it accepts deposit from an account holder and it cannot be allowed to transform into an archaic money lender who may accept the deposit and refuse its return to the depositor. The bank is permitted to freeze the account only for legitimate purposes and in accordance with law. The Bank as a debtor cannot be allowed to breach the faith of the depositor, which would have serious repercussions. Admittedly, it is undisputed that petitioner is maintaining a Current Account in the respondent bank and there are sufficient funds available for withdrawal from its Current Account. The Petitioner is a depositor and in terms of the banking practices it is clearly entitled to withdraw the amount lying in its Account. The money having been held in trust, the Bank can deny withdrawal of such amount only in exigencies which are permissible in law. Such exigencies do not arise in the facts of this case, as discussed herein above. In its absence the action of the respondent bank in refusing to operate the account of the petitioner cannot be legally sustained.

25. From perusal of records and the arguments addressed before this Court, it is an admitted position on behalf of the counsel of the Respondent-Bank that the petitioner is not accused in any F.I.R. till date nor is there anything on records, which would show any involvement of the present petitioner in any criminal activity or any alleged fraudulent suspicious activity. It is further reflected that merely owing to a large incoming transaction the account is under scrutiny and has been put under as 'suspicious transaction', and therefore, freezing of accounts has been done by the Bank itself and not on instructions by any Authorities, as may be permissible under the law.

26. The law with respect to freezing and de-freezing of accounts was settled by the Hon'ble Supreme Court in a catena of judgments. Admittedly, the Respondent-Bank did not even bother to serve a notice of pre-freezing or post-freezing of the bank account, causing immense inconvenience to the petitioner. The illegal act of freezing the bank account of the petitioner has a serious and adverse implication and invades and encroaches upon the petitioner's invaluable right to earn and live with dignity. The petitioners are, at the very least, entitled to be informed of the reasons for freezing their bank accounts, which they are otherwise legally entitled to operate. Thus, the illegal freezing of the bank account, in essence, amounts to a violation of fundamental right of the petitioner, as it directly undermines his right to livelihood, which is integral part of the Right to Life guaranteed under 'Article 21' of the Constitution.

27. The learned counsel for the Respondent-Bank has prayed that in case this Court is of the opinion that the accounts are required to be 'de-frozen', then there is a possibility that the petitioners may withdraw the entire amount from the bank account. Therefore, some reasonable restrictions may be put and the withdrawals may be made subject to certain securities. However, this Court is of the view that the said prayer does not appear to be reasonable. The facts on record indicates that there is neither any complaint nor F.I.R. against the petitioner. In fact, the present freezing of bank account appears to be vexatious and actuated with mala fides. Under these circumstances, this Court deems it appropriate to allow the prayer of the petitioners seeking de-freezing of their bank account.

28. Ergo, the Respondent-Indian Overseas Bank is directed to de-freeze the bank accounts of the petitioner forthwith. The petitioner shall be at liberty to maintain and continue with the operations of his Current Account Number 381702000000301 in the name of his firm in the Respondent-Bank in terms of the R.B.I. guidelines.

29. As an afterward we would like to state that the relationship between a banker and its customers is that of a trustee holding money on behalf of its customers. The duty of the bank is that of a trustee and not of any investigative agency with a roving eye. One cannot countenance the argument that it is the duty of the bank to ensure that the money transaction that takes place in the accounts of the banks are done so in a legal manner. However, the bank is not in any manner empowered or entitled to initiate an action against its customers without there being any cogent material on record that has been provided to the bank from formal entities such as the Reserve Bank of India, Central Bureau of Investigating, Enforcement Directorate, police authorities amongst others. In every such instance where a designated authority approaches the bank to take action against any of the accounts of the customers of the bank, the designated authority is also required to provide some proof of certain suspicious activities.

30. A Co-ordinate Bench of this Court, in ***Khalsa Medical Store v. RBI, reported in 2026 SCC OnLine All 164***; wherein one of us (Hon'ble Shekhar B. Saraf, J.) had occasion to examine the actions of cyber-crime investigative authorities in freezing of accounts had summarized the principles as follows:

'12. After sifting through the ratios laid down in the catena of judgments mentioned above, and upon applying our mind to the issue at hand, the following principles may be laid down for freezing a bank account under a suspicion of cyber crime:-

A. Section 106 of BNSS should not be interpreted to empower police officers to intervene in money disputes by seizing property especially based on mere suspicion but it must be bolstered by reasonable belief.

B. Information for freezing the bank account by the investigating officer shall be sent immediately to the nodal officer of the bank of the beneficiary or payment service system, including the payment aggregator, so as to take action at their end. The police officer must furnish information with relation to the alleged crime and should accompany a copy of the FIR or information received. The bank or the payment system operator (PSO) may decline a request, if it is received without a copy of any complaint or FIR.

C. The notice under Section 106 of the BNSS may require to mark lien on a specific amount (money allegedly transferred from or to the bank account of accused), but in no case the police may ask or request any bank or payment system operator (PSO) including payment aggregator, to block or suspend entire financial account.

D. As soon as information to block or put on hold or marking of a lien is forwarded to a bank or any financial intermediary, including a payment system operator (PSO), then the information shall simultaneously be sent to the jurisdictional Judicial Magistrate within 24 hours. Failure to inform may render such an action as void.

E. If any bank puts on hold any bank account or escrow account maintained by any entity / citizen on the request of the police without following the proper procedure, then the bank shall be personally liable for the Civil and Criminal consequences for the loss including financial and reputational damage of such entity / citizen.

13. From a perusal of the above, we are of the view that in case of a cyber crime, the Investigating Officer is required to not only issue notice under Section 94/106 of the B.N.S.S., 2023 to the banks concerned but the same must contain the amount for which lien is sought. A blanket notice without indicating the amount, on which lien is being sought, would be illegal and arbitrary. Furthermore, the Investigating Officer is required to intimate the jurisdictional Magistrate of the said cyber crime and inform the banks of the case number that has been registered on basis of which said lien / freezing is sought.'

31. As is evident from the above judgment, any action that is taken by any authority has to be backed up with relevant information and must be on the basis of a complaint lodged either before the police or by approaching the magistrate. In any event, none of the provisions under the various legislations governing bank accounts allow freezing of a bank account by the bank authority on its own volition without there being an underlying complaint. The only instance when the bank can freeze an account in its own volition is when the bank has a lien on the said account by virtue of certain loans having been taken by the customer (see: Section 171 of the Contract Act, 1872). In the absence of such a lien no authority is present with a bank to stop the operation of an account of a customer and any such action without the authority of law is a degenerative, arbitrary, perverse and mala fide action that is an anathema to the rule of law and is required to be struck down heavily at the very first instance it comes before the courts of law.

32. Accordingly, the present writ petition is ***Allowed*** in the aforesaid terms.

33. Before we part with, this Court is constrained to observe that there is an increasing menace these days of freezing bank account indiscriminately. Admittedly, in the present case the Respondent-Bank has frozen the bank account of the petitioner, without any rhyme or reason and the same is not permissible as per law. Since, such indiscriminate freezing has the inevitable effect of paralysing the day-to-day business operations of the petitioner, resulting in loss of commercial goodwill and financial consequences, a cost of ₹50,000/- (Fifty thousand Only) is hereby imposed on the Respondent-Indian Overseas Bank, Alambagh branch, Lucknow, through the Branch Manager as a compensation to the petitioner. The said cost shall be payable to the

petitioner within a period of four weeks from the date a certified copy of this judgment is served on the Respondent-Bank.

(2026) 4 ILRA 413
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 24.04.2026

BEFORE

THE HON'BLE AJIT KUMAR, J.
THE HON'BLE SWARUPAMA CHATURVEDI, J.

Writ C No. 32408 of 2023

M/s Reliance Projects & Property Management Services Ltd. ...Petitioner
Versus
State of U.P. & Ors. ...Respondents

ISSUE FOR CONSIDERATION

Matter pertains to:

- (i) Whether the Insolvency and Bankruptcy Code, 2016 overrides the Electricity Act, 2003 and the Electricity Supply Code, thereby barring the respondent authorities from raising demands relating to electricity dues for the period prior to implementation of the Resolution Plan;
- (ii) Whether the respondent authorities could raise statutory electricity dues after implementation of the Resolution Plan despite neither filing any claim before the Resolution Professional during the Corporate Insolvency Resolution Process nor challenging the approved Resolution Plan;
- (iii) Whether, in the facts and circumstances of the case, liability of the successful Resolution Applicant commenced from the date of approval of the Resolution Plan by the National Company Law Tribunal or from the Effective Date of implementation of the Resolution Plan; and
- (iv) Whether the impugned demand notices, recovery certificates, kurki proceedings and consequential coercive measures relating to electricity dues for the period prior to the Effective Date were sustainable in law.

HEADNOTE

Insolvency and Bankruptcy Code, 2016 – ss.31, 238 – Electricity Act, 2003 – ss.173, 174 – Constitution of India – Art.226 – Corporate Insolvency Resolution Process (CIRP) – Corporate Insolvency Resolution Process (CIRP) commenced against Reliance Infratel Ltd. – Public announcements and individual notices issued by Resolution Professional inviting claims from all creditors, including State Electricity Distribution Companies – Respondent authorities neither filed claims before the Resolution Professional nor challenged the approved Resolution Plan – Resolution Plan approved by the Committee of Creditors and National Company Law Tribunal – Implementation delayed due to pendency of appellate proceedings – Successful Resolution Applicant taking over management on 22.12.2022 upon deposit of the entire Resolution Amount in accordance with the approved Resolution Plan – Respondent authorities thereafter issued demand notices, recovery certificates, kurki proceedings and disconnected electricity supply for recovery of electricity dues relating to the period prior to the Effective Date – Petitioner challenged recovery proceedings on the ground that all pre-resolution dues stood extinguished under Section 31 of the Insolvency and Bankruptcy Code, 2016 and that liability could arise only from the Effective Date – Respondents contended that the Resolution Plan became operative

from the date of its approval by the National Company Law Tribunal; that electricity dues constituted statutory first charge under the Electricity Supply Code; and that restoration of electricity supply could be insisted upon only after payment of past dues – Questions arose regarding overriding effect of the Insolvency and Bankruptcy Code over the Electricity Act, extinguishment of statutory electricity dues not submitted during CIRP, commencement of liability of the successful Resolution Applicant, legality of recovery proceedings initiated after implementation of the Resolution Plan, and applicability of the clean slate principle:

Held: Legal maxim, “*leges posteriores priores contrarias abrogant*”, which means wherever two enactments are irreconcilably inconsistent, the later enactment must prevail to the extent of such inconsistency. This principle of interpretation of statutes is generally applicable in a situation where two enactments appear to operate in the same field but got enacted in different timeline. Where there is a conflict between two Statutes, the Court must first attempt a harmonious construction, however, where such reconciliation is not possible, the later enactment would prevail as per above-mentioned maxim.

Section 238 of the IBC contains a non obstante clause asserting the overriding effect of the Code over all other laws in force. Section 31 of the IBC further indicates that an approved Resolution Plan is binding on all stakeholders, including governmental and statutory authorities. The IBC is a subsequent and comprehensive legislation intended to consolidate and amend the laws relating to insolvency resolution and its scheme would be rendered unworkable if past liabilities, not forming part of the Resolution Plan, were permitted to be raised by claimants relying upon any other statute. Thus, when Section 238 of the IBC is read in light of the objective of the Code and established legal principles, there remains no doubt that, *in the event of inconsistency between the IBC and any other statute*, including sector-specific enactments such as the Electricity Act, 2003, *the provisions of the IBC would prevail*.

Court further held that respondents had multiple occasions and forums to challenge the Resolution Plan if they had any grievance, but **after opting to neither file claim nor challenge the Resolution Plan, respondents have lost the opportunity and the old claim of the corporate debtor is extinguished in the facts of the case**. The claims sought to be enforced pertained to the **pre-CIRP period, CIRP period, Monitoring Phase and further up to the Effective Date**, for which **no claim was filed** by the respondents. Such claims are extinguished in terms of **Section 31 of the IBC as well as the express provisions of the Resolution Plan** and are **not enforceable against the petitioner**. The Resolution Plan, having attained finality, **is binding on all stakeholders, including statutory authorities, and operates on a clean slate principle**, and therefore the respondent authorities **could not have proceeded to raise or enforce demands which are extinguished, nor could they have resorted to coercive measures for recovery of such extinguished claims**.

Court further held that the **Effective Date** was **22.12.2022**, being the date on which the successful Resolution Applicant took over the management of the Corporate Debtor upon deposit of the Resolution Amount and actual implementation of the Plan. The Court observed that **the newly resolved company cannot be forced to bear the financial burden due to such delay caused because the NCLT order approving the Resolution Plan got challenged before appellate Courts** and applied the maxim *actus curiae neminem gravabit*, holding that **the act of the Court shall prejudice no one**. Considering the Resolution Plan and the commercial wisdom of the Committee of Creditors, the Court concluded that **the liability arises from the Effective Date which is expressly mentioned in the Resolution Plan**, and that, in the peculiar facts and circumstances of the case, **the liability shall arise from the date on which the petitioner could effectively implement the Resolution Plan after depositing the complete Resolution Amount**. Otherwise, putting the uncertain, unexpected, unclaimed burden on the resolved entity will be against the principles on which the insolvency law is based.

Court held that the IBC has overriding effect over the Electricity Act and related laws. Since respondents **had not filed their claims during CIRP, they cannot raise any demand, as the claim has got extinguished** after approval of the Resolution Plan. Since claims relating to the period prior to approval of the Resolution Plan stood extinguished, **the respondents were precluded from enforcing any such claims, and the liability of the petitioner cannot be fastened prior to the Effective Date** determined

in accordance with the Resolution Plan. The Court identified **four phases**—pre-CIRP dues, CIRP period dues, Monitoring Period dues, and the final phase after the Effective Date—and held that **dues arising in the first, second and third phases cannot be enforced after the Resolution Plan is implemented. It is only liabilities arising in the final phase that can be validly claimed.** Consequently, **the impugned demand notices pertaining to the duration prior to CIRP, during CIRP, the Monitoring Phase and up to the Effective Date cannot be sustained in law.** The impugned **Recovery Certificates and Kurki proceedings**, to the extent they related to demands **prior to the Effective Date, i.e., 22.12.2022, were set aside.** The writ petition was allowed; the impugned demand notices, consequential recoveries and actions were quashed, **however, the respondent authorities were left at liberty to issue fresh demand notices for any dues occurring after the Effective Date, i.e., 22.12.2022, in accordance with law.**

[Paras 42, 44, 47, 58, 59, 66, 69, 71, 73, 76, 78, 79, 83, 84, 85, 87 and 88]

CASE LAW CITED

Ghanshyam Mishra and Sons (P) Ltd. v. Edelweiss Asset Reconstruction Co. Ltd., **(2021) 9 SCC 657**;
M/s Ruchi Soya Industries Ltd. v. Union of India and Others, **(2022) 6 SCC 343**;
Pratap Technocrats (P) Ltd. and Others v. Monitoring Committee of Reliance Infratel Ltd. and Others, **Civil Appeal No. 676 of 2021, decided on 10.08.2021**;
Tata Power Western Odisha Distribution Ltd. and Another v. Jagannath Sponge Pvt. Ltd., **2023 SCC OnLine SC 2442**;
Meghalaya Power Distribution Corporation Ltd. (MePDCL) v. M/s Reliance Infratel Ltd., **2025:MLHC:365-DB**;
K.C. Ninan v. Kerala State Electricity Board, **(2023) 14 SCC 431**;
State Tax Officer (1) v. Rainbow Papers Ltd., **(2023) 9 SCC 545**;
Torrent Power Ltd. v. Ashish Arjankumar Rathi and Others, **2026 SCC OnLine SC 325**;
Innoventive Industries Ltd. v. ICICI Bank and Another, **(2018) 1 SCC 407**;
Paschimanchal Vidyut Vitran Nigam Ltd. v. Raman Ispat Pvt. Ltd., **2023 SCC OnLine SC 842**;
State Tax Officer v. Rainbow Papers Ltd., **(2023) 9 SCC 545**;
Duncans Industries Ltd. v. AJ Agrochem, **(2019) 9 SCC 725**;
Essar Steel India Ltd. Committee of Creditors of v. Satish Kumar Gupta, (2020) 8 SCC 531 : (2020) 13 SCR 683;
RPS Infrastructure Ltd. v. Mukul Kumar (2023) 10 SCC 718;
Vaibhav Goel & anr v. Deputy Commissioner of Income-Tax & anr (2025) 8 SCC 511;
South East U.P. Power Transmission Company Ltd. v. Prescribed Authority and 4 Others, **Writ-C No. 19391 of 2023, decided on 24.04.2026 (All.)**;
Arcelor Mittal India Pvt. Ltd. v. Satish Kumar Gupta, **(2019) 2 SCC 1**;
State Bank of India and Others v. Doha Bank Q.P.S.C. and Another, **Civil Appeal No. 8527 of 2022.**

List of Acts

Insolvency and Bankruptcy Code, 2016;

Electricity Act, 2003;

Constitution of India.

List of Keywords

Corporate Insolvency Resolution Process (CIRP); Resolution Plan; Successful Resolution Applicant; Effective Date; Clean Slate Principle; Extinguishment of Claims; Electricity Dues; Statutory Creditors; Distribution Licensee; Resolution Professional; Public Announcement; Operational Creditor; Monitoring Period; Pre-CIRP Dues; CIRP Dues; Post Effective Date Liability; Recovery Certificate; Demand Notice; Electricity Disconnection; Coercive Recovery; Section 31 IBC; Section 238 IBC; Overriding Effect of IBC; Actus Curiae Neminem Gravabit; leges posteriores priores contrarias abrogant.

CASE ARISING FROM

Petitioner filed the writ petition challenging demand notices, recovery certificates, kurki proceedings and disconnection of electricity supply whereby respondent distribution companies sought to recover electricity dues pertaining to the period prior to the Effective Date under an approved Resolution Plan.

Appearances for Parties

Advs. for the Petitioner: Rahul Agarwal, Vedant Agarwal

Advs. for the Respondents: **Ankit Prakash, Baleshwar Chaturvedi, C.S.C., Kartikeya Saran, Krishna Agarawal, Mukesh Kumar Singh, Rahul Agarwal, Udit Chandra**

(Delivered by Hon'ble Swarupama Chaturvedi, J.)

For the convenience of exposition, this common order is divided into the following parts:-

INDEX

- I. Introduction
- II. Factual Matrix
- III. Submissions on behalf of Petitioner
- IV. Submissions on behalf of Respondents
- V. Points for Determination
- VI. Discussion and Analysis
 - (i) Overriding Effect of the IBC over Electricity Laws
 - (ii) Validity of Pre-CIRP dues raised after implementation of Resolution Plan
 - (iii) Date of commencement of the liability
 - (iv) Legality of Impugned Demands and Coercive Measures..
- VII. Conclusion
- VIII. Order

I**Introduction**

1. Present petition has been filed under Article 226 of the Constitution of India, praying for issuance of several orders and directions in the nature of writ of certiorari and mandamus. Main relief sought in the petition is for order or direction in the nature of certiorari quashing the impugned Recovery Certificates and kurki proceedings issued by respondent nos.1 to 6, especially the impugned demands to the extent they relate to alleged electricity dues for the period prior to 22.12.2022 when the resolved company was effectively commenced.

2. The petitioner further prays for issuance of the writ in the nature of mandamus commanding the respondents to de-seal the mobile tower sites as detailed in the writ petition and to restore electricity supply to all disconnected sites. A further direction has been prayed for requiring the respondents to act in accordance with Section 31(1) of the Insolvency and Bankruptcy Code, 2016

(hereinafter referred to as IBC) and the law laid down by the Supreme Court in ***Ghanshyam Mishra v. Edelweiss Asset Reconstruction Co. Ltd., (2021) 9 SCC 657*** and ***M/s Ruchi Soya Industries Ltd. v. Union of India & Ors., (2022) 6 SCC 343***.

3. The petitioner has also prayed for an order or direction in the nature of mandamus declaring that the approved resolution plan dated 25.11.2019 is binding on all stakeholders and that no liability survives in respect of any debts, claims or dues arising prior to 22.12.2022, including those of statutory authorities. Consequential reliefs have been prayed for restraining the respondents from taking any coercive steps pursuant to the impugned demands and Recovery Certificates, and for a direction to grant new electricity connections in respect of existing and pending applications for mobile tower sites, subject to compliance with applicable conditions.

4. Counter affidavits have been filed on behalf of contesting respondents and rejoinder affidavits have also been filed by the petitioner. With the consent of learned counsel for the respective parties, the writ petition was taken up for final hearing and is being disposed of by this judgment.

II

Factual Matrix

5. The facts of the case, as emerging from the pleadings on record are that the insolvency petition under Section 9 of the IBC was admitted against Reliance Infratel Ltd. (hereinafter referred to as RITL) by the National Company Law Tribunal, Mumbai (hereinafter referred to as NCLT) vide its order dated 15.05.2018. The above mentioned NCLT order imposed the moratorium and appointed the Interim Resolution Professional (hereinafter referred to as IRP), as on 18.05.2018, consequently the Corporate Insolvency Resolution Process (hereinafter referred to as CIRP) got commenced.

6. On 21.05.2018, the IRP made the public announcement (hereinafter referred to as the "First Public Announcement") inviting all the creditors of RITL to submit proof of claims. Meanwhile the NCLT order dated 15.05.2018, admitting the insolvency petition got challenged in National Law Company Appellate Tribunal (hereinafter referred to as the NCLAT), where the NCLT order got stayed by an order dated 30.05.2018, but later on, the petition got withdrawn on 30.04.2019 and consequently CIRP got re-commenced as per IBC.

7. On 07.05.2019 IRP made another public announcement (hereinafter referred to as the "Second Public Announcement") inviting all the creditors to submit proof of claims. It is an undisputed fact that respondent authorities have not submitted any claim before the Resolution Professional (hereinafter referred to as RP) during CIRP for which the impugned demand notices are being issued. On 24.05.2019 IRP prepared the Information Memorandum and the Committee of Creditors (hereinafter referred to as CoC) of RITL was constituted.

8. On 21.06.2019 NCLT confirmed the appointment of RP. As per procedure prescribed under IBC, the RP published Form G containing a detailed invitation for expression of interest (hereinafter referred to as "EOI") to which Reliance Projects & Property Management Services Ltd. (hereinafter referred to as RPPMSL) responded positively. Additionally RP issued letters dated

25.07.2019 and 22.08.2019 addressed to all State Electricity Boards, Distribution Companies, and other respondents informing them of the CIRP and calling for claims.

9. Following due procedure of the CIRP, the RPPMSL submitted its resolution plan, which got approved by the CoC on 02.03.2020 and subsequently, NCLT approved the same resolution plan vide its order dated 03.12.2020. The order passed by the NCLT was assailed in appeals before NCLAT as well as Supreme Court.

10. The NCLT order approving resolution plan got assailed by some stakeholders before NCLAT, which stayed the distribution of the total resolution amount to certain parties due to inter-creditor disputes. The matter travelled upto the Supreme Court where the resolution plan got a way to move towards its implementation.

11. The NCLT vide its order dated 21.11.2022 allowed RPPMSL's application to deposit the Total Resolution Amount in an escrow account towards successful implementation of the resolution plan. Thereafter on 22.12.2022, minutes of the meeting of the CoC noted that all steps of the implementation in the resolution plan were completed.

12. Further, consequent to the order dated 11.05.2023 passed by the NCLT, Mumbai and the order dated 07.08.2023 passed by the NCLT, Ahmedabad under Sections 230-232 of the Companies Act, 2013, RITL stood merged into the Petitioner Company with effect from 22.12.2022. Hence, records demonstrate that pursuant to the approval of the resolution plan, RPPMSL took over RITL on 22.12.2022, which became the effective date.

13. After complete implementation of the approved resolution plan, Respondent Nos.3 to 6 have issued recovery certificates and raised demands against RITL in respect of electricity dues pertaining to the period prior to the effective takeover date. The Respondents also disconnected electricity for some mobile towers while insisting upon payment of the entire amount, along with interest and penalty, as a precondition for reconnection.

14. Aggrieved by above, petitioner company has filed this petition under Article 226, challenging mainly the demand notices issued by the respondent authorities. Although there are various prayers made in the petition, during hearing counsel appearing from respective parties agreed that the main point of contest was the demand notice, to the extent that such dues relate to the period prior to the date to commence liability i.e., 22.12.2022 and also the fact as which date would be considered as the date to commence liability, date of approval of resolution plan by NCLT or the date when the resolved company effectively commenced.

III

Submissions on behalf of Petitioner

15. We have heard Sri Navin Sinha, learned Senior Advocate assisted by Sri Vedant Agarwal, Sri Madhav Kanoria and Sri Aditya Swaroop, learned counsel for the petitioner. At the outset, Sri Sinha, learned Senior Advocate submitted that a public announcement was made by the IRP upon commencement of the CIRP, inviting all creditors to submit their respective claims, and in addition,

RP also send letters to all the DISCOMs (licensees) informing commencement of CIRP, still no claim was filed by the respondents during CIRP.

16. Sri Sinha had drawn the attention of the Court to the list of statutory creditors mentioned in the resolution plan, and argued that despite such public announcement and individual letters, none of the DISCOMs submitted any claim before the RP. He submitted that the CoC unanimously approved the resolution plan, which came to be approved by the NCLT vide its order dated 03.12.2020. The said approval was unsuccessfully assailed before the NCLAT and further before the Supreme Court, where the challenge culminated in dismissal of the petition in ***Pratap Technocrats (P) Ltd. And Others Vs. Monitoring Committee of Reliance Infratec Ltd. And Others, order dated 10.08.2021*** in Civil Appeal No. 676 of 2021 thereby upholding the order approving of the resolution plan.

17. It was further submitted that none of the DISCOMs ever challenged the resolution plan at any stage by asserting their alleged claims before any forum. Sri Sinha had also submitted that on 22.12.2022, the new management took over the company in terms of the approved resolution plan upon payment of the resolution amount into the designated account. Learned Senior Advocate emphasized that till the above-mentioned date, no demand had been raised by any of the DISCOMs, although, according to him, electricity supply to certain mobile towers had been disconnected in part even prior to and during the CIRP period.

18. It was contended that it was only after the resolution plan attained finality and the new management assumed control that the respondent DISCOMs raised demands towards electricity charges pertaining to the period prior to the CIRP and also for the period prior to the date of effective takeover. Sri Sinha submitted that, in view of Section 31 of the IBC, such claims, not having been submitted before the RP, stood extinguished. In support, reliance was placed on the judgment of the Supreme Court in ***Tata Power Western Odisha Distribution Ltd. and another Vs. Jagannath Sponge Pvt. Ltd., (2023) SCC OnLine SC 2442***, to contend that once a resolution plan was approved, the successful resolution applicant could not have been burdened with past liabilities, and permitting such claims would defeat the very scheme of the enactment. It was, thus, submitted that the impugned demand notices and consequential recovery proceedings were liable to be quashed.

19. Sri Sinha, however, fairly submitted that insofar as the dues arising after 22.12.2022 were concerned, the petitioners were ready and willing to pay the same, subject to restoration of electricity connections to enable operation of the mobile towers. He further submitted that the liability of the petitioner, if any, would arise only from 22.12.2022, when the new management has taken over and claimed this date to be effective date (hereinafter 22.12.2022 shall be referred to as effective date for convenience).

20. Sri Sinha invited attention of the Court to the relevant clauses of the resolution plan, i.e., clause 1.2.6 and clause 4.1, as also clauses 2.1.1 and 2.1.2, submitted that an Interim Monitoring Committee was constituted post-approval of the resolution plan by the NCLT, comprising the RP, nominees of financial creditors and nominees of the petitioner company, for which the petitioner had also contributed a sum of Rs. 100 crores.

21. Sri Sinha urged that upon payment of the entire resolution amount on the effective takeover date, no liability of the erstwhile corporate debtor could survive in respect of any dues prior thereto. He had invited the attention of the Court to the minutes of the meeting of the Interim Monitoring Committee/ Committee of Management, particularly agenda item no. B2, to indicate that the Effective Date has been recorded as 22.12.2022, being the date on which the resolution amount stood deposited in the escrow account maintained with the State Bank of India. It was, thus, submitted that the petitioner had already discharged liabilities from the said date onwards and no prior dues, therefore, remained recoverable.

22. Sri Sinha has also placed reliance upon the letter dated 25.07.2019 issued by the Resolution Professional, wherein it has been stated that the resolution plan would be deemed to have become effective upon deposit of the entire resolution amount in the designated account. In further support of his submissions, reliance has been placed upon the judgment of the Supreme Court in *Ghanshyam Mishra and Sons Pvt. Ltd. (supra)*, particularly paragraphs 132, 140 and 149 of the judgment, to contend that all claims not forming part of the resolution plan stand extinguished and that the successful resolution applicant is entitled to get the company as a clean slate.

23. It was urged that the liability, if any, would arise only from the Effective Date, i.e., the date of transfer of control coupled with deposit of the resolution amount, and not from the date of approval of the resolution plan by NCLT as the order continued to be under litigation, which was a situation not under control of the petitioner. He further contended that the resolution plan was binding upon all stakeholders and on the point as to from when the liability would have arisen, it was clearly provided under the plan and, therefore, the demand was to be raised only after the effective date, which was date of takeover and not the date of NCLT order in the facts of this case considering the years long time gone under litigation due to which the resolution plan could not get implemented.

24. On the basis of aforesaid, Sri Sinha argued that all claims, including statutory dues of the erstwhile RITL, stood extinguished on the effective takeover date i.e., 22.12.2022. He also submitted that the successful resolution applicant could not be burdened by uncertain past liabilities of corporate debtor as it would defeat the object of the IBC.

25. Sri Sinha submitted that by virtue of Section 238 of the IBC, the provisions of IBC override the Electricity Act, 2003 and any subordinate legislation framed thereunder. He argued that the respondents, having failed to submit their claims despite due notice, were precluded from raising the same at later stage and the petitioner had, in any case, already incurred substantial expenditure exceeding Rs. 75 crores towards electricity dues for operational towers during the CIRP and Interim Monitoring Committee period, and no liability can be fastened in respect of non-operational towers or towards interest and penalty for the prior period.

26. Sri Sinha lastly submitted that the similar issue was before the division bench of the High Court of *Meghalaya at Shillong in Meghalaya Power Distribution Corporation Limited (MePDCL) v. M/s Reliance Infratel Limited, 2025:MLHC:365-DB*, regarding same resolution plan and the High Court had restrained the authorities from raising old electricity dues pertains to

the corporate debtor while holding that all debts not included in the plan prior to the effective date would be deemed to be extinguished.

IV

Submissions on behalf of Respondents

27. We have heard Sri Manish Goyal, learned Senior Advocate assisted by Sri Udit Chandra, learned counsel for the respondent Power Corporation, Sri Krishna Agrawal, learned counsel for respondent no.2, Sri Mukesh Kumar Singh, learned counsel for respondent no.4, Sri Baleshwar Chaturvedi, learned counsel for respondent no.5, Sri Ankit Prakash, learned counsel appearing for respondent no.6. Since submissions advanced by learned counsel appearing for contesting respondents were similar as well as overlapping, we consider it appropriate to record it altogether, as the issues involved are common.

28. Leading the submission on behalf of respondents, Sri Goyal, learned Senior Counsel, at the outset fairly submitted that the legal position, insofar as extinguishment of claims not submitted before the RP was concerned, it stood settled against respondents. He submitted that where a creditor, including the Government or its instrumentalities, had failed to lodge its claim in the CIRP and the resolution plan had come to be approved by the NCLT, the provisions of Section 31(1) of the IBC would operate to extinguish such claims, and any recovery in respect thereof would not be sustainable in law. He further submitted, in all fairness, that this position stood conclusively settled by a catena of judgments of the Supreme Court, including the case of *Ghanshyam Mishra and Sons Pvt Ltd (supra)*.

29. However, Sri Goyal raised a caveat to the extent of the petitioner's contention regarding the Effective Date. He submitted that the liability of the petitioner could not have been confined to the date of transfer of management or deposit of the resolution amount, i.e., 22.12.2022, and instead must relate back to the date of approval of the resolution plan by the NCLT, i.e. 03.12.2020. Elaborating the submission, he contended that the order of the NCLT approving the resolution plan, in unequivocal terms, stipulated that the plan shall be effective from the date of the order itself.

30. Sri Goyal referred to the relevant directions, particularly clause 8.2.1 of the plan, to submit that the approval order clearly manifested the intention that the plan would come into force from the date of such approval and not from any subsequent date of transfer of assets or payment.

31. Sri Goyal further submitted that the constitution of an Interim Monitoring Committee, as referred to by the petitioner, was merely a facilitative mechanism for implementation of the resolution plan and did not, in any manner, defer or alter the date from which the plan became operative. He contended that, in view of the proviso to Section 31(1) of the IBC, the Adjudicating Authority was required to satisfy itself regarding the feasibility and implementation of the plan and may issue necessary directions for its effective execution. According to him, such directions cannot be construed as postponing the operative date of the plan, and once the NCLT has clearly directed that the plan shall be effective from the date of its order, no other interpretation was permissible.

32. It was further argued by Sri Goyal that any subsequent deposit of funds or procedural steps, including transfer of money into an escrow account with the State Bank of India pursuant to inter se disputes between financial institutions or directions issued by the Supreme Court, would not have the effect of altering the effective date of the resolution plan. He submitted that these were consequential steps towards implementation and cannot determine the date from which liabilities are to be reckoned.

33. Dealing with the argument based upon the judgment in *Ghanshyam Mishra and Sons Pvt. Ltd (supra)* relied upon by the petitioner, Sri Goyal submitted that the said judgment did not address the issue as to whether the effective date of a resolution plan was the date of approval by NCLT or the date of transfer of management. According to him, the observations therein could not be read to draw any inference that the effective date would be the date of transfer of control, and any such interpretation would amount to reading beyond the ratio of the judgment. He further submitted that any directions in the said judgment relating to the date of transfer were traceable to the powers of the Supreme Court under Article 142 of the Constitution of India and could not be treated as a binding declaration of law on the issue.

34. Sri Ankit Prakash, learned counsel appearing for respondent no. 6, supplemented the submissions by placing reliance upon the terms of the resolution plan itself, particularly clause 1.2.6, to contend that the plan expressly provided that it shall be effective from the date of approval by the NCLT.

35. Respondents further contended that under clause 4.3(f)(iv) of the U.P. Electricity Supply Code, 2005, the outstanding electricity dues constitute a first charge on the assets, and therefore, any subsequent applicant or entity seeking reconnection was liable to clear such dues. It was urged that by virtue of such statutory charge, the respondent DISCOMs would become secured creditors, and such security interest, being created by operation of law, could not be extinguished under IBC.

36. It was also argued that electricity being an essential service within the meaning of Section 14(2) of the IBC, if the petitioner continued to consume electricity during the moratorium period for maintaining the corporate debtor as a going concern, the corresponding dues would necessarily be payable.

37. Placing reliance on the principle laid down in *K.C. Ninan Vs. Kerala SPB (2023) 14 SCC 431*, it was further contended that a request for restoration of electricity supply at a disconnected premises amounts to reconnection and not a fresh connection, and therefore, the respondent authorities are entitled to insist upon clearance of past arrears as a condition precedent for such reconnection.

38. Lastly, reliance was placed on the doctrine emerging from *State Tax Officer v. Rainbow Papers Limited (2022) SCC online SC 1162*, to contend that if a resolution plan failed to account for statutory dues or ignored a statutory first charge created by law, the same would be legally untenable and ought not to have been approved by the Adjudicating Authority. Accordingly, it was submitted that the respondent authorities are within their rights to enforce recovery of such dues and to insist upon payment as a precondition for restoration of electricity supply.

V

Points for Determination

39. Having regard to the factual matrix and the rival submissions advanced on behalf of the parties, the following points arise for determination:

(i) Whether IBC overrides the electricity laws and regulations, thereby barring the respondent authorities from raising demands for the pre-resolution period after the resolution plan is duly approved and implemented.

(ii) Whether the respondent authorities could raise demand for their statutory dues after implementation of resolution plan, while they have neither filed their claim during CIRP nor objected to the resolution plan before NCLT.

(iii) Whether there can be any liability, which was not mentioned in the resolution plan, can be imposed upon petitioner for the duration prior to the effective date of the implementation of the plan, in the facts and circumstances of the case.

(iv) Whether the impugned demands, recovery certificates and consequential coercive measures are sustainable in law.

VI

Discussion and Analysis

40. The Supreme Court has analysed the scope of the judicial review in the IBC related cases in *Torrent Power Ltd. v. Ashish Arjunkumar Rath and Others*, 2026 SCC OnLine SC 325, where it was held that:

14.7. Predictability and finality are thus essential to maintaining a robust insolvency regime. Judicial intervention beyond the narrow statutory confines undermines both predictability and finality. Recognising this, the IBC deliberately confines judicial review to strict statutory compliance under Sections 30(2) and 61(3). Respecting these limits will preserve the economic sense of the IBC and ensure that insolvency remains a predictable, time-bound, and market-driven process.

41. Being conscious of the settled legal position that the scope of judicial review over an approved resolution plan under the IBC is very limited, and that the commercial wisdom of the CoC is not open to judicial scrutiny, especially at the stage when the resolution plan is already implemented, we proceed to examine issues arising for determination in these petitions.

(i) Overriding Effect of the IBC over Electricity Laws.

42. The question of primacy between the IBC and the Electricity Act, 2003 arises for consideration in the present case. Learned counsel for the petitioner has drawn attention to Section 238 of the IBC, which contains a non obstante clause asserting the overriding effect of the Code over all other laws in force. Per contra, learned counsel appearing for the respondents have placed reliance upon Sections 173 and 174 of the Electricity Act, 2003 to contend that the said enactment has an overriding effect in certain circumstances. In this backdrop, it becomes necessary to

examine the scope and interplay of the aforesaid provisions to determine which Statute would prevail in the event of inconsistency.

43. In addition to Section 238 IBC, the significant role is also being played by Section 31 of the IBC, which indicates that an approved resolution plan is binding on all stakeholders, including governmental and statutory authorities. Section 31 (1) of the IBC is reproduced below for easy reference:

31. Approval of resolution plan. (1) If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed.] guarantors and other stakeholders involved in the resolution plan:

Provided that the Adjudicating Authority shall, before passing an order for approval of resolution plan under this sub-section, satisfy that the resolution plan has provisions for its effective implementation.

(emphasis supplied)

44. We also consider it necessary to refer legal maxim, *leges posteriores priores contrarias abrogant*, which means wherever two enactments are irreconcilably inconsistent, the later enactment must prevail to the extent of such inconsistency. This principle of interpretation of statutes is generally applicable in a situation where two enactments appear to operate in the same field but got enacted in different timeline. It is a settled rule of statutory interpretation is that where there is a conflict between two Statutes, the Court must first attempt a harmonious construction, however, where such reconciliation is not possible, the later enactment would prevail as per above-mentioned maxim.

45. The IBC is a subsequent and comprehensive legislation intended to consolidate and amend the laws relating to insolvency resolution, specifically focussing on revival of corporate debtors in a time-bound manner. The scheme of the Code would be rendered unworkable if past liabilities, not forming part of the resolution plan, were permitted to be raised by claimants relying upon any other Statute.

46. For ascertaining the legislative intent underlying the enactment of the IBC, we consider it appropriate to refer to its preamble, which was also analysed by the Supreme Court in *Innovative Industries Ltd. v. ICICI Bank & Anr., (2018) 1 SCC 407*. It is settled beyond ambiguity that IBC was enacted to consolidate and amend the laws relating to reorganisation and insolvency resolution of corporate persons, partnership firms, and individuals in a time-bound manner, keeping in view maximisation of assets value. It further seeks to balance the interests of all stakeholders while providing a waterfall mechanism for payment of dues.

47. Thus, when Section 238 of the IBC is read in light of the objective of the Code and established legal principles, there remains no doubt that in the event of inconsistency between the IBC and any other Statutes, including sector-specific enactments such as the Electricity Act, 2003, the provisions of the IBC would prevail.

48. In this regard, reference may be made to *Paschimanchal Vidyut Vitran Nigam Ltd. (supra)*, wherein the Supreme Court considered the status of electricity dues in the context of the IBC and held that the IBC overrides the provisions of the Electricity Act, 2003, as section 238 of the IBC contains a non-obstante clause. The Supreme Court distinguished findings of *Rainbow Papers (supra)* contextually and further held that:

53. *Rainbow Papers [STO v. Rainbow Papers Ltd., (2023) 9 SCC 545]* did not notice the waterfall mechanism under Section 53-the provision had not been adverted to or extracted in the judgment. Furthermore, *Rainbow Papers [STO v. Rainbow Papers Ltd., (2023) 9 SCC 545]* was in the context of a resolution process and not during liquidation. Section 53, as held earlier, enacts the waterfall mechanism providing for the hierarchy or priority of claims of various classes of creditors. The careful design of Section 53 locates amounts payable to secured creditors and workmen at the second place, after the costs and expenses of the liquidator payable during the liquidation proceedings. However, the dues payable to the government are placed much below those of secured creditors and even unsecured and operational creditors. This design was either not brought to the notice of the Court in *Rainbow Papers [STO v. Rainbow Papers Ltd., (2023) 9 SCC 545]* or was missed altogether. In any event, the judgment has not taken note of the provisions of IBC which treat the dues payable to the secured creditors at a higher footing than dues payable to the Central or the State Government.

.....

57. Similarly, in *Duncans Industries Ltd. v. AJ Agrochem [Duncans Industries Ltd. v. AJ Agrochem, (2019) 9 SCC 725 : (2019) 4 SCC (Civ) 669]*, Section 16-G of the Tea Act, 1953 which required prior consent of the Central Government (for initiation of winding-up proceedings) was held to be overridden by IBC. **In a similar manner, it is held that Section 238 IBC overrides the provisions of the Electricity Act, 2003 despite the latter containing two specific provisions which open with non obstante clauses (i.e. Sections 173 and 174).** The position of law with respect to primacy of IBC, is identical with the position discussed in *ABG Shipyard Liquidator [ABG Shipyard Liquidator v. Central Board of Indirect Taxes & Customs, (2023) 1 SCC 472 : (2023) 1 SCC (Civ) 251]* and *Duncans Industries [Duncans Industries Ltd. v. AJ Agrochem, (2019) 9 SCC 725 : (2019) 4 SCC (Civ) 669]* [refer also : *Innoventive Industries [Innoventive Industries Ltd. v. ICICI Bank, (2018) 1 SCC 407 : (2018) 1 SCC (Civ) 356]*, *CIT v. Monnet Ispat & Energy Ltd. [CIT v. Monnet Ispat & Energy Ltd., (2018) 18 SCC 786 : (2019) 3 SCC (Civ) 252]*, *Ghanashyam Mishra & Sons (P) Ltd. v. Edelweiss Asset Reconstruction Co. Ltd. [Ghanashyam Mishra & Sons (P) Ltd. v. Edelweiss Asset Reconstruction Co. Ltd., (2021) 9 SCC 657 : (2021) 4 SCC (Civ) 638]*, and *Jagmohan Bajaj v. Shivam Fragrances (P) Ltd. [Jagmohan Bajaj v. Shivam Fragrances (P) Ltd., 2018 SCC OnLine NCLAT 413]*].

(emphasis supplied)

(ii) Validity of Pre-CIRP dues raised after implementation of Resolution Plan.

49. The law on this issue is well settled by the Supreme Court in a catena of judgements as it was fairly submitted by Sri Goyal learned senior counsel but some of the respondents counsel continued submission on this issue and, therefore, the issue require consideration.

50. The judgement of the Supreme Court in **Tata Power Western Odisha Distribution Ltd. and Anr. (supra)**, is very relevant in the facts of this case, where it was held that:

1. In our opinion, the legal issue is covered by the judgment of this court in Paschimanchal Vidyut Vitran Nigam Ltd. v. Raman Ispat P. Ltd. [See (2023) 23 Comp Cas-OL 524 (SC); 2023 SCC OnLine SC 842.] and the order of this court in Southern Power Distribution Co. of Andhra Pradesh Ltd. v. Gavi Siddeswara Steels (India) P. Ltd. [See (2023) 24 Comp Cas-OL 213 (SC), order dated September 6, 2023 in Civil AppealNos. 5716 and 5717 of 2023.] . The appellant-Tata Power Western Odisha Distribution Ltd. cannot insist on payment of arrears, which have to be paid in terms of the waterfall mechanism, for grant of an electricity connection. However, the successful resolution applicant will have to comply with the other requirements for grant of electricity connection. The clean slate principle would stand negated if the successful resolution applicant is asked to pay the arrears payable by the corporate debtor for the grant of an electricity connection in her/his name.

51. The Supreme Court in **Ghanshyam Mishra and Sons Pvt. Ltd. (supra)** held that the term operational Creditor included Central and State Governments and any other local authority, following its earlier decision in the case of **Essar Steel India Ltd. Committee of Creditors v. Satish Kumar Gupta (2020) 8 SCC 531** and thereafter concluded that:

102.1. That once a resolution plan is duly approved by the adjudicating authority under sub-section (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the corporate debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the adjudicating authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan.

52. These principles were followed in **RPS Infrastructure Ltd. v. Mukul Kumar (2023) 10 SCC 718**, and **Vaibhav Goel & anr v. Deputy Commissioner of Income-Tax & anr (2025) 8 SCC 511**. In **RPS Infrastructure Limited (supra)**, and the Supreme Court relied upon its observations in **Essar Steel India Ltd. Committee of Creditors (supra)** on entertaining claims after the resolution plan had been accepted by the CoC. Supreme Court was of the view that the finality after undergoing the due process under IBC could not be easily interfered with by the adjudicating authority.

53. In **Vaibhav Goel & Anr. (supra)**, the Supreme Court held that:

all the dues including the statutory dues owed to the Central government, any State Government or any local authority, if not a part of the resolution plan, shall stand extinguished and

no proceedings could be continued in respect of such dues for the period prior to the date on which the adjudicating authority grants its approval under Section 31 of the IB Code.

54. Relying upon the principles established by the Supreme Court in ***Essar Steel India Ltd. Committee of Creditors (supra)***, and ***Ghanshyam Mishra and Sons Pvt. Ltd. (supra)***, this Court in similar facts and issue in South East U.P. Power Transmission Company Limited Vs. Prescribed Authority and 4 others, order dated 24.04.2026 in Writ C No. 19391 of 2023 has held that:

76. The principle established by the Supreme Court in the aforementioned judgments is that a successful resolution applicant must be permitted to take over the corporate debtor on a clean slate the entity should be free from past liabilities except those specifically preserved in the Resolution Plan. The IBC is based on the principle that upon approval of a Resolution Plan, the corporate debtor emerges from insolvency in a renewed form, with its past liabilities crystallised and confined strictly to those recognised in the Resolution Plan.

55. Respondents relied upon ***State Tax Officer (1) v. Rainbow Papers Ltd. (supra)***, where the State Tax Officer had raised the claim before the CoC, which was not taken into consideration by the CoC. As such, Court came to a finding that the satisfaction arrived at by the adjudicating authority under Section 31 of the Code was vitiated. Therefore, we are of the considered view that the facts in ***Rainbow Papers*** are totally distinguishable to the facts of the present case and hence the judgment is of no help to the respondents.

56. While dealing with the same resolution plan as in this case and old dues of corporate debtor, the High Court of Meghalaya at Shillong has held in ***Meghalaya Power Distribution Corporation Limited (MePDCL) (supra)*** that:

Then under section 31, the resolution plan goes for approval to the adjudicating authority. The adjudicating authority has a concurrent duty of satisfying itself that inter alia the plan provides for payment of the debts of operational creditors. Thereafter, the adjudicating authority which is the NCLT approves the resolution plan. Section 60 provides that during pendency of the resolution plan before the adjudicating authority or NCLT, any application is to be made before it. Such an application under section 60 (5) (c) includes one for determination to any question with regard to insolvency resolution. Under Section 61 an appeal from a decision of the NCLT lies before the appellate authority (NCLAT). Such appeal under section 61(2) has to be filed within 30 (thirty) days of the decision of the NCLT, the Appellate Tribunal may extend such time by a maximum period of 15 days. A further appeal lies under section 62 of the Supreme Court within 45 days which may be further extended by 15 days and no more.

57. Further, on the issue of raising the demand of electricity dues for pre-CIRP period, the High Court of Meghalaya at Shillong referred various judgements of the Supreme Court on the issue and thereafter held in in ***Meghalaya Power Distribution Corporation Limited (MePDCL) (supra)*** that :

On a proper interpretation of this judgment till such time as a resolution plan is declared as invalid it would be presumed to be valid and all debts not included in the plan prior to the effective date would be deemed to be extinguished.

It was further held that:

In my opinion, unless any contrary order is brought from a competent jurisdiction declaring invalidity of the resolution plan, the plan as approved by NCLT is valid and binding on all stakeholders.

In the facts and circumstances of this case the said alleged debts of the first respondent to the appellant are not included in the resolution plan as approved by the adjudicating authority, NCLT on 3rd December, 2020. Therefore, those debts before the effective date of the plan i.e., 22nd December, 2022 are deemed to have been extinguished.

Therefore, I pass an order of injunction restraining the appellant from taking steps or from enforcing its demand notice dated 12th June, 2023.

58. We are in respectful agreement with the view taken by the Meghalaya High Court in ***Meghalaya Power Distribution Corporation Limited (MePDCL) (supra)***, as there were multiple occasions and forums when respondents could have challenged the resolution plan if they had any grievance but after opting to neither file claim nor challenging the resolution plan, respondents have lost the opportunity and the old claim of corporate debtor is extinguished in facts of the case.

(iii) Date of commencement of the liability

59. Next question which arises for consideration is as to when the liability starts for the payment of dues to the respondents. It is argued by the petitioner that the effective date of the resolution plan should be considered in the facts of the present case. The petitioner contends that the Effective Date is 22.12.2022, being the date on which the successful resolution applicant took over the management of the corporate debtor upon deposit of the resolution amount and actual implementation of the plan. On the other hand, the respondents submits that the resolution plan, having been approved by the NCLT on 03.12.2020, became effective from that date itself, and all consequences, including fastening of liability, must be from the date of NCLT order approving the resolution plan.

60. It is not in dispute that the resolution plan was approved by NCLT on 03.12.2020 and was thereafter challenged in appeal before NCLAT and travelled upto Supreme Court and then got finally upheld. In the circumstances the NCLT order could not be implemented in the meanwhile and that lead to put the resolution plan implementation on hold. It is also not in dispute that the actual change of management and operational control took place on 22.12.2022 upon completion of procedural formalities, including deposit of the resolution amount and implementation steps undertaken thereafter under the supervision mechanism provided in the plan. It can also not be denied that there was no possibility of the resolution plan to become effective till the amount was deposited as per procedural requirement.

61. In the facts of this case the Effective Date assumes significance since it is closely linked with the commencement of liabilities of the successful resolution applicant as per clause 1.2.6 of the resolution plan. While the approval of the resolution plan by the NCLT confers legal sanction upon the plan, its operational implementation, including transfer of management and discharge of

obligations under the plan, may occur subsequently in accordance with its terms and the implementation framework contemplated therein as the decision of CoC is final being the commercial wisdom and there cannot be judicial review to the clause which has specified the effective date in resolution plan itself, which got approved by the NCLT.

62. However, the respondents had raised question in this regard and therefore it becomes the point for determination as to whether mere approval of the resolution plan is sufficient to fix the date for imposition of liability even if the implementation thereof gets over delayed, or whether such liability can only arise upon actual implementation and transfer of control in terms of the resolution framework. This issue necessarily requires examination of the terms of the resolution plan itself, the implementation mechanism envisaged therein, and the legal effect of approval under Section 31 of the IBC.

63. Resolution plan in Clause 1.2.6 states that upon payments in the manner specified in sub-section 1.2.8 and payment of the Interim Management Costs in accordance with this resolution plan, the Corporate Debtor or the resolution applicant or its Affiliates shall have no liability. For ready reference, Clause 1.2.6 is reproduced as below:-

1.2.6 Upon payments in the manner specified in sub-section 1.2.8 below and payment of the Interim Management Costs in accordance with this Resolution Plan, the Corporate Debtor or the Resolution Applicant or its Affiliates shall have no liability towards:

(a) any Stakeholder of the Corporate Debtor, including any Creditor whether Financial Creditors, Employees, Workmen, Government and/or Statutory Authorities, Other Operational Creditors, shareholders or any other stakeholder and all claims and liabilities of any nature whatsoever (whether claimed or unclaimed, admitted or not, due or contingent, asserted or unasserted, crystallised or uncrystallised, known or unknown, disputed or undisputed) of the Corporate Debtor for any period up to the Effective Date towards the Creditors and other Stakeholders of the Corporate Debtor shall be extinguished and settled, upon payment of the Total Resolution Amount on the Effective Date, on and with effect from the NCLT Approval Date; and

b)...

64. It is evident that, with effect from the date of approval by the NCLT, the liability of the Resolution Applicant was intended to commence, but in the resolution plan itself it is also stipulated that all claims against the Corporate Debtor would stand extinguished upon payment of the total resolution amount on the effective date. However, despite this clear framework, the Plan could not be implemented within the contemplated timeline, as the final payment itself was delayed due to challenges raised to the resolution plan. The issue of final payment could be resolved only after the interim order dated 30.11.2022 was passed by the Supreme Court in ***State Bank of India and Others vs. Doha Bank Q.P.S.C. and Another, Civil Appeal No. 8527 of 2022.***

65. The delay, therefore, was occasioned due to litigation and not by any lapse on the part of the Resolution Applicant. In ***State Bank of India and Others (supra)***, the Supreme Court further directed, in terms of the order dated 21.11.2022 passed by the NCLAT Court-I, Mumbai Bench, Maharashtra, that the amount be deposited in an escrow account to be opened with the State Bank of India. It was only thereafter effective steps toward implementation of the resolution plan were

taken, culminating in the successful resolution of the Corporate Debtor as a new entity with effect from 22.12.2022 upon completion of all formalities.

66. In our considered view, the newly resolved company cannot be forced to bear the financial burden due to such delay caused because the NCLT order approving resolution plan got challenged before appellate Courts. To substantiate it, we would rely upon the Latin legal maxim, *actus curiae neminem gravabit* which means that an act of the Court shall prejudice no one. In the facts of this case, occasional interim orders delayed the effective date, which is to be considered as per clause mentioned in the resolution plan regarding commencement of liabilities and therefore, Court is to come forward to protect such litigant relying upon above maxim.

67. On the matter of delay due to litigation the Supreme Court has relied upon the above-mentioned maxim to do justice in ***Arcelor Mittal India Private Limited v. Satish Kumar Gupta, (2019) 2 SCC 1***, and held that:

86. *Given the fact that both the NCLT and Nclat are to decide matters arising under the Code as soon as possible, we cannot shut our eyes to the fact that a large volume of litigation has now to be handled by both the aforesaid Tribunals. What happens in a case where the NCLT or the NCLAT decide a matter arising out of Section 31 of the Code beyond the time-limit of 180 days or the extended time-limit of 270 days? Actus curiae neminem gravabit the act of the court shall harm no man is a maxim firmly rooted in our jurisprudence (see Jang Singh v. Brij Lal [Jang Singh v. Brij Lal, (1964) 2 SCR 145 : AIR 1966 SC 1631] , SCR at p. 149 and A.R. Antulay v. R.S. Nayak [A.R. Antulay v. R.S. Nayak, (1988) 2 SCC 602 : 1988 SCC (Cri) 372 : 1988 Supp (1) SCR 1] , SCR at p. 71). It is also true that the time taken by a Tribunal should not set at naught the time-limits within which the corporate insolvency resolution process must take place. However, we cannot forget that the consequence of the chopper falling is corporate death. The only reasonable construction of the Code is the balance to be maintained between timely completion of the corporate insolvency resolution process, and the corporate debtor otherwise being put into liquidation. We must not forget that the corporate debtor consists of several employees and workmen whose daily bread is dependent on the outcome of the corporate insolvency resolution process. If there is a resolution applicant who can continue to run the corporate debtor as a going concern, every effort must be made to try and see that this is made possible. [Regulation 32 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, states that the liquidator may also sell the corporate debtor as a going concern.] A reasonable and balanced construction of this statute would therefore lead to the result that, where a resolution plan is upheld by the appellate authority, either by way of allowing or dismissing an appeal before it, the period of time taken in litigation ought to be excluded. This is not to say that the NCLT and Nclat will be tardy in decision-making. This is only to say that in the event of the NCLT, or the Nclat, or this Court taking time to decide an application beyond the period of 270 days, the time taken in legal proceedings to decide the matter cannot possibly be excluded, as otherwise a good resolution plan may have to be shelved, resulting in corporate death, and the consequent displacement of employees and workers.*

(emphasis supplied)

68. The minutes of 20th CoC meeting clearly recognizes the effective date of implementation of the resolution plan is the date when the funds were deposited, i.e., 22.12.2022, and therefore, considering NCLT approval date being the date to commence liability would amount to interference with the wisdom of the CoC in the facts of this case because the plan accepted by the NCLT has expressly mentioned that the effective date would be the date of deposit. For ready reference, Agenda Item No. B-15, reads as below:-

Dissolution of the Monitoring Committee pursuant to the completion of the implementation of the Resolution Plan.

The Monitoring Committee was informed that pursuant to resolution plan dated November 25, 2019 (as amended from time to time till January 13, 2020) submitted by Reliance Projects and Property Management Services Limited through its division Infrastructure Projects ("RPPMSL" and the plan is referred to as the "Resolution Plan") during the corporate insolvency resolution process of the Company, as duly approved by the committee of creditors of the Company and subsequently by the Hon'ble National Company Law Tribunal, Mumbai Bench ("NCLT") vide order dated December 3, 2020 and all the steps of the implementation stated in the Resolution Plan of RPPMSL (including reconstitution of Board) have been completed on the Effective Date, i.e. December 22, 2022.

The distribution of the Total Resolution Amount (as defined under the Resolution Plan) to the relevant stakeholders/creditors of the Company shall be carried out in terms of the Escrow Agreement dated December 22, 2022.

Accordingly, it is informed that all actions / correspondence in relation to any matters/affairs of the Company shall henceforth be undertaken by the reconstituted board of directors of the Company, and the Monitoring Committee shall be divested of its powers and responsibilities and shall cease to exist with effect from the Effective Date i.e. December 22, 2022 in accordance with the terms of the Resolution Plan, without the requirement of any further action or deed in this regard.

69. Considering above, we conclude that the liability arises from the effective date which is expressly mentioned in the resolution plan, which was approved by CoC in its commercial wisdom, approved by NCLT and upheld by Supreme Court. Recording in NCLT order that it is effective from the date of the order is to be read harmoniously as well as purposefully as the moment resolution plan is approved by the NCLT, everything written in the resolution plan becomes binding on all stakeholders. NCLT cannot intend to interfere in the provision made in the resolution plan as per established legal principle and, therefore, the NCLT order could have been read as the date per the resolution plan, if the amount was deposited as per clause 1.2.8 schedule and had not got delayed the implementation of the plan due to litigation.

70. In the peculiar facts and circumstances of this case where the implementation of resolution plan got over delayed due to the situation beyond the control of the petitioner, we consider it appropriate to apply the principle laid down by the Supreme Court in ***Arcelor Mittal India Private Limited (supra)***, where the Supreme Court has excluded the time taken in the litigation, we hold that the date on which the petitioner could effectively implement the resolution plan after depositing complete resolution amount, the liability shall arise from that date. Otherwise, putting

the uncertain, unexpected, unclaimed burden on the resolved entity will be against the principles on which the insolvency law is based.

(iv) Legality of Impugned Demands and Coercive Measures

71. The next issue which arises for consideration is the legality and sustainability of the impugned demands, recovery certificates, and consequential coercive actions taken by the respondent authorities because the petitioner has made prayer against the said actions primarily on the ground that the demands pertain to the electricity dues relating to the period prior to Effective Date of the resolution plan, and therefore stand extinguished in view of Section 31 of the IBC if the claim is not being filed during CIRP. It is further contended that once the resolution plan has attained finality, which binds all stakeholders, and hence no recovery proceedings in respect of pre-CIRP dues can be maintained, much less enforced by coercive measures.

72. On the contrary, the respondents seek to justify the impugned actions by contending that the electricity dues constitute statutory dues protected under the applicable Electricity Supply Code and that such dues form a first charge on the premises. It is further urged that electricity being an essential service, recovery of arrears cannot be ignored, and disconnection or reconnection are permissible only under the Electricity Act, particularly where dues remain outstanding against the premises in question for any reason.

73. The controversy, therefore, lies in determining whether, in light of the approved resolution plan and the statutory scheme under the IBC, the respondents could lawfully raise and enforce demands relating to the duration prior to the effective date, and whether coercive measures such as disconnection of electricity supply and sealing of operational mobile tower sites can be justified in law.

74. The answer of this issue would first depend upon the interplay between the binding effect of the resolution plan under Section 31, the overriding effect under Section 238 of the Code, and the statutory powers claimed by the electricity distribution companies under the Electricity Act and the Supply Code, which has been discussed in point (i) where we have concluded that the IBC has overriding effect over Electricity Act and other related laws.

75. The second determinative factor would be as to whether respondents could raise the demand for the period prior to the effective date or when the complete resolution amount was not deposited and the plan was yet to be implemented. This issue has been analysed already above as point (ii) where we have concluded that the respondents who have not filed their claim during CIRP, cannot raise any demand as the claim has got extinguished such a right after the plan, resolution plan got approved by the NCLT and remained undisputed by such a department till the effective date. Considering facts of this case, where the plan is already implemented, raising the demand subsequently would be against all settled legal principles of insolvency laws.

76. Since, it has been held that the claims in respect of the period prior to the approval of the resolution plan stand extinguished, the respondents are precluded from enforcing any such claims,

and the liability of the petitioner cannot be fastened prior to the Effective Date as determined in accordance with the resolution plan in the facts of the case.

77. IBC operates within a time-bound and self-contained mechanism, where rights and obligations of stakeholders are required to be determined strictly in accordance with the approved resolution plan and its implementation structure. The binding nature of the resolution plan, once it attains finality under Section 31 of the Code, necessarily governs the rights of all stakeholders, including operational creditors and statutory authorities, subject to the contours of the plan itself. But the principle of exclusion of time taken in the litigation is not alien to the insolvency law but it is available to the petitioner and not to the respondents in the fact of the case.

78. Within the framework of the IBC, three distinct phases prior to final phase can be discerned in the facts of this case. The first pertains to pre-CIRP dues, which are required to be filed before the RP during the CIRP, failing this, or if not provided for in the approved resolution plan, such dues stand extinguished. The second phase covers the CIRP period itself, where regular operational cost gets presented as CIRP costs, and get placed before the CoC, and these costs are payable on timely basis or in terms of the approved plan, but this also extinguishes, if neither paid during CIRP nor mentioned in the plan. The third phase commences from the date of approval of resolution plan when the monitoring committee takes over, which settles all operational and transitional costs till the effective date of the resolution plan. The final phase is when the corporate debtor emerges as a clean slate, notwithstanding continuity in its name or change of name.

79. In view of the above, dues arising in the first, second and third phases cannot be enforced after the resolution plan is implemented. It is only liabilities arising in the final phase that can be validly claimed, and the petitioner would be bound to comply with the provisions of the Electricity Act, 2003 and other applicable laws in respect of obligations accruing from the effective date onwards.

80. From perusal of resolution plan, it appears that the implementation of the resolution plan, including assumption of management and operational control, is not merely a formal consequence of approval but is intrinsically linked to the execution steps contemplated under the plan. The determination of the point at which liabilities crystallise must, therefore, be guided by the scheme of implementation as reflected in the resolution framework and the actual transition of control in terms thereof, especially when the delay in the implementation was due to pending considerations before one or another Courts.

81. Consequently, any action or demand raised by statutory authorities must necessarily be tested on the anvil of the finality accorded to the resolution process and the statutory mandate governing its binding effect. Coercive steps undertaken in deviation of the approved resolution framework cannot be sustained if they are found to travel beyond the permissible scope of recovery as envisaged under the IBC framework.

82. Accordingly, the sustainability of the impugned actions and the liability, if any, attributable to the petitioner are required to be examined in the light of the settled legal position governing the sanctity of the resolution process and the statutory finality attached thereto under

IBC and therefore impugned demand notices pertaining to the duration prior to CIRP, during CIRP, monitoring phase, and further upto the effective date of implementation cannot be sustained in law.

VII Conclusion

83. In view of the discussions made hereinabove and upon consideration of the factual matrix, the submissions advanced by learned counsel for the parties, and the settled legal position governing the field, this Court is of the considered view that the impugned actions of the respondent authorities cannot be sustained in law as IBC has overriding effect.

84. The claims sought to be enforced pertain to the period pre- CIRP, during CIRP, monitoring phase and further upto the period till effective date for which no claim was filed by respondents. These claims are extinguished in terms of Section 31 of the IBC as well as express provisions made in the resolution plan and hence are not enforceable against the petitioner.

85. We are of the considered view that the resolution plan, having attained finality, is binding on all stakeholders, including statutory authorities, and operates on a clean slate principle as recognised in law. The respondent authorities, therefore, could not have proceeded to raise or enforce demands which are extinguished, nor could they have resorted to coercive measures for recovery of such extinguished claims.

86. Prayers regarding disconnection/ reconnection of the electricity, are not considered in this order as the main point in this case has been the date from which the liability could be imposed upon the petitioner and once that is being determined as the effective date when the final amount was deposited as per resolution plan, consequential action may follow. And for this reason if there is any demand pre-effective date, then the same cannot be claimed being extinguished claim and if the demand is regarding post-effective date then the parties have got remedy under Electricity Act, except the fact that the dues or arrears on premises cannot be demanded any more as per Electricity Act dues for the reason of overriding effect of IBC.

87. In the light of the aforesaid, this Court is of the considered view that the impugned Recovery Certificates and Kruki proceedings, upto the extent of demand being made prior to the effective date 22.12.2022, cannot be sustained in law and are liable to be set aside.

VIII Order

88. Thus, this writ petition succeeds and is **allowed**. Impugned demand notices and consequential recoveries and action are quashed. However, respondent authorities are at the liberty to issue fresh demand notice for any dues, which may have occurred after the effective date i.e., 22.12.2022 in accordance with law.

89. No order as to costs.

(2026) 4 ILRA 435
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 24.04.2026

BEFORE

THE HON'BLE MAHESH CHANDRA TRIPATHI, J.
THE HON'BLE KUNAL RAVI SINGH, J.

Writ C No. 41339 of 2025
Along with
Other Connected Cases

Vijay Pal Singh & Ors.

...Petitioners

Versus

State of U.P. & Ors.

...Respondents

ISSUE FOR CONSIDERATION

Whether the notifications issued under Sections 11 and 19 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 for acquisition of land, including village abadi, for expansion of the Noida International Airport, Jewar, were liable to be quashed on the grounds that: (i) the acquisition could not be undertaken under the Act, 2013 after the villages had been declared Industrial Nagar under the U.P. Industrial Area Development Act, 1976; (ii) the mandatory requirement of obtaining consent of at least 70% of affected families for a Public-Private Partnership project was not satisfied; (iii) the Social Impact Assessment process and Expert Group recommendations were not duly complied with; (iv) the statutory procedure under Sections 11, 12, 15, 16, 17 and 19 of the Act, 2013 was violated; (v) additional land and village abadi were included without due acquisition proceedings; (vi) Section 10 relating to food security and acquisition of irrigated multi-cropped land was breached; and (vii) the acquisition violated the constitutional protection of property under Article 300-A of the Constitution.

HEADNOTE

Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 – ss.2(2), 4, 5, 7, 10, 11, 12, 15, 16, 17, 19 – Constitution of India – Art.300-A – U.P. Industrial Area Development Act, 1976 – Acquisition of land including village abadi for expansion of Noida International Airport, Jewar under a Public-Private Partnership project – Challenge to notifications under ss.11 and 19 – Grounds urged: (i) villages having been declared Industrial Nagar under the Act, 1976, acquisition could only be undertaken by YEIDA under that enactment and not under the Act, 2013; (ii) mandatory consent of at least 70% of affected families under s.2(2)(b)(ii) was not obtained; (iii) Social Impact Assessment proceedings were arbitrary and public hearing was not properly conducted; (iv) recommendation of the Expert Group for re-survey of affected villages was ignored; (v) notification under s.11 was issued without compliance with mandatory requirements under ss.11, 12 and 15 and proceedings under ss.15 and 16 were conducted simultaneously; (vi) village abadi and additional land were included in the declaration under s.19 without prior acquisition proceedings and without consideration of objections; (vii) acquisition involved irrigated multi-cropped land in violation of s.10 relating to food security; and (viii) deprivation of property without strict compliance with statutory safeguards violated Art.300-A.

Held: 1. Nature And Importance Of The Project: Public Purpose – Expansion of Noida International Airport being a project of national importance intended to generate employment, economic development and tourism, the declaration of public purpose could not be said to be arbitrary or colourable exercise of power. (Para 6.1)

2. Statutory Scheme – Private Company Versus Public-Private Partnership Projects: The Airport Project is structured as a public-private partnership project being implemented through NIAL (a State company) with the private operator YIAPL, a wholly owned subsidiary of Zurich Airport International AG. The consent threshold applicable is accordingly 70% of the project affected families. (Para 6.2.4)

3. SIA Process – Compliance Examined: Section 5 of the Act, 2013 governs the conduct of a public hearing at the stage of Social Impact Assessment. Under Section 5, the purpose of the public hearing is limited to ascertaining the views of the affected families to be recorded in the SIA Report; the Act does not contemplate adjudication of individual objections at the SIA stage. Court held that the SIA process was duly conducted in accordance with Sections 4 to 8 of the Act, 2013 and the Rules, 2016. The Expert Group's suggestion for exploring the possibility of minimising displacement was acted upon through PwC, which confirmed the technical unavoidability of relocation. (Para 6.3.4).

4. Consent – Satisfaction of Statutory Threshold: The statutory unit for computing consent is the "affected family" as defined under Section 3(c) of the Act, 2013, and not village-wise landholdings or individual voters. Court held that where certain families holding land in more than one revenue village had been counted multiple times, such duplication was liable to be removed. Upon removal of the duplication, the corrected data established that **73.02% of the project-affected families** had given consent, which was well above the mandatory **70% threshold** prescribed under Section 2(2)(b)(ii) of the Act, 2013. (Para 6.4.2).

5. Expression "affected families" is of wide amplitude and is not confined merely to landowners whose land is acquired, but also includes all such families whose livelihood or rights are adversely impacted by the acquisition, including agricultural labourers, tenants, share-croppers, artisans, forest dwellers, persons dependent on forest or water resources, beneficiaries of Government land allotments, and even families residing in urban areas whose livelihood is affected. For the purposes of obtaining consent under Section 2(2), the statute mandates that the requisite percentage is to be computed with reference to this broader category of affected families and not merely the recorded tenure holders. (Para 6.2.3)

6. Hearing Of Objections Under Section 15 – Section 15 of the Act, 2013 r/w Rule 23 of the Rules, 2016 prescribes the procedure for hearing of objections filed u/s 15 of the Act, 2013 to the proposed acquisition. Any person interested in the land may raise objections within sixty days from the date of publication of the preliminary notification issued under Section 11(1). The objections may relate to the suitability and extent of land, the justification of public purpose, and the findings of the Social Impact Assessment Report. **Such objections are to be considered** by the Collector after affording an opportunity of personal hearing, including through an authorised representative or advocate. **The objections** must be heard by the Collector personally and not delegated. The Collector is required to conduct **the** necessary inquiry and submit a report with recommendations, along with the record of proceedings and relevant details, to the appropriate Government. The final decision on such objections rests with the appropriate Government. In the instant case, **the** Court found that notices were duly issued under Rule 23 of the Rules, 2016 fixing **the** date for hearing of objections. **Public** notice was published in newspapers and local public announcements were made. **The** petitioners were afforded a personal hearing. After due consideration, the Collector passed a reasoned order dismissing the objections on the ground that they fell outside the limited statutory scope of Section 15(1). **The** Collector's report was forwarded to and approved by the State Government under Section 15(3). **The** Court found no infirmity in the procedure followed under Section 15 of the Act, 2013. (Para 6.6.2)

7. Parallel Conduct Of Proceedings Under Sections 15 And 16: The Court rejected the petitioners' contention that initiation of proceedings under Section 16 prior to disposal of objections under Section 15 constitutes an illegality. A harmonious reading of Sections 15, 16, 18, and 19 of the Act, 2013 leads to the conclusion that these provisions are designed to operate concurrently and not in a strictly sequential manner. (Para 6.7.2)

8. R&R Scheme – Adequacy And Compliance: Rehabilitation & Resettlement Scheme provided a comprehensive package including allotment of developed residential land (50% of existing landholding, minimum 50 sq. mtrs., maximum 500 sq. mtrs.), employment option or lump sum of Rs. 5,00,000/- or annuity

of Rs. 2,000/- per month for 20 years, subsistence allowance, transportation allowance, resettlement allowance, and special assistance for SC/ST families, all in accordance with the Act, 2013. The petitioners' objections were specifically recorded and addressed in the draft R&R Scheme dated 14.07.2025. (Para 6.8)

9. **Section 19 Declaration – No Expansion Of Acquisition:** Court rejected the petitioners' contention that Gata Nos. 365 to 671 were added for the first time in the Section 19 notification, covering an additional area of 78.6776 hectares for which no prior acquisition proceedings had been initiated. The Court held that a plain reading of Section 19(2) makes it evident that the declaration under Section 19(1) is required to be accompanied not only by the summary of the Rehabilitation and Resettlement Scheme but also by an indication of the area required for the resettlement of the affected families. The Court further held that the land identified in Schedule-B of the impugned Section 19 Declaration, admeasuring 437.9931 hectares (of which 78.6776 hectares pertained to the petitioners' village), was included solely as the identified resettlement area for displaced families in compliance with Section 19(2) and did not form part of the land proposed to be acquired for the airport expansion project under Section 19(1). Identification of land for R&R purposes under Section 19(2) is a distinct statutory obligation and does not constitute acquisition of such land under Section 19(1). The acquisition of the 437.9931 hectares identified for R&R purposes shall be undertaken only through a separate and independent acquisition process in accordance with the Act, 2013. (Para 6.9.1)

10. Section 10 – Food Security: Section 10 of the Act, 2013 provides special provisions to safeguard food security. It imposes a general prohibition on the acquisition of irrigated multi-cropped land, except in exceptional circumstances as a last resort and subject to limits to be notified by the appropriate Government. The State Government had notified 5% of the net sown area as the applicable limit for District Gautam Buddha Nagar. The net sown area of the district was 64,046 hectares, and the total acquisition across all stages in the district did not exceed the notified limit of 5%. The Court held that the requirement of Section 10(4) accordingly stood satisfied. As far as Section 10(3) is concerned, that provision is triggered only when irrigated multi-cropped land is acquired. In the instant case, the petitioners could not place any specific material on record to establish that the land being acquired was irrigated multi-cropped land within the meaning of Section 10(1).

11. Expert Group's Report: Interference by the Court is warranted only if the Expert Group recommends abandonment under Section 7(4) and the Government proceeds in defiance of that recommendation. In the instant case, the Expert Group expressly did not make any recommendation under Section 7(4) for abandonment of the acquisition. The Court held that the petitioners' suggestion that the Expert Group recommended that Villages Thora and Neemka should be kept free from displacement was a misreading of the record. The Expert Group merely suggested that the possibility be explored, upon which PwC conclusively confirmed the unavailability of relocation. No recommendation under Section 7(4) was made. (Para 6.11.1)

12. **Rule 13 of the Rules, 2016 – Minimum Land Acquisition and Utilisation of Government Land:** The Multi-Disciplinary Expert Group specifically recorded in its report that the total proposed acquisition area of 1,888.9088 hectares constituted the bare minimum requirement for the project and that no viable alternative existed which would result in lesser acquisition or displacement. The Court rejected the ground regarding violation of Rule 13 of the Rules, 2016. (Para 6.11.3)

13. **Challenge Based on the U.P. Industrial Area Development Act, 1976:** Declaration of an area as an industrial township does not, in law, bar the exercise of acquisition powers under the Act, 2013 for a distinct public purpose. Section 6 of the Act, 1976 itself contemplates the acquisition of land either by agreement or through proceedings under the land acquisition law in force. (Para 6.12)

14. **Article 300-A – Right to Property –** Though no longer a fundamental right, the right to property remains a constitutional right protected under Article 300-A. However, the right is subject to the State's power of eminent domain. Where acquisition is undertaken under a valid law and in compliance with the statutory safeguards prescribed under the Act, 2013, deprivation of property cannot be said to violate Article 300-A. (Para 6.13)

15. Petitioners' Urgency Clause Argument: Section 40 of the Act, 2013 provides a special urgency procedure for acquisition by the appropriate Government, enabling the Collector to take possession of land even before the award is passed. The Court noted that the acquisition in the present case was not carried out under the urgency provisions of Section 40. On the contrary, the entire acquisition was undertaken through the normal, full, and complete procedure prescribed under the Act, 2013. No urgency clause was invoked, and

the statutory procedure was followed without any curtailment of the petitioners' rights at any stage. (Para 6.14)

16.Quashing of Acquisition – An acquisition undertaken for the benefit of the public at large is not to be lightly quashed. Extraordinary reasons must exist for doing so. The Government's declaration of public purpose is final and ordinarily not justiciable; judicial review is confined to cases of fraud or colourable exercise of power. Once a public project has substantially progressed or been completed, the appropriate relief is compensation rather than quashing the acquisition. **Court held that an affected landowner aggrieved by the determination of compensation is at liberty to avail the remedy of reference before the competent Reference Authority under Section 64 of the Act, 2013. The Act, 2013 provides a complete statutory mechanism for compensation disputes through Section 64 (Reference to the Authority) and Section 74 (Appeal to the High Court). Writ jurisdiction is not the appropriate forum for redressal of grievances relating to the adequacy of compensation or the rate of market value.** (Paras 6.18.1, 6.21.1, 6.21.4, 6.21.7, 6.21.8, 6.21.9)

17. Court held that the acquisition process pursuant to the impugned notifications dated 11.04.2025 (under Section 11) and 24.10.2025 (under Section 19) of the Act, 2013 was conducted in full and meticulous compliance with every stage prescribed under the Act, 2013 and the Rules, 2016. The notifications under Sections 11 and 19, the record of hearings under Section 15, the approved R&R Scheme under Section 18, and the awards under Section 23 were all duly documented and placed before the Court. Court held that the petitioners' contention that abadi land was proposed for acquisition without any spot inspection was factually incorrect. The competent authority had conducted surveys in all three villages, wherein existing structures, abadi, buildings, wells, tube wells, trees, and other assets were identified, verified, and recorded in the statutory survey documents in Form-11 under the Rules, 2016. (Paras 6.15, 6.17)

18. Court declined to interfere with the acquisition proceedings. However, it directed that possession of the abadi land of displaced families shall not be taken until: (i) full development of the rehabilitation site; (ii) measurement of the existing abadi area of each affected family; (iii) carving out of developed plots in accordance with the approved R&R Scheme; and (iv) passing of the R&R Award under Section 31 of the Act, 2013 and actual handing over of the developed plots to the displaced families. (E-5)

CASE LAW CITED

Kichhu Ram and Another v. State of U.P. and 5 Others, 2019 SCC OnLine All 5071 (Writ-C No. 6499 of 2019, decided on 08.04.2019);

D.B. Basnett (D) through LRs. v. The Collector and Another, East District, Gangtok, Sikkim and Another, [2020] 4 SCR 513;

Kolkata Municipal Corporation and Another v. Bimal Kumar Shah and Others, [2024] 5 SCR 831;

Ramniklal N. Bhutta and Another v. State of Maharashtra and Others, AIR 1997 SC 1236;

Smt. Somawanti and Others v. State of Punjab and Others, AIR 1963 SC 151;

Daulat Singh Surana v. First Land Acquisition Collector and Others, (2007) 1 SCC 641;

Whirlpool Corporation v. Registrar of Trade Marks, Mumbai and Others, (1998) 8 SCC 1;

Veena Singh v. Union of India and 3 Others, 2026 (1) AWC 725;

Competent Authority v. Barangore Jute Factory and Others, (2005) 13 SCC 477.

List of Acts

Constitution of India;

Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013;

Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Uttar Pradesh) Rules, 2016;

U.P. Industrial Area Development Act, 1976.

List of Keywords

Land Acquisition; Noida International Airport; Jewar Airport Expansion; Public-Private Partnership Project; Public Purpose; Social Impact Assessment; Social Impact Management Plan; Expert Group; Consent of Seventy Per Cent Affected Families; Definition of Affected Family; Section 2(2); Section 3(c); Section 4; Section 5 Public Hearing; Section 7 Expert Group; Section 8 Approval; Section 10 Food Security; Section 11 Preliminary Notification; Section 14 Limitation; Section 15 Objections; Section 16 Rehabilitation and Resettlement Scheme; Section 18 Approval of R&R Scheme; Section 19 Declaration; Section 23 Compensation; Section 26 Market Value; Section 30 Solatium; Section 31 R&R Award; Section 38 Taking Possession; Rehabilitation; Resettlement; Village Abadi; Irrigated Multi-Cropped Land; Parallel Proceedings; Statutory Compliance; Article 300-A; Right to Property; Judicial Review; Infrastructure Project; National Importance; Procedural Safeguards; Suppression of Material Facts.

CASE ARISING FROM

Challenge to the notifications dated **11.04.2025** issued under **Section 11** and dated **24.10.2025** issued under **Section 19** of the **Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013**, pertaining to acquisition of land for Stage-2, Phase-2 and Phase-3 expansion of Noida International Airport, Jewar, District Gautam Buddha Nagar, Uttar Pradesh.

Appearances for Parties

Advs. for the Petitioner: Mahesh Chand Sharma

Advs. for the Respondents: **Aditya Bhushan Singhal, C.S.C**

(Delivered by Hon'ble Mahesh Chandra Tripathi, J.)

A. APPEARANCE OF COUNSEL:-

1. Heard Shri Mahesh Chand Sharma, learned counsel for the petitioners, Shri Devesh Vikram, learned Additional Chief Standing Counsel and Shri Fuzail Ahmad Ansari, learned Standing Counsel, both for the State-respondents and Shri Rahul Agarwal, learned Senior Counsel assisted by Shri Abhay Pratap Singh and Shri A.B.Singhal, learned counsel for the respondent - Yamuna Expressway Industrial Development Authority.

1.1. All the aforesaid writ petitions, being Writ-C No. 41339 of 2025, Writ-C No. 41467 of 2025 and Writ-C No. 46238 of 2025, raise a common challenge to the notifications dated 11.04.2025 issued under Section 11 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and dated 24.10.2025 issued under Section 19 of the Act, 2013, pertaining to the acquisition of land for the expansion of the Noida International Airport, Jewar, District Gautam Buddha Nagar. The facts and the questions of law arising in all three writ petitions are substantially similar and interlinked. With the consent of the learned counsel appearing for all the parties, all the three writ petitions were heard together analogously and are being disposed of by this common judgment. It is clarified that for the purpose of brevity, the facts as narrated hereinafter are drawn mainly from Writ-C No. 41339 of 2025, since the facts in all the writ petitions are similar and the narration of facts in one petition sufficiently

represents the factual matrix common to all. Wherever facts specific to Writ-C No. 41467 of 2025 or Writ-C No. 46238 of 2025 are material and distinct, the same have been noted separately.

B. PRAYER:

2. The aforementioned writ petitions have been preferred praying, inter alia, for a direction in the nature of certiorari to quash the notifications under Sections 11 and 19 of the Act, 2013 dated 11.04.2025 and 24.10.2025 respectively, in so far as they relate to the displacement of village abadi of Industrial Nagar - Village Neemka Shahjahanpur Khas, Village Khawajpur and Village Thora, Tehsil Jewar, District Gautam Buddha Nagar; and for writs of mandamus restraining the respondents from proceeding further with the displacement of the said abadis. The petitioners have also prayed for a direction to the respondents to decide the representations filed by them at various stages of the acquisition proceedings, within a time fixed by this Court.

C. FACTS OF THE CASE:-

3. Before advertng to the submissions advanced by the parties, it is necessary to set out the factual background of the present matter as emerging from the record.

3.1. The Government of Uttar Pradesh earmarked approximately 5,000 hectares of land for the development of the Noida International Airport at Jewar, District Gautam Buddha Nagar. The State Cabinet approved the acquisition of the said land in multiple phases. The Airport Project is envisaged as an integrated aviation hub with modern, technology-driven infrastructure and adequate land reserves to enable its systematic and long-term development. The project is expected to promote regional economic growth, generate employment for the local population, strengthen manufacturing and export sectors, and promote tourism, having regard to the proximity of Jewar to Vrindavan, Mathura, and the Taj Mahal. The total acquisition undertaken for the Airport Project comprises three stages: (a) Stage-1, covering land admeasuring 1,239.1416 hectares; (b) Stage-2, Phase-1, covering land admeasuring 1,181.2793 hectares; and (c) Stage-2, Phase-2 and Phase-3 (the present acquisition), covering land admeasuring 1,857.8871 hectares.

3.2. The Airport Project is being implemented on a public-private partnership model on a design, build, finance, operate and transfer basis. The State Government resolved to implement the project through Noida International Airport Limited, a State company, with shareholding distributed as follows: State Government (37.50%), NOIDA (37.50%), Greater NOIDA (12.50%), and YEIDA (12.50%). NIAL invited bids for the development, operation, and maintenance of the project, and Zurich Airport International AG emerged as the successful bidder. ZAI thereafter incorporated Yamuna International Airport Private Limited as its wholly owned subsidiary. On 07.10.2020, NIAL entered into a concession agreement with YIAPL for design, build, finance, operate and transfer of the Noida International Airport for a concession period of 40 years.

3.3. Under Stage-1, land admeasuring 1,239.1416 hectares was acquired from six villages, namely Dayanatpur, Rohi, Parohi, Ranhera, Kishorepur, and Banwaribas, and construction of the airport is presently underway on this land. The Stage-1 acquisition affected approximately 8,971 families, out of which approximately 3,627 families from Villages Dayanatpur, Rohi, and

Kishorepur were displaced. Land admeasuring 48.0970 hectares was identified as a rehabilitation site in the Jewar Bangar area, and a Rehabilitation and Resettlement Scheme (Stage-1 R&R Scheme) was framed and finalised on 31.12.2018. The rehabilitation land was developed into seven sectors, in which 3,074 plots were allotted to the displaced families. The said sectors are established residential areas equipped with basic civic infrastructure. Compensation was paid under Section 23 of the Act, 2013 and possession was taken after compliance with Section 38, and in the case of displaced families, only after completion of the implementation of the Stage-1 R&R Scheme. No development charges were levied on any landowner; the Authority developed the plots at its own cost; and stamp duty and registration charges for execution of conveyance documents were borne by the concerned authorities, without imposing any cost upon the displaced farmers.

3.4. For the Stage-2, Phase-1 expansion, the Civil Aviation Department, Government of Uttar Pradesh, proposed the acquisition of an additional 1,181.2793 hectares of land from six villages in Tehsil Jewar, District Gautam Buddha Nagar, namely Karauli Bangar, Dayanatpur, Kurab, Ranhera, Mudharh, and Birampur. The land acquisition process under the Act, 2013 stands completed and partial possession of the acquired land has already been transferred to the Respondent Authority - YEIDA. Approximately 20,024 families were affected, out of which about 12,863 families were displaced. A Draft Rehabilitation and Resettlement Scheme for the Stage-2, Phase-1 displaced families was approved by the Commissioner, Rehabilitation and Resettlement, on 13.03.2023, and approximately 189.7622 hectares of land across multiple sites was designated for rehabilitation and resettlement purposes. The implementation of this scheme is presently underway.

3.5. The present writ petitions relate to the acquisition being carried out under Stage-2, Phase-2 and Phase-3 of the Airport Project. The acquisition pertains to fourteen villages in Tehsil Jewar, District Gautam Buddha Nagar, namely Thora, Neemka Shahjahanpur, Khawajpur, Ramner, Kishorepur, Banwaribas, Parohi, Mukimpur Shivara, Jewar Bangar, Sabota Mustafabad, Ahmadpur Chauoli, Dayanatpur, Bankapur, and Rohi. The total land proposed for acquisition admeasures 1,857.8871 hectares, of which 275.1820 hectares pertains to Village Neemka Shahjahanpur, 272.3978 hectares to Village Khawajpur, and 577.3727 hectares to Village Thora. The present acquisition seeks to facilitate large-scale aviation and allied infrastructure, including construction of two additional runways, maintenance, repair and overhaul (MRO) facilities, parallel taxiways, isolation bays and engine run-up bays, cargo infrastructure including a Northern Cargo Terminal, Express Cargo Terminal and container terminals, satellite concourses with linkages and walkways, tunnels for cargo movement, passenger car parking and ground transportation centre, light rail connectivity between terminals, and peripheral infrastructure including fire stations, offices, docking areas, warehouses, and perimeter roads.

3.6. Insofar as the statutory process leading to the impugned notifications is concerned, in terms of Section 4 of the Act, 2013, read with Rule 3(1) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Uttar Pradesh) Rules, 2016, the State Government issued Notification No. 820/chhappan-2023-31/2016(Stage-2A) dated 30.06.2023, nominating Gautam Buddha University, Gautam Buddha Nagar, as the Social Impact Assessment Agency. In compliance with Rule 3(2) of the Rules, 2016, the said notification was made available in the local language in the affected areas and in the offices of the District

Collector, Sub-Divisional Magistrate, Land Acquisition Officer, Administrator, and Tehsildar. It was also published in three daily newspapers widely circulated in the affected area, namely 'Amar Ujala', 'Hindustan', and 'Times of India', on 06.07.2023, and was uploaded on the official website of District Gautam Buddha Nagar.

3.7. Pursuant to the issuance of the Section 4 Notification, the SIA Agency prepared a draft Social Impact Assessment Report and Social Impact Management Plan. In compliance with Rule 7(1) of the Rules, 2016, read with Section 5 of the Act, 2013, public hearings were conducted on 19.12.2023 at Village Khwajpur and on 21.12.2023 at Village Neemka Shahjahanpur, to invite the views of the affected families to be recorded and included in the Social Impact Assessment Report. The SIA Agency submitted the Social Impact Assessment Report and Social Impact Management Plan to the appropriate authorities in December 2023. The SIA Report concluded that: (i) the proposed acquisition serves the public purpose; (ii) the land proposed for acquisition is the absolute minimum area required; and (iii) the land proposed for acquisition is the most feasible option.

3.8. In compliance with Rule 8 of the Rules, 2016, on 01.02.2024, a notice informing completion of the SIA Report was published in 'Amar Ujala' and 'Dainik Jagran' on 02.02.2024 and uploaded on the official website of District Gautam Buddha Nagar. In accordance with Section 7 of the Act, 2013, read with Rule 10 of the Rules, 2016, the State Government constituted a Multi-Disciplinary Expert Group to evaluate the SIA Report. On 09.02.2024, the Expert Group unanimously approved the SIA Report and recommended that it be forwarded to the State Government for further approval. The Expert Group categorically recorded that the total proposed acquisition area of 1,888.9088 hectares across fourteen villages constitutes the bare minimum requirement for the project and that no viable alternative exists which would result in lesser displacement. In compliance with Rule 10(3) of the Rules, 2016, the recommendations of the Expert Group were published in 'Amar Ujala' and 'Dainik Jagran' on 21.03.2024 and uploaded on the official website of District Gautam Buddha Nagar.

3.9. On 08.01.2025, after due consideration, the State Government, in compliance with Section 8 of the Act, 2013, granted approval to the SIA Report and the recommendations made by the Expert Group. In compliance with Section 8(3) of the Act, 2013, read with Rule 11(3) of the Rules, 2016, this approval was published in 'Amar Ujala' and 'Dainik Jagran' on 11.01.2025 and uploaded on the official website of District Gautam Buddha Nagar.

3.10. Since the present acquisition is for a public-private partnership project, prior consent of at least 70% of the project-affected families was required to be obtained before issuance of the Section 11 notification, in terms of Section 2(2)(a) and (b)(ii) of the Act, 2013, read with Rule 14 of the Rules, 2016. As on 01.03.2025, the consent of 73.02% of the affected families had been obtained.

3.11. After obtaining the requisite consent, the requiring body submitted its request for land acquisition to the Collector. Prior thereto, an on-spot survey and inspection of assets was duly conducted, wherein a detailed inventory of existing structures, buildings, wells, tube wells, trees, and other assets was prepared in Form-11 prescribed under the Rules, 2016, along with an assessment of the estimated compensation payable in respect of each item.

3.12. In terms of Section 14 of the Act, 2013, the notification under Section 11 was required to be issued within twelve months from the date of appraisal of the SIA Report by the Expert Group, i.e., by 09.02.2025. In exercise of powers under the proviso to Section 14 of the Act, 2013, the State Government, by order dated 27.02.2025, granted an extension of time up to 08.02.2026 for issuance of the Section 11 notification.

3.13. Thereafter, on 11.04.2025, the State Government issued the preliminary notification under Section 11 of the Act, 2013 for the acquisition of land from the aforementioned fourteen villages in Tehsil Jewar, District Gautam Buddha Nagar, admeasuring 1,857.8871 hectares. The State Government simultaneously invited objections from the concerned landowners under Section 15(1) of the Act, 2013. The Section 11 Notification also appointed the Deputy Collector, Jewar, District Gautam Buddha Nagar, as the Administrator for Rehabilitation and Resettlement of the project-affected families. In compliance with Section 11(1) of the Act, 2013, read with Rule 20(4) of the Rules, 2016, the Section 11 Notification was published in 'Amar Ujala' and 'Dainik Jagran' on 13.04.2025 and uploaded on the official website of District Gautam Buddha Nagar.

3.14. Under Section 15 of the Act, 2013, any interested person could, within sixty days of the Section 11 Notification, file objections on the grounds of the area and suitability of land proposed to be acquired, the justification offered for the public purpose, and the findings of the SIA Report. In compliance with Rule 23 of the Rules, 2016, on 02.07.2025, public notices were issued by the Collector to affected landowners whose written objections had been received within the stipulated timeline, fixing 08.07.2025, 09.07.2025 and 10.07.2025 as the dates for hearing objections from different villages. The public notice regarding the hearing dates was published in 'Amar Ujala' and 'Dainik Jagran' on 03.07.2025, and public announcements (munadi) were also carried out locally. The Collector conducted public hearings in accordance with law. Some of the petitioners, including representatives of the Sangharsh Samiti, appeared and were afforded an opportunity of personal hearing. After due consideration of the objections, the Collector passed a reasoned order dated 11.07.2025 under Section 15(1) of the Act, 2013, dismissing the objections on the ground that the issues raised, fell outside the limited statutory scope of Section 15(1), which confines objections only to the area and suitability of land, justification for public purpose, and findings of the SIA Report.

3.15. In compliance with Section 15(2) of the Act, 2013, the Collector forwarded the disposal report to the State Government. On 11.07.2025, a request was also made to the State Government for its approval of the disposal report and for issuance of the declaration under Section 19. Upon consideration, the State Government approved the disposal report under Section 15(3) of the Act, 2013 on 29.07.2025.

3.16. Simultaneously, in compliance with Section 45(1) of the Act, 2013, a project-level Rehabilitation and Resettlement Committee was constituted for monitoring and reviewing the R&R Scheme, vide notification dated 23.06.2025. In compliance with Section 16 of the Act, 2013, the Administrator prepared the draft R&R Scheme for the affected and displaced families, and on 26.06.2025, notices were issued for conducting public hearings on the draft R&R Scheme. Public hearings were conducted on 09.07.2025 in Village Khawajpur and on 10.07.2025 in Village Neemka Shahjahanpur and Village Thora, during which objections and suggestions of the affected

persons, including the petitioners, were duly recorded. The draft R&R Scheme was formally published on 14.07.2025.

3.17. The proposed R&R Scheme provides, inter alia, for: (a) allotment of developed residential land equivalent to 50% of the land held by the displaced family, subject to a minimum of 50 square metres and a maximum of 500 square metres; (b) where a displaced family chooses not to opt for allotment of residential land, compensation of not less than Rs. 1,50,000/-; (c) each displaced family is further given the option to either opt for employment in the Noida International Airport Project, or receive a one-time lump sum payment of Rs. 5,00,000/-, or opt for an annuity of Rs. 2,000/- per month for a period of twenty years; (d) a monthly subsistence allowance of Rs. 3,000/- for one year from the date of award; (e) a special assistance of Rs. 50,000/- for displaced families belonging to Scheduled Castes and Scheduled Tribes; (f) a one-time transportation allowance of Rs. 50,000/-; (g) a one-time financial assistance of Rs. 25,000/- for affected families engaged in small trade and a separate Rs. 25,000/- for families having cattle; and (h) a one-time resettlement allowance of Rs. 50,000/- to each affected family.

3.18. In exercise of powers under Section 18 of the Act, 2013, the Commissioner approved the draft R&R Scheme on 21.07.2025 and directed the authorities to proceed further in accordance with law.

3.19. Thereafter, on 24.10.2025, the State Government issued the declaration under Section 19 of the Act, 2013. In Schedule-B to the Section 19 Declaration, land admeasuring 437.9931 hectares situated in Villages Mangroli, Neemka Shahjahanpur, Alavalpur, Sadullapur alias Madalpur, Ahmadpur Chaurol, and Jewar Bangar, Pargana Jewar, Tehsil Jewar, District Gautam Buddha Nagar, was identified as the R&R site for the purpose of resettlement of displaced families, for which a separate land acquisition process is to be undertaken in accordance with law. The Section 19 Declaration was published in 'Hindustan Times' and 'Dainik Jagran' on 27.10.2025, and copies were also affixed on the Notice Boards in the affected areas and uploaded on the official website of District Gautam Buddha Nagar.

3.20. During the pendency of the present writ petitions, the State Government passed awards in respect of the villages forming part of the present acquisition. The awards for Village Neemka Shahjahanpur and Village Khawajpur were made on 31.01.2026, and the award for Village Thora was made on 02.02.2026. While the circle rate was Rs. 900/- per square metre, the awards provide a market value of Rs. 1,550/- per square metre determined under Section 26(2) of the Act, 2013, along with additional compensation of Rs. 1,200/- per square metre in view of the Government Order dated 10.03.2025. The awards further provide 100% solatium under Section 30(1) and an additional amount at the rate of 12% per annum under Section 30(3) from the date of the Section 4 Notification dated 07.07.2023 up to the date of the respective awards, resulting in total compensation aggregating to approximately Rs. 4,772/- to Rs. 4,778/- per square metre. Disbursement of compensation has already commenced. Possession of abadi land shall be taken only after the R&R Award is passed under Section 31 of the Act, 2013 and developed plots are handed over to the displaced families.

3.21. Aggrieved by the aforesaid notifications dated 11.04.2025 (Section 11 preliminary notification) and dated 24.10.2025 (Section 19 declaration), the aforesaid writ petitions have been filed.

D. SUBMISSIONS ON BEHALF OF PETITIONERS:

4. Shri Mahesh Chand Sharma, learned counsel for the petitioners, submitted that the petitioners are residents of Villages Neemka Shahjahanpur, Khawajpur and Thora, Tehsil Jewar, District Gautam Buddha Nagar, having agricultural land as well as residential abadi in the said villages. He submitted that the petitioners are not opposing the acquisition of their agricultural land but are specifically challenging the displacement of their village abadi, which is being done in flagrant violation of the mandatory provisions of the Act, 2013.

4.1. Learned counsel submitted that the villages in question were declared as an Industrial Nagar under the U.P. Industrial Area Development Act, 1976 by a notification dated 14.12.2018, and accordingly fall within the jurisdiction of the respondent - YEIDA. He argued that once a village is declared as an Industrial Nagar under the Act, 1976, which has an overriding effect, any acquisition or displacement can only be carried out by the respondent - YEIDA under that Act, 1976 and not under the Act, 2013.

4.2. Learned counsel submitted that Section 2(2)(ii) of the Act, 2013 requires prior consent of at least seventy percent of the affected families before acquisition can be initiated for public-private partnership projects. He contended that the consent obtained was only 22.29% across 14 villages as on 21.01.2025, and in Village Neemka specifically, a mere 6.03%.

4.3. Learned counsel argued that the Social Impact Assessment process was conducted in a wholly arbitrary and fraudulent manner. A public hearing was scheduled for 21.12.2023 in Village Neemka Shahjahanpur, however, no actual public hearing took place as no one was willing to give consent. He further submitted that the Expert Group's report specifically recommended a re-survey of Village Thora and Village Neemka, which recommendation was completely ignored.

4.4. Learned counsel emphasized that the notification under Section 11 was issued on 11.04.2025 without completing the mandatory procedural requirements under Sections 11(2), 11(3), 12 and 15 of the Act, 2013. He pointed out that while a notice fixing 08.07.2025 for hearing of objections under Section 15 was issued, simultaneously, without deciding those objections, a notification under Section 16(5) fixing 10.07.2025 for a public hearing was also issued.

4.5. Learned counsel further submitted that by the notification dated 24.10.2025, approximately 39 gatas containing existing village abadi, which had been specifically left out during consolidation proceedings notified in 1966 and concluded in 1971, were acquired and shown as agricultural land. He argued this was done without any spot inspection and without deciding the objections filed under Sections 15, 16 and 17 of the Act, 2013. Furthermore, Gata Nos. 365 to 671 were added for the first time in the Section 19 notification, covering an additional area of 78.6776 hectares, for which no prior acquisition proceedings had been initiated.

4.6. Learned counsel while referring to the Section 10 of the Act, 2013 which provides a special provision to safeguard food security, and prohibits acquisition of irrigated multi-cropped land save under exceptional circumstances as a demonstrable last resort, argued that a substantial portion of the 1,857.7706 hectares notified under Section 11 comprises irrigated multi-cropped agricultural land and the mandatory conditions of Section 10 were not complied with.

4.7. In support of the aforesaid submissions, the learned counsel for the petitioners has placed reliance upon two judgments of the Hon'ble Supreme Court of India: (i) **D.B. Basnett (D) through LR. v. The Collector and Another, East District, Gangtok, Sikkim and Another**, and (ii) **Kolkata Municipal Corporation and Another v. Bimal Kumar Shah and Others**. These judgments have been relied upon in the Written Submissions filed by the petitioners for the propositions that the provisions of the land acquisition law are mandatory in nature and must be strictly followed, and that the right to property under Article 300-A of the Constitution comprises seven sub-rights or procedural safeguards which must all be satisfied before a person is deprived of his property.

4.8. Finally, learned counsel submitted that the right to property, though not a fundamental right, is a constitutional right protected under Article 300-A of the Constitution of India, and no person can be deprived of their property except by authority of law and following a fair procedure. In this backdrop, he urged that the impugned notifications are liable to be quashed.

E. SUBMISSIONS ON BEHALF OF THE RESPONDENT - YEIDA

5. Shri Rahul Agarwal, learned Senior Counsel appearing on behalf of the respondent - YEIDA, submitted that the present writ petitions are wholly misconceived, devoid of merit, and deserve to be dismissed at the threshold. He submitted that the entire acquisition proceeding has been carried out in strict conformity with the provisions of the Act, 2013 and the Rules, 2016, and drew the attention of this Court to the step-by-step Compliance Chart annexed as Appendix-1 to YEIDA's Written Submissions, demonstrating meticulous adherence to each stage of the statutory process.

5.1. Learned Senior Counsel submitted that the Airport Project is an integrated aviation hub of national importance being implemented through the public-private partnership model. He submitted that a significant development had occurred during the pendency of the writ petitions, inasmuch as awards for Villages Neemka Shahjahanpur and Khawajpur were passed on 31.01.2026 and for Village Thora on 02.02.2026, providing total compensation of approximately Rs. 4,772/- to Rs. 4,778/- per square metre, and that disbursement had commenced.

5.2. On the SIA process, learned Senior Counsel submitted that the Act, 2013 does not require prior consent of individual landowners before publication of the SIA Report. Sections 4 to 7 of the Act, 2013 only mandate public consultation, public hearings, and expert appraisal, all of which were duly conducted. He submitted that under Section 5 of the Act, 2013, the purpose of the public hearing is limited to ascertaining the views of affected families to be recorded in the SIA Report, and the Act does not contemplate adjudication of individual objections at the SIA stage. He further submitted that the Expert Group's suggestion regarding a re-survey of Villages Thora and Neemka

Shahjahanpur was duly acted upon through PwC, the technical consultant, who confirmed vide letter dated 22.02.2024 that these villages lie on the runway alignment and that relocation is unavoidable.

5.3. On the issue of consent, learned Senior Counsel submitted that 73.02% of the affected families had consented as on 01.03.2025, well above the statutory 70% threshold. He submitted that the document dated 21.01.2025 relied upon by the petitioners reflected an earlier interim figure before duplication of certain families holding land in more than one revenue village which was identified and removed. The statutory unit under Section 3(c) of the Act, 2013 is the 'affected family' and not village-wise landholdings or individual voters. He placed reliance upon the judgment of this Court in **Kichhu Ram and Another v. State of U.P. and 5 Others**, wherein this Court, on identical facts during Stage-1, upheld the acquisition upon finding consent of 72% of affected families.

5.4. On the Section 15 procedure, learned Senior Counsel submitted that notices dated 03.07.2025 were duly issued fixing 08.07.2025 and 10.07.2025 for personal hearings. Some petitioners appeared and the Collector passed a reasoned order dated 11.07.2025 dismissing the objections, with the State Government approving the report on 29.07.2025 under Section 15(3). On the parallel conduct of proceedings under Sections 15 and 16, he submitted that a sequential reading would make compliance with the mandatory 12-month timeline under Section 19 impossible, and that the two provisions are designed to operate concurrently.

5.5. On the Section 19 Declaration, learned Senior Counsel submitted that the area of 78.6776 hectares has been identified in Schedule-B only for R&R purposes as mandated under the Act, 2013, and does not form part of the land acquired for airport expansion. He submitted that the challenge to the Act, 1976 jurisdiction is misconceived, as Section 6 of that Act, 1976 itself contemplates acquisition through land acquisition law, which, after repeal of the Land Acquisition Act, 1894, necessarily means the Act, 2013.

5.6. Learned Senior Counsel also submitted that the petitioners had suppressed material documents including the final approved R&R Scheme, approvals under Sections 8 and 18, and the awards passed in January-February 2026, while selectively relying on fragments of the record. He urged dismissal of all writ petitions with costs.

EE. SUBMISSIONS ON BEHALF OF STATE RESPONDENTS :-

5.7. Shri Devesh Vikram, learned Additional Chief Standing Counsel and Shri Fuzail Ahmad Ansari, learned Standing Counsel, both appearing for the State-respondents, associated themselves entirely with the submissions advanced by Shri Rahul Agarwal, learned Senior Advocate appearing for the respondent - YEIDA, and adopted the same without any objection/ reservation.

F. DISCUSSION AND FINDINGS:-

6. Having heard the learned counsel for all parties at length and having carefully perused the record, the pleadings, the counter affidavit of the respondent-YEIDA, the Compliance Chart and

the Consent Chart annexed thereto, the written submissions supplied by the learned counsels for the parties and all other material placed on record, this Court proceeds to consider the respective contentions.

I. Nature And Importance Of The Project:

6.1. The acquisition in question has been undertaken for the expansion of the Noida International Airport, Jewar (Stage-2, Phase-2 and Phase-3), a project of national importance designed to serve the ever-increasing passenger and cargo air traffic of the National Capital Region, which has reached saturation at the Indira Gandhi International Airport, New Delhi. The project is expected to generate large-scale employment, stimulate economic development, and promote tourism in the region. The public purpose underlying the acquisition is, in the opinion of this Court, beyond question and cannot be successfully assailed in writ jurisdiction.

II. Statutory Scheme - Private Company Versus Public-Private Partnership Projects:

6.2. Before examining the specific contentions, it is necessary to appreciate the scheme of the Act, 2013. Section 2 of the Act, 2013 classifies acquisitions and prescribes different consent thresholds depending upon the nature of the project. Section 2(1) deals with acquisition for the purposes of the Government or a Government undertaking. Section 2(2) of the Act, 2013 is directly applicable to the present case. Section 2 of the Act, 2013 provides as under:

“2. Application of Act.-(1) The provisions of this Act relating to land acquisition, compensation, rehabilitation and resettlement, shall apply, when the appropriate Government acquires land for its own use, hold and control, including for Public Sector Undertakings and for public purpose, and shall include the following purposes, namely:-

(a) for strategic purposes relating to naval, military, air force, and armed forces of the Union, including central paramilitary forces or any work vital to national security or defence of India or State police, safety of the people; or

(b) for infrastructure projects, which includes the following, namely:-

(i) all activities or items listed in the notification of the Government of India in the Department of Economic Affairs (Infrastructure Section) number 13/6/2009-INF, dated the 27th March, 2012, excluding private hospitals, private educational institutions and private hotels;

(ii) projects involving agro-processing, supply of inputs to agriculture, warehousing, cold storage facilities, marketing infrastructure for agriculture and allied activities such as dairy, fisheries, and meat processing, set up or owned by the appropriate Government or by a farmers-cooperative or by an institution set up under a statute; (iii) project for industrial corridors or mining activities, national investment and manufacturing zones, as designated in the National Manufacturing Policy;

(iv) project for water harvesting and water conservation structures, sanitation;

(v) project for Government administered, Government aided educational and research schemes or institutions;

(vi) project for sports, health care, tourism, transportation or space programme;

(vii) any infrastructure facility as may be notified in this regard by the Central Government and after tabling of such notification in Parliament;

(c) project for project affected families;

(d) project for housing for such income groups, as may be specified from time to time by the appropriate Government;

(e) project for planned development or the improvement of village sites or any site in the urban areas or provision of land for residential purposes for the weaker sections in rural and urban areas;

(f) project for residential purposes to the poor or landless or to persons residing in areas affected by natural calamities, or to persons displaced or affected by reason of the implementation of any scheme undertaken by the Government, any local authority or a corporation owned or controlled by the State.

(2) The provisions of this Act relating to land acquisition, consent, compensation, rehabilitation and resettlement, shall also apply, when the appropriate Government acquires land for the following purposes, namely-

(a) for public private partnership projects, where the ownership of the land continues to vest with the Government, for public purpose as defined in sub-section (1);

(b) for private companies for public purpose, as defined in sub-section (1):
Provided that in the case of acquisition for-

(i) private companies, the prior consent of at least eighty per cent, of those affected families, as defined in sub-clauses (i) and (v) of clause (c) of section 3; and

(ii) public private partnership projects, the prior consent of at least seventy per cent. of those affected families, as defined in sub-clauses (i) and (v) of clause (c) of section 3,
shall be obtained through a process as may be prescribed by the appropriate Government:

Provided further that the process of obtaining the consent shall be carried out along with the Social Impact Assessment study referred to in section 4:

Provided also that no land shall be transferred by way of acquisition, in the Scheduled Areas in contravention of any law (including any order or judgment of a court which has become final) relating to land transfer, prevailing in such Scheduled Areas.

(3) The provisions relating to rehabilitation and resettlement under this Act shall apply in the cases where,-

(a) a private company purchases land, equal to or more than such limits in rural areas or urban areas, as may be prescribed by the appropriate Government, through private negotiations with the owner of the land in accordance with the provisions of section 46;

(b) a private company requests the appropriate Government for acquisition of a part of an area so prescribed for a public purpose:

Provided that where a private company requests the appropriate Government for partial acquisition of land for public purpose, then, the rehabilitation and resettlement entitlements under the Second Schedule shall be applicable for the entire area which includes the land purchased by the private company and acquired by the Government for the project as a whole. ”

6.2.1. Therefore, Section 2(2) provides that where the appropriate Government acquires land for public-private partnership projects, the prior consent of at least seventy per cent of the affected families, as defined in sub-clauses (i) and (v) of clause (c) of section 3, is mandatory.

6.2.2. Section 3(c) of the Act, 2013, defining 'affected family', provides as under:

“3. Definitions.- *In this Act, unless the context otherwise requires.-*

(a) -.

(b) -.

3(c) 'affected family' includes-

(i) a family whose land or other immovable property has been acquired;

(ii) a family which does not own any land but a member or members of such family may be agricultural labourers, tenants including any form of tenancy or holding of usufruct right, share-croppers or artisans or who may be working in the affected area for three years prior to the acquisition of the land, whose primary source of livelihood stand affected by the acquisition of land;

(iii) the Scheduled Tribes and other traditional forest dwellers who have lost any of their forest rights recognised under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (2 of 2007) due to acquisition of land;

(iv) family whose primary source of livelihood for three years prior to the acquisition of the land is dependent on forests or water bodies and includes gatherers of forest produce, hunters, fisher folk and boatmen and such livelihood is affected due to acquisition of land;

(v) a member of the family who has been assigned land by the State Government or the Central Government under any of its schemes and such land is under acquisition;

(vi) a family residing on any land in the urban areas for preceding three years or more prior to the acquisition of the land or whose primary source of livelihood for three years prior to the acquisition of the land is affected by the acquisition of such land.”

6.2.3. A conjoint reading of Section 2(2) with Section 3(c) of the Act, 2013 makes it clear that the expression -affected families- is of wide amplitude and is not confined merely to landowners whose land is acquired, but also includes all such families whose livelihood or rights are adversely impacted by the acquisition, including agricultural labourers, tenants, share-croppers, artisans, forest dwellers, persons dependent on forest or water resources, beneficiaries of Government land allotments, and even families residing in urban areas whose livelihood is affected. Thus, for the purposes of obtaining consent under Section 2(2), the statute mandates that the requisite percentage is to be computed with reference to this broader category of affected families and not merely the recorded tenure holders.

6.2.4. The Airport Project is structured as a public-private partnership project within the meaning of Section 2(2)(b) of the Act, 2013, being implemented through NIAL (a State company) with the private operator YIAPL, a wholly owned subsidiary of Zurich Airport International AG. The consent threshold applicable is accordingly 70% of the project-affected families and not the 80% threshold applicable to acquisitions for private companies under Section 2(3) of the Act, 2013. This distinction is material in adjudicating the consent-related challenge.

III. SIA Process – Compliance Examined:

6.3. The petitioners have challenged the Social Impact Assessment¹⁵ process. This Court has examined the said contention in the light of the statutory provisions.

6.3.1. Section 4 of the Act, 2013 provides for the preparation of a Social Impact Assessment (SIA) study. Sub-section (1) of Section 4 mandates that whenever the appropriate Government

intends to acquire land for a public purpose, it shall carry out a Social Impact Assessment study in consultation with the concerned Panchayat, Municipality, or Municipal Corporation, as the case may be, at the village or ward level in the affected area, in such manner and within such time as may be prescribed. Sub-section (2) further provides that the Social Impact Assessment study referred to in sub-section (1) shall, inter alia, include various specified aspects, and it is also stipulated that the said study shall be completed within a period of six months from the date of its commencement. Section 4 of the Act, 2013 is reproduced hereinbelow for ready reference:

“4. Preparation of Social Impact Assessment study.-(1) Whenever the appropriate Government intends to acquire land for a public purpose, it shall consult the concerned Panchayat, Municipality or Municipal Corporation, as the case may be, at village level or ward level, in the affected area and carry out a Social Impact Assessment study in consultation with them, in such manner and from such date as may be specified by such Government by notification.

(2) The notification issued by the appropriate Government for commencement of consultation and of the Social Impact Assessment study under sub-section (1) shall be made available in the local language to the Panchayat, Municipality or Municipal Corporation, as the case may be, and in the offices of the District Collector, the Sub-Divisional Magistrate and the Tehsil, and shall be published in the affected areas, in such manner as may be prescribed, and uploaded on the website of the appropriate Government:

Provided that the appropriate Government shall ensure that adequate representation has been given to the representatives of Panchayat, Gram Sabha, Municipality or Municipal Corporation, as the case may be, at the stage of carrying out the Social Impact Assessment study:

Provided further that the appropriate Government shall ensure the completion of the Social Impact Assessment study within a period of six months from the date of its commencement.

(3) The Social Impact Assessment study report referred to in sub-section (1) shall be made available to the public in the manner prescribed under section 6.

(4) The Social Impact Assessment study referred to in sub-section (1) shall, amongst other matters, include all the following, namely:-

(a) assessment as to whether the proposed acquisition serves public purpose;

(b) estimation of affected families and the number of families among them likely to be displaced;

(c) extent of lands, public and private, houses, settlements and other common properties likely to be affected by the proposed acquisition;

(d) whether the extent of land proposed for acquisition is the absolute bare- minimum extent needed for the project;

(e) whether land acquisition at an alternate place has been considered and found not feasible;

(f) study of social impacts of the project, and the nature and cost of addressing them and the impact of these costs on the overall costs of the project vis-a-vis the benefits of the project:

Provided that Environmental Impact Assessment study, if any, shall be carried out simultaneously and shall not be contingent upon the completion of the Social Impact Assessment study.

(5) *While undertaking a Social Impact Assessment study under sub-section (1), the appropriate Government shall, amongst other things, take into consideration the impact that the project is likely to have on various components such as livelihood of affected families, public and community properties, assets and infrastructure particularly roads, public transport, drainage, sanitation, sources of drinking water, sources of water for cattle, community ponds, grazing land, plantations, public utilities such as post offices, fair price shops, food storage godowns, electricity supply, health care facilities, schools and educational or training facilities, anganwadis, children parks, places of worship, land for traditional tribal institutions and burial and cremation grounds.*

(6) *The appropriate Government shall require the authority conducting the Social Impact Assessment study to prepare a Social Impact Management Plan, listing the ameliorative measures required to be undertaken for addressing the impact for a specific component referred to in sub-section (5), and such measures shall not be less than what is provided under a scheme or programme, in operation in that area, of the Central Government or, as the case may be, the State Government, in operation in the affected area."*

6.3.2. Section 5 of the Act, 2013 governs the conduct of a public hearing at the stage of Social Impact Assessment. It provides that the appropriate Government shall ensure that a public hearing is held in the affected area after giving adequate publicity regarding the date, time, and venue of such hearing, so as to ascertain the views of the affected families, which are to be recorded and included in the SIA Report. For ready reference, Section 5 is reproduced hereinbelow:

*"5. **Public hearing for Social Impact Assessment.**-Whenever a Social Impact Assessment is required to be prepared under section 4, the appropriate Government shall ensure that a public hearing is held at the affected area, after giving adequate publicity about the date, time and venue for the public hearing, to ascertain the views of the affected families to be recorded and included in the Social Impact Assessment Report."*

6.3.3. Rule 7 of the Rules, 2016 provides the manner of conducting public hearing on the SIA Report and SIA Plan. The Rule lays down a detailed procedure to ensure transparency, participation of affected families, and proper consideration of their objections and suggestions. It mandates prior publication of notice, conduct of hearings in affected areas, availability of draft reports for public inspection, participation of the requiring body and authorities, recording of proceedings, and incorporation of feedback in the final Social Impact Assessment Report. It further ensures that objections raised by affected persons are duly considered and made part of the decision-making process. Rule 7(1) of the Rules, 2016 prescribes the procedure for such public hearing and mandates adequate notice to the affected families. The Rule 7 provides as under:

*"7. **Manner of conducting public hearing on Social Impact Assessment Report and Social Impact Management Plan.**-(1) Soon after completion of Social Impact Assessment Study Report and Social Impact Management Plan, a public hearing shall be conducted by the state Government, in the affected area by giving notice to be published in two daily newspapers circulating in the affected area of which at least one shall be in the regional language, and also by way of a public notice by affixing it at some conspicuous places in the affected areas not less than seven days before the public hearing indicating its time, place and date and other necessary*

details. This notice shall also be uploaded on the website of the concern district or the State Government.

(2) The public hearings shall be conducted in the concern Gram Panchayat offices or urban local bodies offices, as the case may be, any public place or convenient place in the affected area. The State Government may take decision to conduct hearing at some conspicuous place other than the affected areas within the concern district by giving the justification for it and duly published in a notice.

(3) The State Government may appoint any Revenue officer of the rank of Deputy Collector, Tehsildar or Block Development Officer to conduct the hearings.

(4) A member or members, as the case may be, of the Social Impact Assessment agency shall facilitate the public hearing which shall be organized through the local administration with the designated Government officers of appropriate level.

(5) Public hearings generally are held in the affected areas to bring out the main findings of the Social Impact Assessment, seeking feedback on the findings and to seek additional information and views for incorporating the same in the final documents.

(6) Public hearings shall be conducted in all Gram Sabha where more than twenty per cent of the members are directly or indirectly affected by the acquisition of the land.

(7) The draft of Social Impact Assessment report and Social Impact Management Plan shall be published for inspection of general public in the office of the Collector for the purpose of land acquisition not less than seven days before the public hearing.

(8) The requiring body may also be served with a copy of the draft report. Adequate copies of the report and summaries shall be made available to the public on the day of the public hearing by the agency.

(9) All the proceedings Shall be held in the local language to ensure that all the participants can understand and express their views.

(10) Representatives from the requiring body shall also attend the public hearing and address the questions and any issue raised by the affected parties.

(11) The proceedings of the public hearing will be video recorded and transcribed accordingly. The said recording and transcription shall be submitted to the Collector along with the final Social Impact Assessment report and Social Impact Management Plan.

(12) After the conclusion of the public hearings, the Social Impact Assessment team shall analyse the entire feedback received and information gathered in the public hearing and incorporate the same along with their analysis, in the revised Social Impact Assessment report accordingly.

(13) Every objection raised in the public hearing shall be recorded and the Social Impact Assessment agency shall ensure that the every objection shall be considered in the Social Impact Assessment report.

(14) No public re-hearing shall be conducted if the public hearing is disturbed by misbehavior of the miscreant's presents, leading to disturbance of public peace and law and order. In case of any disturbance, the next public hearing shall be treated as conclusive. In such circumstances, seven days shall be provided to file claims, objections/suggestions."

6.3.4. A perusal of the record reflects that the Section 4 Notification was duly issued on 30.06.2023, nominating Gautam Buddha University as the SIA Agency, and was published in three newspapers on 06.07.2023. Public hearings were conducted on 19.12.2023 at Village Khwajpur

and on 21.12.2023 at Village Neemka Shahjahanpur. Under Section 5, the purpose of the public hearing is limited to ascertaining the views of the affected families to be recorded in the SIA Report; the Act does not contemplate adjudication of individual objections at the SIA stage. Insofar as the Expert Group's recommendation for a re-survey is concerned, the record reveals that PwC, the technical consultant, was specifically asked to examine whether displacement could be avoided. PwC confirmed by letter dated 22.02.2024 that Villages Thora and Neemka Shahjahanpur fall within the proposed runway alignment and that no alternative alignment exists. Village Khawajpur was confirmed to lie between the taxiways of two runways and the proposed aircraft parking area, making its retention a threat to aviation safety. The Expert Group's suggestion was thus duly acted upon. The State Government, in compliance with Section 8(3) of the Act, 2013, read with Rule 11(3) of the Rules, 2016, granted approval to the SIA Report on 08.01.2025. The challenge to the SIA process is accordingly rejected.

IV. Consent - Satisfaction Of Statutory Threshold:

6.4. The petitioners have challenged the acquisition on the ground that the mandatory consent of 70% of the project-affected families was not obtained before issuance of the Section 11 notification. Rule 14 of the Rules, 2016 prescribes the detailed procedure for obtaining such prior consent. The Rule mandates identification of all affected landowners after verification of land records, preparation and publication of their list, and holding of meetings in the affected area with prior notice. It further requires that complete project details, including compensation and rehabilitation measures, be explained in the local language, and that consent be obtained individually in a prescribed format with proper authentication, signatures and verification. The process must be transparent, video recorded, and objections raised during the process must be duly recorded and considered. The Rule also mandates that the entire consent process be completed prior to issuance of the preliminary notification under Section 11 of the Act. Rule 14 provides as under:

*“14. **Recruitment and procedure to obtain consent.**- In case land is sought to be acquired for the purposes as specified under sub-section (2) of section 2, the prior consent of the affected land owners as per provisions of sub-section (2) of section 2 shall be obtained by the Collector concerned in form-5, along with the Social Impact Assessment study. Some of the principles to obtain consent given as under:-*

(a) The Collector may constitute a team of revenue officers or depute any other officers under his control to assist him in the process of obtaining the prior consent.

(b) The Collector and Sub Divisional Officer exercising the powers of District Collector shall take steps to resolve outstanding issues of land rights, land title and land records in the affected areas, so that all the land owners can be correctly identified before initiating consent procedures.

(c) The Collector shall also undertake a special drive for the purpose and complete the said exercise within a period of sixty days from the date of issuance of preliminary notification.

(d) The Collector shall, after completion of the aforesaid exercise of correcting and updating the land records shall draw out a list, of all affected land owners from whom consent must be sought, after considering the list prepared by the Social Impact Assessment Agency.

(e) The list shall be made available in the affected area by displaying the list in conspicuous places of the affected areas for at least ten days before obtaining consent.

(f) *The Collector shall in consultation with the representatives of Gram Panchayat or Nagar Panchayat or Nagar Palika Parishad or Municipal Corporation, as the case may be, notify the date, time and venue at least two weeks in advance, for holding the affected land owners meetings at the concern village or ward level. It shall also be published in two daily newspapers circulating in the affected area of which at least one shall be in the regional language.*

(g) *The Requiring Body or its representative shall be present at all such affected land owners meetings and respond to the queries raised by the affected land owners. The terms and conditions of the project, Rehabilitation and Resettlement, Compensation and other measures committed by the Requiring Body shall be explained to the members in the local language and signatures of the members as well as the representative of Requiring Body shall be obtained on such terms and conditions.*

(h) *The proposed terms and conditions agreed by the Requiring Body shall also be made available in local language to each and every affected land owner, at least one week in advance.*

(i) *The land owner shall give his individual consent to the authorized officer.*

(j) *The land owner shall give his written consent having his photograph affixed on it in the format attached and the digital impression of his thumb along with his signature (if he can make it) shall be printed on his affidavit.*

(k) *The authorized representative of the Requiring Body shall sign on the prescribed consent Form and shall put the seal of the Requiring Body towards its commitment to the consented terms and conditions.*

(l) *Any member of Gram panchayat, or Zila Panchayat, Lekhpal, Gram Vikas Adhikari or any Government servant may sign on the affidavit as a witness thereof that he recognizes the person who has given consent.*

(m) *The prescribed consent form shall be countersigned by the officer authorised by the Collector.*

(n) *The form of consent and declaration so obtained shall be made available to the land acquisition officer in original, who will then prepare a list of all such land owners and shall provide it to the requiring body. One copy of this list shall also be attached with acquisition proposal, before issuing the preliminary notification under section 11(1) of the Act.*

(o) *All the individual consent taking procedure shall be video recorded.*

(p) *All persons interested in the same land can give consent on a single form.*

(q) *Single forms shall be used for giving consent by a same person for his different lands under acquisition.*

(r) *No land owner can withdraw his consent once given in the above manner.*

(s) *In case of a land situated in the Scheduled Area mentioned in the Fifth Schedule appended to the Constitution of India, the consent of the Gram Sabha shall be sought prior to the consent of the land owners.*

(t) *The consent taking process shall be concluded before issuing the Preliminary Notification under sub-section (1) of section 11.*

(u) *Every objection raised during the process of taking consent meeting shall be recorded and shall be considered by the requiring body.*

(v) *During the process of obtaining consent, those land owners, who were absent and not given his /her consent and also has not raised any objections before issuing of preliminary notification under section 11(1) of the Act, shall be considered as they have no objection for the on-going proposed acquisition."*

6.4.1. This Court has carefully examined the Consent Chart placed on record by the respondent-YEIDA (Annexure CA-2 to the counter affidavit), which discloses the following consolidated picture as of 01.03.2025, compiled under Section 2(2) of the Act, 2013, read with Rule 14 of the Rules, 2016:

	Village	Total Affected Families	Consent Obtained	Percentage
1.	Thora	3,342	2,041	61.07%
2.	Neemka Shahjahanpur	1,635	558	34.13%
3.	Khawajpur	1,548	628	40.57%
4.	Ramner	2,105	1,934	91.88%
5.	Kishorepur	1,987	1,875	94.36%
6.	Banwaribas	703	703	100.00%
7.	Parohi	683	609	89.17%
8.	Mukimpur Shivara	796	796	100.00%
9.	Jewar Bangar	268	233	86.94%
10.	Sabouta Mustafabad	344	317	92.15%
11.	Ahmadpur Chauoli	158	69	43.67%
12.	Dayanatpur	218	215	98.62%
13.	Bankapur	216	201	93.06%
14.	Rohi	171	171	100.00%
	TOTAL	14,174	10,350	73.02%

6.4.2. The statutory unit for computing consent is the 'affected family' as defined under Section 3(c) of the Act, 2013, and not village-wise landholdings or individual voters. The apparent discrepancy between the earlier figure of 22.29% (document dated 21.01.2025) and the final figure of 73.02% (as on 01.03.2025) is fully explained by the removal of duplication, i.e. certain families holding land in more than one revenue village had been counted multiple times at the initial stage. For instance, the number of project-affected families in Village Thora was revised from 3,511 to 3,342, in Village Neemka Shahjahanpur from 1,726 to 1,635, and in Village Khawajpur from 1,826 to 1,548, after rectification of such duplication. Upon removal of duplication, the corrected data establishes that 73.02% of the project-affected families had consented, which is well above the mandatory 70% threshold under Section 2(2)(b)(ii) of the Act, 2013.

6.4.3. An identical question arose during the Stage-1 acquisition in **Kichhu Ram** (supra), wherein in paragraph-11, this Court held as under:

“11. According to the petitioners, consent has not been obtained from atleast 70% of the affected families in terms of Section 2(2) of the Act. The counsel for the respondents, on the basis of information received, have placed reliance upon a report of the Collector dated 05.01.2019 to contend that there are six villages that would fall within the area covered for the purpose of the project and the number of families to be affected would be 5926 out of which 4235 families have

already given their consent for the project. The percentage of affected families which have given consent comes to 72%, which is more than 70%. Thus, the argument of the learned counsel for the petitioners that no consent has been obtained and atleast consent of 70% of the affected families is required under Section 2(2) of the Act, is not sustained.”

6.4.4. The ratio of **Kichhu Ram** (supra) squarely governs the present case. Once the official data demonstrates that the statutory threshold of 70% has been satisfied, the challenge on the ground of lack of consent cannot be sustained. The objection is accordingly rejected.

V. Compliance With The Statutory Process - Compliance Chart Examined:

6.5. This Court has carefully examined the step-by-step compliance chart brought on record during the course of hearing and subsequently filed by the respondent-YEIDA as Appendix-1 to its written submissions. The said chart sets out each step in the acquisition process, the corresponding statutory provisions under the Act, 2013 and the Rules, 2016, and the specific dates of compliance. The chart, which has not been effectively controverted by the petitioners, is summarised hereunder:

Step	Statutory Provision	Legal Mandate	Compliance / Key Dates
1. SIA Notification	Sec. 4(1) Rule 3	Govt. issues SIA notification; published in Gazette, 2 newspapers (one regional) and locally. Study completed within 6 months.	30.06.2023: Sec. 4 Notification; 07.07.2023: Published in newspapers; SIA Agency: Gautam Buddha University; Study completed: 05.12.2023
2. Public Hearing (SIA)	Sec. 5 / Rule 7	SIA Agency conducts mandatory public hearing after adequate notice to record views of affected families.	19.12.2023 (Khwajpur) & 21.12.2023 (Neemka Shahjahanpur): Public hearings conducted
3. SIA Report & Expert Appraisal	Sec. 6 & 7 / Rules 8 & 10	SIA Report submitted to Govt; evaluated by Expert Group confirming public purpose and project feasibility.	01.02.2024: Notice regarding completion published; 09.02.2024: Expert Group unanimously approved report; published 21.03.2024
4. Govt. Decision and Approval	Sec. 8 / Rule 11	Govt. reviews SIA & Expert Group	08.01.2025: State Govt. granted

		reports and decides whether to proceed. Approval published.	approval; 11.01.2025: Published in Amar Ujala & Dainik Jagran
5. Explicit Consent	Sec. 2(2)(b)(ii) / Rule 14	Prior consent of 70% of project-affected families (PPP project).	73.02% of affected families consented as of 01.03.2025 (above 70% threshold)
6. Preliminary Notification	Sec. 11 / Rule 20	Notification of intent; freezes transactions; 60 days for objections.	11.04.2025: Notification; 1,857.7706 hectares notified; 13.04.2025: Published in newspapers
7. Survey	Sec. 12 / Rules 16 & 22	Preliminary survey of land to be conducted.	Survey conducted in Villages Neemka Shahjahanpur, Khwajpur & Thora
8. Hearing of Objections	Sec. 15(1) / Rule 23	60 days for objections; Collector gives personal hearing and submits report.	03.07.2025: Notice; 08.07.2025: Hearing – Neemka Shahjahanpur; 10.07.2025: Hearing – Khwajpur & Thora; 11.07.2025: Objections
9. Collector's Report & Govt. Decision	Sec. 15(2) & (3) / Rule 23	Collector forwards disposal report; State Govt. decision is final.	11.07.2025: Collector's report forwarded; 29.07.2025: State Govt. approval
10. R&R Scheme	Sec. 16, 17 & 26 / Rules 24 & 18	Administrator prepares draft R&R Scheme; public hearing; Commissioner's approval before Sec. 19.	26.06.2025: Notice for public hearing; 14.07.2025: Draft R&R Scheme published; 21.07.2025: Approval under Sec. 18; 23.07.2025: Publication in Amar Ujala and Dainik Jagran
11. Final	Sec. 19 / Rule 27	Issued within	24.10.2025: Declaration

Declaration		12 months of Sec. 11 Notification; R&R Scheme summary included.	issued; 27.10.2025: Published in newspapers

6.5.1. A perusal of the Compliance Chart demonstrates that the acquisition process has been conducted in meticulous compliance with each stage prescribed under the Act, 2013 and the Rules, 2016.

VI. Hearing Of Objections Under Section 15 - Procedure Followed:

6.6. Section 15 of the Act, 2013 provides for hearing of objections to the proposed acquisition. It confers a statutory right upon any person interested in the land to raise objections within sixty days from the date of publication of the preliminary notification issued under Section 11(1). The objections may relate to the suitability and extent of land, the justification of public purpose, and the findings of the Social Impact Assessment report. The provision mandates that such objections be considered by the Collector after affording an opportunity of personal hearing, including through an authorised representative or advocate. The Collector is required to conduct necessary inquiry and submit a report with recommendations, along with the record of proceedings and relevant details, to the appropriate Government. The final decision on such objections rests with the appropriate Government. Section 15 of the Act, 2013 provides as under:

“15. Hearing of objections.- (1) Any person interested in any land which has been notified under sub-section (1) of Section 11, as being required or likely to be required for a public purpose, may within sixty days from the date of the publication of the preliminary notification, object to-

- (a) the area and suitability of land proposed to be acquired;*
- (b) justification offered for public purpose;*
- (c) the findings of the Social Impact Assessment report.*

(2) Every objection under sub-section (1) shall be made to the Collector in writing, and the Collector shall give the objection an opportunity of being heard in person or by any person authorised by him in this behalf or by an Advocate and shall, after hearing all such objections and after making such further inquiry, if any, as he thinks necessary, either make a report in respect of the land which has been notified under sub-section (1) of Section 11, or make different reports in respect of different parcels of such land, to the appropriate Government, containing his recommendations on the objections, together with the record of the proceedings held by him along with a separate report giving therein the approximate cost of land acquisition, particulars as to the number of affected families likely to be resettled, for the decision of that Government.

(3) The decision of the appropriate Government on the objections made under sub-section (2) shall be final.”

6.6.1. Rule 23 of the Rules, 2016 prescribes the procedure for hearing of objections filed under Section 15 of the Act, 2013. The Rule mandates that objections must be heard by the Collector personally and not delegated. It requires issuance of notice to the objector as well as the requiring

body, affording them an opportunity to appear, produce evidence, and be heard either in person or through an authorised representative or counsel. The Collector is empowered to adjourn proceedings, conduct further inquiry, and ensure expeditious completion of the process. After considering all objections and evidence, the Collector is required to prepare a detailed report with recommendations, along with the record of proceedings, for decision by the appropriate Government. Rule 23 of the Rules, 2016 prescribes the procedure for hearing of objections and provides, inter alia, as under:

“23. Hearing of objections.- (1) *The intimation of Public hearing shall be conducted by giving notice in two daily newspapers circulating in the affected area of which at least one shall be in the regional language, and also by way of a public notice by affixing it at some conspicuous places in the affected areas, indicating its time, place of the office for hearing (preferably at the office of land acquisition officer) and the date there-in.*

(2) *Hearing of objections under sub-section (2) of section 15 should be performed by the Collector for the purpose of acquisition, in person and not be delegated.*

(3) *When the Collector receives, within the prescribed period, a written objection from a person interested in the land, he should cause a notice to be served on the objector to appear before him in person or by a duly authorised representative or by an authorised pleader on a specified date, time and place to produce the evidence, if any, on which he relies. Notice of the hearing and enquiry should also be given to the requiring body; the latter, if he desires to be heard or to adduce evidence in support of the proposed acquisition, should be permitted to do so either in person or through an authorised representative.*

(4) *On the application of either party the Collector may exercise his powers under section 35 of the Act.* (5) *The hearing may be adjourned by the Collector from time to time, if necessary.*

(6) *The enquiries must be completed most expeditiously in view of first proviso to section 19, whereby time limit of one year has been prescribed from the date of publication of preliminary notification under sub-section (1) of section 11 to publication of declaration under section 19 of the Act:*

Provided that the State Government shall have the powers to extend the period of hearing objections if in opinion circumstances exist justifying the same: recorded in writing and the same shall be notified and be uploaded on the website of authority concerned.

(7) *The Collector after hearing all the objections and recording a memorandum of the evidence produced in support thereof or in support of the proposal to acquire the land and after making further enquiry if he thinks necessary, he shall submit the case for decision of the State Government containing his recommendations on the objections, together with the record of proceedings held by him along with a separate report giving therein the approximate cost of land acquisition, particulars as to the number of affected families likely to be resettled, for the decision of the Government, at the time of sending proposal of declaration under section 19 of the Act:*

Provided that, the State Government or District Collector as case may be shall take decision on such recommendations for the project. The decision of the State Government /District Collector shall be final:

Provided further that, if acquisition of land for any project area falls under the jurisdiction of more than one district, then the State Government or the District Collector, as the

case may be, shall send the proposal to the concerned administrative department at Government level, for the necessary approval. The decision of the administrative department shall be final.”

6.6.2. From the record, it is evident that notices dated 03.07.2025 were duly issued under Rule 23 of the Rules, 2016 fixing 08.07.2025 for hearing of objections from Village Neemka Shahjahanpur and 10.07.2025 for Villages Khwajpur and Thora. The public notice was published in newspapers on 03.07.2025 and local public announcements were made. Some of the petitioners, including representatives of the Sangharsh Samiti, appeared and were afforded a personal hearing. After due consideration, the Collector passed a reasoned order dated 11.07.2025, dismissing the objections on the ground that they fell outside the limited statutory scope of Section 15(1), which confines objections only to the area and suitability of land, justification for public purpose, and findings of the SIA Report. The Collector's report was forwarded to and approved by the State Government on 29.07.2025 under Section 15(3). The decision of the appropriate Government under Section 15(3) is final. This Court finds no infirmity in the procedure followed under Section 15 of the Act, 2013. This finding is consistent with and supported by the judgment of this Court in **Kichhu Ram** (supra), wherein on identical facts in the Stage-1 acquisition for the same Airport Project, this Court found that there was due compliance with the provisions of Section 15 of the Act, 2013, read with Rule 23 of the Rules, 2016, and upheld the acquisition. The present case stands on an even firmer factual footing, since all objections were heard by the Collector in person, a reasoned disposal order was passed, and the State Government's decision thereon was obtained before the Section 19 declaration.

VII. Parallel Conduct Of Proceedings Under Sections 15 And 16:

6.7. The petitioners have contended that initiation of proceedings under Section 16 prior to disposal of objections under Section 15 constitutes an illegality. Section 16 of the Act, 2013 provides for preparation of the Rehabilitation and Resettlement Scheme by the Administrator after issuance of the preliminary notification under Section 11(1). It mandates that the Administrator shall conduct a detailed survey and census of affected families, including particulars of land, livelihoods, affected infrastructure, and common resources. Based on such survey, a draft Rehabilitation and Resettlement Scheme is to be prepared specifying the entitlements of affected persons, along with details of amenities and facilities to be provided. The provision further requires that the draft scheme be widely publicised, discussed in Gram Sabhas or Municipalities, and subjected to a public hearing. The claims and objections raised in such hearing are to be considered, and thereafter the Administrator is required to submit the draft scheme along with a report to the Collector. Section 16 of the Act, 2013 provides as under:

“16. Preparation of Rehabilitation and Resettlement Scheme by the Administrator.-(1)

Upon the publication of the preliminary notification under sub-section (1) of section 11 by the Collector, the Administrator for Rehabilitation and Resettlement shall conduct a survey and undertake a census of the affected families, in such manner and within such time as may be prescribed, which shall include-

- (a) particulars of lands and immovable properties being acquired of each affected family;*
- (b) livelihoods lost in respect of land losers and landless whose livelihoods are primarily dependent on the lands being acquired;*

(c) a list of public utilities and Government buildings which are affected or likely to be affected, where resettlement of affected families is involved;

(d) details of the amenities and infrastructural facilities which are affected or likely to be affected, where resettlement of affected families is involved; and

(e) details of any common property resources being acquired.

(2) The Administrator shall, based on the survey and census under sub-section (1), prepare a draft Rehabilitation and Resettlement Scheme, as prescribed which shall include particulars of the rehabilitation and resettlement entitlements of each land owner and landless whose livelihoods are primarily dependent on the lands being acquired and where resettlement of affected families is involved-

(i) a list of Government buildings to be provided in the Resettlement Area;

(ii) details of the public amenities and infrastructural facilities which are to be provided in the Resettlement Area.

(3) The draft Rehabilitation and Resettlement scheme referred to in sub-section (2) shall include time limit for implementing Rehabilitation and Resettlement Scheme.

(4) The draft Rehabilitation and Resettlement scheme referred to in sub-section (2) shall be made known locally by wide publicity in the affected area and discussed in the concerned Gram Sabhas or Municipalities.

(5) A public hearing shall be conducted in such manner as may be prescribed, after giving adequate publicity about the date, time and venue for the public hearing at the affected area:

Provided that in case where an affected area involves more than one Gram Panchayat or Municipality, public hearings shall be conducted in every Gram Sabha and Municipality where more than twenty-five per cent. of land belonging to that Gram Sabha or Municipality is being acquired:

Provided further that the consultation with the Gram Sabha in Scheduled Areas shall be in accordance with the provisions of the Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996 (40 of 1996).

(6) The Administrator shall, on completion of public hearing submit the draft Scheme for Rehabilitation and Resettlement along with a specific report on the claims and objections raised in the public hearing to the Collector."

6.7.1. Section 19 of the Act, 2013 prescribes the stage of declaration of acquisition and the outer time limit for issuance of such declaration. It provides that after considering the report under Section 15, the appropriate Government, if satisfied that the land is required for a public purpose, shall issue a declaration to that effect along with identification of the resettlement area. The provision mandates simultaneous publication of a summary of the Rehabilitation and Resettlement Scheme and requires prior deposit of acquisition cost by the requiring body. It further lays down the manner of publication of the declaration and specifies its contents. Importantly, Section 19 stipulates that the declaration must be issued within a period of twelve months from the date of the preliminary notification under Section 11, failing which the notification shall lapse, subject to exclusion of the period of stay and permissible extension by the appropriate Government for recorded reasons. Section 19 of the Act, 2013 prescribes the outer limit for issuance of the declaration and provides as under:

“19. Publication of declaration and summary of Rehabilitation and Resettlement.-(1)

When the appropriate Government is satisfied, after considering the report, if any, made under sub-section (2) of section 15, that any particular land is needed for a public purpose, a declaration shall be made to that effect, along with a declaration of an area identified as the -resettlement area- for the purposes of rehabilitation and resettlement of the affected families, under the hand and seal of a Secretary to such Government or of any other officer duly authorised to certify its orders and different declarations may be made from time to time in respect of different parcels of any land covered by the same preliminary notification irrespective of whether one report or different reports has or have been made (wherever required).

(2) The Collector shall publish a summary of the Rehabilitation and Resettlement Scheme along with declaration referred to in sub-section (1):

Provided that no declaration under this sub-section shall be made unless the summary of the Rehabilitation and Resettlement Scheme is published along with such declaration:

Provided further that no declaration under this sub-section shall be made unless the Requiring Body deposits an amount, in full or part, as may be prescribed by the appropriate Government toward the cost of acquisition of the land:

Provided also that the Requiring Body shall deposit the amount promptly so as to enable the appropriate Government to publish the declaration within a period of twelve months from the date of the publication of preliminary notification under section 11.

(3) In projects where land is acquired in stages, the application for acquisition itself can specify different stages for the rehabilitation and resettlement, and all declarations shall be made according to the stages so specified.

(4) Every declaration referred to in sub-section (1) shall be published in the following manner, namely:-

(a) in the Official Gazette;

(b) in two daily newspapers being circulated in the locality, of such area of which one shall be in the regional language;

(c) in the local language in the Panchayat, Municipality or Municipal Corporation, as the case may be, and in the offices of the District Collector, the Sub-Divisional Magistrate and the Tehsil;

(d) uploaded on the website of the appropriate Government;

(e) in the affected areas, in such manner as may be prescribed.

(5) Every declaration referred to in sub-section (1) shall indicate,-

(a) the district or other territorial division in which the land is situated;

(b) the purpose for which it is needed, its approximate area; and

(c) where a plan shall have been made for the land, the place at which such plan may be inspected without any cost.

(6) The declaration referred to in sub-section (1) shall be conclusive evidence that the land is required for a public purpose and, after making such declaration, the appropriate Government may acquire the land in such manner as specified under this Act.

(7) Where no declaration is made under sub-section (1) within twelve months from the date of preliminary notification, then such notification shall be deemed to have been rescinded:

Provided that in computing the period referred to in this sub-section, any period or periods during which the proceedings for the acquisition of the land were held up on account of any stay or injunction by the order of any Court shall be excluded:

Provided further that the appropriate Government shall have the power to extend the period of twelve months, if in its opinion circumstances exist justifying the same:

Provided also that any such decision to extend the period shall be recorded in writing and the same shall be notified and be uploaded on the website of the authority concerned.”

(Emphasis supplied)

6.7.2. This Court is not persuaded by the petitioners' contention. The Act, 2013 prescribes a mandatory timeline of twelve months under Section 19 within which the declaration must be issued. Within this compressed period, Section 15 requires disposal of objections within sixty days, Section 16(1) mandates completion of the R&R survey within three months of the Section 11 notification, and Section 18 requires the Commissioner's approval of the R&R Scheme prior to the Section 19 declaration. If proceedings under Sections 15 and 16 were required to operate strictly sequentially, compliance with the mandatory timeline under Section 19 would, in most cases, be rendered practically impossible, and the legislative intent of ensuring expeditious acquisition for public purpose would be entirely frustrated. A harmonious reading of Sections 15, 16, 18, and 19 of the Act, 2013 leads to the conclusion that these provisions are designed to operate concurrently and not in a strictly sequential manner. No illegality is therefore attributable to the parallel conduct of proceedings under Sections 15 and 16 in the present case.

VIII. R&R Scheme - Adequacy And Compliance:

6.8. Section 18 of the Act, 2013 provides that no declaration under Section 19 shall be made unless the Rehabilitation and Resettlement Scheme under Section 17 has been tendered. Rule 24 of the Rules, 2016 mandates preparation of the draft R&R Scheme within three months of the Section 11 notification, followed by public hearings and approval. This Court is satisfied that the R&R Scheme framed for the present acquisition has been approved by the Commissioner on 21.07.2025, prior to issuance of the Section 19 Declaration on 24.10.2025, in full compliance with Section 18 of the Act, 2013 and Rule 24 of the Rules, 2016. The Scheme provides a comprehensive package including allotment of developed residential land (50% of existing landholding, minimum 50 sq. mtrs., maximum 500 sq. mtrs.), employment option or lump sum of Rs. 5,00,000/- or annuity of Rs. 2,000/- per month for 20 years, subsistence allowance, transportation allowance, resettlement allowance, and special assistance for SC/ST families, all in accordance with the Act, 2013. The petitioners' objections raised during the public hearing on 09/10.07.2025 were specifically recorded and addressed in the draft R&R Scheme dated 14.07.2025. The Stage-1 R&R implementation - involving resettlement of displaced families in planned urban residential sectors without any development charges, with stamp duty borne by the authorities - further establishes the bona fides of the respondent authorities.

IX. Section 19 Declaration - No Expansion Of Acquisition:

6.9. The petitioners have contended that Schedule-B of the Section 19 Declaration dated 24.10.2025 illegally expands the acquisition by including an additional area of 78.6776 hectares of Village Neemka Shahjahanpur, which was not covered by the notification issued under Section 11. In order to test this contention, it is necessary to refer to Section 19(2) of the Act, 2013, which provides as under:

“(2) The Collector shall publish a summary of the Rehabilitation and Resettlement Scheme along with declaration referred to in sub-section (1):

Provided that no declaration under this sub-section shall be made unless the summary of the Rehabilitation and Resettlement Scheme is published along with such declaration:

Provided further that no declaration under this sub-section shall be made unless the Requiring Body deposits an amount, in full or part, as may be prescribed by the appropriate Government toward the cost of acquisition of the land:

Provided also that the Requiring Body shall deposit the amount promptly so as to enable the appropriate Government to publish the declaration within a period of twelve months from the date of the publication of preliminary notification under section 11.”

6.9.1. A plain reading of Section 19(2) makes it evident that the declaration under Section 19(1) is required to be accompanied not only by the summary of the Rehabilitation and Resettlement Scheme but also by an indication of the area required for the resettlement of the affected families. The land identified in Schedule-B of the impugned Section 19 Declaration admeasuring 437.9931 hectares (of which 78.6776 hectares pertains to Village Neemka Shahjahanpur) has been included solely as the identified resettlement area for the purpose of displaced families, in compliance with the mandate of Section 19(2). It does not form part of the land proposed to be acquired for the airport expansion project under Section 19(1). Identification of land for R&R purposes under Section 19(2) is a distinct statutory obligation and does not constitute acquisition of such land under Section 19(1). The acquisition of 437.9931 hectares identified for R&R purposes shall be undertaken only through a separate and independent acquisition process strictly in accordance with the provisions of the Act, 2013. The petitioners have thus fundamentally conflated two distinct statutory processes under the same section. The contention is accordingly rejected.

X. Section 10 - Food Security:

6.10. Section 10 of the Act, 2013 provides for special provisions to safeguard food security. It imposes a general prohibition on acquisition of irrigated multi-cropped land, except in exceptional circumstances as a last resort and subject to limits to be notified by the appropriate Government. The provision further mandates that where such land is acquired, either an equivalent area of cultivable wasteland must be developed for agricultural purposes or an equivalent amount must be invested to enhance food security. It also places an overall cap on acquisition of agricultural land in a district or State. However, these restrictions do not apply to linear projects such as railways, highways, canals and power lines. Section 10 of the Act, 2013 provides as under:

“10. Special provision to safeguard food security.-(1) Save as otherwise provided in sub-section (2), no irrigated multi-cropped land shall be acquired under this Act.

(2) Such land may be acquired subject to the condition that it is being done under exceptional circumstances, as a demonstrable last resort, where the acquisition of the land referred to in sub-section (1) shall, in aggregate for all projects in a district or State, in no case exceed such limits as may be notified by the appropriate Government considering the relevant State specific factors and circumstances.

(3) Whenever multi-crop irrigated land is acquired under sub-section (2), an equivalent area of cultivable wasteland shall be developed for agricultural purposes or an amount equivalent

to the value of the land acquired shall be deposited with the appropriate Government for investment in agriculture for enhancing food-security.

(4) In a case not falling under sub-section (1), the acquisition of the agricultural land in aggregate for all projects in a district or State, shall in no case exceed such limits of the total net sown area of that district or State, as may be notified by the appropriate Government:

Provided that the provisions of this section shall not apply in the case of projects that are linear in nature such as those relating to railways, highways, major district roads, irrigation canals, power lines and the like.”

6.10.1. The petitioners' Written Submissions raise three specific sub-grounds under Section 10 of the Act, 2013: (i) that the provisions of Section 10 are mandatory in nature and have not been complied with; (ii) that Section 10(3), which requires development of equivalent culturable wasteland or deposit of an equivalent monetary value when multi-cropped irrigated land is acquired under sub-section (2), has not been complied with; and (iii) that the limit under Section 10(4) has been exceeded. This Court proceeds to adjudicate each ground hereinafter.

6.10.2. Insofar as Section 10(4) is concerned, the State Government has notified 5% of the net sown area as the applicable limit for District Gautam Buddha Nagar. The net sown area of the district is 64,046 hectares, and the total acquisition across all stages in the district does not exceed this notified limit of 5%. The requirement of Section 10(4) accordingly stands satisfied. This finding is directly supported by and consistent with the judgment of this Court in **Kichhu Ram** (supra), wherein, in the context of the Stage-1 acquisition for the same Airport Project in the same district, this Court held that the requirement of Section 10 of the Act, 2013 stood fulfilled since the acquired area was only 1.9% of the total net sown area of District Gautam Buddha Nagar, which was well within the notified limit of 5%. The present acquisition across all stages similarly remains within the notified limit and the ground under Section 10(4) fails.

6.10.3. Insofar as Section 10(3) is concerned, that provision is triggered only when multi-cropped irrigated land is acquired under Section 10(2), i.e., under exceptional circumstances as a demonstrable last resort. The petitioners have not placed any specific material on record to establish that the land being acquired is irrigated multi-cropped land within the meaning of Section 10(1), nor have they produced any khasra or girdawari records before this Court to substantiate this claim. The writ petitions themselves contain internal contradictions in this regard. In the Stage-1 case, this Court also noted that contradiction in **Kichhu Ram** (supra) (Writ Petition No. 6499 of 2019), particularly referring to paragraph 8 described the land as three-cropped while paragraph 20 described it as four-cropped. In the present case also, no documentary material has been placed on record before this Court to conclusively establish that the lands are irrigated multi-cropped. In the absence of such material, the applicability of Section 10(3) cannot be presumed. Furthermore, the record does not disclose that the Collector or the State Government, while processing the acquisition, arrived at a finding that the land is irrigated multi-cropped land requiring application of Section 10(2) and (3). The ground under Section 10(3) is accordingly found to be not established and is, therefore, rejected.

XI. Expert Group-s Report:

6.11. The petitioners' Written Submissions allege that the State Government did not consider the Expert Group's report under Section 7(2) of the Act, 2013 and that no finding with regard to displacement was recorded, in violation of Rule 11(2) of the Rules, 2016. This contention is examined henceforth. Section 7 of the Act, 2013 provides for constitution and appraisal by the Expert Group, and sub-sections (4) and (5) thereof are particularly material. Sub-Section (4) provides that where the Expert Group concludes that the proposed acquisition is not for a public purpose or the social costs and adverse impacts outweigh the benefits, the appropriate Government shall not proceed with the acquisition process. Sub-Section (5) provides that where the Expert Group concludes that the proposed acquisition is for a public purpose and the benefits outweigh the social costs and adverse impacts, the appropriate Government may proceed with the acquisition process. Section 7 provides as under:

“7. Appraisal of Social Impact Assessment report by an Expert Group.-(1) The appropriate Government shall ensure that the Social Impact Assessment report is evaluated by an independent multi-disciplinary Expert Group, as may be constituted by it.

(2) The Expert Group constituted under sub-section (1) shall include the following, namely:-

(a) two non-official social scientists;

(b) two representatives of Panchayat, Gram Sabha, Municipality or Municipal Corporation, as the case may be;

(c) two experts on rehabilitation; and

(d) a technical expert in the subject relating to the project.

(3) The appropriate Government may nominate a person from amongst the members of the Expert Group as the Chairperson of the Group.

(4) If the Expert Group constituted under sub-section (1), is of the opinion that,-

(a) the project does not serve any public purpose; or

(b) the social costs and adverse social impacts of the project outweigh the potential benefits,

it shall make a recommendation within two months from the date of its constitution to the effect that the project shall be abandoned forthwith and no further steps to acquire the land will be initiated in respect of the same:

Provided that the grounds for such recommendation shall be recorded in writing by the Expert Group giving the details and reasons for such decision:

Provided further that where the appropriate Government, inspite of such recommendations, proceeds with the acquisition, then, it shall ensure that its reasons for doing so are recorded in writing.

(5) If the Expert Group constituted under sub-section (1), is of the opinion that,-

(a) the project will serve any public purpose; and

(b) the potential benefits outweigh the social costs and adverse social impacts,

it shall make specific recommendations within two months from the date of its constitution whether the extent of land proposed to be acquired is the absolute bare-minimum extent needed for the project and whether there are no other less displacing options available:

Provided that the grounds for such recommendation shall be recorded in writing by the Expert Group giving the details and reasons for such decision. (6) The recommendations of the Expert Group referred to in sub-sections (4) and (5) shall be made available in the local language

to the Panchayat, Municipality or Municipal Corporation, as the case may be, and the offices of the District Collector, the Sub-Divisional Magistrate and the Tehsil, and shall be published in the affected areas, in such manner as may be prescribed and uploaded on the website of the appropriate Government.”

6.11.1. A plain reading of Section 7(4) and (5) of the Act, 2013 makes the position clear: if the Expert Group concludes that the acquisition is for a public purpose and that the benefits outweigh the social costs, the appropriate Government may proceed. Interference by the Court is warranted only if the Expert Group recommends abandonment under Section 7(4) and the Government proceeds in defiance of that recommendation. In the present case, the Expert Group, constituted in accordance with Section 7 and Rule 10 of the Rules, 2016, submitted its report on 09.02.2024 and unanimously concluded: (i) that the proposed acquisition of 1,888.9088 hectares across fourteen villages serves a valid public purpose; (ii) that the total proposed area constitutes the bare minimum requirement for the project; and (iii) that no viable alternative exists which would result in lesser displacement. The Expert Group thus returned a finding squarely within Section 7(5) and expressly did not make any recommendation under Section 7(4) for abandonment of the acquisition. Thereafter the State Government, in compliance with Section 8 of the Act, 2013, approved the SIA Report on 08.01.2025. The petitioners' suggestion that the Expert Group recommended that Villages Thora and Neemka should be kept free from displacement has already been found to be a misreading of the record, the Expert Group merely suggested that the possibility be explored, upon which PwC conclusively confirmed the unavailability of relocation. No recommendation under Section 7(4) was made. The ground under Section 7(2) read with Rule 11(2) of the Rules, 2016 accordingly fails and is rejected.

XII. Rule 13 of the Rules, 2016 -Minimum Land Acquisition and Utilisation of Government Land:

6.11.2. The petitioners' Written Submissions specifically raise violation of Rule 13 of the Rules, 2016 and contend that the authorities were required to ensure acquisition of the minimum amount of land and to facilitate utilisation of unutilised public/Government land before resorting to acquisition of private land. The petitioners claim that approximately 296 hectares of Government land was available and should have been used, and that the total acquisition of 1,857.77 hectares is far in excess of the minimum requirement. Rule 13 of the Rules, 2016 provides as under:

“13. Inventory of Waste, Barren and Unutilised Land.- To ensure acquisition of minimum amount of land and to facilitate the utilization of unutilized public lands, the State Government, by way of notification, shall make necessary arrangements to authorise any department to prepare a district-level inventory report of waste, barren and unutilized public land. If it is requested or required then the land available in the State Government land bank and shall be made available to the Social Impact Assessment team and Expert group. The inventory report shall be updated from time to time.”

6.11.3. This Court has carefully considered the petitioners' contention in the light of Rule 13. The record discloses that the Multi-Disciplinary Expert Group, constituted under Section 7 of the Act, 2013 and Rule 10 of the Rules, 2016, specifically examined and recorded in its report dated 09.02.2024 that the total proposed acquisition area of 1,888.9088 hectares constitutes the bare

minimum requirement for the project, and that no viable alternative exists which would result in lesser acquisition or displacement. This finding of the Expert Group, which is the body specifically constituted to appraise the SIA Report and determine whether the minimum land requirement has been met, was accepted and approved by the State Government on 08.01.2025 under Section 8 of the Act, 2013. Furthermore, the PwC technical report specifically confirmed that the three villages in question lie within the alignment of runways and aircraft parking areas, and that no alternative technical configuration is available. On the petitioners' computation regarding Government land, this Court notes that the petitioners' written submissions themselves acknowledge that approximately 296 hectares of Government land exists in the area, which is already included within and accounted for in the total acquisition. The fact that some Government land forms part of the acquisition does not establish a violation of Rule 13, it establishes compliance with it, since Government land is being utilised as part of the same proceedings. The record does not disclose any non-compliance of Rule 13. The ground qua violation of Rule 13 is accordingly rejected.

XIII. Challenge Based On The U.P. Industrial Area Development Act, 1976:

6.12. The petitioners have contended that since Village Neemka Shahjahanpur was declared as an Industrial Nagar under the Act, 1976 by notification dated 14.12.2018, any acquisition or displacement could only be carried out by the Industrial Development Authority under that Act. This Court is unable to accept this contention. Section 6 of the Act, 1976 itself contemplates acquisition of land either by agreement or through proceedings under the land acquisition law in force. With the repeal of the Land Acquisition Act, 1894, such acquisition necessarily operates through the Act, 2013. The Act, 1976 is not a self-contained code for compulsory acquisition, and the declaration of an area as an industrial township does not, in law, bar the exercise of acquisition powers under the Act, 2013 for a distinct public purpose. Displacement, if any, is not a function of the acquiring authority but a consequence regulated exclusively through the R&R framework under the Act, 2013, irrespective of the nature of the acquiring authority. Furthermore, as rightly urged by the learned Senior Counsel for YEIDA, there is no specific pleading in the writ petitions disclosing how the Act, 1976 creates a jurisdictional bar to the exercise of acquisition powers under the Act, 2013. This contention is accordingly rejected. This Court also notes that an identical contention was raised and came to be rejected in the **Kichhu Ram case** (supra) in respect of the Stage-1 acquisition.

XIV. Article 300-A - Right To Property:

6.13. The petitioners have invoked Article 300-A of the Constitution of India, which provides that no person shall be deprived of his property save by authority of law. This Court fully recognises that the right to property, though no longer a fundamental right after the 44th Constitutional Amendment, remains a constitutional right under Article 300-A and is entitled to the protection of law. However, the right under Article 300-A is not an absolute right; it is subject to the State's power of eminent domain exercised through a valid law and a fair legal procedure. The protection afforded by Article 300-A is that the deprivation of property must be by authority of law - meaning a valid law that has been followed in letter and spirit.

6.13.1. In the present case, this Court has found, upon detailed examination, that the entire acquisition process has been carried out strictly in accordance with the Act, 2013, which is a valid law enacted by Parliament specifically to govern land acquisition while safeguarding the interests

of landowners and affected families through mandatory SIA, public hearings, consent requirements, fair compensation, and rehabilitation and resettlement entitlements. The Act, 2013 is itself a comprehensive legislative response to the constitutional mandate under Article 300-A, incorporating procedural and substantive safeguards that go significantly beyond the previous Land Acquisition Act, 1894. Since the acquisition has been conducted in full compliance with the Act, 2013 and the Rules, 2016, there is no deprivation of property otherwise than by authority of law, and no violation of Article 300-A is made out. The constitutional challenge accordingly fails.

XV. Petitioners- Urgency Clause Argument:

6.14. The petitioners have submitted in their written submissions that the notifications were required to be issued with an urgency clause in consonance with Section 40 of the Act, 2013, since the Government was acting with undue haste, and that the absence of the urgency clause but the presence of alleged procedural shortcuts is inconsistent. Section 40 of the Act, 2013 provides for the special provision of urgency for acquisition by the appropriate Government in cases of urgency, which enables the Collector to take possession of land even before the award is passed. This Court records that the present acquisition was not carried out under the urgency clause provisions of Section 40. On the contrary, the entire acquisition has been processed through the normal, full, and complete procedure prescribed under the Act, 2013, from Section 4 (SIA notification) all the way through Sections 7, 8, 11, 15, 16, 17, 18, and 19, with each step being duly completed before proceeding to the next. Paradoxically, the petitioners' own argument on this point supports the respondents. The very fact that no urgency clause was invoked means that the fullest possible statutory procedure was followed without any curtailment of the petitioners' rights at any stage. Far from disclosing any illegality, the absence of the urgency clause is conclusive evidence of the bona fide intent of the respondent authorities to follow the complete due process of law. The petitioners' argument on this ground is accordingly rejected and is in fact a further circumstance that supports the conclusion that the acquisition is valid.

XVI. Distinction of judgment in D.B. Basnett (D) through Lrs. vs. The Collector and another:

6.15. The petitioners have relied upon the judgment of the Hon'ble Supreme Court in **D.B. Basnett (D)** (supra), for the proposition that the provisions of the land acquisition law are mandatory in nature and must be strictly followed. In that case, the Agriculture Department of the Government of Sikkim sought to acquire land in the year 1980 for the purpose of building a Progeny Orchard Regional Centre. The landowner's successor filed a suit for possession after finding the State in occupation of his land in the year 2002. The State sought to defend on the ground that the land had been acquired and compensation paid. However, the Supreme Court found that: (i) no notification of intent to acquire under Section 4 of the Sikkim Land (Requisition and Acquisition) Act, 1977 had been issued or produced; (ii) no declaration or any other acquisition document was available on record; (iii) no proof of actual payment of compensation existed beyond a covering letter, i.e. the signed receipt was missing and there was no proof of the Collector having withdrawn the sum from any account; and (iv) the entire acquisition record was admittedly unavailable with the State. On these facts, the Supreme Court held that there cannot be a presumption of acquisition without following the due process under Sections 3(1), 4(2), 5(1) and 7(2) of the said Act, and that the burden lay on the State to prove that the statutory process had been followed and compensation paid, a burden which the State had entirely failed to discharge. It

further reiterated that rights in land, though no longer a fundamental right, remain a constitutional right under Article 300-A, and provisions seeking to divest any person of property must be strictly followed.

6.15.1. The said judgment is clearly and manifestly distinguishable from the present case on every material aspect. In **D.B. Basnett** (supra), the State could not produce a single acquisition document - no notification, no declaration, no compensation receipt - and the entire acquisition record was concededly missing. The Supreme Court intervened precisely because there was a total absence of compliance with the mandatory statutory process, rendering the purported acquisition entirely without the authority of law. The present case stands in diametric contrast. As this Court has found upon exhaustive examination, the acquisition has been conducted in meticulous compliance with each stage prescribed under the Act, 2013 and the Rules, 2016, as conclusively demonstrated by the Compliance Chart on record, the notifications under Sections 11 and 19, the record of hearings under Section 15, the approved R&R Scheme under Section 18, and the awards under Section 23 - all of which are documented and placed before this Court. D.B. Basnett judgment is a case of acquisition without any process; the present is a case of acquisition with a full, documented and verified statutory process. The proposition of law laid down therein that statutory provisions must be strictly followed, in fact supports the respondents, since it is precisely because those provisions have been meticulously followed in the present case that the acquisition goes through scrutiny. The judgment accordingly provides no assistance to the petitioners and is inapplicable.

XVII. Distinction of judgment in Kolkata Municipal Corporation and another vs. Bimarl Kumar Shah:

6.16. The petitioners have also relied upon the judgment of the Hon'ble Supreme Court in Kolkata Municipal Corporation (supra), for the proposition that the right to property under Article 300-A of the Constitution comprises seven intersecting sub-rights or procedural safeguards which must all be satisfied before a person is deprived of his property. These seven sub-rights, as identified by the Supreme Court, are: (i) the right to notice; (ii) the right to be heard; (iii) the right to a reasoned decision; (iv) the duty to acquire only for a public purpose; (v) the right of restitution or fair compensation; (vi) the right to an efficient and expeditious process; and (vii) the right of conclusion. In that case, the Kolkata Municipal Corporation purported to compulsorily acquire a private property under Section 352 of the Kolkata Municipal Corporation Act, 1980, without following any procedure for acquisition whatsoever. The Supreme Court, affirming the High Court, held that Section 352 was not a power of compulsory acquisition at all, it merely empowered the Municipal Commissioner to identify land for opening of streets, parks, etc. and that compulsory acquisition could only be effected by applying to the State Government under Section 537 of the said Act. Since Section 352 prescribed absolutely no procedure before depriving a person of his property, i.e. no notice, no hearing, no reasoned decision, no determination of compensation, the Supreme Court held the purported acquisition to be constitutionally weak and in violation of Article 300-A. It was in this context of a complete legislative and procedural vacuum that the Court elaborated upon the seven sub-rights constituting the minimum constitutional content of a valid acquisition law.

6.16.1. The said judgment is also clearly distinguishable on facts and law and provides no support to the petitioners. In **Kolkata Municipal Corporation** (supra), the acquisition was attempted under a provision that: (a) was held by the Supreme Court not to be a power of compulsory acquisition at all; (b) prescribed absolutely no procedure of any kind before deprivation of property; and (c) provided no mechanism for notice, hearing, reasoned decision or fair compensation. The Supreme Court intervened because there was a complete constitutional and statutory vacuum, no valid law authorising compulsory acquisition had been followed. In the present case, the position is entirely different. The acquisition has been carried out under the Act, 2013, which is a comprehensive Parliamentary enactment that not only confers the express power of compulsory acquisition but, as the Supreme Court itself noted in **Kolkata Municipal Corporation** (supra) at paragraphs 30.1 to 30.7, specifically and expressly incorporates each of the seven sub-rights identified therein. Section 11 of the Act, 2013 provides for the right to notice; Section 15 provides for the right to be heard; Section 19 provides for a reasoned declaration; Sections 2(1) and 11(1) ensure acquisition only for a public purpose; Section 23 ensures fair compensation; the timeline provisions of Sections 4(2), 14, 15(1), 16(1), 19(2) and 25 ensure an efficient process; and Sections 37 and 38 govern conclusion through taking of possession. All seven sub-rights are thus not only present in the Act, 2013 but have been fully complied with in the present acquisition, as this Court has found on facts. Far from assisting the petitioners, the framework laid down in **Kolkata Municipal Corporation** (supra) itself vindicates the constitutional validity of an acquisition conducted under the Act, 2013 in the manner it has been done in the present case. The judgment is accordingly inapplicable to the facts before this Court and affords no ground for interference.

XVIII. Abadi Survey:

6.17. The petitioners' contention that abadi land was proposed for acquisition without any spot inspection is factually incorrect. The competent authority conducted surveys under the Act, 2013 and the Rules, 2016 in all three villages - Neemka Shahjahanpur, Khwajpur and Thora - wherein existing structures, abadi, buildings, wells, tube wells, trees and other assets were identified, verified and recorded in the statutory survey documents in Form-11 under the Rules, 2016, as is evident from the survey records placed on record as Annexure CA-22 to YEIDA's Counter Affidavit. The allegations are unsupported by any material on record and are rejected.

XIX. Awards Passed - Compensation Determined:

6.18. This Court takes note that awards providing total compensation of approximately Rs. 4,772/- to Rs. 4,778/- per square metre - computed by applying market value of Rs. 1,550/- under Section 26(2) of the Act, 2013, additional compensation of Rs. 1,200/- under the Government Order dated 10.03.2025, 100% solatium under Section 30(1), and 12% per annum additional amount under Section 30(3) of the Act, 2013 from the date of the Section 4 Notification - have been passed for the three villages during the pendency of these proceedings. Disbursement has commenced. The compensation so determined is, in the view of this Court, fair and in conformity with the scheme of the Act, 2013. It is however made expressly clear that if any petitioner or affected landowner is aggrieved by the determination or quantum of compensation, the Act, 2013 provides a specific and efficacious statutory remedy. Section 64 of the Act, 2013 provides as under:

“64. Reference to Authority.”-(1) *Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Authority, as the case may be, whether his objection be to the measurement of the land, the amount of the compensation, the person to whom it is payable, the rights of Rehabilitation and Resettlement under Chapters V and VI or the apportionment of the compensation among the persons interested:*

Provided that the Collector shall, within a period of thirty days from the date of receipt of application, make a reference to the appropriate Authority:

Provided further that where the Collector fails to make such reference within the period so specified, the applicant may apply to the Authority, as the case may be, requesting it to direct the Collector to make the reference to it within a period of thirty days.

(2) The application shall state the grounds on which objection to the award is taken:

Provided that every such application shall be made-

(a) if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector-s award;

(b) in other cases, within six weeks of the receipt of the notice from the Collector under section 21, or within six months from the date of the Collector-s award, whichever period shall first expire:

Provided further that the Collector may entertain an application after the expiry of the said period, within a further period of one year, if he is satisfied that there was sufficient cause for not filing it within the period specified in the first proviso.”

6.18.1. Any petitioner or affected landowner aggrieved by the determination of compensation is at liberty to avail the remedy of reference before the competent Reference Authority under Section 64 of the Act, 2013.

XX. Possession Of Abadi Land:

6.19. This Court takes note of the categorical statement made by the respondent-YEIDA in paragraph 31 of its Supplementary Counter Affidavit, reiterated in the Written Submissions filed by Shri Rahul Agarwal, learned Senior Counsel appearing on behalf of the respondent-YEIDA, which is extracted below:

“31. --.. The possession will be taken only after disbursement of compensation in accordance with law. In cases where abadi land is involved, the authorities shall first undertake measurement of the existing abadi area of the affected families. Thereafter, developed plots will be carved out for the displaced families in terms of the approved R&R Scheme. Upon completion of the said process, the R&R award will be passed under Section 31 of the 2013 Act, and the developed plots will be handed over to the displaced families. Only thereafter possession of the abadi land will be taken.”

6.19.1. The aforesaid statement, having been made on affidavit in the Supplementary Counter Affidavit and reiterated in the Written Submissions of the learned Senior Counsel, is binding on the respondent-YEIDA. This Court places the said statement on record and directs the respondent-YEIDA and the State respondents to strictly adhere to and comply with the same. It is made expressly clear that possession of the abadi land of the displaced families shall not be taken in any manner contrary to or in derogation of the aforesaid statement. Any deviation therefrom shall be

treated as a wilful breach of the undertaking given to this Court, rendering the respondent-YEIDA liable to contempt proceedings.

XXI. Suppression Of Material Facts:

6.20. This Court cannot but record that the petitioners have consciously withheld material documents, including the final approved SIA Report, the approved R&R Scheme, the approvals granted under Sections 8 and 18 of the Act, 2013, and the awards passed in January-February 2026, all of which were available in the public domain, while selectively relying on fragments of the record. A litigant invoking the extraordinary jurisdiction under Article 226 of the Constitution of India must approach this Court with clean hands and full disclosure of all material facts.

XXII. Additional Legal Principles which fall for consideration in the instant case:

6.21. This Court deems it appropriate to set out additional legal principles laid down by the Hon'ble Supreme Court which further fortify the conclusion that no interference is required in the instant acquisition proceedings put to challenge before this Court.

6.21.1. In **Ramniklal N. Bhutta and Another v. State of Maharashtra and Others**, the Hon'ble Supreme Court considered a challenge to acquisition of land for a road project in Maharashtra and laid down the governing principles of judicial review in such matters. Hon-ble Supreme Court held that it is recognised on all hands that the infrastructure necessary for sustaining such a pace of progress is woefully lacking in our country. The means of transportation, power and communications are in dire need of substantial improvement, expansion and modernisation. These things very often call for acquisition of land and that too without any delay. It is, however, natural that in most of these cases, the persons whose lands are acquired are not happy with the same. They seek to challenge the acquisition in the courts. While the rights of such persons have to be scrupulously respected, an acquisition for the benefit of the public at large is not to be lightly quashed. Extraordinary reasons must exist for doing so. The court, while balancing the competing interests must also bear in mind that the public, which is the greater beneficiary, is a silent party in all such proceedings. The Hon-ble Court observed as under in paragraph 10:

"10. Before parting with this case, we think it necessary to make a few observations relevant to land acquisition proceedings. Our country is now launched upon an ambitious programme of all-round economic advancement to make our economy competitive in the world market. We are anxious to attract foreign direct investment to the maximum extent. We propose to compete with china economically. We wish to attain the pace of progress achieved by some of the Asian countries, referred to as "Asian tigers", e.g., South Korea, Taiwan and Singapore. It is, however, recognised on all hands that the infrastructure necessary for sustaining such a pace of progress is woefully lacking in our country. The means of transportation, power and communications are in dire need of substantial improvement, expansion and modernisation. These things very often call for acquisition of land and that too without any delay. It is, however, natural that in most of these cases, the persons affected challenge the acquisition proceedings in courts. These challenge the acquisition proceedings in courts. These challenges are generally in shape of writ petitions filed on High Courts. Invariably, stay of acquisition is asked for and in some cases, orders by way of stay or injunction are also made. Whatever may have been the practices in the past, a time has come where the courts should keep the larger public interest in mind while

exercising their power or grant in stay/injunction. The power under-Article 226-is discretionary. It will be exercised only in furtherance of interests of justice and not merely on the making out of a legal point. And in the matter of land acquisition for public purposes, the interests of justice and the public purposes, the interests of justice and the public interest coalesce. They are very often one and the same. Even in civil suit, granting of injunction or other similar orders, more particularly of an interlocutory nature, is equally discretionary. The courts have to weigh the public interest vis-a-vis the private interest while exercising the power under-Article 226 --indeed any of their discretionary powers. It may even be open to the High Court to direct, in case it finds finally that the acquisition was vitiated on account of non-compliance with some legal requirement that the persons interested shall also be entitled to a particular amount of damages to be awarded as a lumpsum or calculated at a certain percentage of compensation payable. There are many ways of affording appropriate relief and redressing a wrong; quashing the acquisition proceedings is not the only mode of redress. To wit, it is ultimately a matter of balancing the competing interests. Beyond this, it is neither possible nor advisable to say. We hope and trust that these considerations will be duly borne in mind by the courts while dealing with challenges to acquisition proceedings.”

6.21.2. Applying the aforesaid principle to the present case, the acquisition is for the expansion of the Noida International Airport, which is a project of national importance serving the aviation requirements of the National Capital Region. No fraud, malafides, or non-application of mind has been established or credibly alleged. The ratio of **Ramniklal N. Bhutta** (supra) squarely applies to the instant case and as such no interference is warranted in the instant proceedings.

6.21.3. In Constitution Bench judgment of **Smt. Somawanti and Others v. State of Punjab and Others**, the Hon'ble Supreme Court held as under:

“40. ---.. If the purpose for which the acquisition is being made is not relatable to a public purpose, then a question may well arise whether, in making the declaration, there has been, on the part of the Government, a fraud on the power conferred upon it by the Act. In other words, the question would then arise whether that declaration was merely a colourable exercise of the power conferred by the Act, and, therefore, the declaration is open to challenge at the instance of the party aggrieved. To such a declaration the protection of Section 6(3) will not extend. For, the question whether a particular action was the result of a fraud or not is always justiciable, ---...”

6.21.4. The ratio of this Constitution Bench judgment is clear. The Government's declaration of public purpose is final and not ordinarily justiciable; judicial review is confined to cases of fraud or colourable exercise. In the present case, the public purpose, i.e. expansion of an international airport, is beyond challenge. No fraud or colourable exercise has been alleged, let alone established. The protection of finality of the Government's satisfaction fully applies. The principle in **Somawanti** (supra) operates as a complete bar to judicial interference with the declared public purpose.

6.21.5. In **Daulat Singh Surana v. First Land Acquisition Collector and Others**,¹⁸ it was held that the rationale of taking away private land by the State for a public purpose is that private interest must give way to public interest. The State in exercise of its power of eminent domain may interfere with the right of property of a person by acquiring the same, but the same must be for a

public purpose and reasonable compensation therefor must be paid. However, once a public purpose is established and proper procedure under the applicable acquisition law has been followed, the private interest of the individual must yield to the larger interest of the public. The Hon'ble Supreme Court in this judgment, while affirming the acquisition of land for a public purpose, held as under:

“40. Public purpose will include a purpose in which the general interest of community as opposed to the interest of an individual is directly or indirectly involved. Individual interest must give way to public interest as far as public purpose in respect of acquisition of land is concerned.”

6.21.6. In the present case, the petitioners' own case is that they do not oppose the acquisition of their agricultural land. Even the challenge to displacement of abadi is a private interest that must, upon due compliance with the R&R framework under the Act, 2013, yield to the public interest of airport expansion. The R&R Scheme provides comprehensive entitlements and the awards have been passed. This principle directly supports dismissal of the present petitions.

6.21.7. In **Whirlpool Corporation v. Registrar of Trade Marks, Mumbai and Others**, the Hon'ble Supreme Court laid down the following principle (paragraph 15):

'15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged---

6.21.8. In the present case, none of the three exceptional contingencies enumerated by the Supreme Court are present. The Act, 2013 provides a complete statutory mechanism for all compensation disputes through Section 64 (Reference to the Authority) and Section 74 (Appeal to High Court) thereafter. To the extent the petitioners' grievances relate to adequacy of compensation or rate of market value, the efficacious statutory remedy under Section 64 is available and may be availed. The writ jurisdiction of this Court is not the appropriate forum for such redressal qua inadequacy of compensation or rate of market value.

6.21.9. This Court, in **Veena Singh vs. Union of India and 3 Others**, examined the issue of balancing public interest with private rights in matters of land acquisition, particularly in the context of infrastructure development such as national highways. The Court held that while individual property rights are to be respected and adequately compensated, they cannot be allowed to obstruct or delay projects of national importance. It was observed that once a public project has substantially progressed or been completed, the appropriate relief is compensation rather than quashing the acquisition, as setting aside such proceedings would lead to practical difficulties and impede public development. This Court has held as under:

“6.6. Public Interest vs. Private Interest

6.6.1. *Infrastructure development is critical for the economic growth and prosperity of the nation. National highways play a vital role in facilitating movement of goods and passengers, promoting trade and commerce, and integrating different regions of the country. Widening and upgradation of national highways have become imperative in view of the exponential growth in vehicular traffic over the past decades.*

6.6.2. *It is well-established that whenever there is a conflict between public interest and private interest, the former must prevail. While the law provides for payment of fair and adequate compensation to persons whose land is acquired for public purposes, individual hardship cannot be permitted to defeat or delay projects of national importance. The constitutional courts, while exercising jurisdiction under Article 226, must keep the larger public interest in mind and must weigh public interest vis-a-vis private interest while exercising their discretionary powers.*

6.6.3. *The Supreme Court, in **Competent Authority vs. Barangore Jute Factory and others**, examined the delicate balance between public interest and private rights in the context of land acquisition for a national highway. While holding that the acquisition notification was legally defective for want of proper statutory compliance and that possession had been taken contrary to law, the Court declined to quash the notification. It noted that the acquisition was for a project of great national importance and that the highway construction had already been completed. Quashing the notification at that stage would have caused serious practical difficulties and led only to a fresh acquisition process, escalating compensation due to rising land prices. The Court emphasized that private property rights cannot be ignored, but where public interest has crystallized into an irreversible public project, the appropriate remedy lies in just and fair compensation rather than undoing what has already been done. In this context, Hon'ble Supreme Court observed in paragraph 14 as under:*

*“14. Having held that the impugned notification regarding acquisition of land is invalid because it fails to meet the statutory requirements and also having found that taking possession of the land of the writ petitioners in the present case in pursuance of the said notification was not in accordance with law, the question arises as to what relief can be granted to the petitioners. **The High Court rightly observed that the acquisition of land in the present case was for a project of great national importance, i.e. the construction of a national highway.** The construction of a national highway on the acquired land has already been completed as informed to us during the course of hearing. No useful purpose will be served by quashing the impugned notification at this stage. **We cannot be unmindful of the legal position that the acquiring authority can always issue a fresh notification for acquisition of the land** in the event of the impugned notification being quashed. The consequence of this will only be that keeping in view the rising trend in prices of land, the amount of compensation payable to the land owners may be more. Therefore, the ultimate question will be about the quantum of compensation payable to the land owners. Quashing of the notification at this stage will give rise to several difficulties and practical problems. Balancing the rights of the petitioners as against the problems involved in quashing the impugned notification, we are of the view that a better course will be to compensate the land owners, that is, writ petitioners appropriately for what they have been deprived of. Interests of justice persuade us to adopt this course of action.”*

(Emphasis supplied)

6.6.4. *This principle has been consistently followed by the Hon'ble Supreme Court in several cases. The Supreme Court, in **Ramniklal N. Bhutta and another vs. State of Maharashtra***

and others, emphasized that while individual property rights are important, they cannot override genuine public purposes underlying land acquisition. The case arose from acquisition of land for establishing a bus station for the Bombay Electric Supply and Transport Undertaking (BEST). The appellant challenged the acquisition on grounds of alleged mala fides, selective exclusion of adjoining land, and procedural irregularities. The Court noted that the acquisition proceedings had commenced as early as 1979 and were repeatedly delayed due to litigation. It found no material to substantiate allegations of mala fides or absence of public purpose and held that mere adjustments or settlements during acquisition do not negate the underlying public need. The Court underscored that infrastructure projects are vital for economic development and cannot be lightly stalled at the instance of individual landowners, particularly after prolonged delay. Importantly, it held that discretionary jurisdiction under Article 226 must be exercised keeping the larger public interest in mind, especially in matters of land acquisition. In this context, the Court observed:

*“The courts have to weigh the public interest vis-a-vis the private interest while exercising the power under Article 226- In the matter of land acquisition for public purposes, **the interests of justice and the public interest coalesce; they are very often one and the same.**”*

(Emphasis supplied)

6.6.5. The Supreme Court in **Pratibha Nema and others vs. State of M.P. and others**, examined the delicate balance between private landowners- rights and the larger public interest in the context of land acquisition for establishment of a -Diamond Park.- While the acquisition incidentally benefited private companies engaged in diamond cutting and polishing, the Court held that such benefit does not, by itself, negate the existence of a public purpose. Emphasis was laid on the broader objectives of industrial development, employment generation, earning of foreign exchange, and planned economic growth of the State. The Hon-ble Supreme Court reiterated that the concept of -public purpose- is elastic and must be understood in a pragmatic manner, keeping in view contemporary socio-economic needs. It was further held that the Government-s satisfaction regarding public purpose is entitled to due weight and judicial interference is warranted only where the acquisition is shown to be a colourable exercise of power to serve a purely private interest. The Court observed that -the phrase -public purpose-- must include a purpose in which the general interest of the community, as opposed to the particular interest of individuals, is directly and vitally concerned.- Thus, where acquisition subserves a larger public goal, the incidental benefit to private entities cannot invalidate it.”

G. CONCLUSION

7. In the light of the foregoing analysis, the legal framework, the principles of law laid down in the judgments discussed above, and the material available on record, this Court holds as follows:-

(i) The acquisition process in respect of the impugned notifications dated 11.04.2025 (under Section 11) and 24.10.2025 (under Section 19) of the Act, 2013 has been conducted in full and meticulous compliance with each stage prescribed under the Act, 2013 and the Rules, 2016, as demonstrated by the Compliance Chart placed on record by the respondent-YEIDA, which has not been effectively controverted.

(ii) The mandatory consent of 70% of the project-affected families, as required under Section 2(2)(b)(ii) of the Act, 2013, has been duly obtained as 73.02% of the total project-affected families across the fourteen villages had consented as on 01.03.2025.

(iii) The SIA process was duly conducted in accordance with Sections 4 to 8 of the Act, 2013 and the Rules, 2016. The Expert Group's suggestion for exploring the possibility of minimising displacement was acted upon through PwC, which confirmed the technical unavailability of relocation.

(iv) Objections under Section 15 of the Act, 2013 were duly heard and disposed of by reasoned order dated 11.07.2025, and the decision of the State Government thereon is final under Section 15(3) of the Act, 2013.

(v) Proceedings under Sections 15 and 16 of the Act, 2013 are designed to operate concurrently and the parallel conduct of these proceedings raises no illegality.

(vi) The R&R Scheme was duly approved under Section 18 of the Act, 2013 on 21.07.2025, prior to issuance of the Section 19 Declaration.

(vii) Awards providing fair and just compensation have been passed and disbursement has commenced. Any grievance regarding compensation may be addressed in Reference before the Authority under Section 64 of the Act, 2013.

(viii) The challenge to the Section 19 Declaration on the ground of alleged expansion is based on a misreading of Schedule-B, which identifies land for R&R of displaced families under the mandate of Section 19(2) of the Act, 2013, through a separate acquisition process, and does not expand the area of acquisition for the public purpose project under Section 19(1).

(ix) The challenge under the U.P. Industrial Area Development Act, 1976 is without merit and is rejected.

(x) The requirement of Section 10 of the Act, 2013 stands satisfied, as the total acquired area does not exceed the notified limit of 5% of the net sown area of District Gautam Buddha Nagar.

(xi) The constitutional challenge under Article 300-A of the Constitution of India fails. The right to property under Article 300-A is not an absolute right and is subject to the State's power of eminent domain exercised through a valid law followed in letter and spirit. Since the acquisition has been carried out in full compliance with the Act, 2013, which is itself Parliament's comprehensive legislative response to the constitutional mandate under Article 300-A, no deprivation of property otherwise than by authority of law is made out.

(xii) The two Supreme Court judgments relied upon by the petitioners, namely D.B. Basnett (supra) and Kolkata Municipal Corporation (supra), are clearly distinguishable on facts and inapplicable to the present case.

H. FINAL ORDERS

8. In view of the foregoing discussion and for the reasons stated hereinabove, this Court finds no merit in the challenge raised by the petitioners to the impugned notifications dated 11.04.2025 and 24.10.2025. This Court declines to interfere in the acquisition proceedings, which have been conducted in conformity with the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and the Rules, 2016 framed thereunder.

8.1. **All the three writ petitions**, being Writ-C No. 41339 of 2025, Writ-C No. 41467 of 2025 and Writ-C No. 46238 of 2025, are hereby **disposed of** with the following directions:

(a) The respondent-YEIDA and the State respondents shall strictly comply with the statement made on affidavit in paragraph 31 of YEIDA's Supplementary Counter Affidavit placed on record before us and reiterated in the Written Submissions of Shri Rahul Agarwal, learned Senior Counsel, to the effect that possession of the abadi land of displaced families shall not be taken until: (i) full development of the rehabilitation site; (ii) measurement of the existing abadi area of each affected family; (iii) carving out of developed plots in accordance with the approved R&R Scheme; and (iv) passing of the R&R Award under Section 31 of the Act, 2013 and actual handing over of the developed plots to the displaced families. Any deviation from the aforesaid statement shall be treated as a wilful breach of the undertaking given to this Court.

(b) The petitioners and all other affected landowners, if aggrieved by the determination or quantum of compensation awarded under the Act, 2013, are at liberty to approach the competent Reference Authority under Section 64 of the Act, 2013 and all such disputes shall be adjudicated strictly only in accordance with law.

(c) The disbursement of compensation, implementation of the R&R Scheme, and all consequential acquisition activities shall proceed strictly in accordance with the provisions of the Act, 2013 and the Rules, 2016.

8.2. There shall be no order as to costs.

(2026) 4 ILRA 480
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 28.04.2026

BEFORE

THE HON'BLE SAUMITRA DAYAL SINGH, J.
THE HON'BLE SWARUPAMA CHATURVEDI, J.

Writ Tax No. 2238 of 2026
 Along With
 Other Connected Cases

M/s Runway Impex & Anr.

...Petitioners

Versus

U.O.I. & Ors.

...Respondents

Issue for Consideration

Matter pertains to whether the expression 'entertain an appeal' occurring in s. 129E of the Customs Act, 1962 would mean mere filing/registration of an appeal, or would operate only at the stage when the appellate authority applies its mind and considers the appeal on merits.

Headnotes

Customs Act, 1962 - ss. 112(a), 114(AA), 129E - Constitution of India, 1950 - Article 226 - Mandatory pre-deposit of 7.5% of disputed demand/penalty for filing appeal - Waiver application - Interpretation of word "entertain" - Scope and meaning - Appeal against Order-in-

Original - The instant bunch of writ petitions was filed by the petitioners challenging the action of Customs authorities in refusing to register their statutory appeals against the Order-in-Original passed under the provisions of Customs Act, 1962 - The petitioners were aggrieved by the adjudication orders whereby customs duty/penalty demands were imposed upon them, and they intended to challenge the same before the appellate authority - However, the appeals were not entertained on the ground that the petitioners had failed to comply with the mandatory requirement of pre-deposit of 7.5% of disputed duty/penalty as contemplated u/s 129E of Customs Act - The petitioners contended before the High Court that they were being prevented at the threshold from even filing and registering their appeals, and sought permission to pursue the statutory remedy along with consideration of their request for waiver of pre-deposit - The controversy before the High Court, therefore, centred around the interpretation of expression 'entertain an appeal' u/s 129E of Act and whether non-compliance of pre-deposit requirement could prevent mere filing/registration of an appeal.

Held: The 'entertainment' of an appeal, cannot be equated with its mere filing or registration - At that stage, the act performed may be ministerial but not quasi-judicial - A proceeding, howsoever defective, may be registered by a quasi-judicial authority - Subject to removal/curing of those defects, it may be registered as a regular proceeding - At that stage, either the defects may stand cured, or the objection to defect may be considered by the quasi-judicial authority - It may either be sustained, or time may be granted to cure the defect, (or the proceeding may fail for the reason that it is a hopelessly defective proceeding), or such other order may be passed, as may be deemed fit in the peculiar facts of a case - At that stage, the quasi-judicial authority may first exercise and apply its judicial mind-whether such proceeding is worthy of being 'entertained' as an appeal - Till that stage (of application of mind by the quasi-judicial authority), has been crossed, it cannot be said if the appeal has been 'entertained' by that quasi-judicial authority - Accordingly, the writ petitions disposed of with the direction that proceeding being presented by petitioner before the Commissioner (Appeals), against the Order-in-Original dated 28.11.2025, must be allowed to be filed, numbered and thus registered, without insisting on pre-deposit at the rate of 7.5% of disputed demand of customs duty/penalty, at that stage - Such proceeding may be registered as a defective proceeding-for reason of pre-deposit not made or proof of pre-deposit not produced, at that stage - The issue, whether that appeal is to be 'entertained', may be considered by Commissioner (Appeals), where that proceeding is listed/placed before it, first. [Paras 20, 21, 23] (E-13)

Case Law Cited

M/s Ganesh Yadav v. Union of India & Ors.; **2015 (6) ADJ 250**; *Shyam Kishore v. Municipal Corporation of Delhi* **(1993) 1 SCC 22**; *Dhoom Chand Jain v. Chaman Lal Gupta and another* **AIR 1962 All 543**; *Kundan Lal v. Jagan Nath Sharma and others*, **AIR1962 All 547**; *Haji Rahim Bux and others v. Haji Sanaullah and sons, Pechbagh, Kanpur* **1962 SCC OnLine All 156**; *Ramesh Vasantbhai Bhojani v. Union of India and 2 others*, **2017:GUJHC:11689-DB - referred to**

Lakshmiratan Engineering Works Ltd. v. Assistant Commissioner (Judicial) I, Sales Tax, Kanpur Range, Kanpur and another **1967 SCC OnLine SC 140 - relied on**

List of Acts

Customs Act, 1962; Constitution of India, 1950

List of Keywords

Article 226 of Constitution of India; s. 129E of Customs Act, 1962; Disputed demand; Customs duty; Penalty; Waiver application; Appeal Authority; Commissioner (Appeals); Res-integra; Order-in-Original; Entertain an appeal; Quasi-Judicial Authority; Extraordinary Jurisdiction; Maintainability; Condition of Pre-Deposit; Chief Commissioner, CGST & Central Excise, Lucknow; CGST & Customs, Meerut; Disposed of

Case Arising From

ORIGINAL JURISDICTION: Writ Tax No. - 2238 of 2026

Connected with other matters

(Writ Tax No. - 2265 of 2026), (Writ Tax No. - 2291 of 2026) and
(Writ Tax No. - 2292 of 2026)

From the Adjudication Order (Order-in-Original) No. 51/JC/NOIDA-CUS/2026-26 dated 28.11.2025.

Appearances for Parties

Adv. for the Petitioner(s):

Akanksha Mishra

Advs. for the Respondent(s):

A.S.G.I., Dhananjay Awasthi, Krishna Agarawal

(Delivered by Hon'ble Saumitra Dayal Singh, J.

&

Hon'ble Swarupama Chaturvedi, J.)

1. Heard Ms. Akanksha Mishra, learned counsel for the petitioners, Sri Dhananjay Awasthi, learned counsel for the revenue, Sri Krishna Agarawal, learned counsel for the respondent No.1 and perused the record.

2. This batch of writ petitions raises a common legal issue. Visited with a common Adjudication Order (Order-in-Original), passed under the provisions of the Customs Act, 1962 (hereinafter referred to as 'the Act'), the petitioners intend to file individual appeals, thereagainst. They also seek opportunity to apply for waiver of the condition to pre-deposit 7.5% of the disputed demand of Custom duty/penalty, in terms of Section 129E of the Act. They have been prevented from filing such appeals, ostensibly on the objection raised that they have not pre-deposited or appended proof of deposit of 7.5% of the disputed demand of customs duty/penalty, imposed under the Order-in-Original (proposed to be assailed by them), before the appellate forum.

3. For ready reference, the facts giving rise to the issue in Writ-Tax No. 2238 of 2026 (M/S Runway Impex and another vs. Union of India and others), may be noted, in brief.

4. The petitioner is engaged in the business of import and export of betel nuts. It had entered into an agreement with one M/s Margo Impex Private Limited-for storage and warehousing of those goods, in a Free Trade Warehousing Zone. On 29.10.2024, a Show Cause Notice (in short 'SCN') was issued to the petitioner, proposing to confiscate the goods imported by it. The petitioner participated in the proceedings and submitted its reply. However, by order dated 28.11.2025, the objections raised have been rejected, and a disputed demand of penalty of Rs.3,91,82,273/- has been imposed under Sections 112(a) and 114(AA) of the Act.

5. To 'entertain' an appeal against that order, the petitioner is required to pre-deposit 7.5% of that penalty demand. It would amount to Rs.29,38,670.47/-.

6. In the above facts, the petitioner has disclosed that it has been prematurely prevented from filing its appeal, for reason of that pre-deposit not made and/or for lack of proof of such pre-deposit-submitted with its memorandum of appeal. Voicing this grievance, the writ petition has been filed, seeking the following relief:

"i) issue a writ, order or direction in the nature of Mandamus directing the respondent no.2 to waive of the mandatory pre-deposit amount deposited for filing of the appeal;

ii) issue a writ, order or direction in the nature of Mandamus directing the respondent no.2 to decide the petitioners' Waiver Application filed alongwith his appeal (Irfan vs. Joint Commissioner, Customs Commissionerate, Noida) before the respondent no.2 against the Order-in-Original No. 51/JC/NOIDA-CUS/2026-26 dated 28.11.2025, in view of the judgment passed by this Hon'ble Court in Writ Tax no. 5866 of 2025."

7. First, no waiver may be granted by this Court, at this stage, unless there exists a proceeding in the nature of an appeal, registered with the appeal authority, with respect to which waiver may be prayed for. Yet, it has been asserted by learned counsel for the revenue, unless the petitioner makes pre-deposit @ 7.5% of the disputed demand of penalty etc. involved, its appeal may never be entertained i.e. registered, in view of the clear language of Section 129E of the Act.

8. In such circumstances, we had granted opportunity to learned counsel for the revenue to complete his instructions. That has been done. To the extent, the issue is purely legal and in view of the order we propose to pass, we also find the issue is not res-integra. Accordingly, the petition is being disposed of, at this stage.

9. Section 129E of the Act reads as below:

"[129E. Deposit of certain percentage of duty demanded or penalty imposed before filing appeal. - The Tribunal or the Commissioner (Appeals), as the case may be, shall not entertain any appeal,"

(i) under sub-section (1) of section 128, unless the appellant has deposited seven and a half per cent. of the duty, in case where duty or duty and penalty are in dispute, or penalty, where such penalty is in dispute, in pursuance of a decision or an order passed by an officer of customs lower in rank than the Commissioner of Customs or Commissioner of Customs;

(ii) against the decision or order referred to in clause (a) of sub-section (1) of section 129A, unless the appellant has deposited seven and a half per cent. of the duty, in case where duty or duty and penalty are in dispute, or penalty, where such penalty is in dispute, in pursuance of the decision or order appealed against;

(iii) against the decision or order referred to in clause (b) of sub-section (1) of section 129A, unless the appellant has deposited ten per cent. of the duty, in case where duty or duty and penalty are in dispute, or penalty, where such penalty is in dispute, in pursuance of the decision or order appealed against:

Provided that the amount required to be deposited under this section shall not exceed rupees ten crores:

Provided further that the provisions of this section shall not apply to the stay applications and appeals pending before any appellate authority prior to the commencement of the Finance (No. 2) Act, 2014 (25 of 2014).J"

(emphasis supplied)

10. Thus, no appeal may be 'entertained' unless the condition of pre-deposit at the rate of 7.5% of the disputed demand of custom duty or penalty, as the case may be, is first satisfied.

11. At the same time, it is recognized-the statutory authorities do not have any power to grant waiver of that requirement. Yet, in exceptional facts, this Court, in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India, may pass appropriate orders with respect to waiver. That principle arises on the strength of the reasoning in the decision of the coordinate bench in **M/s Ganesh Yadav Vs. Union of India & Ors.; 2015 (6) ADJ 250**, wherein, following **Shyam Kishore Vs. Municipal Corporation of Delhi (1993) 1 SCC 22**, in paragraph nos. 3 and 8 of that judgment of the coordinate bench, it has been noticed as below :

"3. The petitioner has sought in these proceedings a writ restraining the respondents from enforcing the mandatory requirement of a pre-deposit of 7.5% of the duty demanded in pursuance of the order of adjudication dated 31 March 2015. The second relief is for a declaration that Section 35F of the Act, as amended with effect from 6 August 2000, so as to provide a mandatory pre-deposit of 7.5% for first appeals and 10% to second appeals of the total tax or penalty demanded, is ultravires or unconstitutional.

...
...
...
...

8. ... The requirement of a deposit of 10% is in the case of an appeal to the Tribunal against an order of the Commissioner (Appeals). This requirement cannot be regarded or held as being arbitrary or as violative of Article 14. Above all, as the Supreme Court held in Shyam Kishore (supra), the High Court under Article 226 of the Constitution is vested with the jurisdiction in an appropriate case to dispense with the requirement of pre-deposit and the power of the Court under Article 226 is not taken away. This was also held by the Supreme Court in P. Laxmi Devi (supra) in which the Supreme Court observed that recourse to the writ jurisdiction would not be ousted in an appropriate case. Whether the writ jurisdiction under Article 226 should be exercised, having due regard to the discipline which has been laid down under Section 35F of the Act, is a separate matter altogether but it is important to note that the power under Section 26 has not been, as it cannot be, abridged."

(emphasis supplied)

12. Therefore, it cannot be successfully claimed by the revenue that there does not exist any power to grant the relief prayed. Howsoever restricted it may be, such power, referable to the extraordinary jurisdiction of this Court under Article 226 of the Constitution, does exist. Whether this power is to be exercised, in the present fact, may remain to be considered at the appropriate stage, in the individual/peculiar facts of each case.

13. However, before such consideration may ever arise, there must exist a proceeding with respect to which that power may be exercised, by this Court. At present, owing to the refusal on part of the Commissioner (Appeals) and for reason of insistence by the revenue authorities that pre-deposit at the rate 7.5% of the disputed demand be first made and/or its proof be shown to exist, at the time of filing of the appeal, no proceeding has been registered. Consequently the stage to consider the grant of waiver has not arrived.

14. In **Dhoom Chand Jain vs. Chaman Lal Gupta and another AIR 1962 All 543**, a coordinate bench of the then Chief Justice M.C. Desai and Justice S.N. Dwivedi held-the word 'entertained' appearing in the proviso to Rule 90 of the Order XXI, C.P.C., bears the meaning 'admitted for consideration'.

15. As to the objection raised by the revenue that unless deposit is first made, no appeal may be 'entertained', and therefore, the insistence on part of the revenue and the Commissioner (Appeals), that such pre-deposit must be made before the appeal may be entertained i.e. registered, requires serious consideration. Yet, that issue is squarely decided against the revenue almost from the beginning. Thus, another coordinate bench of B. Mukrji and D.P. Uniyal, JJ., in **Kundan Lal Vs. Jagan Nath Sharma and others, AIR1962 All 547** had the occasion to interpret the proviso to Rule 90 of the Order XXI, C.P.C. It was opined as below:

"This in our opinion clearly goes to indicate that the stage at which the question as to whether the applicant has complied with the terms of the proviso to Rule 90 of Order XXI arises is when the court is actually seized of the application filed by the judgment-debtor for setting aside the sale"

(emphasis supplied)

16. In **Haji Rahim Bux and others Vs. Haji Sanaullah and sons, Pechbagh, Kanpur 1962 SCC OnLine All 156**, another coordinate bench had the occasion to consider that issue. Therein, in his judgment, Justice S.D. Singh framed the following issue:

10. Taking the two appeals together, the questions, which arise for decision and which were canvassed before us, are:

(1) ...

(2) ...

(3) Whether it was necessary for the applicants to comply with the provisions of Cl. (b) of the first proviso to rule 90 of Or. XXI of the Code within the period of limitation prescribed for an objection under the aforesaid rule.

(emphasis supplied)

17. That issue was answered as below:

"35. This brings us to the next point involved in the case, namely, the one relating to the interpretation of the proviso to R. 90 of Or. XXI of the Code, which has already been extracted in the earlier part of this judgment. An application to set aside a sale is not to be entertained unless

(1) the objector puts forward a round, which could not have been taken by him on or before the date on which the sale proclamation was drawn up, and

(2) he deposits such amount not exceeding twelve and a half per cent of the sum realised by the sale or furnishes such security as the Court may demand but the Court may, for reasons to be recorded, dispense with his requirement.

36. It is not in dispute that no deposit was made by the objectors, or any security furnished by them, in application was moved for exemption being granted for the operation of Cl. (b) of the proviso to R. 90 afore-said on 13th February, 1960, and was allowed on 29th February, 1960. The sale, it may be recalled, took place on 6th October, 1959, and the objection under R. 90 was filed on 24th November, 1959. The question is whether the objector should have made the deposit or furnished security under Cl. (b) of the proviso or applied for exemption thereunder within the period of limitation prescribed for filing an objection under R. 90, and if, in the absence of compliance with the provisions of Cl. (b) within the aforesaid period of limitation the objection could be 'entertained' or if it was liable to be thrown out. Reliance was placed by the learned Counsel for the respondents on *Bawan Ram v. Kunj Behari Lal*, 1960 A.L.J. 578, in which V. Bhargava, J. has held that under such circumstances the proviso bars the entertainment of an objection altogether and that consequently if the requirements of the proviso are not complied with within the time within which the objection could be filed, it cannot thereafter be entertained, nor can the deposit or security therefor accepted after the expiry of such time. It was, therefore, urged that the objection filed by the appellants was liable to be dismissed on that ground. A Full Bench decision of the Patna High Court - *Brij Behari Lal v. Srinivas Ram Kumar*, A.I.R. 1939 Pat. 248 was cited in *Bawan Ram's* 1960 A.L.J. 578 case and was distinguished on the ground that the corresponding proviso added by the Patna High Court to R. 90 afore-said laid a bar to the 'admission' of a petition and it was pointed out that under that rule if there was compliance with the proviso before admission, it had to be held that there was sufficient compliance. The words used in the Patna Rule are:

(i) Provided that no application to set aside a sale shall be admitted unless

(a)

(b) the applicant deposits with his application such amount not exceeding 12 1/2 per cent of the sum realized by the sale or such other security as the Court may in its discretion fix, unless the Court, for reasons to be recorded, dispenses with the deposit.

37. This proviso differs from the one added by this Court in two important respects:

(1) The words 'shall be admitted' have been used for the words 'shall be entertained.'

(2) The words 'deposits with his application' have been used in Cl. (b) as against the simple word 'deposits' used in the Allahabad amendment.

38. The use of the words 'deposits with his application' seem to make it obligatory that the deposit must be made or other requirements of the clause satisfied simultaneously with the moving of the application, but the word 'admitted' in the opening clause indicates that even if the provisions of Cl. (b) of the proviso are complied with by the time the application is admitted, the objector will be deemed to have complied with the provisions of the clause. It is this latter aspect of the Patna amendment which was referred to by V. Bhargava, J. and the Patna view distinguished.

39. Since then, however, there has been another decision of this Court in *Kundan Lal v. Jagan Nath Sharma*, 1962 A.W.R. 500 : 1962 A.L.J. 574, in which *Bawan Ram v. Kunj Behari Lal*, 1960 A.L.J. 578, has been overruled, and it has been held that the expression 'entertain' does not mean the same thing as the filing of the application or the admission of the application by the

Court and that the true intention of the proviso is to allow the judgment debtor to prosecute his application for the setting aside of the sale, if he complies with the conditions contained in the proviso to R. 90 before the application is finally heard and disposed of by the Court.

40. The meaning of the word 'entertain' was also understood in the same sense in another recent decision, *Dhoom Chand v. Chaman Lal*, 1962 A.L.J. 729, to which one of us was a party, and it was pointed out:

The dictionary meaning of the word 'entertain' is: to deal with; to admit to consideration. In its application to Cl. (a) the word bears the meaning of admitting to consideration. That clause enjoins the Court from considering the application on any ground which could have been taken on or before the drawing up of the sale proclamation. In its application to Cl. (b) the word should bear the same sense. Accordingly while the court cannot refuse to take an application which is not backed by deposit or security, it cannot judicially consider it. It is expected that the Court would ordinarily give an opportunity to the applicant to comply with Cl. (b), and would reject the application if Cl. (b) were still not complied with.

41. The word 'entertain' was also explained by their Lordships of the Supreme Court in *Samrath Transport Co. v. Regional Transport Authority*, A.I.R. 1961 S.C. 93, though in another connection. Interpreting Sec. 68-F of the Motor Vehicles Act, 1939, their Lordships observed at page 97:

'The word 'entertain' may mean to receive on file or keep on file and in that sense the Authority may refused to keep an application on its file by rejecting it either at the time it is file or thereafter. It does not connote any time but only describes the scope of the duty under that clause. It can only mean that the Authority cannot dispose of the application on merits but can reject it as not maintainable.'

42. According to this view the word 'entertain' may mean that an objection may not be received by the Court without the provisions of the Proviso being complied with at the time of the filing of the objection, or that the objection may not be heard on merits unless compliance with it is duly made. It is in this latter sense that the word 'entertain' was understood in *Dhoom Chand v. Chaman Lal*, 1962 A.L.J. 729, as well as in *Kundan Lal v. Jagan Nath Sharma*, 1962 A.W.R. 500: 1962 A.L.J. 574 'and the reason for the same is obvious.

18. The then Chief Justice M.C. Desai in his concurring opinion further observed as below:

"I agree that the word 'entertain' in the proviso, means not 'receive' or 'accept' but 'proceed to consider on merits' or 'adjudicate upon.' An application under the rule is not to be entertained unless the applicant deposits such amount or furnishes such security as the Court may in its discretion fix, unless it dispenses with the deposit or security."

(emphasis supplied)

19. That consistent view of this Court was noticed and affirmed by the Supreme Court in **Lakshmiratan Engineering Works Ltd. Vs. Assistant Commissioner (Judicial) I, Sales Tax, Kanpur Range, Kanpur and another** 1967 SCC OnLine SC 140. Therein, it was observed as below:

"To begin with it must be noticed that the proviso merely requires that the appeal shall not be entertained unless it is accompanied by satisfactory proof of the payment of the amount of

tax admitted by the appellant to be due. A question thus arises what is the meaning of the word "entertained" in this context? Does it mean that no appeal shall be received or filed or does it mean that no appeal shall be admitted or heard and disposed of unless satisfactory proof is available? The dictionary meaning of the word "entertain" was brought to our notice by the parties, and both sides agreed that it means either "to deal with or admit to consideration". We are also of the same opinion. The question, therefore, is at what stage can the appeal be said to be entertained for the purpose of the application of the proviso? Is it "entertained" when it is filed or is it "entertain" when it is admitted and the date is fixed for hearing or is it finally "entertained" when it is heard and disposed of? Numerous cases exist in the law reports in which the word "entertained" or similar cognate expressions have been interpreted by the courts. Some of them from the Allahabad High Court itself have been brought to our notice and we shall deal with them in due course. For the present we must say that if the Legislature intended that the word "file" or "receive" was to be used, there was no difficulty in using those words. In some of the statutes which were brought to our notice such expressions have in fact been used. For example, under Order 41, rule 1, of the Code of Civil Procedure it is stated that a memorandum shall not be filed or presented unless it is accompanied etc.; in section 17 of the Small Causes Courts Act, the expression is "at the time of presenting the application". In section 6 of the

Court-fees Act, the words are "file" or "shall be received". It would appear from this that the Legislature was not at a loss for words if it had wanted to express itself in such forceful manner as is now suggested by counsel for the State. It has used the word "entertain" and it must be accepted that it has used it advisedly. This word has come in for examination in some of the cases of the Allahabad High Court and we shall now refer to them.

In Kundan Lal v. Jagannath Sharma(1), the Court was concerned with Order 21, rule 90, of the Code of Civil Procedure which had been amended by the Court by changing the provisions of the original Code. The changed rule is as follows:

"Provided that no application to set aside the sale shall be entertained:

(a) upon any ground which should have been taken by the applicant on or before the date on which the sale proclamation was drawn up;

(b) unless the applicant deposits such amount not exceeding 12 1/2 per cent. of the sum realised by the sale or furnishes such security as the court may in its discretion fix, except when for reasons to be recorded it dispenses with the requirements of this clause.

.....

The word "entertain" is explained by a Divisional Bench of the Allahabad High Court as denoting the point of time at which an application to set aside the sale is heard by the court. The expression "entertain", it is stated, does not mean the same thing as the filing of the application or admission of the application by the court. A similar view was again taken in Dhoom Chand Jain v. Chamanlal Gupta and Another(2), in which the learned Chief Justice Desai and Mr. Justice Dwivedi gave the same meaning to the expression "entertain". It is observed by Dwivedi, J., that the word "entertain" in its application bears the meaning "admitting to consideration" and therefore when the court cannot refuse to take an application which is backed by deposit or security, it cannot refuse judicially to consider it. In a single Bench decision of the same court reported in Bawan Ram and Another v. Kunj Beharilal and Another(3), one of us (Bhargava, J.) had to consider the same rule. There the deposit had not been made within the period of limitation and the question had arisen whether the court could entertain the application or not. It was decided that the application could not be entertained because proviso (b) debarred the court from

entertaining an objection unless the requirement of depositing the amount or furnishing security was complied with within the time prescribed. In that case the word "entertain" is not interpreted but it is held that the court cannot proceed to consider the application in the absence of deposit made within the time allowed by law. This case turned on the fact that the deposit was made out of time. In yet another case of the Allahabad High Court reported in Haji Rahim Bux & Sons and Others v. Firm Samiullah & Sons(4), a Division Bench consisting of Chief Justice Desai and (1) A.I.R. 1962 All. 547.(3) A.I.R. 1962 All. 42. (2) A.I.R. 1962 All. 543.(4) A.I.R. 1963 All. 320.

Mr. Justice S.D. Singh interpreted the words of Order 21, rule 00, by saying that the word "entertain" meant not "receive" or "accept" but "proceed to consider on merits" or "adjudicate upon".

In our opinion these cases have taken a correct view of the word "entertain" which according to dictionary also means "admit to consideration".

...

Now the complicating factor is the existence of the rule, and here, the divergence of submission arises on whether the rules can be regarded as mandatory or merely directory. It is quite obvious that the section as it stands only requires that at the time of the consideration of the appeal, there should be satisfactory proof, that the admitted tax has been deposited. It only says that no appeal shall be entertained unless accompanied by satisfactory proof of the payment of the tax. This satisfactory proof may take any form; in fact in the present case satisfactory proof was tendered in the shape of a certificate from the Sales Tax Officer that the admitted tax had been deposited and well within time. Under section 9 and its proviso as they stand, it is quite obvious that "entertainment" means the point of time when the appeal is being considered. There was thus satisfactory proof in the present case.

...

The distinction made by the learned Chief Justice between the tangible and intangible objects does not, in our opinion, fall for consideration in the present case. If one holds that by "entertainment" is meant the time of admission of the appeal, satisfactory proof may be furnished at the time of admission of the appeal. We are of opinion that by the word "entertain" here is meant the first occasion on which the court takes up the matter for consideration. It may be at the admission stage or if by the rules of that Tribunal the appeals are automatically admitted, it will be the time of hearing of the appeal. But on the first occasion when the court takes up the matter for consideration, satisfactory proof must be presented that the tax was paid within the period of limitation available for the appeal. In the present case when the Assistant Commissioner took up the appeal for consideration, satisfactory proof was available in the shape of a certificate which even today is not denied. In our opinion the Assistant Commissioner was wrong in declining to consider the appeal in the presence of such uncontestable proof."

(emphasis supplied)

20. The view taken by this Court has been consistent. It affirms that 'entertainment' of an appeal, cannot be equated with its mere filing or registration. At that stage, the act performed may be ministerial but not quasi-judicial. A proceeding, howsoever defective, may be registered by a quasi-judicial authority. Subject to removal/curing of those defects, it may be registered as a regular proceeding.

21. At that stage, either the defects may stand cured, or the objection to the defect may be considered by the quasi-judicial authority. It may either be sustained, or time may be granted to cure the defect, (or the proceeding may fail for the reason that it is a hopelessly defective proceeding), or such other order may be passed, as may be deemed fit in the peculiar facts of a case. That would fall within the domain of exercise of quasi-judicial power/function. At that stage, the quasi-judicial authority may first exercise and apply its judicial mind-whether such proceeding (brought before it), is worthy of being 'entertained' as an appeal. Till that stage (of application of mind by the quasi-judicial authority), has been crossed, it cannot be said if the appeal has been ☐entertained☐ by that quasi-judicial authority.

22. In view of that consistent view of the Court, the decision of the Gujarat High Court in **Ramesh Vasantbhai Bhojani vs. Union of India and 2 others, 2017:GUJHC:11689-DB** that is seen to adopt a slightly different reasoning may not require our further consideration. We find, the reasoning offered by this Court, as has been confirmed by the Supreme Court and consistently applied over six decades, applies with equal force, even in the context of Section 129E of the Act.

23. Accordingly, the writ petitions stand **disposed of** with the direction that the proceeding being presented by the petitioner before the Commissioner (Appeals), against the Order-in-Original dated 28.11.2025, must be allowed to be filed, numbered and thus registered, without insisting on pre-deposit at the rate of 7.5% of the disputed demand of customs duty/penalty, at that stage. Such proceeding may be registered as a defective proceeding-for reason of pre-deposit not made or proof of pre-deposit not produced, at that stage. The issue, whether that appeal is to be ☐entertained☐, may be considered by the Commissioner (Appeals), on the quasi-judicial side, where that proceeding is listed/placed before it, first.

24. Since time has been lost to the petitioner for no fault on its part, subject to the petitioner filing such proceeding within a period of four weeks from today, the same may be accepted and may be registered (even if defective), without raising any objection as to limitation, at that stage.

25. Let a copy of this order be communicated to Chief Commissioner of the CGST & Central Excise, Lucknow Zone and Chief Commissioner of the CGST & Customs Meerut Zone by Sri Dhananjay Awasthi, for effective compliance in other similar cases/situations.

(2026) 4 ILRA 490

APPELLATE JURISDICTION

CRIMINAL SIDE

DATED: LUCKNOW 22.04.2026

BEFORE

THE HON'BLE SUBHASH VIDYARTHI, J.

Criminal Appeal No. 958 of 2018

Rajesh Singh Rathore

...Appellant

Versus

State of U.P.

...Respondent

Issue for consideration

Matter pertains to legality of conviction order u/s 5/6 POCSO Act.

Headnotes

Protection of Children from Sexual Offences Act, 2012-Sec. 5/6 Written complaint by the appellant's wife -he had repetitively committed the misdeed against her daughter aged 9 years- statement of the victim recorded u/s 164 Cr.P.C.- testimony of the victim and her mother read along with the medical report and testimony of the doctor -shows injuries on her private parts -commission of rape by the appellant is clearly established-non-examination of the blood sample of Appellant for corroboration does not vitiate the prosecution's case- no ground to reduce the sentence of the appellant-**Appeal dismissed.** (E-9)

Case Law Cited

1. Veerendra v. State of M.P.: (2022) 8 SCC 668
2. Lok Mal v. State of U.P.: (2025) 4 SCC 470
3. Dilip v. State of M.P.: (2001) 9 SCC 452
4. Debraj Dutta v. State of W.B.: 2026 SCC OnLine SC 664
5. Nirmal Kumar v. State of U.P.; 2026:AHCLKO:23345-DB
6. Gyanendra Singh @ Raja Singh v. State of U.P.; 2025 SCC OnLine SC 517

List of Acts

1. Indian Penal Code, 1860
2. Protection of Children from Sexual Offences Act, 2012

List of Keywords

external injury; rape; hymen old, torn and healed; repetitive penetration; medico-legal examination report; Non examination of blood sample.

Appearances of parties

Counsel for Appellant(s) : Kapil Dev Srivastava, Anita, Ashish Kumar Singh, Pal Singh Yadav, Prathama Singh, Rajeev Prakash Anand, Sandeep Kumar Srivastava, Sharad Dixit, Shivam Gupta

Counsel for Respondent(s) : G.A.

(Delivered by Hon'ble Subhash Vidyarthi, J.)

1. Heard Shri Pal Singh Yadav, the learned counsel for the appellant and Shri Mohd. Asif Khan, the learned AGA-I for the State.

2. By means of the instant appeal filed under Section 374 Cr.P.C., the appellant has challenged the validity of a judgment and order dated 05.04.2018 passed by the Special Judge, POCSO Act/Additional District and Sessions Judge, Court No.8, Lucknow in Session Trial No.869 of 2015 titled State v. Rajesh Singh Rathore arising out of Case Crime No.259 of 2015 under Section 376 IPC and 5/6 of POCSO Act registered at Police Station- Krishna Nagar, District- Lucknow.

3. The aforesaid case was instituted on the basis of an FIR lodged on the basis of a written complaint given by the appellant's wife on 20.07.2015 stating that the appellant had repetitively committed the misdeed against her daughter aged 9 years. The daughter had informed her that the appellant commits penetrative intercourse and bites on her private parts.

4. In the statement of the victim recorded under Section 164 Cr.P.C., she stated that her father (the appellant) used to insert his finger in her vagina. She stated that blood was coming out of her vagina while urinating.

5. The medico-legal examination of the victim was conducted on 20.07.2015 itself at 05:00 PM. Swabs were collected for pathological examination and clothes of the victim were sent to the Forensic Science Laboratory for examination. The medico-legal examination report mentions that there was swelling and redness on vagina and on inner sides of thighs, hymen was torn with old, healed tags of membrane were present and that the victim was bleeding during urination. The pathological examination report did not reveal presence of spermatozoa (dead or alive). The Forensic Science Laboratory report mentions presence of blood on underwear of the victim.

6. The trial Court took cognizance of the offence and on 07.11.2015, the charges were framed against the appellant for commission of the offence under Section 376 IPC and 5/6 of Prevention of Children from Sexual Offence, 2012 (hereinafter referred to as POCSO Act).

7. The informant was examined as PW-1. She stated that she got married to the appellant in the year 2005. She lived for nine years in the house of her parents with her husband and her children. In the year 2018, her mother got a new house constructed in Sangam Vihar Colony, Krishna Nagar and gave the same to her and thereafter she shifted in that house along with her husband (the appellant), daughter and son. On 19.07.2015, her daughter was crying and was frightened. Upon being asked, she informed that the appellant commits the misdeed with her. He puts his penis in her mouth as well as in her vagina. He did so on 19.07.2015 in a room situated on the upper floor of the house. She further told that the appellant had bitten on her vagina. PW-1 stated that there were bite marks on the vagina and there was redness on that area.

8. During cross-examination, PW-1 stated that she got married in the year 2005. The daughter (the victim) was born in the year 2006. She stayed in her sasural till chouthi ceremony, i.e., only for four days after the marriage. Thereafter she lived in the house of her parents for about nine years. She stated that she was physically handicapped whereas her husband (the appellant) is an able-bodied person. She did not live in her sasural and she lived in the house of her parents because she is physically handicapped. She further stated that although the victim had not told her about the incident prior to 19.07.2015, but she had told on several occasions that she experienced pain in her private parts. She further stated that her husband was working as a Bus driver on contractual basis. The relations between herself and her husband were normal. Her husband used to bear the household expenses as per his capacity and her father also used to provide financial assistance.

9. The victim was examined as PW-2. She stated that the appellant used to put his penis in her vagina. She used to suffer pain and her father used to ask her to hold him tightly to lessen the pain. Her father used to bite on her vagina. Some white discharge used to come out when her father did so. He also used to put his penis in her mouth. This was done in a room situated on the upper floor of the house. She also stated that when her father did so, blood had come out from her vagina. When she used to suffer pain, her father used to shut her mouth and threaten her.

10. During cross-examination, the victim stated that earlier she used to reside in the house of her maternal grand-parents but thereafter they gave them a new house and since then she was residing in the new house given by her maternal grand-parents.

11. The informant's mother was examined as PW-3. She stated that the appellant is her son-in-law. She has given a house in Krishna Nagar, Kanausi to her daughter and her daughter had shifted to that house with her husband and children in March 2013. She stated that her daughter had gone her to her sasural after her wedding. She returned in chouthi (ceremonial visit to the bride's paternal home on the fourth day after the marriage) and thereafter she never went to her sasural. Her son-in-law (the appellant) started living with her. PW-3 stated that she used to bear the expenses of the appellant. In the year 2005, the appellant started working in the transport department on contractual basis.

12. The Doctor who had medically examined the victim, was examined as PW-4. She stated that the victim had told that the appellant had been making sexual assault on her for the past about six months. The Doctor stated that there were biting marks on the vulva of the child victim. She was bleeding while urinating. The incident had taken place about 20-22 hours ago. The vulva was swollen and there was redness in that area. The skin between the thigh and the vagina was also red and this was possible by commission of rape by use of force. Upon internal examination, swelling and redness was found in urethra. Hymen was old torn and healed. She stated that as per the radiological examination report, the age of the victim is about eight years. The hymen of an eight years old child being old, torn and healed indicates that forcible rape has been attempted on her several times.

13. The FIR writer was examined as PW-5 and the Investigating Officer has been examined as PW-6.

14. In the statement recorded under Section 313 Cr.P.C., the appellant denied the charges against him. He stated that his wife has falsely implicated him because of disputes between them. He stated that he does not have to lead any defence evidence.

15. After examining the entire material, the trial Court found that the prosecution has proved beyond reasonable doubt that the appellant has committed aggravated sexual assault and rape against his own daughter aged eight years. There was no substantial discrepancy in the evidence led by the prosecution. Thus, the offences described in Section 5(k), 5(l), 5(m), 5(n) of POCSO Act are made out.

16. Assailing validity of the aforesaid order, the learned Counsel for the appellant has submitted that during examination under Section 313 Cr.P.C., questions were put to the appellant regarding commission of offence under Section 3/4 of the POCSO Act and no question was put regarding the offence under Section 5/6 of the POCSO Act. Therefore, the appellant could not be punished for the offence under Section 5/6 of POCSO Act.

17. Although question No.2 and question No.9 put to the appellant during his examination under Section 313 Cr.P.C. mentioned Section 3/4 of POCSO Act but the question No.1 specifically

asks the appellant to place his version regarding the prosecution evidence to the effect that the appellant had repetitively committed rape against his nine years' old daughter. This fact clearly makes out commission of offence under Section 5/6 of the POCSO Act. During examination, the facts making out an offence are required to be put to the accused. Mere non-mention of a particular Section in the questions put during examination of the accused under Section 313 Cr.P.C. would not be of any material consequence. Similarly, question Nos. 4, 5, 6, 7 and 8 specifically required the appellant-accused to put his version regarding the allegations which make out commission of offences under Section 5 of the POCSO Act. Therefore, I find no force in the submission of the learned counsel for the appellant that since the questions put to the appellant under Section 313 Cr.P.C. did not make a mention of Section 5/6 of POCSO Act, the appellant could not be convicted and sentenced for the aforesaid offence.

18. The learned counsel for the appellant has next submitted that although the FSL report mentions presence of blood on the underwear of the victim, the blood sample was not examined to ascertain as to whether the blood was of the victim herself or not.

19. In this regard it is relevant to have a look at the law as explained by the Hon'ble Supreme Court in **Veerendra v. State of M.P.**: (2022) 8 SCC 668, wherein it was held that: -

"46. There can be no doubt with respect to the position that a fair investigation is necessary for a fair trial. Hence, it is the duty of the investigating agency to protect the rights of both the accused and the victim by adhering to the prescribed procedures in the matter of investigation and thereby to ensure a fair, competent and effective investigation. Even while holding so, we cannot be oblivious of the well-nigh settled position that solely on account of defects or shortcomings in investigation an accused is not entitled to get acquitted. In other words, it also cannot be the sole reason for interference with a judgment of conviction if rest of the evidence is cogent enough to sustain the same.

47. In the decision in Mir Mohammad Omar case [State of W.B. v. Mir Mohammad Omar, (2000) 8 SCC 382], this Court held:

*"41. ? In our perception it is almost impossible to come across a single case wherein the investigation was conducted completely flawless or absolutely foolproof. The function of the criminal courts should not be wasted in picking out the lapses in investigation and by expressing unsavoury criticism against investigating officers. **If offenders are acquitted only on account of flaws or defects in investigation, the cause of criminal justice becomes the victim. Effort should be made by courts to see that criminal justice is salvaged despite such defects in investigation.**" (emphasis supplied by the Hon'ble Supreme Court)*

48. In the context of the contentions it is more appropriate to refer to the decision of this Court in Sunil v. State of M.P. [(2017) 4 SCC 393] It was a case of rape and murder of a four (4) year old child. A three-Judge Bench held herein thus:

"3. At the very outset, we deal with the arguments advanced on behalf of the appellant that in the present case the report of DNA testing of the samples of blood and spermatozoa under Section 53-A of the Criminal Procedure Code, 1973 has not been proved by the prosecution. The prosecution has, therefore, failed to prove its case beyond reasonable doubt. Reliance in this regard has been placed on the decision of this Court in Krishan Kumar Malik v. State of Haryana [(2011) 7 SCC 130].

4. From the provisions of Section 53-A of the Code and the decision of this Court in *Krishan Kumar [Krishan Kumar Malik v. State of Haryana, (2011) 7 SCC 130 : (2011) 3 SCC (Cri) 61]* it does not follow that failure to conduct the DNA test of the samples taken from the accused or prove the report of DNA profiling as in the present case would necessarily result in the failure of the prosecution case. As held in *Krishan Kumar (para 44)*, Section 53-A really "facilitates the prosecution to prove its case". A positive result of the DNA test would constitute clinching evidence against the accused if, however, the result of the test is in the negative i.e. favouring the accused or if DNA profiling had not been done in a given case, the weight of the other materials and evidence on record will still have to be considered. It is to the other materials brought on record by the prosecution that we may now turn to."

* * *

53. In view of the nature of the provision under Section 53-ACrPC and the decisions referred to, we are also of the considered view that the lapse or omission (purposeful or otherwise) to carry out DNA profiling, by itself, cannot be permitted to decide the fate of a trial for the offence of rape especially, when it is combined with the commission of the offence of murder as in case of acquittal only on account of such a flaw or defect in the investigation the cause of criminal justice would become the victim. The upshot of this discussion is that **even if such a flaw had occurred in the investigation in a given case, the court has still a duty to consider whether the materials and evidence available on record before it, are enough and cogent to prove the case of the prosecution.** In a case which rests on circumstantial evidence, the Court has to consider whether, despite such a lapse, the various links in the chain of circumstances form a complete chain pointing to the guilt of the accused alone in exclusion of all hypothesis of innocence in his favour." (Emphasis added)

20. Non examination of blood sample present on the clothes of the victim for the purpose of ascertaining to whom it belonged is not fatal to an otherwise reliable, trustworthy and credible prosecution story which clearly establishes the guilt of the accused beyond reasonable doubt. When the testimony of the victim and her mother are read along with the medical report which show injuries on her private parts and the testimony of the doctor who had examined her, commission of rape by the appellant is clearly established. In such a case, non-examination of the blood sample for corroboration does not vitiate the prosecution's case.

21. In **Lok Mal v. State of U.P.:** (2025) 4 SCC 470, the Hon'ble Supreme Court held that: -

16. It is a settled principle of criminal jurisprudence that the evidence of a prosecutrix in a case of rape is of the same value as that of an injured witness and conviction can be made on the basis of the sole testimony of the prosecutrix. In *State of Punjab v. Gurmit Singh [(1996) 2 SCC 384]*, the Supreme Court observed as under:

"21. ? The courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case. **If evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars.** If for some reason the court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice. The testimony of the prosecutrix must

be appreciated in the background of the entire case and the trial court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations." (emphasis supplied by Hon'ble Supreme Court)

17. A profitable reference can also be made to *Bharwada Bhoginbhai Hirjibhai v. State of Gujarat* [(1983) 3 SCC 217] where the Supreme Court observed as under: -

"9. In the Indian setting, refusal to act on the testimony of a victim of sexual assault in the absence of corroboration as a rule, is adding insult to injury. Why should the evidence of the girl or the woman who complains of rape or sexual molestation be viewed with the aid of spectacles fitted with lenses tinged with doubt, disbelief or suspicion?"

22. It is significant to note that the prosecution story in the present case does not solely rest upon the victim's testimony. It is already supported by the medical evidence including the doctor's statement regarding the happening of the alleged incident. In such a case, the non examination of the blood sample does not weaken the prosecution's case.

23. The learned counsel for the appellant has lastly submitted that the pathological examination report as well as the FSL report are negative for presence of spermatozoa on the body of the victim as well as her clothes.

24. The victim had stated that her father used to wipe away the sperm by a cloth. It is recorded in the medico-legal examination report that the medico-legal examination was conducted after about 20-22 hours since the incident. The victim had taken bath and had washed away her private parts. In these circumstances, absence of sperms in the vaginal smear slides and clothes of the victim would not be decisive.

25. The learned Counsel for the appellant has relied upon a judgment in the case of **Dilip v. State of M.P.**: (2001) 9 SCC 452, wherein the prosecution case was based solely on the testimony of the prosecutrix but the medical evidence does not lend any positive corroboration to her testimony. The Hon'ble Supreme Court held that: -

"12. The law is well settled that the prosecutrix in a sexual offence is not an accomplice and there is no rule of law that her testimony cannot be acted upon and made the basis of conviction unless corroborated in material particulars. However, the rule about the admissibility of corroboration should be present to the mind of the Judge. In State of H.P. v. Gian Chand [(2001) 6 SCC 71] on a review of decisions of this Court, it was held that conviction for an offence of rape can be based on the sole testimony of the prosecutrix corroborated by medical evidence and other circumstances such as the report of chemical examination etc., if the same is found to be natural, trustworthy and worth being relied on. This Court relied upon the following statement of law from State of Punjab v. Gurmit Singh [(1996) 2 SCC 384] SCC (para 21):

"If evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If for some reason the court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice. The testimony of the prosecutrix must be appreciated in the background of the entire case and the trial court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations?."

13. *In Madan Gopal Kakkad v. Naval Dubey [(1992) 3 SCC 204] this Court has held (vide para 23) that lack of oral corroboration to that of a prosecutrix does not come in the way of a safe conviction being recorded provided the evidence of the victim does not suffer from any basic infirmity, and the "probabilities factor" does not render it unworthy of credence, and that as a general rule, corroboration cannot be insisted upon, except from the medical evidence, where, having regard to the circumstances of the case, medical evidence can be expected to be forthcoming."*

26. The learned Counsel for the appellant has relied upon a judgment of the Hon'ble Supreme Court in the case of **Debraj Dutta v. State of W.B.**: 2026 SCC OnLine SC 664, wherein it was held that *"Unless the testimony of a victim child is found to be fully credible and trustworthy, the question of applying the presumption on the strength of such statement alone would not arise."* However, in the present case, I have come to a conclusion that the testimony of the child is fully credible and trustworthy and it is corroborated by the medical evidence.

27. Therefore, the judgments in the cases of **Dilip v. State of M.P. and Debraj Dutta v. State of W.B.** (supra) will not apply to the present case.

28. The learned counsel for the appellant has relied upon a decision of this Court in the case of **Nirmal Kumar v. State of U.P.**; 2026:AHC-LKO:23345-DB. The prosecution case in that case was that father of the victim had gone out in connection with work for about a week. His mentally challenged daughter, aged about 14 years, was alone in the house. The neighbour (appellant) enticed the victim to his house and raped her and extended death threats to her. When the father returned to his house a day before lodging of the FIR, his daughter informed him about the rape. On the date of lodging of FIR the father had gone to Tehsil Rudauli. He returned to his house at 4 p.m., by then, his daughter had died. The incident of rape was of 20.09.2010. The FIR was lodged against the appellant for the offence under Sections 376, 302, 506 IPC, on 23.09.2010. There was no direct evidence to implicate the appellant for the offence punishable under Section 376 IPC. The statement of the victim was not recorded either before the police or the Magistrate prior to her death. As per the viscera report also, cause of death could not be ascertained. After examining the facts of the case, this Court held that in absence of any external injury to the body of the victim or internal injury to the private part of the victim, rape per say may not be proved. This judgment was given in light of the peculiar facts, where the victim had not been examined and there was no other evidence to prove the charge.

29. In the present case, there was injury on the private parts of the victim. The Doctor had stated that hymen of an eight year old child can only be old, torn and healed in case of repetitive penetration. There was swelling and redness in urethra, vulva and the nearby region. Therefore, in the present case it cannot be said that there was no other evidence of rape like in **Nirmal Kumar** (Supra). In view of the factual differences in the case of **Nirmal Kumar** (Supra) and the present case, the aforesaid observation made in **Nirmal Kumar** (Supra) will not apply to the present case.

30. The learned counsel for the appellant has further relied upon a decision of the Hon'ble Supreme Court in the case of **Gyanendra Singh @ Raja Singh v. State of U.P.**; 2025 SCC

OnLine SC 517 and has submitted that in that case the Hon'ble Supreme Court has reduced the sentence and, therefore, this Court should also reduce the sentence of the appellant.

31. In **Gyanendra Singh** (Supra), the Hon'ble Supreme Court had sentenced the appellant to undergo imprisonment for life as awarded by the trial Court. The Hon'ble Supreme Court had only done away with the stipulation that the life term will be enured till the natural life of the appellant.

32. The learned counsel for the appellant lastly submitted that from the prosecution evidence, merely an offence under Section 9(a)(n) of POCSO Act is made out and, therefore, the punishment should be made under Section 10 of the POCSO Act which extends to 7 years only.

33. Section 9(a)(n) of POCSO Act contains provision about sexual assault being committed by a person who is related to the child through blood or adoption or marriage or guardianship or in foster care, or having domestic relationship with a parent of the child or who is living in the same or shared household with the child. The term sexual assault is defined in Section 7 of the POCSO Act, which is as follows: -

*"7. **Sexual assault**-Whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault."*

34. The allegation against the appellant is of committing aggravated penetrative sexual assault as defined in Section 5(l),(m),(n),(p) of POCSO Act. Therefore, the conviction cannot be altered to Section 9 of POCSO Act and punishment cannot be reduced to Section 10 of POCSO Act.

35. In view of the foregoing discussion, I find no force in any submission of the learned counsel for the appellant.

36. Having myself examined the entire record, I also could not find any error or illegality in the impugned order dated 05.04.2018 passed by the Special Judge, POCSO Act/Additional District and Sessions Judge, Court No.8, Lucknow in Session Trial No.869 of 2015 arising out of Case Crime No.259 of 2015 under Section 376 IPC and 5/6 of POCSO Act registered at Police Station- Krishna Nagar, District- Lucknow.

37. So far as the question of quantum of sentence is considered, Section 6 of the POCSO Act provides a minimum sentence of imprisonment of 20 years and the trial Court has awarded the minimum sentence to the appellant. Therefore, there is no ground to reduce the sentence of the appellant.

38. In view of the foregoing discussion, the instant criminal appeal is **dismissed**. The impugned order dated 05.04.2018 passed by the Special Judge, POCSO Act/Additional District and Sessions Judge, Court No.8, Lucknow in Session Trial No.869 of 2015 arising out of Case Crime No.259 of 2015 under Section 376 IPC and 5/6 of POCSO Act registered at Police Station- Krishna Nagar, District- Lucknow is affirmed.

(2026) 4 ILRA 499
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 16.04.2026

BEFORE

THE HON'BLE SAURABH SHYAM SHAMSHERY, J.

Writ - B No. 6809 of 1979

Abdul Haq

...Petitioner

Versus

D.D.C. & Ors.

...Respondents

ISSUE FOR CONSIDERATION

Whether the Settlement Officer of Consolidation was legally justified in dismissing the appeal filed by the petitioner's father against the order of the Consolidation Officer rejecting his objection under Section 9-A(2) of the U.P. Consolidation of Holdings Act, 1953 by treating it as a cross-appeal solely on the ground that another objector, namely Dukhi, had earlier filed an appeal against the same order.

HEADNOTE

U.P. Consolidation of Holdings Act, 1953 – ss.9-A(2), 48 – Petitioner's father filed objection under Section 9-A(2) claiming himself to be Sirdar of the entire land in dispute – One Dukhi filed separate objection claiming rights on the basis of an agreement to sell allegedly executed by petitioner's father – Consolidation Officer dismissed all the objections – Dukhi preferred appeal before the Settlement Officer of Consolidation – Subsequently, petitioner's father also filed appeal – Settlement Officer of Consolidation treated the appeal filed by petitioner's father as a cross-appeal and rejected it on the ground that there was no provision for filing cross-appeal in consolidation proceedings – Revision filed by petitioner's father was also rejected by the Deputy Director of Consolidation – Challenge in writ jurisdiction – Justification:

Held: Petitioner's father had filed objection claiming Sirdari rights over the entire land in dispute whereas objection filed by Dukhi was based upon an agreement to sell allegedly executed by petitioner's father – Therefore, the substantive objection was that of petitioner's father and not of Dukhi – Submission made on behalf of Dukhi before SOC that he had filed appeal only to protect the rights of petitioner's father and further by the fact that revision filed by Dukhi was ultimately not pressed – Court held that where objections filed by objectors were rejected and respective appeals were filed, the appeal filed at a later point of time could not be declared to be a cross-appeal – *The concept of cross-appeal would arise when rival parties are dissatisfied with an order on different grounds, whereas in the present case Dukhi and petitioner's father were riding in the same boat and not in different boats* – Objection of Dukhi could succeed only if petitioner's father succeeded in establishing that he was Sirdar of the entire land – Settlement Officer of Consolidation committed illegality in treating the substantive appeal filed by petitioner's father as a cross-appeal. Court further held that neither the Appellate Authority nor the Revisional Authority had decided the matter on merits so far as the objection of petitioner's father was concerned – Since Section 48 of the Act confers wide revisional powers, the matter was remitted to the Revisional Authority for decision on merits – Orders dated

21.02.1977 and 26.07.1979 set aside – Matter remitted to the Deputy Director of Consolidation to pass a fresh order on merits. (E-5)
[Paras 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27]

CASE LAW CITED

Ranjeet v. Deputy Director of Consolidation, Ballia, 2003 (3) AWC 2170.

List of Acts

U.P. Consolidation of Holdings Act, 1953.

List of Keywords

Section 9-A(2); Section 48; Sirdari rights; Cross-appeal; Substantive appeal; Consolidation proceedings; Settlement Officer of Consolidation; Deputy Director of Consolidation; Remand.

CASE ARISING FROM

From the order dated 31.03.1967 passed by the Consolidation Officer, order dated 21.02.1977 passed by the Settlement Officer of Consolidation and order dated 26.07.1979 passed by the Deputy Director of Consolidation.

Appearances for Parties

Advs. for the Petitioner: Ashok Kumar Rai, Dharendra Singh, Dinesh Kumar Singh, G.D. Mukarjee, Raj Karan Yadav, S. Ray, Subhojeet Pathak.

Advs. for the Respondents: Adarsh Bhushan, Amit Kumar Srivastava, Standing Counsel.

(Delivered by Hon'ble Saurabh Shyam Shamshery, J.)

1. Present writ petition was filed in the year 1979 and is decided by present judgment, i.e., after more than 46 years.

2. The case is arising out of objections filed under Section 9A(2) of U.P. Consolidation of Holdings Act, 1953 (*hereinafter referred to as "Act, 1953"*).

3. According to records, dispute relates to a Plot No. 13 area 3-0-0, situated in Village Sarai Taqui, Pargana Jhusi, Tehsil Phulpur, District Allahabad. In the basic year Khatauni name of petitioner's father, i.e., Abdul Hamid, was recorded over an area 15 Biswa of said plot. Name of Farik Shah was recorded over an area of 2 Bigha, 1 Biswa and 15 Dhur, name of Rizwan was recorded over an area of 2 Bigha, 15 Biswa and name of Ramzan was recorded over 4 Biswa and 15 Dhur.

4. Petitioner's father filed an objection claiming himself to be a Sirdar of entire area of 3 Bigha of land in suit and a similar objection was filed by Ramjan claiming to be Sirdar of entire

land. Third objection was filed by Dukhi claiming to be Sirdar of land in suit through agreement of sale executed by father of petitioner.

5. Consolidation Officer vide an order dated 31.03.1967 dismissed all objections and ordered that entries would be continued as recorded in basic year Khatauni. For reference the order passed by Consolidation Officer is reproduced hereinafter:

"पत्रावली पेश हुई विवाद खेत नम्बर १३/३-०-० का है।

कागजात की छानबीन मै यह नम्बर ३-०-० के स्थान पर खाता नम्बर २१/०-१५-० २३/२-१-१५, ३७/२-०-१५, ४९/-४-५ में ५-१-१५ दर्ज है। इस प्रकार इसका रकवा २-१-१५ अधिक दर्ज है। खातेदार २१ ने आपत्ति की है कि वह इस पूरे खेत १३/३-०-० का सीरदार है। इसकी आपत्ति मु०न० ४४१ पर है जो वाद इस वाद के साथ ही सुना गया है। खातेदार २१ का कथन है कि साविक जमींदार से मुकदमा चला था जिसमें उसे ३-०-० रकवा मिला ०-१५-० की अमलदरामद हुई और २-५-० की छूट गई। आपत्तिकर्ता ने खातेदार खाता २३ व ३७ को फरीक मुकदमा बनाया है खाता ४९ नलकूप नाली का है। एक अन्य आपत्ति शाह अकमल ने की है जिसमें अने को इस भूमि का भूमिधर होना कहा है। खातेदार खाता ३७ ने बयान तहरीरी दाखिल किया है जिसमें अपने को सीरदार कहा है। खातेदार खाता २३ की ओर से कोई कानटेस्ट नहीं किया गया। चकबन्दी परताल में पूरे खेत पर कब्जा दुःखी का लिखा गया। दुःखी आपत्ति दाखिल करने के बजाय वयान तहरीरी दाखिल किया है जिसमें कहा है कि १३/३-०-० खातेदार खाता २१ से ३-६-६५ को रूपया देकर लिया है और खातेदार ने भूमिधरी हासिल करके २ वर्ष के अन्दर बयाना करने का वचन दिया है। दुःखी अपने सीरदार कहता है। खेत नम्बर १३ का रकवा २-१-१५ जो अधिक एवं फर्जी दर्ज है वह किस खाते मे है यह सर्व प्रथम देखना है कि मुझे ऐसा प्रतीत होता है कि खाता २३ में ही यह रकवा फर्जी है क्योंकि ठीक ठीक २-१-१५ ही इसमें दर्ज है दूसरी बात यह है कि इस खाते के खातेदारों ने कानटेस्ट भी नहीं किया है अतएव मै इसी खाते में १३/२-१-१५ फर्जी समझता हूँ जो खारिज होना चाहिए। अब प्रश्न यह पैदा होता है कि खातेदार २१ इसके सीरदार है अथवा खातेदार ३७ अथवा दुःखी सर्व प्रथम मै खातेदार २१ व ३७ का ही अधिकार तय करता हूँ क्योंकि खातेदार २१ व दुःखी का केस अन्योन्याक्त है यदि खातेदार २१ पूरा अधिकारी है तभी दुःखी का केस निर्णय होगा क्योंकि दुःखी खातेदार २१ से ही रूपया देकर भूमि को लेना कहते हैं। खतौनी १३६२ फ० के इन्तखाब खाता के अवलोकन से ज्ञात होता है कि खातेदार ३७ इस भूमि के अधिवासी से सीरदार हुए हैं और शाह अकमल आदि इसमें भूमिधर दर्ज थे। इस प्रकार शाह अकमल का तो कोई अधिकार अवशेष नहीं रह जाता।

खातेदार खाता २१ ने १३२० फ० की अप्रमाणित नकल पेश करके यह दिखाना चाहता है कि १३ मि० २-५-० पर उसके बाप का नाम शिकमी में दर्ज है। किन्तु इस इन्तखाब पर विश्वास नहीं किया जा सकता है। अदालत मौल में शाह अकमल ने खातेदार खाता २१ के खिलाफ १३ मि० २-५-० के बाबत बेदखली का दावा दाखिल किया था जो अदम पैरवी में खारिज हुआ इसमें खातेदार ३७ पर कोई पाबन्दी नहीं है। इस प्रकार यदि खातेदार खाता का कभी कब्जा रहा भी होगा तो वह समाप्त हो गया होगा क्योंकि खातेदार खाता ३७ अधिवासी से सीरदार हुए हैं और इसके खिलाफ खातेदार २१ के पास कोई प्रमाण नहीं है। जबानी सबूत सभी का अलाभकारी साबित हो रहा है। जहाँ तक दुखी और अब्दुल हमीद खातेदार २१ का यह समझौता कि वह २ वर्ष के अन्दर जिसकी अवधि ३ जून ६७ को समाप्त होगी बयाना कर देगा उसी हद तक मान्य होगा जिसका अब्दुल हमीद खातेदार सीरदार है। यदि अब्दुल हमीद किसी अन्य की भूमि का मूल्य लेकर किसी को धोका दे तो इसका दायित्व उन्हीं पर होगा। दुःखी किसी प्रकार सीरदार नहीं होते। अब्दुल हमीद ०-१५-० के सीरदार दर्ज हैं। अतः अधिक से अधिक इसका बयाना करवा सकते हैं जब अब्दुल हमीद भूमिधर बन जावें तब। कब्जे अथवा ट्रांसफर के आधार पर दुःखी के कोई अधिकार हासिल नहीं होते। वैसे अब्दुल हमीद ने यह ट्रांसफर अवैधानिक रूप से किया है किन्तु मै इस बिन्दु पर अधिक टिप्पणी नहीं करता हूँ।

आदेश हुआ कि आपत्ति दुःखी खारिज की जाती है आपत्ति शाह अकमल खारिज की जानी है, आपत्ति अब्दुल हमीद बाबत १३ मि० २-५-० खारिज की जाती है तथा खाते २१ खाता २३ से खारिज हो। खाता २१, ३७, ४९ में यथावत दर्ज रहे।"

6. The objector, Dukhi, being aggrieved by above referred order, filed an appeal before Settlement Officer of Consolidation and has made a specific averment that he does not want that his name be recorded in revenue records but he can protect rights of Abdul Hamid, i.e., father of petitioner, who has also subsequently filed an appeal against above referred order. However, Settlement Officer of Consolidation treated the appeal filed by petitioner's father as a cross-appeal and accordingly rejected the same at threshold without even going into merit of said appeal and the

other appeal filed by Dukhi was considered on merit but it was rejected by order dated 21.02.1977. Relevant part of order passed by Settlement Officer of Consolidation is reproduced hereinafter:

"२- मैंने पक्षों के विद्वान वकील की बहस सुन ली है तथा पत्रावलियों का अवलोकन कर लिया है।

३- अपीलकर्ता दुखी की ओर से कहा गया कि वे अपना नाम दर्ज नहीं कराना चाहते हैं परन्तु हमीद से बैनामा द्वारा भूमि प्राप्त करने के बाद अतः हमीद के हितों की रक्षा करने का अधिकार उन्हें है हमीद ने क्रास अपील प्रस्तुत की और श्री जगदीश नारायण द्विवेदी बन्दोबस्त अधिकारी ने अपने निर्णय दिनांक २-९-७२ के अन्तिम पैरा में इसका विवेचन किया है कि क्रास अपील का कोई प्रावधान नहीं है और सी० पी० सी० चकबन्दी क्रियाओं में लागू नहीं होता है। अतः बन्दोबस्त अधिकारी चकबन्दी ने क्रास अपील खारिज की है। यह सही है कि दुखी हमीद को ३०००) जर व्याना के लिये दिये थे। परन्तु हमीद ने दुखी के हित में कोई बैनामा नहीं किया और जर व्याना के धन के सम्बन्ध में दीवानी न्यायालय को ही अधिकार प्राप्त है। चकबन्दी न्यायालय इस सम्बन्ध में कोई कार्यवाही करने को सक्षम नहीं है और दुखी अपीलार्थी संख्या का कहना है कि वे कोई अधिकार नहीं चाहते क्योंकि उन्हें कोई अधिकार नहीं मिल सकता। अधिकार नहीं चाहते क्योंकि उन्हें कोई अधिकार नहीं मिल सकता। परन्तु मैं हमीद के हितों की रक्षा कर सकता हूँ। हमीद ०-१५-० भूमि पर खातेदार है और इतनी ही भूमि के सम्बन्ध में दुखी को कुछ करने का अधिकार है और यह भूमि हमीद के ही नाम आदेशो के वाद दर्ज है। अपीलकर्ता दुखी की ओर से यह कहा गया है कि विपक्षीय रमजान सकी-कुल- निशां ने धारा २०९- जमींदारी विनाश एक्ट भूमि व्यवस्था अधिनियम के अन्तर्गत अब्दुल हमीद आदि की बेदखली का दावा किया जो दिनांक ३१-९-७६ को खारिज हुआ। मु० शकीकुन निशां व रमजान ने अपील प्रस्तुत की जो दिनांक ३-५-१९६५ को खारिज हुयी। पुनः उन्होंने द्वितीय अपील माननीय उच्च न्यायालय में प्रस्तुत की और हमीद ने अपील वापस ली कि बहस हो गयी है परन्तु पत्रावली पर उपलब्ध साक्ष्य से यह स्पष्ट होता है कि मु० शकीकुन निशां बीबी रमजान जैनुल हुसेन और श्रीमती महमुदुन निशां आदि के खिलाफ प्रस्तुत किया जो जूडिशियल आफिसर महोदय ने खारिज किया और शकीकुन निशां रमजान ने अपील संख्या ६५९ लागायत ६८७ व ७२२, ७१२ सन् १९६४ ई० प्रस्तुत की जो दिनांक ३-५-६५ को प्रथम अतिरिक्त सिविल जज ने ६८२ वापस लेने के आधार पर खारिज की और शेष अपील पुनः निर्णय के लिये वापस भेजी। अपील संख्या ६८२ गाटा संख्या १३-१ के सम्बन्ध में थी। जिसमें अपील के विद्वान अधिवक्ता ने कहा कि वे अपील पेश नहीं करते। अतः यह अपील इस आधार पर खारिज हुयी। अपील संख्या ६८२ की डिफ्री की नकल प्रस्तुत की गयी है और आदेश की भी नकल प्रस्तुत की गयी है। और इस डिफ्री में विवादित भूमि १३-२- रकबा २-५-० दर्ज है। और अपील संख्या ६८२ / १९६४ ई० की डिफ्री को देखने से यह निर्देश निकलता है कि यह अपील मु० नम्बर २/२७ के विरुद्ध थी। अपील के निर्णय में गाटा संख्या १३-१ लिखा गया है। जबकि डिफ्री में १३/२ लिखा गया है। यह मुकदमा किस भूमि के सम्बन्ध में है सिद्ध नहीं होता है यदि यह मान लिया जाय कि धारा २०९ के मुकदमें गाटा संख्या १३-२ के सम्बन्ध में थे तो भी दुखी को कुछ करने का अधिकार नहीं है क्योंकि धारा २०९ के मुकदमें में अब्दुल हमीद, शाह मोहम्मद, सैयद मोहम्मद, मोहम्मद अनीस विपक्षी थे और जिनके विरुद्ध बेदखली का दावा किया था। और इनमें से किसी भी व्यक्ति ने कोई भी अपील प्रस्तुत नहीं की है। अतः चकबन्दी अधिकारी ने दुखी को अधिकार न देने में कोई भूल नहीं की है। अपील निराधार है और खारिज की जाती है।"

7. Father of petitioner as well as Dukhi, being aggrieved by order passed by Settlement Officer of Consolidation preferred two revisions before Deputy Director of Consolidation, however, the revision filed by father of petitioner was rejected on ground that there was no illegality when Settlement Officer of Consolidation has held that cross-appeal was not maintainable. So far as revision filed by Dukhi is concerned, it was dismissed as withdrawn on basis of a consent given by his counsel. Relevant part of order dated 26.07.1979 passed by Deputy Director of Consolidation is reproduced hereinafter:

"२- मैंने पक्षों को सुना तथा अभिलेखों का अवलोकन किया।

३- अब्दुल हक आदि का कथन है कि विवादित गाटा संख्या १३ के बन्दोबस्ती रकबा ३-०-० पर उसके पिता अब्दुल हमीद आदि का पूरा पुरा कब्जा है और वह गलती से किसी अन्य के नाम दर्ज हो गया है। इस तथ्य को लेकर एक क्रास अपील बन्दोबस्त अधिकारी चकबन्दी के यहाँ प्रस्तुत की। बन्दोबस्त अधिकारी चकबन्दी ने यह कह कर निरस्त कर दिया कि चकबन्दी में क्रास अपील नहीं किया जा सकता। अब्दुल हक आदि के विद्वान अधिवक्ता ने यह बहस की कि रेवेन्यू कोर्ट मैनुअल के पैरा ९७६ के अनुसार चकबन्दी में भी जैसा कि लैण्ड रेवेन्यू ऐक्ट लागू होता है उसी प्रकार क्रास अपील लागू होगा और निगरानीकर्ता को पूरा अधिकार था, जिसके आधार पर उन्होंने क्रास अपील दायर किया और दोनों बार बन्दोबस्त अधिकारी

चकबन्दी ने निरस्त किया। मैं विद्वान बन्दोबस्त अधिकारी चकबन्दी की राय से पूर्णतया सहमत हूँ कि रेवेन्यू कोर्ट मैनुअल के पैरा ९७६ चकबन्दी प्रक्रिया में लागू नहीं होता। अतः अब्दुल हक द्वारा दायर की निगरानी उपरोक्त के आधार पर निरस्त की जाती है।

४- दुखी के विद्वान अधिवक्ता ने अपनी बहस में यह बताया कि वह एग्रीमेन्ट टू सैल के आधार पर अपना स्वत्व विवादित भूमि पर मानते थे जो इस आधार पर वापस लेते हैं कि चकबन्दी न्यायालयों को एग्रीमेन्ट टू सैल के आधार पर किसी को स्वत्व देने का अधिकार नहीं प्राप्त है। अस्तु मैं यह निगरानी भी उनके विद्वान अधिवक्ता की सहमति पर निरस्त करता हूँ।"

8. In aforesaid circumstances, petitioner has challenged all above referred orders, i.e., order dated 31.03.1967 passed by Consolidation Officer; order dated 21.02.1977 passed by Settlement Officer of Consolidation and order dated 26.07.1979 passed by Deputy Director of Consolidation.

9. In the present case an interim order was passed on 04.09.1979 whereby dispossession of petitioner was stayed from land in dispute. The interim order was later on modified vide order dated 19.02.1986 that if petitioner is in possession and further Chak has been carved out in his name his possession shall not be disturbed. In case Chak is carved out in the name of Ramjan and Sakiulnisa, petitioner shall not be entitled to remain in possession.

10. Sri Dharendra Singh, learned counsel for petitioner has claimed that petitioner is still in possession and has not been dispossessed. He further submitted that father of petitioner has filed a substantive appeal against an order dated 31.03.1967 passed by Consolidation Officer whereby his objection filed under Section 9A(2) of Act, 1953 was rejected, therefore, it was a substantive appeal and it cannot be considered as a cross appeal only on ground that other Objector, namely, Dukhi has filed appeal against same order before the petitioner's father has filed appeal. It was a substantive appeal and was wrongly dismissed as a cross-appeal and Revisional Authority has also erred in law. Learned counsel for petitioner has placed reliance on a judgment passed by this Court in **Ranjeet vs. Deputy Director of Consolidation, Ballia, 2003(3) AWC 2170** that the illegality committed by Settlement Officer of Consolidation could have been cured by Revisional Authority and revision can be heard by said authority on merit.

11. None appeared on behalf of private respondents though represented by Advocates, therefore, the Court takes note of counter affidavit that Settlement Officer of Consolidation and Deputy Director of Consolidation have not committed any error when appeal filed by father of petitioner was considered as a cross-appeal.

12. I have considered the aforesaid submissions and perused the material available on record.

13. The facts referred above are not under much dispute that petitioner's father has filed an objection under Section 9A(2) of Act, 1953 claiming Sirdar of entire land in dispute whereas the objections filed by Dukhi was on ground that he has acquired Sirdari right on basis of an agreement to sell executed by petitioner's father for entire land and since objection of petitioner's father was rejected, the only consequence would be that objection filed by Dukhi has to be rejected. Therefore, the substantive objection could be of petitioner's father and not of Dukhi and this observation of Court is supported by submission made on behalf of Dukhi before Settlement Officer of Consolidation that he has filed appeal only to protect the right of petitioner's father and further revision filed by Dukhi was not pressed.

14. In aforesaid circumstances, in a case where objections filed by objectors were rejected and respective appeals were filed, the appeal filed in later point of time cannot be declared as a cross-appeal.

15. The concept of cross-appeal would arise when rival parties are dissatisfied with an order on different grounds, whereas in the present case objection of Dukhi can be allowed only if the objection filed by father of petitioner was allowed that he was a Sirdar of entire land. Therefore, both, i.e., Dukhi and father of petitioner were riding in same boat and not in different boats. The Settlement Officer of Consolidation has committed an illegality when he has treated the substantive appeal filed by father of petitioner as a cross-appeal, therefore, said order passed by Settlement Officer of Consolidation is legally unsustainable and accordingly the order passed by Deputy Director of Consolidation is also illegal and liable to be set aside.

16. Now the question arise that after 45 years when much water has flown and interim order is modified, can the matter be remitted to Settlement Officer of Consolidation or Deputy Director of Consolidation. In this regard Court is of the opinion that since neither Appellate Authority nor Revisional Authority has decided matter on merit so far as objections of petitioner's father is concerned and revision filed by Dukhi was withdrawn on consent and in case the interim order is implemented in favour of petitioner, a case is made out to remit matter to Deputy Director of Consolidation, who can still decide matter on merit considering powers granted under Section 48 of Act, 1953 that revision can be considered on merit even without filing an appeal and for that Court takes note of the judgment relied on by learned counsel for petitioner in **Ranjeet (supra)**.

17. Accordingly the orders dated 21.02.1977 and 26.07.1979 passed by Settlement Officer of Consolidation and Deputy Director of Consolidation, respectively, are hereby set aside. The matter is remitted back to Revisional Authority to pass a fresh order on merit preferably within a period of six months. The Revisional Authority will also take note, whether the interim order as modified vide order dated 19.02.1986 has been implemented or not and accordingly revision be decided. The revision shall not be disposed on a ground that an appeal filed by petitioner's father was not decided on merit.

18. The writ petition is accordingly disposed of.

(2026) 4 ILRA 504
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 16.04.2026

BEFORE

THE HON'BLE MAHESH CHANDRA TRIPATHI, J.
THE HON'BLE PRASHANT KUMAR, J.

Writ - C No. 13663 of 2025

Ajay Kumar Srivastava

...Petitioners

Versus

State of U.P. & Ors.

...Respondents

ISSUE FOR CONSIDERATION

Whether the petitioner's application for reference under Section 64 of the RFCTLARR Act, 2013 could be entertained despite being filed beyond the limitation prescribed under Section 18 of the Land Acquisition Act, 1894?

HEADNOTES

Civil Law – Constitution of India – Article 226 - Land Acquisition Act, 1894 - Section 18 - RFCTLARR Act, 2013 - Section 64 - Limitation Act, 1963 – Section – 5: - Writ Petition under Article 226 – challenging the order passed by the Collector, rejecting petitioner's application for enhancement of award by reference under Section 64 of the RFCTLARR Act, 2013 - acquisition proceedings initiated in 2008 under the 1894 Act - Award passed in year 2013 - petitioner moved reference only in 2024 - The Collector rejected the application as barred by limitation under Section 18 of the 1894 Act - Petitioner pleaded that the 2013 Act applied and relied on *Mohar Singh* - Respondents objected, citing *Vijai Pal* (FB), *Bhagwan Das*, *Padmasundara Rao*, and *S.V. Global Mills*, contending Collector is not a court and cannot condone delay, nor can High Court enlarge limitation under Article 226 - Court finds that, petitioner had knowledge of proceedings, failed to avail remedy within time, and Collector rightly rejected the application – held, limitation under Section 18 is mandatory and Section 5 of Limitation Act is inapplicable – Act, 2013 cannot retrospectively revive time-barred claims – consequently, writ petition devoid of merit and stands dismissed (Para – 39, 40, 41)

WP Disposed of. (E-11)

CASE LAW CITED

Mohar Singh (Dead) through LRs v. State of U.P. (2023 (12) ADJ 527 SC) – relied by petitioner.
Vijai Pal v. State of U.P. (2010 AIR All 180) – Full Bench.
Bhagwan Das v. State of U.P. (2010) 3 SCC 545.
Padmasundara Rao v. State of T.N. (2002) 3 SCC 533.
Deputy Commissioner & SLAO v. *S.V. Global Mills Ltd.* (SC, 2026).

LIST OF ACTS

Constitution of India - Land Acquisition Act, 1894 - RFCTLARR Act, 2013 - Limitation Act, 1963.

LIST OF KEYWORDS

Writ Petition, Certiorari, Caste certificate, OBC verification, locus standi, repeated enquiry, fraud on Constitution, Bhishti Abbasi, finality, harassment, substitution of complainant, service jurisprudence, Allowed.

CASE ARISING FROM

Impugned order dated 06.11.2024 passed by Collector, Siddharth Nagar in Case No.1461 of 2024 rejecting petitioner's application for reference under Section 64 of the 2013 Act.

APPEARANCE OF PARTIES

Counsel for Appellant(s): - Shri Anirudh Singh, Shri Indrakesh Kumar Sharma,
Counsel for Respondent(s): - Shri Devesh Vikram, Additional Chief Standing Counsel, Shri Fuzail Ahmad Ansari, Standing Counsel, Shri Gopal Verma – for Union of India.

(Delivered by Hon'ble Mahesh Chandra Tripathi, J. & Hon'ble Prashant Kumar, J.)

1. Heard Shri Anirudh Singh, Advocate holding brief of Shri Indrakesh Kumar Sharma, learned counsel for the petitioner, Shri Devesh Vikram, learned Additional Chief Standing Counsel as well as Shri Fuzail Ahmad Ansari, learned Standing Counsel for State-respondents and Shri Gopal Verma, learned counsel for respondent-Union of India.

2. The instant writ petition is preferred under Article 226 of the Constitution of India challenging the validity of the impugned order dated 06.11.2024 passed by the Collector, Siddharath Nagar in Case No.1461 of 2024, Computerized Case No.D202417630001461 (Ajay Kumar Srivastava vs. State of U.P. and others) in the proceeding under Section 18 of the Land Acquisition Act, 1894 read with Section 64 of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 whereby the application dated 24.09.2024 filed by petitioner for enhancement of award was rejected.

A. FACTS

3. Before considering the rival contentions, it is apt to have a glance over the facts of the case. The State Government initiated acquisition proceedings in Mauja Dhanaura, Mustahakam, Tappa Khajahani, Pargana Naugarh, Tehsil Shoharatgarh, District Siddharath Nagar, for the establishment of the Sashastra Seema Bal Chauki. A notification under Section 4(1)/17 of the Act, 1894 was issued on 11.09.2008 and published in the Official Gazette on the same date. It was thereafter published in widely circulated newspapers, namely □Rashtriya Sahara□ and □Amar Ujala□, on 30.11.2008 and 02.12.2008, respectively, followed by local publication (Munadi) on 27.12.2008. A declaration under Section 6(1)/17 of the Act, 1894 was notified on 09.11.2009 and published in the Gazette on the same date, as well as in the newspapers □United India□ and □Aaj□ on 10.12.2009, with local publication effected on 27.12.2009. An award under the Act, 1894 was ultimately made on 22.08.2013.

4. It is borne out from the record that the petitioner, for the first time, filed an application on 24.09.2024 seeking reference before the Collector under Section 64 of the Act, 2013. The Collector, by the impugned order, rejected the said application by taking into consideration the limitation prescribed under Section 18 of the Act, 1894. Since the application was filed under the Act, 2013, which came into force with effect from 01.01.2014, the same was held to be barred by limitation and accordingly rejected. The said order has been challenged under Article 226 of the Constitution of India.

B. ARGUMENTS ON BEHALF OF THE PETITIONER

5. Learned counsel for the petitioner vehemently contended that the petitioner had rightly invoked the provisions of the Act, 2013, which came into force on 01.01.2014. It is submitted that upon becoming aware of the alleged discrimination, the petitioner moved an application for reference under Section 64 of the Act, 2013.

6. In support of his submissions, learned counsel for the petitioner has placed reliance on the judgment passed by the Hon'ble Supreme Court in **Mohar Singh (Dead) through LRs and others vs. State of Uttar Pradesh and Others**³. It is argued that the application ought to have been considered on merits and the matter was liable to be referred to the competent court, and that the Collector had arbitrarily rejected the application filed under Section 64 of the Act, 2013. Accordingly, it is prayed that the impugned order be set aside and a direction be issued to the Collector to refer the matter to the appropriate court.

C. ARGUMENTS ON BEHALF OF STATE RESPONDENTS

7. Per contra, the learned Additional Chief Standing Counsel vehemently resisted the contention of learned counsel for the petitioner and submitted that the Act, 1894 is a complete code in itself. Reliance was placed on Section 18 of the Act, 1894, which prescribes a specific period of limitation. It is contended that the Collector has no discretion to extend such limitation. Further reliance is placed on the Full Bench decision of this Court in **Vijai Pal vs. State of U.P. and others**⁴, wherein two questions were referred by the Division Bench to the Full Bench. For ready reference, both the questions are reproduced hereunder:-

"(1) Whether the directions contained in Savitri Devi's case in the nature of a general mandamus are in direct conflict with the ratio of Kanchhid's case reported in 1999 (3) AWC 1978.

(2) Whether the High Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution or India while interpreting Section 18 of the Land Acquisition Act can confer the power on the Collector to refer a dispute under Section 18 even if it is barred by limitation."□

8. He further submits that the second question, which has been formulated by the Full Bench, had been answered in paras 38 and 39 of the judgment in **Vijai Pal** (supra). For ready reference, the same are also reproduced hereunder:-

"38. From the discussions as made above, we arrive on following conclusion with regard to scope and extent of jurisdiction of Collector under Section 18 of the Act:

(1) The Collector while considering an application filed under Section 18 (1) of the Act for making reference acts as a statutory authority and the said application is to be dealt by him subject to the statutory conditions as laid down in Section 18 (2) of the Act.

(2) The jurisdiction to make reference under Section 18 arises only when the application satisfies the statutory conditions enumerated in Section 18 (2).

(3) The Collector is not a Court, Section 5 of the Limitation Act, is not applicable in the proceedings of reference under Section 18 of the Act.

(4) The High Court under Article 226 of the Constitution cannot issue any general mandamus to a statutory authority to act in a manner which is not contemplated by statutory power given to such authority.

(5) The Collector while considering an application under Section 18 of the Act, if comes to the conclusion that the application is barred by time which having not been made in accordance with Section 18 (2) the Collector has no option, but to reject the said application.

39. In view of the foregoing discussion our answer to the above two questions is as follows:

(1) The directions contained in Smt. Savitri Devi's case (supra) in the nature of general mandamus are in direct conflict with the ratio of Division Bench judgment in Kanchhid's case reported in 1999 (3) AWC 1978, which directions are not approved.

(2) The High Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution while interpreting Section 18 of the Act, cannot confer jurisdiction to the Collector to refer a dispute under 18 of the Act, to the Court even if the application is barred by limitation."

9. Mr. Ansari, learned Standing Counsel in this backdrop vehemently contended that the Collector, while exercising powers under Section 18 of the Act, 1894, cannot invoke Section 5 of the Limitation Act, as the same is inapplicable to such proceedings. It was also submitted that even the High Court, in exercise of its extraordinary jurisdiction under Article 226 of the Constitution, cannot direct the statutory authority to act contrary to the provisions of the statute or enlarge the prescribed limitation and accordingly, the Full Bench has answered that the High Court in exercise of extraordinary jurisdiction under Article 226 of the Constitution of India while interpreting Section 18 of the Act cannot confer jurisdiction to Collector to refer a dispute under Section 18 of the Act to court even if the application is barred by limitation. Reliance was also placed on the judgment passed by the Hon'ble Supreme Court in the matter of **Bhagwan Das vs. State of U.P.**⁵.

10. Lastly, he has placed reliance on the judgment passed by Hon'ble Apex Court in the matter of **Padmasundara Rao (Dead) & ors vs. State of T.N. & ors**⁶, wherein the Apex Court has held as under:-

"3. The controversy involved lies within a very narrow compass, that is, whether after quashing of notification under Section 6 of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act") fresh period of one year is available to the State Government to issue another notification under Section 6. In the case at hand such a notification issued under Section 6 was questioned before the Madras High Court which relied on the decision of a three-Judge Bench in N. Narasimhaiah v. State of Karnataka [(1996) 3 SCC 88] and held that the same was validly issued."

11. Shri Ansari also placed reliance upon a recent judgment passed by Hon'ble Supreme Court on 9th February, 2026 in **Deputy Commissioner and Special Land Acquisition Officer vs. M/s S.V. Global Mills Ltd.**⁷. Relying upon paragraphs 31 and 74, he contended that limitation cannot be extended and the writ petition is devoid of merit. Paragraph Nos.31 and 74 of the judgment in **S.V. Global Mill** (supra) are reproduced hereunder:-

"31. At this juncture, it is apposite to note that when the power to condone delay by invoking Section 5 of the 1963 Act is not even available to a Tribunal in the ordinary course, certainly, the Collector, not being a Court, cannot exercise the same....."

xxx□

74. We have dealt with the provisions contained in both the enactments in extenso already. We have also dealt with the principles of law. Upon such analysis, we reiterate that the 2013 Act is a unique piece of legislation. The Collector is given two different and distinct roles up to a certain stage of the acquisition process. The first role is to facilitate the acquisition on behalf of the Government, and the other is with respect to the determination of the compensation. For both these roles, there is no question of application of any provisions of the 1963 Act, as the Collector either acts as a statutory authority on the executive side or as a quasi-judicial authority while determining the compensation or as an authority dealing with rights having civil consequences while making a reference. In all these three acts, there is no role that is exclusively judicial. As we have already discussed, only when the issue of compensation is decided by the Authority, who is a legally trained person entitled to exercise the powers of a Civil Court, followed by the declaration of an award deemed to be a decree, does an out-and-out judicial forum enter the

picture. The proceedings before him are original in nature, with two parties appearing before him, of which even the Collector is a party, since it is his award that is under challenge. There is a reason why the Authority is expected to exercise an element of fair play by following the principles of natural justice which would otherwise inhere in a party before it. It is only the Court that is given the inherent power of formulating its own procedure when it is not provided under the statute. Thus, the reference made by the Collector to the Authority, which is akin to the institution of a suit before a Civil Court, does not attract the application of Section 5 of the 1963 Act. However, an application filed during the pendency of the reference, being akin to an application filed during the pendency of a suit, would attract the application of Section 5 of the 1963 Act. For example, when a party to a reference dies, and an application for bringing the legal representatives on record is filed belatedly, Section 5 of the 1963 Act would have to be pressed into service. Such a situation might also arise in appellate proceedings. To that extent, there is no bar."

D. ANALYSIS BY THE COURT

12. We have heard the rival submissions, perused the record and given anxious consideration to the judgments placed at the bar.

13. In order to appreciate the controversy involved, it is necessary to refer to the provisions of Section 18 of the Act, 1894. For ready reference, the same is reproduced hereunder:-

"18. Reference to Court

(1) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested.

(2) The application shall state the grounds on which objection to the award is taken:

Provided that every such application shall be made, (a) if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collectors award; (b) in other cases, within six weeks of the receipt of the notice from the Collector under section 12, sub-section (2), or within six months from the date of the Collectors award, whichever period shall first expire."

14. The Full Bench in **Vijai Pal** (supra) has considered the statutory provision under Section 18 of the Act, 1894 and arrived at a conclusion that an application filed under Section 18 of the Act, 1894 for making reference at a statutory authority, the said application is to be dealt by him subject to statutory conditions as laid down in Sections 18 (2) of the Act, 1894. In the present case, the acquisition proceedings were completed under the Act, 1894. The final declaration was published on 09.11.2009, possession of the land was taken by invoking the urgency clause, and the land gets vested in the State free from all encumbrances. The award was thereafter made on 22.08.2013. The petitioner, however, filed the application only on 24.09.2024 under the provisions of the Act, 2013.

15. It transpires that in the case of **Vijay Pal** (supra) the Full Bench of this Court has also considered the dictum of Apex Court in the case of **Bhagwan Das** (supra) in paras 21, 22, 23 & 24, which are quoted below:-

□21. *The Apex Court in a very recent judgment had an occasion to again consider the provisions of Section 18 of the Act after noticing the earlier decisions of the Apex Court in (2010) 3 SCC 545, Bhagwan Das & Ors Vs. State of U.P. & Ors. In the aforesaid case, award was made by the Land Acquisition Officer on 14/3/2007, and notice was served on the appellants on 25/10/2007. Appellants claim that they came to know about the award on 16/11/2007, and thereafter they made an application for reference. The Collector rejected the application for reference vide order dated 19/12/2007, on the ground that it was made beyond the period of 6 months from the date of award. The writ petition was dismissed by the High Court vide order dated 17/1/2008 as not maintainable. While dismissing the writ petition the High Court observed that the appellants had a remedy by way of filing an appeal under Section 54 of the Act.*

22. *The review application was filed which too was rejected vide order dated 05/5/2008, with the observation that the appellants ought to have filed an application for condonation of delay with the application for reference. The order of the High Court was challenged in the appeals. The Apex Court noticed the issues which arose for consideration in paragraph 6 which is quoted below:*

"6. The following questions arise for consideration, on the contentions urged :

(a) Whether an appeal would lie under Section 54 of the Act against the order of the Collector refusing to make a reference?

(b) Whether the Collector can condone the delay in filing an application seeking reference, if sufficient cause is shown?

(c) Whether the period of six months under clause (b) of the proviso to section 18 of the Act should be reckoned from the date of knowledge of the award of the Collector or from the date of award itself?

(d) Whether the appellants were entitled to relief?"

23. *While considering the question (b) the Apex Court laid down that the Collector is not a Court and the provisions of Section 5 of the Limitation Act, have no application. Following was laid down in paragraphs 14, 15 and 16 which are quoted below:*

"14. The proviso to section 18 requires that an application by a person interested, to the Collector, seeking reference of his claim for higher compensation for determination by the Court, shall be made within six weeks from the date of the Collector's award, if such person was present or represented before the Collector, at the time when the award was made. If not, the application for reference shall have to be made within six weeks of the receipt of the notice of the Collector under Section 12(2) or within six months from the date of the Collector's award, whichever period shall first expire.

15. In Officer on Special Duty (Land Acquisition) & Anr. v. Shah Manilal Chandulal & Ors. [1996 (9) SCC 414], this Court held that in view of the special limitation provided under the proviso to section 18 of the Act, section 29(2) of the Limitation Act, cannot be applied to the proviso to section 18 of the Act; and therefore, the benefit of sections 4 to 24 of Limitation Act 1963, will not be available in regard to applications under section 18(1) of the Act. It was also held that as the Collector is not a court when he discharges his functions as a statutory authority under

section 18(1) of the Act, section 5 of the Limitation Act 1963 cannot be invoked for extension of the period of limitation prescribed under the proviso to section 18(2) of the Act.

16. As the Collector is not a civil court and as the provisions of Section 5 of the Limitation Act, 1963 have not been made applicable to proceedings before the Collector under the Act, and as there is no provision in the Act enabling the Land Acquisition Collector to extend the time for making an application for reference, the Collector cannot entertain any application for extension, nor extend the time for seeking reference, even if there are genuine and bonafide grounds for condoning delay. This view was reiterated in Steel Authority of India Ltd. vs. S.U.T.N.I. Sangam and others [2009 (16) SCC 1]. Therefore, the observation of the High Court that an application for condonation of delay could have been made by the person interested, is incorrect."

24. The Apex Court in the said judgement also laid down that if the person interested was not present when the award is made and did not receive notice under Section 12 (2) of the Act, he has to make an application within six months of the date on which he actually and constructively came to know about the conditions of the award. □

E. CONCLUSION

16. From the record, it is evident that the petitioner cannot claim lack of knowledge of the acquisition proceedings. No explanation has been furnished as to why the statutory remedy available under the Act, 1894 was not availed within the prescribed period. In view of the law settled by the catena of judgments as placed before us by the respondent counsels, we have no hesitation in holding that the Collector does not have any such power of enlargement of time. Similar issue has also been considered by the Full Bench in **Vijai Pal** (supra). Accordingly, we find no illegality or infirmity in the impugned order dated 06.11.2024 passed by the Collector.

17. The judgment of **Mohan Singh** (supra) relied by the petitioner is distinguishable as the same is not applicable in the facts and circumstances of the instant matter.

18. The writ petition, being devoid of merit, does not warrant any interference and the same is hereby **dismissed**.

(2026) 4 ILRA 511
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 03.04.2026

BEFORE

THE HON'BLE HARVIR SINGH, J.

Criminal Misc. Bail Application No. 296 of 2026

Nafees Alias Mohammad Nafees	...Applicant
	Versus
State of U.P.	...Respondent

Issue for Consideration

Matter pertains to whether considering the nature of allegations, medical evidence indicating early pregnancy loss, absence of external injury, alleged lack of intention to cause such injury, pendency of criminal cases against the applicant, and suppression of criminal history in the bail application, the accused-applicant was entitled to be released on bail during pendency of trial.

Headnotes

Bharatiya Nyaya Sanhita, 2023 - ss. 115(2), 351(3), 352 and 91 - Bharatiya Nagarik Suraksha Sanhita, 2023 - s. 91 - Bail - Concealment of criminal history - Duty to disclose pending cases - Allahabad High Court (Amendment) Rules, 2025 - Scope - Directions issued - The case arose from an incident wherein allegations were levelled against the accused-applicant for committing physical assault upon the injured, resulting in internal injury and early pregnancy loss - An FIR was registered under various ss. of BNS, 2023 - The applicant sought bail contending false implication, absence of external injury in the medical examination, lack of knowledge regarding pregnancy, and absence of intention to cause such injury - While the State opposed the bail application on the ground that internal injury was caused to injured resulting in pregnancy loss and further alleged that the applicant had suppressed his criminal history of five pending cases while filing the instant bail application.

Held: It is evident that, by suppressing the pendency of 5 criminal cases and concealment thereof, the applicant has tried to take the benefit of liberty of bail - However, without taking into consideration the criminal history of applicant and the suppression of material fact of pendency of five criminal cases against the applicant, other ground is available that, in both the medical reports, the first report speaks of no external injury, however, as far as second report is concerned, it shows early pregnancy loss by injured, but the said fact of pregnancy was not in the knowledge of accused-applicant, therefore, the applicant-accused has no intention to cause such bodily injury to injured, moreover, the same is matter of trial - Accused-applicant is languishing in jail, since 11.10.2025 - Thus, keeping in view the nature of offence, evidence, complicity of accused, severity of punishment, submissions of learned counsel for parties and without expressing any opinion on merits of case, the applicant has made out a case for bail - Accordingly, bail application allowed - Issued directions to Judicial Officers of State of Uttar Pradesh. [Para 7, 12, 13]

Case Law Cited

Nil

List of Acts

Bharatiya Nyaya Sanhita, 2023; Bharatiya Nagarik Suraksha Sanhita, 2023; Allahabad High Court (Amendment) Rules, 2025

List of Keywords

Bail Application; Bharatiya Nyaya Sanhita, 2023; Bharatiya Nagarik Suraksha Sanhita, 2023; Falsely implicated; Physical assault on injured; Medical report; External injury; 82 days pregnancy; Gestational sac; Embryo; Cardiac activity; Knowledge about early pregnancy loss; Intention; Bodily injury; Disclose criminal history of cases in tabular form; Follow the procedure as prescribed in Allahabad High Court (Amendment) Rules, 2025; Direction to Judicial Officers (Sessions Judge/ Additional Sessions Judge/ Special Judge) of State of Uttar Pradesh; Application allowed.

Case Arising From

ORIGINAL JURISDICTION: Criminal Misc. Bail Application No. - 296 of 2026

From the Judgment and Order dated 19.11.2025, passed by Special Judge SC/ST, Basti in Case Crime No. 279 of 2025.

Appearances for Parties

Adv. for the Applicant(s):
Rishabh Srivastava

Advs. for the Opposite Party(s):

Deepak Kumar Tripathi, G.A., Nikhilesh Kumar Chaudhary

(Delivered by Hon'ble Harvir Singh, J.)

1. Supplementary affidavit dated 24.3.2026 filed today by learned counsel for the applicant is taken on record.

2. Heard learned counsel for the accused-applicant, learned A.G.A. for the State and perused the material available on record.

3. This bail application has been moved on behalf of the accused-applicant/ **Nafees Alias Mohammad Nafees**, for grant of bail, in Case Crime No. 279 of 2025, under Sections 115(2), 351(3), 352 and 91 of Bharatiya Nyaya Sanhita, 2023, Police Station Parasrampur, District Basti, during pendency of trial.

4. Learned counsel for accused-applicant, while pressing the bail application, submits that, the accused-applicant has been falsely implicated in the instant case and has not committed any offence, as alleged by the prosecution. It is further submitted by learned counsel for the applicant that, allegations of physical assault on injured- Sayma Bano, have been leveled against the accused-applicant, however, as per the medical report dated 13.9.2025 of the injured, no external injury was found upon the person of the injured. The injured was further examined by the same hospital, in which, the medical opinion has been referred as under:-

"Single intrauterine gestational sac seen.

Gestational sac diameter: 6.6 mm.

Evidence of an embryo in gestational sac.

CRL: 18 mm, corresponds to 08 weeks 02 days of gestation.

No cardiac activity.

Impression"- Early Pregnancy loss."

Learned counsel for the applicant further submits that, as far as eight weeks and two days pregnancy is concerned, the same was not in the knowledge of the applicant, even if he has caused some injuries to the injured and in the absence of intention to cause such injury to the injured, the Section 91 of the Bharatiya Nagarik Suraksha Sanhita, 2023, is not made out against the applicant. Learned counsel for the applicant further submits that, the accused-applicant is languishing in jail in this matter since 11.10.2025 and there is no likelihood that the accused-applicant, after release on bail, may flee from the process of law or will misuse the liberty of bail, therefore, the applicant is entitled to be enlarged on bail.

5. On the other hand, learned counsel appearing on behalf of informant/ complainant submits that, even if, it was not the intention of the accused persons, but internal injury has been caused to the injured by the applicant and as a result of the same, there is early pregnancy loss, which can only be attributed to the act of the accused-applicant, therefore, the applicant is not entitled to be enlarged on bail.

6. Per contra, learned A.G.A. appearing on behalf of State opposes the prayer for bail of the applicant on the ground that, the internal injuries have been caused to the injured by the applicant and having regard to the manner, in which the crime has been committed, the applicant is not entitled to be released on bail. Learned AGA for the State further submits that, at the time of filing of the instant bail application, the accused-applicant has suppressed the material fact of having criminal history of 5 cases against him and in para 30 of the instant bail application, he has stated as under:-

"30. That the applicant is law abiding citizen and except the present case, he has no criminal history."

However, at a later stage, the criminal history of the applicant has been placed on record, by way of some supplementary affidavit, after being pointed out by the State/ prosecution that, five criminal cases are pending against the accused- applicant. Learned AGA for the State further submits that, the applicant has not shown any bona fide by not disclosing the fact of five criminal cases pending against him and then did not follow the procedure, as prescribed in para 3 of the Allahabad High Court (Amendment) Rules, 2025, published vide publication in Extraordinary Gazette of State of Uttar Pradesh, vide Notification dated 12.11.2025, and the procedure prescribed therein para 3 is as under:-

"3. Insertion of sub-Rule (7) in Rule 18 of Chapter XVIII.- In Rule 18 of Chapter XVIII of the Rules, the following sub-Rule (7) shall be inserted after sub-Rule (6) :

(7) Every application for bail filed before this Court shall also disclose-

(a) Particulars of any bail application filed by the applicant which is pending before this Court, any subordinate Court, or the Supreme Court, and if none is pending, a clear statement to that effect, together with the result of any such application previously decided along with copy of the order (s);

(b) Whether the applicant is or was involved in any other criminal case, and if so, the particulars and decisions thereof."

Learned AGA for the State further submits that, since the internal injuries have been caused to the injured by the applicant and the applicant also, did not follow the procedure prescribed in the Allahabad High Court (Amendment) Rules, 2025, on the subject of Bail, he is not entitled to be enlarged on bail.

7. Having considered the rival contentions of the parties and having perused the record, it is evident that, by suppressing the pendency of 5 criminal cases and concealment thereof, the applicant has tried to take the benefit of liberty of bail. However, without taking into consideration the criminal history of the applicant and the suppression of material fact of pendency of five criminal cases against the applicant, other ground is available that, in both the medical reports, the first report speaks of no external injury, however, as far as second report is concerned, it shows early pregnancy loss by the injured, but the said fact of pregnancy was not in the knowledge of accused-applicant, therefore, the applicant-accused has no intention to cause such bodily injury to the injured, as stated, moreover, the same is matter of trial; the accused-applicant is languishing in

jail in this matter, since 11.10.2025. Thus, keeping in view the nature of the offence, evidence, complicity of the accused, severity of punishment, submissions of the learned counsel for the parties and without expressing any opinion on the merits of the case, this Court is of the considered view, that applicant has made out a case for bail. The bail application is **allowed**.

8. Let the accused-applicant/ **Nafees Alias Mohammad Nafees**, involved in aforesaid case, be released on bail on furnishing a personal bond with two sureties in the like amount to the satisfaction of the court concerned subject to following conditions:-

(i) The applicant shall not tamper with the prosecution evidence by intimidating/pressurizing the witnesses, during the investigation or trial.

(ii) The applicant shall cooperate in the trial sincerely without seeking any adjournment.

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

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

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

11. Observations made herein-above by this court are only for the purpose of disposal of this bail application and shall not be construed as an expression of this Court on the merits of the case.

12. Apart from above and having regard to the Allahabad High Court (Amendment) Rules, 2025, as stated above in para 6 of this order, it is directed that, all accused-applicants, while filing the bail application before this High Court, they shall follow the procedure as prescribed in the Allahabad High Court (Amendment) Rules, 2025 and shall disclose the pendency of any criminal case(s) against them.

13. Hence, in order to strengthen and streamline the process of criminal history to be disclosed/ explained at the earliest, it is directed that, all the Judicial Officers (Sessions Judge/ Additional Sessions Judge/ Special Judge) of the State of Uttar Pradesh, while deciding/ disposing of the bail application, shall also mention the criminal history of the accused/ applicant in a **tabular form** in their order and it shall be duty of the State/ prosecution to furnish the details of the criminal cases/ criminal history, pending against the concerned accused-applicant(s) and bring the same on record, at the time of hearing of the bail applications.

14. In the event of default by the concerned Public Prosecutor/ Investigating Officer, the matter may be referred to the concerned administrative authorities of the State for not placing the correct/ appropriate facts on record.

15. Registrar (Compliance) is directed to circulate the copy of this order amongst all the Judicial Officers of the State of Uttar Pradesh, for compliance.

(2026) 4 ILRA 516
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 02.04.2026

BEFORE

THE HON'BLE ARUN KUMAR SINGH DESHWAL, J.

Criminal Misc. Bail Application No. 10323 of 2026

Sunny

...Applicant

Versus

State of U.P.

...Respondent

Issue for Consideration

Issue pertains to whether while preparing an inquest report u/s 194 of the Bharatiya Nagarik Suraksha Sanhita, 2023, it is necessary for the investigating officer to mention the name of accused allegedly responsible for causing the death of deceased, and whether non-mentioning of accused's name in the inquest report would create a doubt sufficient to entitle the accused-applicant to be enlarged on bail during pendency of trial.

Headnotes

Bharatiya Nagarik Suraksha Sanhita, 2023 - ss. 105, 194 - Bharatiya Nyaya Sanhita, 2023 - ss. 103(1) and 61(2) - Arms Act, 1959 - ss. 3/25/27 - Murder - Bail - Grant of - Inquest Report - Non-mentioning of accused's name - Effect - Object and scope - The prosecution case was that the accused-applicant allegedly fired upon the deceased at the gate of his housing society, resulting in his death - The applicant was implicated under various provisions of BNS and Arms Act - The applicant sought bail contending false implication, inconsistencies in the statements of alleged eyewitnesses, non-mentioning of his name in inquest report, absence of initial information regarding the assailant, and lack of incriminating material - The prosecution opposed the bail application by submitting that several witnesses had seen the applicant at the place of occurrence, his involvement was corroborated through electronic evidence and recovery of weapon, and mere omission of accused's name in inquest report was not material.

Held: While preparing the inquest report there is no requirement of mentioning the name of accused who caused the death of person, whose body is under examination - It is not in dispute that the presence of applicant was found at the time of incident at 3:30 P.M. while he was making UPI payment at the shop adjacent to the place of incident, and the incident in question at 5:30 P.M. was seen by several other witnesses who have made specific allegation of firing against the applicant, and there is a recovery of weapon from the applicant allegedly used in incident, which was duly substantiated by conducting a videography as per s. 105 BNSS, and considering the gravity of offence and role of applicant, the Court refused to release the applicant on bail - Accordingly, bail application rejected. [Paras 10 to 12] (E-13)

Case Law Cited

Amar Singh v. Balwinder Singh and others, reported in (2003) 2 Supreme Court Cases 518 - referred to

List of Acts

Bharatiya Nagarik Suraksha Sanhita, 2023; Bharatiya Nyaya Sanhita, 2023; Arms Act, 1959

List of Keywords

Bail Application; s. 105 BNSS, 2023; B.N.S, 2023; Arms Act, 1959; Innocent person; Falsely implicated; Fired upon deceased at gate of his housing society; First informant himself claimed to be an eye-witness; In site plan place where accused was sitting at the time of incident was not mentioned; G.D. Report; Some unknown person fired upon deceased; No fard of motorcycle was prepared by police; Reiki of deceased; Substantiated by UPI payment; Father brought deceased to hospital; Panch witness; Inquest of dead body; Postmortem report showed firearm injuries; Statement of injured; On the basis of doubt applicant was witness of murder; Blind murder; Recovery of country made pistol; Prima facie opinion about apparent cause of death; Wounds; Fractures; Bruises; Marks of Injury; Weapon used to inflict such injuries; Bail application rejected.

Case Arising From

ORIGINAL JURISDICTION: Criminal Misc. Bail Application No. - 10323 of 2026

From the Judgment and Order dated 18.12.2025, passed by Additional District and Sessions Judge, Gautam Buddh Nagar in Case Crime No. 100 of 2025.

Appearances for Parties

Advs. for the Applicant(s):

Raghvendra Prakash, Sr. Advocate

Advs. for the Opposite Party(s)

G.A., Rakesh Kumar Srivastava

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

1. Heard Sri Gaurav Kakkar, learned Senior Counsel assisted by Sri Raghvendra Prakash, learned counsel for the applicant, Sri Rakesh Kumar Srivastava, learned counsel for the first informant, Sri D.P.S. Chauhan, learned A.G.A. for the State and perused the record.

2. The instant application has been filed to release the applicant on bail in Case Crime No.100 of 2025, under Sections 103(1) and 61(2) of B.N.S. and Section 3/25/27 of Arms Act, Police Station Dankaur, District Gautam Buddh Nagar.

3. Contention of learned counsel for the applicant is that the applicant is an innocent person and he has been falsely implicated in the present case. He further submitted that as per the prosecution story, the applicant is alleged to have fired upon the deceased Vishal and killed him at the gate of his housing society. He further submitted that though the first informant himself claimed to be an eye-witness of the incident in his statement, but in the site plan, the place where he was sitting at the time of incident was not mentioned. He further submitted that as per the G.D. report, information regarding the incident in question was also received by the police through some unknown person and as per the G.D. report dated 12.05.2025 at 7:50 P.M., some unknown person fired upon the deceased Vishal, and his father has taken him to the hospital, therefore, till the deceased was taken to the hospital, exact person who has fired upon the deceased was not known. He next submitted that as per the hospital records, the deceased was admitted in the hospital on 12.05.2025. wherein it was mentioned that his father brought him to the hospital and he told that some unknown person fired upon the deceased. Learned Senior Advocate also submitted that the father of first informant Gyani was the one of the panch witnesses of inquest but name of the applicant was not mentioned as assailant instead unknown assailant was mentioned, therefore, till

the time of inquest actual name of the accused was not known and subsequently applicant was falsely nominated as accused. He further submitted that though all the alleged eye-witnesses clearly stated that the present applicant fired upon the deceased Vishal, but post-mortem report shows that the deceased Vishal received two firearm injuries and such fact was not mentioned in the statement of the injured. He further submitted that it is a case of blind murder, and on the basis of doubt, as the applicant was one of the witness of murder case in which the deceased was accused, the applicant has been falsely implicated in the present case.

4. It is further submitted by learned counsel for the applicant that in the site plan it is mentioned that the applicant along with unknown person came on the spot on motorcycle and fired upon the deceased and run away on motorcycle, but no 'fard' of the motorcycle was prepared by the police. There is no incriminating material against the applicant. Applicant has no criminal history. Applicant is languishing in jail since 26.05.2025. In case the applicant is released on bail, he will not misuse the liberty of bail and would cooperate in the investigation/trial proceedings.

5. *Per contra*, learned A.G.A. as well as learned counsel for the first informant vehemently opposed the prayer for bail and submitted that not only the father but there are several other persons have seen the present applicant while he was doing 'Reiki' of the deceased, and this fact has been duly substantiated by the UPI payment being made by the applicant at 3:30 P.M. at the shop adjacent to the place of incident. They further submitted that the father of the deceased lodged the FIR making specific allegation against the applicant and also clearly stated in his statement about the role of the applicant and also claiming himself as a witness, and merely not mentioning the place in site plan where the applicant was present at the time of incident is not relevant, and the same is a matter of trial. It is further submitted that mentioning the name of accused in inquest is not necessary. They further submitted that on pointing out of the applicant, a country made pistol (.32 bore) was recovered and the aforesaid recovery was duly substantiated by conducting a videography as per Section 105 BNSS, therefore, the aforesaid recovery cannot be disputed. They also submitted that the father of the deceased himself brought the deceased to the hospital, and in his absence someone informed the police about the incident, who is expected to mention the name of the actual accused. Therefore, the applicant is not entitled to be released on bail.

6. Considering the rival submissions of the learned counsel for the parties, a legal question arises whether it is necessary to mention the name of accused who allegedly killed the deceased while preparing the inquest of the dead-both.

7. Section 194 of BNSS provides that when an officer in-charge of police or other police officer especially empowered by the State Government receives information that a person has been killed by another or has died under the circumstances, raising reasonable suspicion that some other person has committed an offence then he shall proceed to the place where the dead-body of the deceased person is found then in presence of two or more respectable inhabitants of the neighbourhood, he shall draw up a report/ inquest apparent cause of death, describing such wounds, fractures, bruises and other marks of injury found on the body and stating in what manner or by what weapon or instrument such marks appear to have been inflicted. This report shall be assigned by such police officer and other persons who concur with the aforesaid observation regarding the dead-body. If there is any doubt regarding the cause of death or for other reason then the police

officer may consider it expedient and he shall forward the dead-body to the nearest Civil Surgeon or other qualified medical officer appointed by the State Government with a view to its being examined.

8. Section 194 BNSS is quoted as under:

"(1) When the officer in charge of a police station or some State police officer specially empowered by the State Government in that behalf receives information that a person has committed suicide, or has been killed by another or by an animal or by machinery or by an accident, or has died under circumstances raising a reasonable suspicion that some other person has committed an offence, he shall immediately give intimation thereof to the nearest Executive Magistrate empowered to hold inquests, and, unless otherwise directed by any rule made by the State Government, or by any general or special order of the District or Sub-divisional Magistrate, shall proceed to the place where the body of such deceased person is, and there, in the presence of two or more respectable inhabitants of the neighbourhood, shall make an investigation, and draw up a report of the apparent cause of death, describing such wounds, fractures, bruises, and other marks of injury as may be found on the body, and stating in what manner, or by what weapon or instrument (if any); such marks appear to have been inflicted.

(2) The report shall be signed by such police officer and other persons, or by so many of them as concur therein, and shall be forwarded to the District Magistrate or the Sub-divisional Magistrate within twenty-four hours.

(3) When-

(i) the case involves suicide by a woman within seven years of her marriage; or

(ii) the case relates to the death of a woman within seven years of her marriage in any circumstances raising a reasonable suspicion that some other person committed an offence in relation to such woman; or

(iii) the case relates to the death of a woman within seven years of her marriage and any relative of the woman has made a request in this behalf; or

(iv) there is any doubt regarding the cause of death; or

(v) the police officer for any other reason considers it expedient so to do,

he shall, subject to such rules as the State Government may prescribe in this behalf, forward the body, with a view to its being examined, to the nearest Civil Surgeon, or other qualified medical person appointed in this behalf by the State Government, if the state of the weather and the distance admit of its being so forwarded without risk of such putrefaction on the road as would render such examination useless.

(4) The following Magistrates are empowered to hold inquests, namely, any District Magistrate or Sub-divisional Magistrate and any other Executive Magistrate specially empowered in this behalf by the State Government or the District Magistrate."

9. From a perusal of Section 194 BNSS, it is clear that the only purpose of inquest is to make a prima facie opinion about the apparent cause of death and noting the injuries i.e. wounds, fractures, bruises and other marks of injury found on the body, possible cause of death including the weapon used to inflict such injuries and after preparation of such report by the concerned officer, it shall be signed by him as well as other persons who are present and concur the aforesaid opinion, therefore, there is no statutory requirement regarding mentioning the name of accused in the inquest report.

The Hon'ble Supreme Court has also observed in the case of ***Amar Singh Vs. Balwinder Singh and others, reported in (2003) 2 Supreme Court Cases 518***. Paragraph 12 of the said judgment is quoted below:

*"The High Court has also held that the details about the occurrence were not mentioned in the inquest report which showed that the investigating officer was not sure of the facts when the inquest report was prepared and this feature of the case carried weight in favour of the accused. We are unable to accept this reasoning of the High Court. The provision for holding of an inquest and preparing an inquest report is contained in Section 174 Cr.P.C. The heading of the Section is "Police to enquire and report on suicide, etc." Sub-section (1) of this Section provides that when the officer in charge of a police station or some other police officer specially empowered by the State Government in that behalf receives information that a person has committed suicide, or has been killed by another or by an animal or by machinery or by an accident, or has died under circumstances raising a reasonable suspicion that some other person has committed an offence, he shall immediately give information to the nearest Executive Magistrate and shall proceed to the place where the body of such deceased person is, and there, in the presence of two or more respectable inhabitants of the neighbourhood, shall make an investigation, and draw up a report of the apparent cause of death describing such wounds, fractures, bruises, and other marks of injury as may be found on the body and stating in what manner, or by what weapon or instrument (if any), such marks appear to have been inflicted. The requirement of the section is that the police officer shall record the apparent cause of death describing the wounds as may be found on the body and also the weapon or instrument by which they appear to have been inflicted and this has to be done in the presence of two or more respectable inhabitants of the neighbourhood. The Section does not contemplate that the manner in which the incident took place or the names of the accused should be mentioned in the inquest report. The basic purpose of holding an inquest is to report regarding the apparent cause of death, namely whether it is suicidal, homicidal, accidental or by some machinery, etc. The scope and purpose of Section 174 Cr.P.C. was explained by this Court in *Podda Narayana & Ors. v. State of Andhra Pradesh AIR 1975 SC 1252* and it will be useful to reproduce the same.*

"The proceedings under Section 174 have a very limited scope. The object of the proceedings is merely to ascertain whether a person has died under suspicious circumstances or an unnatural death and if so what is the apparent cause of the death. The question regarding the details as to how the deceased was assaulted or who assaulted him or under what circumstances he was assaulted is foreign to the ambit and scope of the proceedings under Section 174. Neither in practice nor in law was it necessary for the police to mention those details in the inquest report.

It is therefore not necessary to enter all the details of the overt acts in the inquest report. Their omission is not sufficient to put the prosecution out of Court."

10. In view of above analysis, this Court observes that while preparing the inquest report there is no requirement of mentioning the name of the accused who caused the death of the person, whose body is under examination.

11. Considering the aforesaid submissions of learned counsel for the parties and taking into account that it is not in dispute that the presence of the applicant was found at the time of incident at 3:30 P.M. while he was making UPI payment at the shop adjacent to the place of incident, and

the incident in question at 5:30 P.M. was seen by several other witnesses who have made specific allegation of firing against the applicant, and there is a recovery of weapon from the applicant allegedly used in the incident in question, which was duly substantiated by conducting a videography as per Section 105 BNSS, and considering the gravity of the offence and role of the applicant, this Court is not inclined to release the applicant on bail, at this stage.

12. Accordingly, the bail application is **rejected**.

(2026) 4 ILRA 521
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 02.04.2026

BEFORE

THE HON'BLE ARUN KUMAR SINGH DESHWAL, J.

Criminal Misc. Bail Application No. 29240 of 2025

Rohit Patel

...Applicant
Versus

State of U.P.

...Respondent

Issue for Consideration

Issue pertains to whether fracture of the hyoid bone is an indispensable requirement for establishing a case of strangulation; and whether delay in recording the statements of witnesses during investigation, also having regard to the postmortem report, and surrounding circumstances emerging from the record would, by itself, be fatal to the prosecution case so as to entitle the accused-applicant to be enlarged on bail during the pendency of trial.

Headnotes

Bharatiya Nyaya Sanhita, 2023 - s 103(1) - Bharatiya Sakshya Adhiniyam, 2023 - s. 109 - Bharatiya Nagarik Suraksha Sanhita, 2023 - s. 180 - Bail - Murder - Strangulation - Absence of fracture of hyoid bone - Whether fatal to prosecution case - Interpretation - The prosecution case was that the applicant, being the husband of deceased, had allegedly quarrelled with and assaulted her on previous occasions, regarding which an FIR had earlier been lodged - Subsequently, after compromise between the parties, the deceased started residing with the applicant - It was alleged that on 19.03.2025, the applicant murdered his wife in collusion with other accused persons - During investigation, the other accused persons were exonerated and charge-sheet was submitted only against the present applicant - The applicant sought bail contending that the postmortem report indicating strangulation was doubtful as the hyoid bone was intact, there was no eyewitness account, and delayed recording of witness statements created doubt in the prosecution case - The informant and State opposed the bail application by relying upon the medical evidence, witness statements, and surrounding circumstances.

Held: In the instant case, FIR was registered on 20.03.2025 and statement of applicant's nephew was recorded on 27.03.2025 and the statement of daughter of applicant was recorded on 18.04.2025 as both the children were under shock because of murder of deceased - Therefore, some delay cannot be said to be fatal to the prosecution case - Even otherwise such issues are to be decided during trial not at the stage of bail - It is not in dispute that as per postmortem report, the cause of death is strangulation and other injuries are also present on the body of deceased which shows that she resisted at the time of strangulation - It is also clear

from the judgements relied upon by learned counsel for first informant that fracture of hyoid bone is not always necessary in case of strangulation and the statement of applicant's daughter as well as statement of applicant's sister's son, clearly establishes that at the time of incident, the applicant was present in the house - Therefore, s. 109 of BSA will be attracted as it is the case of murder and it is the applicant who has to explain but he failed to explain the same by simply taking the plea that he was not present in home - Therefore, the court refused to release the applicant on bail - Accordingly, bail application rejected. [Paras 19 to 21] (E-13)

Case Law Cited

State of Rajasthan v. Ramanand reported in AIR 2017 Supreme Court 2100; *Shahid Khan v. State of Rajasthan* reported in 2016 AIR (SC) 1178; *Ravirala Laxmaiah v. State of Andhra Pradesh* reported in 2013 (9) SCC 283; *Pushkar Katiyar v. State of U.P.*, Criminal Misc. Bail Application No.27556 of 2018 decided on 10.07.2019; *Ponnusamy v. State of Tamil Nadu* reported in (2008) 5 SCC 587; *Ravirala Laxmaiah v. State of Andhra Pradesh* reported in (2013) 9 SCC 283; *Ganesh Bhavan Patel And Another v. State of Maharashtra* reported in (1978) 4 SCC 371; *Shahid Khan v. State of Rajasthan* reported in (2016) 4 SCC 96; *Jafarudheen and Others v. State of Kerala* reported in (2022) 8 SCC 440; *Goutam Joardar v. State of West Bengal* reported in (2022) 17 SCC 549; *Firoz Khan Akbarkhan v. State of Maharashtra* reported in 2025 SCC OnLine SC 627 - referred to

Books and Periodicals Cited

23rd Edititon at page 583 of the Modi's Medical Jurispudence and Toxicology; Journal of Forensic Sciences, Vol-41 (paragraph no.24 of Ponnusamy's case) - referred to

List of Acts

Bharatiya Nyaya Sanhita, 2023; Bharatiya Sakshya Adhiniyam, 2023; Bharatiya Nagarik Suraksha Sanhita, 2023;

List of Keywords

Bail Application; Bharatiya Nyaya Sanhita, 2023; Bharatiya Sakshya Adhiniyam, 2023; Murder; Bharatiya Nagarik Suraksha Sanhita, 2023; Husband; Quarrel; Previous occasion; Beaten the deceased; FIR; Compromise; Murdered his wife; Co-accused were in collusion with applicant; Names of co-accused exonerated; Fracture of hyoid bone; Intact; No eye witness; Modi's Medical Jurispudence and Toxicology; Children were sleeping; Custodial interrogation; Delayed recording of statement; Bone; Neck; Difference between hanging and strangulation; Postmortem report of deceased; Journal of Forensic Sciences; Victims of homicide; Shock after death of her mother; Bail application rejected.

Case Arising From

ORIGINAL JURISDICTION: Criminal Misc. Bail Application No. - 29240 of 2025

From the Judgment and Order dated 07.07.2025 passed by the District and Sessions Judge, Fatehpur in Case Crime No.90 of 2025, P.S. Lalauli, District Fatehpur.

Appearances for Parties

Adv. for the Applicant(s):

Ghan Shyam Das

Adv. for the Opposite Party(s):

Arun Kumar Shukla, G.A., Govind Tiwari, Ram Saumitra Tripathi, Shivam Agarwal, Tanu Shree

(Delivered by Arun Kumar Singh Deshwal, J.)

1. Heard Sri Kamal Krishna, learned Senior Advocate, assisted by Sri Ghan Shyam Das, learned counsel for the applicant, Sri Arun Kumar Shukla along with Sri Shivam Agarwal, learned counsel for the first informant and Sri Ram Kumar Verma, learned A.G.A. for the State and perused the record.

2. The instant bail application has been filed with a prayer to release the applicant on bail in Case Crime No.90 of 2025, under Section-103(1) BNS, Police Station-Lalauli, District-Fatehpur, during the pendency of the trial.

3. Contention of learned counsel for the applicant is that as per the prosecution story, the applicant is the husband of the deceased and he used to quarrel with the deceased and on previous occasion also, he had beaten the deceased regarding which an FIR was also lodged. Subsequently in police station, both the parties had entered into compromise and deceased started living with the applicant. It is further mentioned in the FIR that on 19.03.2025, the applicant has murdered his wife and other co-accused were also in collusion with the applicant. After the investigation, the names of the other co-accused were exonerated and chargesheet was filed only against the present applicant.

4. It is submitted by the applicant's counsel that as per the postmortem report of the deceased, cause of death is strangulation but hyoid bone was intact, therefore, it cannot be a case of strangulation. It is further submitted that there is no eye witness of the incident and even the children themselves admitted that they were sleeping in the night and in the morning, they found the deceased dead. It is further submitted that there is no evidence that at the time of incident, applicant was inside the house along with the deceased, therefore, presumption u/s 109 of BSA will not be attracted against the applicant. Learned counsel for the applicant has also relied upon the judgement of the Apex Court in the case of **State of Rajasthan Vs. Ramanand** reported in **AIR 2017 SUPREME COURT 2100**. It is further submitted that the applicant has no criminal history and charge sheet has been filed in the present case, therefore, there is no requirement of custodial interrogation. It is further submitted that though the daughter of the applicant in her statement recorded u/s 180 of BNSS has stated that she had not seen the incident in question. However, she changed her statement during trial and stated that at the time of incident, she was not sleeping but has herself seen the incident where the two other persons along with his father committed the murder of their mother. Therefore statement of applicant's daughter during trial itself makes the prosecution story doubtful. It is further submitted that the statement of the daughter of the deceased, Rishika was recorded on 16.04.2025 and the statement of Utkarsh who was the applicant's sister's son, who allegedly resided in the same house, was recorded on 18.04.2025. Therefore, delayed recording of statement u/s 180 of BNSS is not reliable. In support of his contention, learned counsel for the applicant has relied upon the judgement of the Apex Court in the case of **Shahid Khan Vs. State of Rajasthan** reported in **2016 AIR (SC) 1178** wherein the Apex Court discarded the statement of two witnesses recorded after three days of the occurrence. The applicant is a law abiding citizen and he is languishing in jail since 25.03.2025. In case, he is granted bail, he will not misuse the liberty of bail and would cooperate in the trial proceedings.

5. Per contra, learned counsel for the first informant has vehemently opposed the prayer for bail and submitted that the daughter of the applicant stated in her statement u/s 180 BNSS that the applicant was present in the house at the time of the incident and he had also beaten his mother in

the night. It is further submitted that the statement of applicant's sister's son, Utkarsh was also recorded on 27.03.2025 who stated that in the night of the date of incident, the applicant came to the house and was present in the house at the time of incident. It is further submitted that statement of Utkarsh was promptly recorded on 27.03.2025 not on 18.04.2025 and he further submitted that even if the statement of the daughter of the applicant was recorded on 16.04.2025 that could be the fault on the part of the Investigating Officer because of the reason that daughter was under shock after the death of her mother (deceased). It is further submitted that the postmortem report shows that the deceased was also having other injuries apart from mark of strangulation which shows that at the time of strangulation, she also resisted and he also submitted that it is not always true that hyoid bone should be fractured during strangulation. In support of his contention, he has relied upon the judgement of the Apex Court in the case of Ravirala Laxmaiah Vs. State of Andhra Pradesh reported in 2013 (9) SCC 283 wherein the Apex Court observed that fracture of hyoid bone is not always found fractured in the case of strangulation. Learned counsel for the first informant has also relied upon Clause 9 of the Modi's Medical Jurisprudence and Toxicology wherein it was opined by Modi that it is not always necessary that hyoid bone should be fractured during strangulation. Learned counsel for the first informant has further relied upon the judgement of this court in Criminal Misc. Bail Application No.27556 of 2018 (Pushkar Katiyar Vs. State of U.P.) decided on 10.07.2019 wherein this Court has also taken a view that fracture of hyoid bone is not always necessary in case of strangulation. Therefore, applicant is not entitled to be released on bail.

6. Learned A.G.A. has also adopted the arguments of learned counsel for the first informant.

7. After hearing the submissions of learned counsel for the parties, two legal questions arise which need to be addressed before coming to the merits of this case. These two questions are as follows:

(i) Whether the hyoid bone will necessarily be fractured in the case of strangulation?

(ii) Whether the delay in recording the statement of witness during investigation will always be fatal to prosecution case?

8. Before dealing with the question no.i, it would be appropriate to define the hyoid bone.

"The hyoid bone is a small U-shaped floating bone located in front of the neck, between the lower jaw and the thyroid cartilage serving as a critical anchor point for tongue, throat and larynx muscles. It is only bone in the body that does not articulate with another bone, instead of suspended by muscles and ligaments."

9. In Modi's Medical Jurisprudence and Toxicology 23rd Edition at page 583 difference between hanging and strangulation was given in tabulated form wherein paragraph no.12 discusses the differences in hanging and strangulation regarding fracture of hyoid bone which is mentioned as below:

12.	Hanging	Strangulation

(1)	Fracture of larynx and trachea - Very rare and that too in judicial hanging.	(1) Fracture of larynx and trachea - Often found also hyoid bone (sic-fracture)

10. In the Journal of Forensic Sciences, Vol-41 under the title 'fracture of the hyoid bone in strangulation', paragraph no.24 of **Ponnusamy's** case is being quoted as under:

"24. In Journal of Forensic Sciences, Vol. 41 under the title ? Fracture of the Hyoid Bone in Strangulation: Comparison of Fractured and Unfractured Hyoids from Victims of Strangulation, it is stated:

"The hyoid is the U-shaped bone of the neck that is fractured in one-third of all homicides by strangulation. On this basis, post-mortem detection of hyoid fracture is relevant to the diagnosis of strangulation. However, since many cases lack a hyoid fracture, the absence of this finding does not exclude strangulation as a cause of death. The reasons why some hyoids fracture and others do not may relate to the nature and magnitude of force applied to the neck, age of the victim, nature of the instrument (ligature or hands) used to strangle, and intrinsic anatomic features of the hyoid bone. We compared the case profiles and xeroradiographic appearance of the hyoids of 20 victims of homicidal strangulation with and without hyoid fracture (n = 10, each). The fractured hyoids occurred in older victims of strangulation (39 # 14 years) when compared to the victims with unfractured hyoids (30 # 10 years). The age dependency of hyoid fracture correlated with the degree of ossification or fusion of the hyoid synchondroses. The hyoid was fused in older victims of strangulation (41 # 12 years) whereas the unfused hyoids were found in the younger victims (28 # 10 years). In addition, the hyoid bone was ossified or fused in 70% of all fractured hyoids, but, only 30% of the unfractured hyoids were fused. The shape of the hyoid bone was also found to differentiate fractured and unfractured hyoids. Fractured hyoids were longer in the anterior-posterior plane and were more steeply sloping when compared with unfractured hyoids. These data indicate that hyoids of strangulation victims, with and without fracture, are distinguished by various indices of shape and rigidity. On this basis, it may be possible to explain why some victims of strangulation do not have fractured hyoid bones."

11. The Hon'ble Apex Court in the case of **Ponnusamy Vs. State of Tamil Nadu** reported in (2008) 5 SCC 587 also observed that it is not necessary that fracture of hyoid bone is must in all the cases. Similarly, in the case of **Ravirala Laxmaiah Vs. State of Andhra Pradesh** reported in (2013) 9 SCC 283, the Hon'ble Apex Court relied upon the judgement of Ponnusamy (supra) and observed that fracture of hyoid bone is not always found in the case of strangulation.

12. From the above discussion, it is clear that though there are more chances of fracture in hyoid bone in older victims of strangulation but when the victims of homicide strangulation is of younger age (30 -+10 years) then hyoid bone may remain unfractured. Therefore, it is not necessary in the case of strangulation that there should be fracture in hyoid bone and there may be cases of strangulation without fracture in hyoid bone.

13. So far as the second question regarding delayed recording of statement of witnesses is concerned, this issue was considered by the Apex Court in several cases. In the case of **Ganesh Bhavan Patel And Another Vs. State of Maharashtra** reported in (1978) 4 SCC 371, three Judges Bench of Hon'ble Supreme Court observed that inordinate delay in registration of the 'FIR'

and further delay in recording the statement of material witnesses casts a cloud of suspicion over the prosecution story. Paragraph no.29 of the said judgement is being quoted as under:

"29. Thus considered in the light of the surrounding circumstances, this inordinate delay in registration of the 'FIR' and further delay in recording the statements of the material witnesses, casts a cloud of suspicion on the credibility of the entire warp and woof of the prosecution story."

14. Hon'ble Apex Court in the case of **Shahid Khan Vs. State of Rajasthan** reported in **(2016) 4 SCC 96**, observed that if there is no explanation for the delayed recording of statement, it casts a serious doubt about their being the eye witnesses to the occurrence and if there is no corroboration of their evidence from any other independent source then it would be unsafe to rely upon the statement of such evidences to uphold the conviction. Paragraph no.20 of the said judgement is being quoted as under:

"20. The statements of PW 25 Mirza Majid Beg and PW 24 Mohamed Shakir were recorded after 3 days of the occurrence. No explanation is forthcoming as to why they were not examined for 3 days. It is also not known as to how the police came to know that these witnesses saw the occurrence. The delay in recording the statements casts a serious doubt about their being eyewitnesses to the occurrence. It may suggest that the investigating officer was deliberately marking time with a view to decide about the shape to be given to the case and the eyewitnesses to be introduced. The circumstances in this case lend such significance to this delay. PW 25 Mirza Majid Beg and PW 24 Mohamed Shakir, in view of their unexplained silence and delayed statement to the police, do not appear to us to be wholly reliable witnesses. There is no corroboration of their evidence from any other independent source either. We find it rather unsafe to rely upon their evidence only to uphold the conviction and sentence of the appellants. The High Court has failed to advert to the contentions raised by the appellants and reappraise the evidence thereby resulting in miscarriage of justice. In our opinion, the case against the appellants has not been proved beyond reasonable doubt."

15. In the case of **Jafarudheen and Others Vs. State of Kerala** reported in **(2022) 8 SCC 440**, the Hon'ble Apex Court considered the issue of delayed recording of statement of witness during investigation and observed that an inordinate and unexplained delay in recording the statement of witness u/s 161 Cr.P.C. may be fatal to the prosecution's case but it also depends upon the fact of each case. Paragraph no.33 of the said judgement is being quoted as under:

"33. The investigating officer is expected to kick start his investigation immediately after registration of a cognizable offence. An inordinate and unexplained delay may be fatal to the prosecution's case but only to be considered by the court, on the facts of each case. There may be adequate circumstances for not examining a witness at an appropriate time. However, non-examination of the witness despite being available may call for an explanation from the investigating officer. It only causes doubt in the mind of the court, which is required to be cleared."

16. The 3 Judges Bench of Hon'ble Apex Court in the case of **Goutam Joardar Vs. State of West Bengal** reported in **(2022) 17 SCC 549**, considered the earlier cases and observed that mere

factum of delay by itself cannot result in rejection of the testimony of witnesses as there may be number of reasons for delayed recording of the statement which can be considered by the court and taking into account the fact of the particular case. Paragraph nos.10 and 11 of the said judgement are being quoted as under:

"10. It is true that there was some delay in recording the statements of the eyewitnesses concerned but mere factum of delay by itself cannot result in rejection of their testimonies.

11. The material on record definitely establishes the fear created by the accused. If the witnesses felt terrorised and frightened and did not come forward for some time, the delay in recording their statements stood adequately explained. Nothing has been brought on record to suggest that during the interregnum, the witnesses were carrying on their ordinary pursuits. Thus, the eyewitness account unfolded through PW 18 and PW 19 cannot be discarded. We have gone through their testimonies and are convinced that their statements were cogent, consistent and trustworthy."

17. In recent judgement of **Firoz Khan Akbarkhan Vs. State of Maharashtra** reported in **2025 SCC OnLine SC 627**, three Judges Bench considering all earlier cases on the point of delayed recording of statement observed that **Ganesh Bhavan Patel (supra)** is not an authority to contain, that delay in recording witness statement is always fatal to the prosecution case and when such delay is explained then delayed recording of witness statement will not aid an accused. Paragraph no.21 of the said judgement is being quoted as under:

"21. Insofar as the delay of 2/3 days in recording the statements of the eye-witnesses under Section 161 of the Criminal Procedure Code, 1973 (hereinafter referred to as the 'Code') is concerned, the said delay has been thoroughly explained by the witnesses, including the Investigating Officer, to the effect that there were riots in the area. On this score, the Investigating Officer was involved in maintaining law and order in the affected area. In the attendant facts and circumstances, the course of action adopted by the police cannot be termed unjustified and no adverse inference can be drawn on this count. No doubt that Court has laid down that an inordinate delay in recording witness statements can prove to be fatal for the prosecution, as pointed out by three learned Judges in *Ganesh Bhavan Patel v. State of Maharashtra*, (1978) 4 SCC 371; however, therein, the delay in recording statements of the material witnesses was accompanied by a delay in registering of the FIR and the surrounding circumstances, which led the Court to hold that there was a 'a cloud of suspicion on the credibility of the entire warp and woof of the prosecution story.' In *Jagjit Singh v. State of Punjab*, (2005) 3 SCC 689 and *State of A.P. v. S Swarnalatha*, (2009) 8 SCC 383, the Court held in favour of the convict/accused, as the inordinate delays therein could not be sufficiently explained. Delay of about 27 days, in a case where communal violence had broken out, was held not fatal, in *Lal Bahadur v. State (NCT of Delhi)*, (2013) 4 SCC 557. Delay of over 2 years in recording witness statements was deemed not fatal, when explained, in *Baldev Singh v. State of Punjab*, (2014) 12 SCC 473. Delay in recording witness statements was held not fatal per se in *Sunil Kumar v. State of Rajasthan*, (2005) 9 SCC 283 and *V K Mishra v. State of Uttarakhand*, (2015) 9 SCC 588. Delay in recording statements of witnesses was held to have cast serious doubts on the prosecution version in *Shahid Khan v. State of Rajasthan*, (2016) 4 SCC 96 and *Jafarudheen v. State of Kerala*, (2022) 8 SCC 440. It was held, in *Goutam Joardar v. State of W. B.*, (2022) 17 SCC 549, by a Coordinate Bench that 'there was some delay in recording the statements of the eyewitnesses concerned but mere factum of delay by itself cannot result in rejection of their testimonies.' Per our understanding, *Ganesh Bhavan Patel (supra)* is not an authority to contend that delay in recording witness statements is always fatal to the prosecution's case. Thus, stricto sensu, delay in recording witness statements, moreso when the said delay is explained, will not aid an

18. From the above quoted judgements regarding delayed recording of statements, it is clear that delay in recording the statement of witnesses is not always fatal to the prosecution case and other surrounding evidence should also be considered. If there is sufficient explanation for the delay in recording the statement then delayed recording of statements during investigation will not affect the prosecution's case and such explanation can be given during trial by the Investigating Officer or can be gathered from the facts of the case.

20. Considering the aforesaid submission and taking into account that it is not in dispute that as per the postmortem report, the cause of death is strangulation and other injuries are also present on the body of the deceased which shows that she resisted at the time of strangulation. It is also clear from the judgements relied upon by learned counsel for the first informant that fracture of hyoid bone is not always necessary in case of strangulation and the statement of the applicant's daughter as well as statement of applicant's sister's son, Utkarsh clearly establishes that at the time of incident, the applicant was present in the house. Therefore, Section 109 of BSA will be attracted as it is the case of murder and it is the applicant who has to explain but he failed to explain the same by simply taking the plea that he was not present in home. Therefore, this court is not inclined to release the applicant on bail.

22. The observations made in the bail application will not be binding on the trial court.

(2026) 4 ILRA 528
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 03.04.2026

BEFORE

THE HON'BLE ABDUL MOIN, J.
THE HON'BLE PRAMOD KUMAR SRIVASTAVA, J.

Criminal Misc. Writ Petition No. 2777 of 2026

Mohammad Mushfik (in Fir Mushfik Urf Sanju) ...Petitioner
Versus
State of U.P. & Ors. ...Respondents

Issue for Consideration

Issue pertains to whether the subsequent First Information Report registered against the petitioner on the basis of a fresh application u/s 173(4) of Bharatiya Nagarik Suraksha Sanhita, 2023 (corresponding to Section 156(3) Cr.P.C.) was legally maintainable when an earlier F.I.R. relating to Provident Fund irregularities had already been registered and a previous application u/s 156(3) Cr.P.C. had been dismissed for non-prosecution.

Headnotes

Bharatiya Nagarik Suraksha Sanhita, 2023 - s. 173(4) (Corresponding s. 156(3), Cr.PC) - Indian Penal Code, 1860 - ss. 419,420,467,468,471 - Earlier application dismissed - For non-prosecution - Fresh/second application filed - Allowed - Second FIR registered - Maintainability - Quashing of - Scope of - The petitioner challenged the subsequent F.I.R. dated 01.03.2026 registered u/ss. 419, 420, 467, 468 and 471 I.P.C. at Police Station Kotwali Nagar, District Gonda, alleging that the dispute was already covered by an earlier F.I.R. lodged in year 2020 concerning irregularities and misappropriation of Provident Fund amounts of employees of Municipal Corporation, Gonda - It was alleged that the earlier F.I.R. was lodged against the then Clerk of Municipal Corporation and a bank employee, and after investigation charge-sheet was filed - Subsequently, respondent No. 4, an employee of Municipal Corporation, alleged that amounts were withdrawn from her Provident Fund account by fabricating documents and making false entries - Her application u/s 156(3) Cr.P.C. was initially rejected, but after revision and dismissal of application for non-prosecution, a fresh application u/s 173(4) BNSS was filed, resulting in registration of impugned F.I.R. against the petitioner - The petitioner contended that the second F.I.R. was impermissible as the allegations were already investigated in earlier F.I.R. and the subsequent proceedings were liable to be quashed - The State opposed the writ petition, submitting that the subsequent F.I.R. related to a distinct grievance which was neither investigated nor considered in the earlier proceedings.

Held: In the instant case admittedly the first complaint u/s 156(3) Cr.P.C. was dismissed for non-prosecution on 29.07.2025 - The second application u/s 156(3) Cr.P.C. has been filed on 04.08.2025 - Perusal of the said complaint specifically indicates that disclosure was made by the complainant of having earlier filed an application u/s 156(3) Cr.P.C. but the same having been dismissed for non-prosecution on 29.07.2025 - Thus, the second complaint would clearly be maintainable keeping in view the law laid down by Hon'ble Supreme Court in the cases of *Subrata Choudhury (infra)* and *Samta Naidu (infra)* - Hence, the said ground is also rejected - Accordingly, writ petition dismissed.[Para 23, 24] (E-13)

Case Law Cited

Babubhai v. State of Gujarat and others (2010) 12 SCC 254; *Amitbhai Anil Chandra Shah v. Central Bureau of Investigation and another* (2013) 6 SCC 348; *T.T.Antony v. State of Kerala and others* (2001) 6 SCC 181; *State of Rajasthan v. Surendra Singh Rathore* 2025 SCC OnLine SC 358; *Upkar Singh v. Ved Prakash* (2004) 13 SCC 292 - referred to

Arnab Ranjan Goswami v. Union of India and others (2020) 14 SCC 12 - distinguished

Subrata Choudhury @ Santosh Choudhury v. The State Of Assam- 2024 INSC 834; *Samta Naidu and another vs. State of M.P. and another* - 2020(5) SCC 378 - followed

List of Acts

Bharatiya Nagarik Suraksha Sanhita, 2023; Indian Penal Code, 1860

List of Keywords

First Information Report; Indian Penal Code; Investigation; Charge-sheet; Misappropriation of Provident Fund; s. 156(3) Cr.PC.; Magistrate; Criminal Revision; Maintainability; Subsequent F.I.R.; Previous F.I.R.; Dismissed for want of non-prosecution; Withdrawn from Provident Fund Account; False entry; Fabricating forged

document; Account holder; Irregularities; Illegal transaction; Different incidence/crimes; No bar on second complaint with same facts; Writ petition dismissed.

Case Arising From

ORIGINAL JURISDICTION: Criminal Misc. Writ Petition No. - 2777 of 2026

From the First Information Report No. 189 of 2026 dated 01.03.2026 in Case Crime No. 29 of 2025, Police Station Kotwali Nagar, District Gonda.

Appearances for Parties

Advs. for the Petitioner(s):

Ashish Kumar Singh, Manish Vaish

Adv. for the Respondent(s):

G.A.

(Delivered by Hon'ble Abdul Moin, J.

&

Hon'ble Pramod Kumar Srivastava, J.)

1. Sri Anil K. Tripathi, Advocate has filed his Vakalatnama on behalf of the petitioner, which is taken on record. After arguing at some length he states that he would like the previous counsel Sri Manish Vaish to argue the matter and thus the 'baton' of argument has been passed on to Sri Manish Vaish.

2. We fail to understand this tactic on the part of lawyers of changing counsels mid way.

3. Be that as it may, we have heard Sri Manish Vaish, learned counsel for the petitioner and learned A.G.A. appearing for the State.

4. Under challenge is the First Information Report (hereinafter referred to as "F.I.R.") dated 01.03.2026 bearing First Information Report No. 189/2026, under Sections 419, 420, 467, 468 and 471 of Indian Penal Code (hereinafter referred to as "I.P.C."), Police Station Kotwali Nagar, District Gonda.

5. Learned counsel for the petitioner submits that in the year 2020, the Executive Officer of the Municipal Corporation, Gonda had lodged a F.I.R. dated 07.12.2020 bearing F.I.R. No. 955/2020, under Sections 419, 420, 467, 468, 471 and 409 I.P.C., Police Station Kotwali Nagar against Vipin Prakash Srivastava (Clerk of Municipal Corporation). After concluding the investigation, a charge-sheet had been filed against accused persons, namely, Vipin Prakash Srivastava and Ankit Srivastava (a bank employee). In the said F.I.R., irregularities regarding misappropriation of Provident Fund during the year 2017 were alleged.

6. Learned counsel for the petitioner further submits that respondent No. 4 moved an application under Section 156(3) Cr.P.C. before the Magistrate seeking registration of the F.I.R. against the petitioner, which was rejected vide order dated 25.06.2024 on the basis of preliminary

inquiry report. Being aggrieved by the order dated 25.06.2024, respondent No. 4 preferred a Criminal Revision No. 358/2024::Ayesha Begum Vs. Mohammad Mushfik @ Sanju . The revisional court admitted the revision and consequently quashed the order dated 25.06.2024 passed by learned Magistrate under Section 156(3) of Cr.P.C. and also directed the trial court to pass a fresh order after hearing both the parties. On the date fixed for hearing applicant/respondent No.4 did not appear before the learned Magistrate, therefore, application under Section 156(3) Cr.P.C. was dismissed for want of prosecution on 29.07.2025. Subsequently, applicant/respondent No. 4 filed another application under Section 173(4) of the BNSS, 2023 (Corresponding Section 156(3) of Cr.P.C.), resulting learned Magistrate vide order dated 04.02.2026 allowed the application and directed police for registration of the F.I.R. against the petitioner.

7. Learned counsel for the petitioner next submits that grievances of respondent No.4 had already been covered by previous F.I.R. lodged on 07.12.2020. He further submits that at the relevant time, the petitioner was posted as a Clerk and he had performed his duties properly, so that Provident Fund of the employees could be deposited in their Provident Fund Account and if some amount have been withdrawn in an authorized manner, then the matter rests between account holder and bank, for which the petitioner has no concern.

8. Learned counsel for the petitioner further submits that in the first inquiry report, no allegation was found against the petitioner; therefore, subsequent order dated 04.02.2026 passed by the learned Magistrate, without affording an opportunity of hearing to the petitioner, is illegal. Consequently, the subsequent F.I.R. is liable to be quashed, and the police be directed not to arrest the petitioner or take any coercive measures against him.

9. The other ground taken by learned counsel for the petitioner is that when the earlier application filed under Section 156(3) Cr.P.C. was dismissed for non-prosecution vide order dated 29.07.2025 the impugned FIR being lodged on the basis of second application filed under Section 156(3) Cr.P.C. (now Section 173(4) of BNSS 2023) by respondent no.4 was clearly not maintainable. Elaborating the same, the argument is that it was open for respondent no.4 to have applied for setting aside the order by which the earlier application under Section 156(3) Cr.P.C. had been dismissed for non-prosecution but the second application was clearly not maintainable and consequently the impugned FIR having been lodged on the basis of the same merits to be set-aside on this ground alone.

10. Elaborating the first ground, the argument is that where first F.I.R. was lodged and all the allegations were covered, then subsequent F.I.R. could not be lodged for the same incident. In support of his argument learned counsel for the petitioner has placed reliance on the judgment passed by Hon'ble Apex Court in the cases of **Arnab Ranjan Goswami Vs. Union of India and others (2020) 14 SCC 12**; **Babubhai Vs. State of Gujarat and others (2010) 12 SCC 254**; **Amitbhai AnilChandra Shah Vs. Central Bureau of Investigation and another (2013) 6 SCC 348** and **T.T.Antony Vs. State of Kerala and others (2001) 6 SCC 181**.

11. Per contra, learned A.G.A. vehemently contends that in the first F.I.R., the matter of opposite party No. 4 was neither investigated, nor she was afforded any opportunity to give her statement before the Investigating Officer. He further submits that a subsequent F.I.R. is not barred

where there is a different allegation and which is not a consequence of the first F.I.R.; otherwise, the ends of justice would be victimized. He also submits that no investigation was conducted with regard to the role of the present petitioner, and therefore, he could not take the shelter of the first F.I.R. Accordingly, the present petition is vague, misconceived, devoid of merit, and liable to be dismissed.

12. Having heard learned counsel for the parties, on perusal of material on record it reveals that earlier F.I.R. bearing F.I.R. No. 955/2020 was lodged by the complainant Vikas Sain (the then Executive Officer) against Vipin Prakash Srivastava under Sections 419, 420, 467, 468, 471 and 409 I.P.C., stating that accused Vipin Prakash Srivastava, who was posted Bill Clerk/Health Clerk was not producing complete records of the Provident Fund relating to the employees of Municipal Corporation, Gonda. Vipin Prakash Srivastava was suspended for tampering the records, thus there was no averment made in F.I.R. with regard to claim of the respondent No.4. It is admitted by the petitioner that the charge-sheet has been filed against Vipin Prakash Srivastava and Ankit Srivastava and the trial is going on.

13. Thereafter, respondent No.4-Smt Ayesha Begum moved an application under Section 156(3) of the Cr.P.C. before the Magistrate concerned, stating that she was posted as a Peon in the Municipal Corporation and out of her Provident Fund, different amounts were withdrawn on different dates, after making a false entry, fabricating the forged document and in the application the cheque period was stated 02.03.2017, 15.03.2027 and 16.03.2017 and thus Rs. 1,50,000/- was withdrawn from the Provident Fund account of the respondent No.4.

14. On the basis of a preliminary inquiry report submitted by the Bank of India, the application under Section 156(3) Cr.P.C. was dismissed on 25.06.2024. This order was assailed in Criminal Revision No. 358/2024, wherein the learned Additional Sessions Judge allowed the revision and directed the concerned Magistrate to pass a fresh order in accordance with law after hearing both parties. On the date fixed for hearing, applicant/respondent No.4 did not appear before the concerned court, hence application under Section 156(3) of the Cr.P.C. was dismissed for want of prosecution on 29.07.2025. Thereafter, Respondent No. 4 moved a fresh application under Section 173(4) of the BNSS (Corresponding Section 156(3) of Cr.P.C.) against the petitioner, disclosing that the previous application was dismissed due to her non-appearance. Upon hearing the said application, the learned Magistrate, vide order dated 04.02.2026, directed to the police for registration of an FIR against the accused persons. Consequently, FIR No. 189/2026 was registered at Police Station Kotwali Nagar, District Gonda, under Sections 419, 420, 467, 468, and 471 of the I.P.C.

15. Now question arises that whether subsequent impugned F.I.R. can be lodged?

16. In this regard in the case of **State of Rajasthan Vs. Surendra Singh Rathore 2025 SCC OnLine SC 358** Hon'ble Apex Court held that where the incident is separate, offences are similar or different or even where the subsequent crime is of such magnitude that it does not fall within the ambit and scope of the F.I.R. recorded first, then second F.I.R. could be registered.

In the above case Hon'ble Apex Court has cited the case of **Upkar Singh Vs. Ved Prakash (2004) 13 SCC 292**, wherein **T.T. Antony Vs. State of Kerala (2001) 6 SCC 181** has been discussed and it was observed in paragraph No. 23 of **Upkar Singh (supra)** as under:

“Be that as it may, if the law laid down by this Court in T.T. Antony case [(2001) 6 SCC 181: 2001 SCC (Cri) 10481 is to be accepted as holding that a second complaint in regard to the same incident filed as a counter-complaint is prohibited under the Code then, in our opinion, such conclusion would lead to serious consequences. This will be clear from the hypothetical example given hereinbelow i.e. if in regard to a crime committed by the real accused he takes the first opportunity to lodge a false complaint and the same is registered by the jurisdictional police then the aggrieved victim of such crime will be precluded from lodging a complaint giving his version of the incident in question, consequently he will be deprived of his legitimated right to bring the real accused to book. This cannot be the purport of the Code.”

17. In **Surendra Singh Rathore (supra)** Hon'ble Apex Court also discussed the case of **BabuBhai Vs. State of Gujarat (2010) 12 SCC 254** wherein it is observed that in case where the version in the second F.I.R. is different and they are in respect of the two different incidents/crimes, the second F.I.R. is permissible and referred to the observation made in paragraph No. 67 of **Nirmal Singh Kahlon Vs. State of Punjab (2009) 1 SCC 441** as under:

“67. The second FIR, in our opinion, would be maintainable not only because there were different versions but when new discovery is made on factual foundations. Discoveries may be made by the police authorities at a subsequent stage. Discovery about a larger conspiracy can also surface in another proceeding, as for example, in a case of this nature. If the police authorities did not make a fair investigation and left out conspiracy aspect of the matter from the purview of its investigation, in our opinion, as and when the same surfaced, it was open to the State and/or the High Court to direct investigation in respect of an offence which is distinct and separate from the one for which the FIR had already been lodged.”

After concluding the case laws referred in the said judgment Hon'ble Apex Court summarize at point 9.2, when the ambit of the two FIRs is different even though they may arise from the same set of circumstance, then registration of the second F.I.R. is permissible.

18. In view of the above, on perusal of the material available on record, it reflects that in the F.I.R. which was registered in the year 2020 there was no averment with regard to involvement of the petitioner in respect of claim of respondent No.4 relating to irregularities and illegal transaction of the Provident Fund of the respondent No.4, and she was not afforded opportunity of hearing during the course of investigation, thus allegation regarding her claim was not dealt with in previous F.I.R. and investigation. Apart from this, the subsequent F.I.R. is not consequence of the first F.I.R. although it is true that no fresh investigation on receipt of every information in respect of same cognizable offence can be conducted, but if two F.I.R.s pertain to two different incidence/crimes, second F.I.R. is permissible.

19. Learned counsel for the petitioner argues that in the matter of **Arnav Ranjan Goswami (supra)** there was multiple F.I.R. with regard to particular incident, therefore, Hon'ble Apex Court

quashed all the proceedings other than one F.I.R., but the fact of the present case is different from the case referred as in **Arnav Ranjan Goswami (supra)**, news and views was discussed and TV shows with respect to particular incident, which happened in Maharashtra and for the same incident several F.I.R.s in other region had been lodged, but in the case in hand, the Provident Fund was misappropriated through fabricating the documents and it was withdrawn in different time period without the knowledge of the holder of the account and for that account holder has made allegations against the petitioner of this case, whose role was not investigated in the earlier F.I.R. which was lodged in the year 2020, therefore, it cannot be said that subsequent F.I.R. could not be lodged pertaining to different check period, as observed by the Hon'ble Apex Court in the latest judgment of **Surender Singh Rathore (supra)** that if the claim of the petitioner was not investigated in previous F.I.R. then subsequent F.I.R. could be lodged for the same set of circumstances, therefore, the ground taken by the petitioner is not tenable.

20. As regards the ground that the second application under Section 156(3) Cr.P.C. was not maintainable, the earlier application under Section 156(3) Cr.P.C. having been dismissed for non-prosecution, the said ground is also found to be patently misconceived and is rejected.

21. In this regard, it would be apt to refer to the judgment of Hon'ble Supreme Court in the case of **Subrata Choudhury @ Santosh Choudhury vs The State Of Assam- 2024 INSC 834** wherein Hon'ble Supreme Court has held as under:-

“24. In Samta Naidu v. State of Madhya Pradesh, this Court considered all the relevant decisions including Pramatha Nath Talukdar v. Saroj Ranjan Sarkar, Jatinder Singh v. Ranjit Kaur, Poonam Chand Jain v. Farzu, and Shivshankar Singh's case (supra) in regard to the moot question involved, in paragraphs 12 to 12.3, 12.5, 13 and 16 thereunder. The said paragraphs, insofar as they are relevant to this case, are as under:

12. The law declared in Talukdar has consistently been followed, for instance, in Bindeshwari Prasad Singh v. Kali Singh it was observed : (Bindeshwari Prasad Singh case, SCC p. 59, para 4)

“4. ... it is now well settled that a second complaint can lie only on fresh facts or even on the previous facts only if a special case is made out.”

(emphasis supplied)

The view taken in Bindeshwari was followed in A.S. Gauraya v. S.N. Thakur.

12.1. In Jatinder Singh v. Ranjit Kaur the issue was whether the first complaint having been dismissed for default, could the second complaint be maintained. The matter was considered as under : (SCC pp. 572-74, paras 9 & 12)

“9. There is no provision in the Code or in any other statute which debars a complainant from preferring a second complaint on the same allegations if the first complaint did not result in a conviction or acquittal or even discharge. Section 300 of the Code, which debars a second trial, has taken care to explain that "the dismissal of a complaint, or the discharge of the accused, is not an acquittal for the purposes of this section". However, when a Magistrate conducts an inquiry under Section 202 of the Code and dismisses the complaint on merits, a second complaint on the same facts cannot be made unless there are very exceptional circumstances. Even so, a second

complaint is permissible depending upon how the complaint happened to be dismissed at the first instance.

12. If the dismissal of the complaint was not on merit but on default of the complainant to be present there is no bar in the complainant moving the Magistrate again with a second complaint on the same facts. But if the dismissal of the complaint under Section 203 of the Code was on merits the position could be different. There appeared a difference of opinion earlier as to whether a second complaint could have been filed when the dismissal was under Section 203. The controversy was settled by this Court in *Pramatha Nath Talukdar v. Saroj Ranjan Sarkar*, (1962) 1 Cri LJ 770. A majority of Judges of the three-Judge Bench held thus : (AIR p. 899, para 48)

“48. ... An order of dismissal under Section 203, Criminal Procedure Code, is, however, no bar to the entertainment of a second complaint on the same facts but it will be entertained only in exceptional circumstances, e.g., where the previous order was passed on an incomplete record or on a misunderstanding of the nature of the complaint or it was manifestly absurd, unjust or foolish or where new facts which could not, with reasonable diligence, have been brought on the record in the previous proceedings, have been adduced. It cannot be said to be in the interest of justice that after a decision has been given against the complainant upon a full consideration of his case, he or any other person should be given another opportunity to have his complaint inquired into.”

(emphasis supplied)

S.K. Das, J. (as he then was) while dissenting from the said majority view had taken the stand that right of a complainant to file a second complaint would not be inhibited even by such considerations. But at any rate the majority view is that the second complaint would be maintainable if the dismissal of the first complaint was not on merits.

(emphasis supplied)

12.2. In *Ranvir Singh v. State of Haryana*, the issue was set out in para 23 of the decision and the discussion that followed thereafter was as under : (SCC p. 647, paras 23-26)

“23. In the instant case, the question is narrowed down further as to whether such a second complaint would be maintainable when the earlier one had not been dismissed on merits, but for the failure of the complainant to put in the process fees for effecting service.

24. The answer has been provided firstly in *Pramatha Nath Talukdar* case, wherein this Court had held that even if a complaint was dismissed under Section 203 CrPC, a second complaint would still lie under exceptional circumstances, indicated hereinbefore. The said view has been consistently upheld in subsequent decisions of this Court. Of course, the question of making a prayer for recalling the order of dismissal would not be maintainable before the learned Magistrate in view of Section 362 CrPC, but such is not the case in these special leave petitions.

25. In the present cases, neither have the complaints been dismissed on merit nor have they been dismissed at the stage of Section 203 CrPC. On the other hand, only on being satisfied of a prima facie case, the learned Magistrate had issued process on the complaint.

26. *The said situation is mainly covered by the decision of this Court in Jatinder Singh case, wherein the decision in Pramatha Nath Talukdar case was also taken into consideration and it was categorically observed that in the absence of any provision in the Code barring a second complaint being filed on the same allegation, there would be no bar to a second complaint being filed on the same facts if the first complaint did not result in the conviction or acquittal or even discharge of the accused, and if the dismissal was not on merit but on account of a default on the part of the complainant.*"

(Underline supplied)

12.3. In *Poonam Chand Jain v. Fazru* the issue whether after the dismissal of the earlier complaint had attained finality, could a second complaint be maintained on identical facts was considered as under : (SCC pp. 634-36, paras 14-20)

14. In the background of these facts, the question which crops up for determination by this Court is whether after an order of dismissal of complaint attained finality, the complainant can file another complaint on almost identical facts without disclosing in the second complaint the fact of either filing of the first complaint or its dismissal.

15. Almost similar questions came up for consideration before this Court in *Pramatha Nath Talukdar v. Saroj Ranjan Sarkar*. The majority judgment in *Pramatha Nath* was delivered by Kapur, J. His Lordship held that an order of dismissal under Section 203 of the Criminal Procedure Code (for short "the Code") is, however, no bar to the entertainment of a second complaint on the same facts but it can be entertained only in exceptional circumstances. This Court explained the exceptional circumstances as:

- (a) where the previous order was passed on incomplete record, or
- (b) on a misunderstanding of the nature of the complaint, or
- (c) the order which was passed was manifestly absurd, unjust or foolish, or
- (d) where new facts which could not, with reasonable diligence, have been brought on the record in the previous proceedings.

16. This Court in *Pramatha Nath* made it very clear that interest of justice cannot permit that after a decision has been given on a complaint upon full consideration of the case, the complainant should be given another opportunity to have the complaint enquired into again. In para 50 of the judgment the majority judgment of this Court opined that fresh evidence or fresh facts must be such which could not with reasonable diligence have been brought on record. This Court very clearly held that it cannot be settled law which permits the complainant to place some evidence before the Magistrate which are in his possession and then if the complaint is dismissed adduce some more evidence. According to this Court, such a course is not permitted on a correct view of the law. (para 50, p. 899)

17. This question again came up for consideration before this Court in *Jatinder Singh v. Ranjit Kaur*. There also this Court by relying on the principle in *Pramatha Nath* held that here is no provision in the Code or in any other statute which debar a complainant from filing a second complaint on the same allegation as in the first complaint. But this Court added when a Magistrate conducts an enquiry under Section 202 of the Code and dismisses a complaint on merits a second complaint on the same facts could not be made unless there are "exceptional circumstances". This Court held in para 12, if the dismissal of the first complaint is not on merit but the dismissal is for the default of the complainant then there is no bar in filing a second complaint on the same facts.

However, if the dismissal of the complaint under Section 203 of the Code was on merit the position will be different.

19. Again in Mahesh Chand v. B. Janardhan Reddy, a three-Judge Bench of this Court considered this question in para 19 at p. 740 of the Report. The learned Judges of this Court held that a second complaint is not completely barred nor is there any statutory bar in filing a second complaint on the same facts in a case where a previous complaint was dismissed without assigning any reason. The Magistrate under Section 204 of the Code can take cognizance of an offence and issue process if there is sufficient ground for proceeding. In Mahesh Chand this Court relied on the ratio in Pramatha and held if the first complaint had been dismissed the second complaint can be entertained only in exceptional circumstances and thereafter the exceptional circumstances pointed out in Pramatha were reiterated. Therefore, this Court holds that the ratio in Pramatha Nath is still holding the field. The same principle has been reiterated once again by this Court in Hira Lal v. State of U.P. In para 14 of the judgment this Court expressly quoted the ratio in Mahesh Chand discussed hereinabove.

20. Following the aforesaid principles which are more or less settled and are holding the field since 1962 and have been repeatedly followed by this Court, we are of the view that the second complaint in this case was on almost identical facts which was raised in the first complaint and which was dismissed on merits. So the second complaint is not maintainable. This Court finds that the core of both the complaints is the same. Nothing has been disclosed in the second complaint which is substantially new and not disclosed in first complaint. No case is made out that even after the exercise of due diligence the facts alleged in the second complaint were not within the knowledge of the first complainant. In fact, such a case could not be made out since the facts in both the complaints are almost identical. Therefore, the second complaint is not covered within exceptional circumstances explained in Pramatha Nath. In that view of the matter the second complaint in the facts of this case, cannot be entertained."

(emphasis supplied)

12.4.....

12.5. In Ravinder Singh v. Sukhbir the matter was considered from the standpoint whether a frustrated litigant be permitted to give vent to his frustration and whether a person be permitted to unleash vendetta to harass any person needlessly. The discussion was as under : (SCC pp. 258-60, paras 26-27 & 33)

"26. While considering the issue at hand in Shivshankar Singh v. State of Bihar this Court, after considering its earlier judgments in Pramatha Nath Talukdar v. Saroj Ranjan Sarkar, Jatinder Singh v. Ranjit Kaur, Mahesh Chand v. B. Janardhan Reddy and Poonam Chand Jain v. Fazru held : (Shivshankar Singh case, SCC p. 136, para 18)

"18. ... it is evident that the law does not prohibit filing or entertaining of the second complaint even on the same facts provided the earlier complaint has been decided on the basis of insufficient material or the order has been passed without understanding the nature of the complaint or the complete facts could not be placed before the court or where the complainant came to know certain facts after disposal of the first complaint which could have tilted the balance in his favour. However, second complaint would not be maintainable wherein the earlier complaint has been disposed of on full consideration of the case of the complainant on merit."

27. In Chandrapal Singh v. Maharaj Singh this Court has held that it is equally true that chagrined and frustrated litigants should not be permitted to give vent to their frustration by

enabling them to invoke the jurisdiction of criminal courts in a cheap manner. In such a fact situation, the court must not hesitate to quash criminal proceedings.

33. *The High Court has dealt with the issue involved herein and the matter stood closed at the instance of Respondent 1 himself. Therefore, there can be no justification whatsoever to launch criminal prosecution on that basis afresh. The inherent power of the court in dealing with an extraordinary situation is in the larger interest of administration of justice and for preventing manifest injustice being done. Thus, it is a judicial obligation on the court to undo a wrong in course of administration of justice and to prevent continuation of unnecessary judicial process. It may be so necessary to curb the menace of criminal prosecution as an instrument of operation of needless harassment. A person cannot be permitted to unleash vendetta to harass any person needlessly. Ex debito justitiae is inbuilt in the inherent power of the court and the whole idea is to do real, complete and substantial justice for which the courts exist. Thus, it becomes the paramount duty of the court to protect an apparently innocent person, not to be subjected to prosecution on the basis of wholly untenable complaint."*

25. *After referring to the aforesaid decisions in Samta Naidu's case (supra) this Court further, held in Paragraph 13 thus:-*

"13. The application of the principles laid down in Talukdar in Jatinder Singh shows that "a second complaint is permissible depending upon how the complaint happened to be dismissed at the first instance". It was further laid down that: (Jatinder Singh case, SCC p. 573, para 12)

"12. If the dismissal of the complaint was not on merit but on default of the complainant to be present there is no bar in the complainant moving the Magistrate again with a second complaint on the same facts. But if the dismissal of the complaint under Section 203 of the Code was on merits the position could be different."

"To similar effect are the conclusions in Ranvir Singh and Poonam Chand Jain. Para 16 of Poonam Chand Jain also considered the effect of para 50 of the majority judgment in Talukdar. These cases, therefore, show that if the earlier disposal of the complaint was on merits and in a manner known to law, the second complaint on "almost identical facts" which were raised in the first complaint would not be maintainable. What has been laid down is that "if the core of both the complaints is same", the second complaint ought not to be entertained."

(underline supplied)

26. *It was further held in paragraph 16 of the decision in Samta Naidu's case (supra) thus:-*

"16. As against the facts in Shivshankar, the present case stands on a different footing. There was no legal infirmity in the first complaint filed in the present matter. The complaint was filed more than a year after the sale of the vehicle which meant the complainant had reasonable time at his disposal. The earlier complaint was dismissed after the Judicial Magistrate found that no prima facie case was made out; the earlier complaint was not disposed of on any technical ground; the material adverted to in the second complaint was only in the nature of supporting material; and the material relied upon in the second complaint was not such which could not have been procured earlier. Pertinently, the core allegations in both the complaints were identical. In

Uttar Pradesh Prohibition of Unlawful Conversion of Religion Act, 2021 - ss. 3, 5(1) - Bharatiya Nagarik Suraksha Sanhita, 2023 - u/ss. 180 and 183 - Bharatiya Sakshya Adhiniyam, 2023 - s. 63(4)(c) - Unlawful conversion - Attempted conversion - FIR - Quashing of - Victim statement - CCTV footage - Case diary - Investigation - Mala fide intention - Prima facie case - The petitioners approached the High Court seeking quashing of F.I.R. dated 22.01.2026 registered at Police Station Bilari, District Moradabad, u/ss. 3 and 5(1) of Uttar Pradesh Prohibition of Unlawful Conversion of Religion Act, 2021 - The F.I.R. was lodged by brother of victim alleging that the victim, a Class XII student, was being compelled by accused persons to wear a veil (burqa) and to adopt Islam by exerting influence and inducement - The petitioners contended that the allegations were vague, omnibus and based on suspicion, without disclosing any specific date, time or place of alleged acts - It was further argued that the F.I.R. was lodged with mala fide intention and for purpose of harassment - During investigation, the statements of victim were examined by Court -The victim stated that the accused persons had compelled her to wear a veil and attempted to persuade her to adopt Islam - The State/respondents argued that it is a clear case for alleged offence and requires investigation by police.

Held: The Court notice from the Case Diary that the victim was caught on a Closed-Circuit Television (CCTV) camera, located in an alley, where, she was forced to wear the veil (burqa) by the petitioner and the other co-accused, including petitioner who has withdrawn her writ petition - The CCTV camera was installed on the premises of one Rajeev son of Mahipal - He had taken the data from the recorder into his mobile phone and handed over the device to Police, along with a certificate dated 24.01.2026, u/s. 63(4)(c) of BSA, 2023, as the person In-charge of device, where the video was recorded - There are lots of material in the Case Diary, where the investigation still appears to be under progress - The details regarding the prosecution that appear and the materials collected during investigation prima facie disclose a case that requires to be thoroughly investigated - The submissions advanced by learned Counsel for petitioners that it is a mala fide FIR, is absolutely not borne out by the record - There is no FIR earlier lodged that it was the third respondent who was stalking or harassing petitioner or had proposed to her - Quite apart, the stand of victim before the learned Judicial Magistrate cannot be trashed - It carries all the necessary facts, which would prima facie attract the provisions of ss. 3 and 5(1) of Act of 2021 - Whether the petitioners' acts constitute allurement or undue influence are questions premature to be examined in a petition to quash the FIR - Accordingly, both the petitions dismissed, interim order vacated. [Paras 14, 16 to 19] (E-13)

Case Law Cited

Nil

List of Acts

Uttar Pradesh Prohibition of Unlawful Conversion of Religion Act, 2021; Bharatiya Nagarik Suraksha Sanhita, 2023; Bharatiya Sakshya Adhiniyam, 2023

List of Keywords

First Information Report; Uttar Pradesh Prohibition of Unlawful Conversion of Religion Act, 2021; Bharatiya Nagarik Suraksha Sanhita, 2023; Bharatiya Sakshya Adhiniyam, 2023; Unlawful conversion; Attempted conversion; General and omnibus allegations of conversion; Date, time, place not specified; Principal of College; Concocted story; Vengeance; Psychological disturbance; Mala Fide; Case Diary; Statement of victim; Violation of provision of Act, 2021; Coaching classes; Compel to wear burqa and accept Islam; Conspiracy; CCTV camera; Prima facie disclose a case that requires to be thoroughly investigated; Stalking; Harassing; Undue Influence; Allurement; Interdict investigation; Interim stay vacated; Writ petitions dismissed.

Case Arising From

ORIGINAL JURISDICTION: Criminal Misc. Writ Petition No. - 3203 of 2026

Connected with other matter

(Criminal Misc. Writ Petition No. - 4128 of 2026)

From the First Information Report dated 22.01.2026 in Case Crime No. 21 of 2026, Police Station Bilari, District Moradabad.

Appearances for Parties

Adv. for the Petitioner(s):

Shiv Shankar Mishra

Advs. for the Respondent(s):

Chandra Vijai Singh, Shashi Shekhar Tiwari

(Delivered by Hon'ble J.J. Munir, J.)

1. This judgment will dispose of the motion to admit the present Criminal Misc. Writ Petition and the connected Criminal Misc. Writ Petition No. 4128 of 2026 to hearing, both of which arise out of a common First Information Report giving rise to crimes, that are being investigated together.

2. This writ petition was initially instituted by two petitioners, to wit, Aleena alias Aleena Parveen and Shabiya, seeking to quash the First Information Report¹ dated 22.01.2026, giving rise to Case Crime No. 21 of 2006, under Sections 3 and 5(1) of The Uttar Pradesh Prohibition of Unlawful Conversion of Religion Act, 2012, Police Station Bilari, District Moradabad. The connected writ petition, being Criminal Misc. Writ Petition No. 4128 of 2026, also impugns the same FIR.

3. When this petition came up first before a Division Bench of this Court comprising Hon'ble Rajiv Gupta and Hon'ble Achal Sachdev, JJ., the first petitioner, Aleena alias Aleena Parveen withdrew the writ petition, whereas, the second petitioner, Shabiya pressed it. Their Lordships, vide order dated 12.02.2026, while dismissing this writ petition at the instance of Aleena alias Aleena Parveen as withdrawn, issued notice pending admission to the respondents and granted stay of arrest to the second petitioner, Shabiya. The connected writ petition came up before us on 30.03.2026. It was connected to the leading petition, albeit with an incorrect number, later on corrected, wherein, no interim order was passed. Both the petitions have now come up for admission.

4. Heard Mr. Shiv Shanker Mishra, learned Counsel for the petitioner in support of the motion to admit this petition to hearing, Mr. Chandra Vijai Singh, learned Counsel appearing for respondent no. 3 and Mr. Shashi Shekhar Tiwari, learned Additional Government Advocate appearing on behalf of the State. Mr. Tiwari has placed the Case Diary before us, but not filed any counter affidavit.

5. Mr. Ashutosh Upadhyay, Advocate, has been heard in support of the connected writ petition, where, Mr. Chandra Vijai Singh, Advocate has appeared on behalf of respondent no. 3, whereas Mr. Shashi Shekhar Tiwari has been heard on behalf of the State. Here too, the Case Diary has been carefully perused.

6. According to FIR, lodged by respondent no. 3, who is the brother of the victim, it is said that his sister is a student of Class XII, who goes to take tuitions to the Shahukunj Colony, Moradabad. At the tuition classes, other girls also read along with the victim. These girls are Muslims, and they, by alluring his sister, compel her to wear a veil (burqa). They also compel her to accept their religion, that is to say, Islam. Amongst these girls, one is Aleena alias Aleena Parveen, a resident of Village Rustamnagar, Sahaspur, Bilari, Moradabad, besides four other students, whose names are Malishka, Shabiya, Riyasha and Jauhara. The informant says, in the closing lines, that he suspects some deep conspiracy behind this activity, which should be thoroughly investigated. The said FIR was registered on 22.01.2026 at 11:30 ante meridiem at Police Station Bilari, Moradabad, under Sections 3 and 5(1) of the Act of 2021.

7. Learned Counsel for the petitioners argues that the impugned FIR carries general and omnibus allegations of conversion against the petitioners, without specifying any date, time and place of specific acts done to that end. It is urged that the impugned FIR is based on the first informant's imagination. It is for this reason that he has not mentioned details of the name and age of the accused.

8. It is urged by learned Counsel for the petitioner in the leading petition that respondent no. 3 was harassing Aleena alias Aleena Parveen and used to follow her out of college. On 17.01.2026, the said respondent stopped her and proposed. When this happened, the petitioner as well as the other students, who are co-accused, informed the third respondent's sister and also made a complaint to the Principal of the College. It is for this reason that the third respondent has lodged the impugned FIR with a concocted story, that has not a grain of truth to it. It has been lodged for the sole purpose of wreaking vengeance. Learned Counsel for the petitioner also points out that the petitioner is a young girl, aged just 18 years and a student of Class XII. She had to write her Class XII examinations, that would commence on 18.01.2026. She is unable to concentrate on her studies on account of the mammoth distraction, which this FIR brings in the form of severe psychological disturbance. It is particularly emphasised that there has been no conversion or attempted conversion of the victim to Islam, and the impugned FIR has been lodged mala fide.

9. Mr. Ashutosh Upadhyay, learned Counsel for the petitioner in the connected matter has pressed his motion on similar grounds and added that pending admission, co-accused Shabiya has been granted interim stay of arrest. He further argues that the thrust of the allegations are against co-accused Aleena alias Aleena Parveen, who has not pressed the petition, and not against the petitioner in this matter or the others. He has drawn our attention to the statement of the victim, Kumari Mahima, recorded under Section 180 of the Bharatiya Nagarik Suraksha Sanhita, 2023 to submit that she has said that she is friends with Aleena, and the others, that is to say, the petitioner here, besides the three others, are Aleena's friends. Learned Counsel for the petitioner has endeavoured to impress that whatever was the act, that led to the crime being registered, is referable to Aleena alone, and not the petitioner here.

10. Mr. Chandra Vijai Singh, learned Counsel for respondent no. 3 in both the petitions and Mr. Shashi Shekhar Tiwari, learned Additional Government Advocate appearing for the State-respondents have opposed the motion to admit the writ petitions to hearing. They submit that a clear case for the offence charged is disclosed, which requires thorough investigation by the Police.

11. Since the FIR giving rise to the present crime alleges an attempted unlawful conversion of the victim, Kumari Mahima, in violation of the provision of Sections 3 and 5(1) of the Act of 2021, with a very brief description of the occurrence, we summoned the Case Diary and perused the same.

12. The statement of the victim recorded by the Police under Section 180 BNSS, and that before the learned Judicial Magistrate under Section 183 BNSS have been perused by us. We think that the victim's statement under Sections 180 and 183 BNSS are essential in order to decide whether a case worth admitting the writ petitions and granting interim stay of arrest pending hearing of the writ petitions or quashing the FIR is made out. The victim, in her statement under Section 180 BNSS, says that she is a student of Class XII. The incident is one dated 20.12.2025, when she, along with her five friends - all Muslims, went to attend their coaching classes at Shahukunj Colony, located in Town Bilai, Moradabad. On the fateful day, they had finished attending classes at one coaching center, and the other had a holiday. Her friends invited the victim over to some snacks in a hotel. Aleena, according to the victim, had brought along a veil (burqa). Aleena asked the victim to wear the burqa, which she declined. Thereupon, all the accused forced it down her neck. Then, they said that somebody was approaching and pushed her behind a tree. They then made her wear the burqa all the way. All the accused took her along for a meal/refreshment. It is also stated by the victim, in the statement under Section 180 BNSS, that all these friends of hers bring along non-vegetarian food and allure her to eat it. When she refuses to partake of it, they tell her to eat the gravy. It is next said that Aleena asks her to adopt Islam as her faith. The victim has said that Aleena was her friend, and the other co-accused were friends of Aleena. Their names were Zehra, Rimsha, Shabiya and Malishka. The victim, in her statement under Section 183 BNSS before the learned Judicial Magistrate, has substantially said that on 20.12.2025, there was a holiday for their coaching institute. Her friend Aleena, along with her friends, whom Aleena wanted to be the victim's friends as well, made her wear a veil (burqa). All of them then proceeded to a certain Anand Restaurant and ate Spring Roll, Chowmein, besides partaking of Pepsi Cola. The five girls had earlier also told her that their religion was good. The victim stated that she did not at all tell her mother and father about it, because Aleena had forbidden her from doing so. The victim said that Aleena was apparently trying to brainwash her. She said that she had lost her faculty to think. The victim has candidly said that they never asked her to recite the kalma or fast. Aleena would plan, together with the other four co-accused, and they would make the victim say that their religion was good. They would tell her that Quran can be read in forty days. They would also tell her that there was freedom in their religion. After wearing the veil (burqa), they could go anywhere. It is then said in the statement that the victim told them that she too had complete freedom at home, except indulging in any wrongdoing.

13. On 20.12.2025, Aleena went along with the victim and brought a veil (naqab) and a stole. She had no money to pay for it, and therefore, asked the victim to pay, which she did, for friendship's sake. She asked the victim to place the veil in her own bag, which she would take back from the victim the following day. They took the veil from the victim, together with the stole and tied it to her face. The victim protested, but they would not listen. After making her wear the veil, they took her to restaurant. The victim has said that she wants action to be taken against the accused for attempting to convert her.

14. We notice from the Case Diary that the victim was caught on a Closed-Circuit Television (CCTV) camera, located in an alley, where, she was forced to wear the veil (burqa) by the petitioner and the other co-accused, including Aleena, who has withdrawn her writ petition. The CCTV camera was installed on the premises of one Rajeev son of Mahipal. He had taken the data from the recorder into his mobile phone and handed over the device to the Police, along with a certificate dated 24.01.2026, under Sections 63(4)(c) of the Bharatiya Sakshya Adhiniyam, 2023, as the person In-charge of the device, where the video was recorded. There are lots of material in the Case Diary, where the investigation still appears to be under progress. The details regarding the prosecution that appear and the materials collected during investigation prima facie disclose a case that requires to be thoroughly investigated. The submissions advanced by learned Counsel for the petitioners that it is a mala fide FIR, is absolutely not borne out by the record. There is no FIR earlier lodged that it was the third respondent who was stalking or harassing Aleena or had proposed to her. Quite apart, the stand of the victim before the learned Judicial Magistrate cannot be trashed. It carries all the necessary facts, which would prima facie attract the provisions of Section 3 and 5(1) of the Act of 2021.

15. We must be alive to the situation that the Act of 2021 was enacted to curtail an emergent situation in society, where, certain persons go about not professing or propagating their religion, but thrusting it upon others in the belief which somehow makes it to their mind the religion they believe in must be followed by others. If this kind of a trend comes to be seen amongst young people, it is all the more disturbing. This is time in their lives when they should be thinking more towards developing their skills in different fields of education and dedicate themselves in the service of the society and the nation. The Act of 2021 was brought to curtail this emergent mischief, which is heard from different quarters in the country these days, and, of which, we must take judicial notice. A statute, that is enacted to curtail an emergent mischief, if stopped in its tracks at the very early stages of its enforcement, would bog down the statute and frustrate its purpose. This does not mean that false implications under a new statute are to be encouraged, but, at the same time, the purpose, for which the statute has been enacted, cannot be subverted by snuffing out prosecutions brought on tangible materials at the threshold.

16. A look at Section 3 of the Act of 2021 shows that there could be multiple grounds, on the foot of which, conversion from one religion to another by others becomes a crime. Amongst them, figures undue influence and allurement. Allurement has been defined under Section 2(a) of the Act of 2021, under its three sub-clauses in the widest terms. Whether the petitioners' acts constitute allurement or undue influence are questions premature to be examined in a petition to quash the FIR. As investigation proceeds and material surfaces, it would have to be seen in the first instance by the investigator, and if one or more of the accused are charge-sheeted, by the Court, whether a case is ultimately established.

17. In the totality of circumstances, we do not find it to be a fit case where we ought interdict investigation and quash the impugned FIR.

18. In the result, both the petitions **fail** and are **dismissed**.

19. The interim order dated 12.02.2026 passed in the present petition is **vacated**.

20. The Registrar (Compliance) is directed to communicate this order to the Principal Secretary (Home), Government of Uttar Pradesh, Lucknow through the learned Chief Judicial Magistrate, Lucknow. Let this order be also communicated to the Senior Superintendent of Police, Moradabad and the Station House Officer, Police Station Bilari, Moradabad, both through the learned Chief Judicial Magistrate, Moradabad.

(2026) 4 ILRA 545
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 08.04.2026

BEFORE

THE HON'BLE SIDDHARTHA VARMA, J.
THE HON'BLE JAI KRISHNA UPADHYAY, J.

Jail Appeal No. 188 of 2021

Baba Vishwakarma
State of U.P.

...Appellant
Versus
...Respondent

Issue for Consideration

Matter pertains to whether the prosecution was able to establish guilt of the appellant for the offence under S.304 IPC beyond reasonable doubt on the basis of testimony of PW-1 and medical evidence and whether the sentence of life imprisonment awarded under S.304 (Part-I) IPC required modification in view of the fact that no minimum sentence has been provided for the offence and having regard to the reformatory theory of punishment and doctrine of proportionality. (Paras 20, 22, 24, 32-34)

Headnotes

Indian Penal Code, 1860 - S.304 - PW-1 is the mother of the deceased and an eye witness of the occurrence - the incident occurred at about 8:00 p.m. in the night, when only PW-1, her daughter (deceased) and the accused were present - PW-1 is the only possible eye witness - there are no material contradictions in her testimony which go to the root of the prosecution case and if some differences appear, they are minor in nature and same are bound to occur in criminal cases - even if there is only one eyewitness, conviction can be based on such testimony provided it is trustworthy and reliable - incident took place on the date, time and place mentioned in the FIR - deceased died due to the injuries caused by the appellant and this fact finds support from medical evidence - prosecution was able to establish guilt of appellant for the aforesaid offence beyond reasonable doubt. (Para 22)

Indian Penal Code, 1860 - S.304 - Allegation regarding the character of PW-1 - accused-appellant has not produced any evidence in support of this contention - argument remains unproved - even if the allegation regarding the character of PW-1 is accepted, it would in no way affect the merits of the case. (Para 21)

Indian Penal Code, 1860 - S.304 - Punishment for culpable homicide not amounting to murder - S.304 IPC does not prescribe any minimum punishment - discretion lies with the Court to award a sentence proportionate to the circumstances of the case - sentencing is not rigid but responsive to the gravity of the offence, the intention behind it, and the mitigating or aggravating factors present - philosophy behind it is to distinguish the acts committed with intention to cause death and those committed without such intention, thereby tailoring punishment to culpability. (Para 24)

Indian Penal Code, 1860 - S.304 (Part-I) - Quantum of sentence - reformatory theory of punishment - principle of proportionality - appropriate sentence should be awarded after giving due consideration to the facts and circumstances of each case, nature of the offence and the manner in which it was executed or committed - punishment should be proportionate to the gravity of the offence - sentence awarded by learned trial court for life term is very harsh keeping in view the entirety of facts and circumstances of the case and gravity of offence - appellant is in jail for the last more than twelve years - sentence of life imprisonment converted into sentence already undergone. (Paras 29, 30, 32-34)

Held: So far as the allegation regarding the character of PW-1 is concerned, the accused-appellant has not produced any evidence in support of this contention and therefore this argument remains unproved - Even if the allegation regarding the character of PW-1 is accepted, it would in no way affect the merits of the case - On careful scrutiny of the testimony of PW-1, there are no material contradictions in her testimony which go to the root of the prosecution case and if some differences appear, they are minor in nature and same are bound to occur in criminal cases - Even if there is only one eyewitness, conviction can be based on such testimony provided it is trustworthy and reliable - Incident took place on the date, time and place mentioned in the FIR - Deceased died due to the injuries caused by the appellant and this fact finds support from medical evidence - Prosecution was able to establish guilt of appellant for the aforesaid offence beyond reasonable doubt - Findings recorded by trial court against the appellant in the impugned judgment and order are based on correct appreciation of fact and evidence and same do not warrant interference by this Court - S.304 IPC does not prescribe any minimum punishment - The discretion lies with the Court to award a sentence proportionate to the circumstances of the case - Appropriate sentence should be awarded after giving due consideration to the facts and circumstances of each case, nature of the offence and the manner in which it was executed or committed - The measure of punishment should be proportionate to the gravity of the offence - The paramount principle that should be the guiding laser beam is that the punishment should be proportionate to the gravity of the offence - Sentence awarded by learned trial court for life term is very harsh keeping in view the entirety of facts and circumstances of the case and gravity of offence - Undue harshness should be avoided taking into account the reformatory approach underlying in criminal justice system - No accused person is incapable of being reformed and, therefore, all measures should be applied in order to bring them in the social stream - Keeping in view the reformatory theory of punishment and principle of proportionality, the sentence of life imprisonment awarded under S.304 (Part-I) IPC by learned trial Court to the appellant is too harsh and severe - The appellant is in jail for the last more than twelve years - Since the appellant has already served-out more than twelve years jail sentence, the sentence of life imprisonment under S.304 (Part-I) IPC is converted into the sentence already undergone, which would meet the ends of justice, subject to deposit of the fine amount imposed by the trial court - appeal partially allowed. (Paras 21, 22, 24, 29, 30, 32-34) (E-7)

Case Law Cited

Mohd. Giasuddin Vs. State of AP, **AIR 1977 SC 1926**; *Deo Narain Mandal Vs. State of UP*, **(2004) 7 SCC 257**; *Ravada Sasikala vs. State of A.P.*, **AIR 2017 SC 1166**;
Jameel vs State of UP, **(2010) 12 SCC 532**; *Guru Basavraj vs. State of Karnatak*, **(2012) 8 SCC 734**;
Sumer Singh vs. Surajbhan Singh and others, **(2014) 7 SCC 323**;
State of Punjab vs. Bawa Singh, **(2015) 3 SCC 441**; *Raj Bala vs. State of Haryana*, **(2016) 1 SCC 463**;
Sham Sunder vs. Puran, **(1990) 4 SCC 731**; *M.P. vs. Saleem*, **(2005) 5 SCC 554**; *Ravji vs. State of Rajasthan*, **(1996) 2 SCC 175**; *G. V. Siddaramesh Versus State of Karnataka*, **2010 (87) AIC 43 (SC)**.

List of Acts

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

List of Keywords

Jail Appeal; S.304 IPC; culpable homicide not amounting to murder; eye witness; medical evidence; ante mortem injuries; coma; character of PW-1; material contradictions; guilt of appellant; punishment; life imprisonment; quantum of sentence; theories of punishment; reformatory theory of punishment; principle of proportionality; gravity of the offence; sentence already undergone; ends of justice;

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Jail Appeal No. 188 of 2021 against judgment and order dated 2.8.2019 passed by the Additional District & Sessions Judge, Court No.5, Allahabad in Session Trial No. 366 of 2014, case crime no. 421 of 2013 convicting and sentencing the appellant for the offence punishable under S.304 IPC.

Appearances for Parties**Advs. for the Appellant:**

Shri Vinod Kumar Ojha;

Shri Vinay Kumar Dwivedi.

Advs. for the Respondents:

Shri Amit Sinha, learned AGA for the State.

(Delivered by Hon'ble Jai Krishna Upadhyay, J.)

1. This jail appeal has been preferred by accused appellant - **Baba Vishwakarma** against judgment and order dated 2.8.2019 passed by the Additional District & Sessions Judge, Court No.5, Allahabad in Session Trial No. 366 of 2014, case crime no. 421 of 2013 convicting and sentencing the appellant for the offence punishable under Section 304 IPC for imprisonment of life and a fine of Rs. 20,000/- with default clause.

2. Heard Shri Vinod Kumar Ojha and Shri Vinay Kumar Dwivedi, learned counsel for the appellant and Shri Amit Sinha, learned AGA for the State.

3. Facts of case, in nutshell, as unfolded by the informant Smt. Malti Devi in First Information Report (in short 'FIR'), are that she was married to Baba Vishwakarma, son of Hiralal, resident of Jasra Bazar, six months ago. Her first marriage was solemnized with Ramanand Vishwakarma resident of village Badur, who died about two years ago. A daughter, named Kajal, was born from their wedlock and she was one and half years of age and was residing with her. On 12.12.2013, at 8:00 PM, her husband, Baba Vishwakarma in anger picked up Kajal and threw her on the ground and struck her with an iron rod. She was subsequently taken to hospital for treatment, where the doctors referred her to Allahabad, however, she expired on the way.

4. On the basis of written report (Ext. ka-1), chik FIR (Ext. Ka-3) was registered at Police Station concerned on 13.12.2013 at 8.15 a.m. against accused appellant for the offence under Section 304 IPC mentioning all details as had been described in Ext. Ka-1. G.D. entry Ext. Ka-4 was also made at the same time.

5. Investigation started in the matter. The Investigating Officer recorded statement of witnesses, inspected place of occurrence and prepared inquest report (Ext. ka-4) and site plan (Ext. ka-5). He also prepared other police papers, namely, photo lash (Ext. ka-10), sample seal (Ext. ka-11), letter to CMO (Ext. ka-6), letter to RI (Ext. ka-7), letter to CMO (Ext. ka-8), police paper no. 13 (Ext. ka-9). After conducting post mortem on the dead body of deceased, autopsy report (Ext. ka 13) was prepared.

6. As per post mortem report, following ante-mortem injuries were found on the body of deceased:

- "(i) Abrasion 1 x 2 cm right side face.*
- (ii) Abrasion 1 x 2 cm left side face.*
- (iii) Abrasion 1 cm on chin.*
- (iv) Contusion swelling 4 x 3 cm on right side forehead.*
- (v) Contusion swelling 3 x 4 cm on right temporal area.*
- (vi) Contusion swelling left elbow joints and elbow joints fracture."*

7. In the opinion of doctor, cause of death was due to coma as a result of ante mortem injuries to brain.

8. After completion of investigation, the Investigating Officer submitted charge-sheet (Ext. ka-12) for the offence under Section 304 IPC against appellant. Cognizance was taken on the charge-sheet. The matter, being exclusively triable by the Sessions Court, was committed to the Court of Sessions for trial. Accused appellant appeared and charge under Section 304 IPC was framed against him to which he pleaded not guilty and claimed to be tried.

9. Trial proceeded and on behalf of prosecution five witnesses, namely, PW-1 Malti Devi (informant-mother of deceased), PW-2 Sajan, PW-3 Raj Karan, PW-4 H.C. Ashok Kumar Rai, and PW-5 Dr. Lalji Gautam, who conducted post mortem on the dead body of deceased, were examined.

10. In documentary evidence, written report Ex.Ka.-1, inquest Ext. ka-2, chick FIR Ext. ka-3, G.D. entry Ext. ka-4, site plan Ext. ka-5, letter to CMO Ext. ka-6, letter to RI Ext. ka-7, letter to CMO Ext. ka-8, police paper no.13 Ext. ka-9, photo nash Ext. ka-10, sample seal Ext. ka-11, charge sheet Ext. ka-12 and post mortem report Ext. ka-13 respectively have been proved.

11. The incriminating evidence and circumstances were put to the accused in his statement under Section 313 Cr.P.C. wherein he claimed the entire prosecution evidence as false and fabricated and stated that the case has been lodged due to enmity. He further stated that Malti had married him as her second husband, and after the incident, she entered into a third marriage. She had claimed that her first husband had expired, whereas he was alive and she married third time without obtaining a divorce and has falsely implicated the appellant. The accused appellant did not adduce any documentary or oral evidence in his defence.

12. P.W.1 Smt. Malti Devi - informant is the mother of the deceased. She is an eye witness of the occurrence. She has supported the prosecution story as narrated above. In her statement she has elaborately explained the occurrence. She has further stated that she was married to Baba Vishwakarma six months ago. Her first marriage was solemnized with Ramanand Vishwakarma resident of village Badur. A daughter, named Kajal, was born from their wedlock and she was one and half years old and was residing with them i.e. informant and her husband Baba Vishwakarma at Jasra Bazar. On 12.12.2013, at 8:00 PM, her husband, Baba Vishwakarma in anger picked up Kajal and threw her on the ground and struck her with an iron rod as a result, Kajal sustained head injuries and lost teeth. She was subsequently taken to Jasra Hospital for treatment where the doctors referred her to Allahabad, however, upon arrival at the hospital, doctors declared her dead.

13. PW-2 and PW-3 Sajan and Raj Karan are the witnesses of inquest. They have proved the inquest proceeding.

14. PW-4 H.C. Ashok Kumar Rai, stated that he was head moharrir at the police station Ghurpur. He proved chik FIR, entry GD entry. He also appeared as a secondary witness for Mewaram Bharti, Investigating Officer, who expired. He stated that Mewaram Bharti was posted with him at the police station concerned and he recognizes his writing and signature. He proved the papers prepared by the I.O. during investigation.

15. PW-5 Dr. Lalji Gautam is the Medical Officer, Mortuary, Allahabad, who performed the autopsy of the dead body of the deceased on 13.12.2013 at about 4.00 p.m. He proved the autopsy report as Ext. ka-13.

16. The learned trial court upon scrutiny of the evidence on record concluded that the case of prosecution was proved beyond reasonable doubt against the accused appellant and recorded conviction and sentence against him, as mentioned here-in-above.

17. Assailing the impugned judgment on various grounds, learned counsel appearing for the appellant submitted that the prosecution has not proved its case beyond reasonable doubt. It has been submitted that the impugned judgement and order is not sustainable under law. The entire prosecution case rests solely on the testimony of Malti Devi (PW-1) but her conduct shows that she entered into multiple marriages and was a woman of questionable character. She married the accused-appellant without obtaining divorce from her first husband, Ramanand, and falsely had given out that he had died. Furthermore, PW-1, in her examination-in-chief, denied having contracted a third marriage, but in her cross-examination she admitted that she had in fact married again and regularly visited the Court with her third husband. It has been further submitted that she herself done to death the deceased. There are major contradictions in the statement of PW-1, the informant which shake the root of the prosecution case. The conclusion arrived at by the trial court is not based on credible evidence. The findings recorded by trial court in the impugned judgment and order are also not based on correct appreciation of evidence and the impugned judgment and order suffers from infirmity and illegality warranting interference by this Court. It has been lastly submitted that the trial court has imposed sentence upon the accused appellant for the offence under Section 304 IPC for life imprisonment. The conviction under Section 304 (Part-I) IPC does not mandate a minimum sentence and therefore the punishment of life imprisonment imposed by the trial court is excessive in the facts of the present case. The incident occurred suddenly and in the heat of passion without premeditation. Neither the accused appellant is habitual offender nor has he been convicted in any other case. Thus, the sentence awarded to the accused appellant by the trial court vide impugned judgment and order be modified and accused appellant be released in this matter on the basis of imprisonment already undergone.

18. Per contra, learned A.G.A. has vehemently opposed the submissions made by the learned counsel appearing for the appellant. He submitted that P.W.1 Smt. Malti Devi, mother of the deceased, is the eye witness of the incident and she had no reason to depose falsely before the court intending false implication of the appellant. The prosecution case is also corroborated by the medical evidence. The prosecution story is proved by cogent and reliable oral and documentary

evidence. Findings recorded by trial court in the impugned judgment and order are based on correct appreciation of facts and evidence and do not suffer from any infirmity or illegality warranting interference by this Court. Looking to the gravity and seriousness of the offence and also the manner in which it was committed, no lenient view in regard to sentence imposed by the trial court is warranted in the matter. Hence, the appeal is liable to be dismissed.

19. We have considered rival submissions made by learned counsel for parties and have gone through entire record carefully.

20. In the instant case, we find that the learned counsel for the appellant has made mainly two contentions i.e. PW-1, informant is a lady of bad character, and secondly, there are major contradictions in her testimony recorded before the trial Court.

21. So far as the allegation regarding the character of PW-1 is concerned, it is evident that the accused-appellant has not produced any evidence in support of this contention. Therefore, this argument remains unproved. Even if the allegation regarding the character of PW-1 is accepted, it would in no way affect the merits of the case.

22. With regard to the contradictions in the testimony of PW-1, it is important to note that the incident occurred at about 8:00 p.m. in the night, when only PW-1, her daughter (deceased) and the accused were present. In such circumstances, PW-1 is the only possible eye witness. On careful scrutiny of her testimony, we find that there are no material contradictions in her testimony which go to the root of the prosecution case and if some differences appear, they are minor in nature and same are bound to occur in criminal cases. It is a well-settled proposition of law that even if there is only one eyewitness, conviction can be based on such testimony provided it is trustworthy and reliable. Hence, after close scrutiny of entire evidence, we are of the opinion that incident took place on the date, time and place mentioned in the FIR, deceased died due to the injuries caused by the appellant and this fact finds support from medical evidence. Thus, on the point of conviction of the appellant for the offence under Section 304 IPC, we are of the opinion that prosecution was able to establish guilt of appellant for the aforesaid offence beyond reasonable doubt. Findings recorded by trial court against the appellant in the impugned judgment and order are based on correct appreciation of fact and evidence and same do not warrant interference by this Court.

23. Before proceeding to deal with the submission regarding sentence imposed upon the appellant by the trial court, it is necessary to quote the provisions of Section 304 IPC, which are as under:

"Section 304. Punishment for culpable homicide not amounting to murder. Whoever commits culpable homicide not amounting to murder shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death;

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

24. From a perusal of the above-quoted provisions, it is explicitly clear that Section 304 IPC does not prescribe any minimum punishment. The discretion lies with the Court to award a sentence proportionate to the circumstances of the case. This flexibility ensures that sentencing is not rigid but responsive to the gravity of the offence, the intention behind it, and the mitigating or aggravating factors present. The philosophy behind it is to distinguish the acts committed with intention to cause death and those committed without such intention, thereby tailoring punishment to culpability.

25. Learned counsel for the appellant, in the course of his argument, has further requested that the sentence recorded by the learned trial court is too severe and harsh and submits that the convict / appellant had no intention to do away with the deceased and in a spur of moment, the occurrence happened. He was a young man at the time of incident and has already spent more than twelve years of incarceration and must be a repenting man.

26. Now it takes us to the quantum of sentence, specifically under Section 304 (Part-I) IPC, where life imprisonment has been awarded by learned trial court. For awarding the sentence, we have to keep in mind the theories of punishment in our country.

27. Discouraging the retributive theory, reformatory theory of sentence has been impressed upon by the Hon'ble Apex Court in **Mohd. Giasuddin Vs. State of AP, AIR 1977 SC 1926**. It has been observed by the Hon'ble Supreme Court :

"Crime is a pathological aberration. The criminal can ordinarily be redeemed and the state has to rehabilitate rather than avenge. The sub-culture that leads to ante-social behaviour has to be countered not by undue cruelty but by reculturization. Therefore, the focus of interest in penology in the individual and the goal is salvaging him for the society. The infliction of harsh and savage punishment is thus a relic of past and regressive times. The human today vies sentencing as a process of reshaping a person who has deteriorated into criminality and the modern community has a primary stake in the rehabilitation of the offender as a means of a social defence. Hence a therapeutic, rather than an 'in terrorem' outlook should prevail in our criminal courts, since brutal incarceration of the person merely produces laceration of his mind. If you are to punish a man retributively, you must injure him. If you are to reform him, you must improve him and, men are not improved by injuries."

28. On the other hand, in **Deo Narain Mandal Vs. State of UP, (2004) 7 SCC 257**, it was observed that while determining the quantum of sentence, the Court should bear in mind the 'principle of proportionality'.

29. If we translate the legal theories rendered by the Hon'ble Apex Court in various judgments, such as, **Ravada Sasikala vs. State of A.P., AIR 2017 SC 1166**, **Jameel vs State of UP, (2010) 12 SCC 532**, **Guru Basavraj vs. State of Karnatak, (2012) 8 SCC 734**, **Sumer Singh vs. Surajbhan Singh and others, (2014) 7 SCC 323**, **State of Punjab vs. Bawa Singh, (2015) 3 SCC 441**, **Raj Bala vs. State of Haryana, (2016) 1 SCC 463**, **Sham Sunder vs. Puran (1990) 4 SCC 731**, **M.P. vs. Saleem, (2005) 5 SCC 554** and **Ravji vs. State of Rajasthan, (1996) 2 SCC 175**, the settled legal position, which emerges out before us, is that appropriate sentence should be

awarded after giving due consideration to the facts and circumstances of each case, nature of the offence and the manner in which it was executed or committed. It is the obligation of the Court to constantly remind itself that the right of the victim, and be it said, on certain occasions the person aggrieved as well as the society at large, should never be marginalised. The measure of punishment should be proportionate to the gravity of the offence. Object of sentencing should be to protect society and to deter the criminal in achieving the avowed object of law. Further, it is expected that the Courts would operate the sentencing system, so as to impose such sentence which reflects the conscience of the society. However, the sentencing process has to be stern where it should be. The Court will be failing in its duty, if appropriate punishment is not awarded for a crime which has been committed not only against the individual victim but also against the society to which the criminal and victim belong. The punishment to be awarded for a crime must not be irrelevant, but it should conform to and be consistent with the atrocity and brutality in which the crime has been perpetrated, the enormity of the crime warranting public abhorrence and it should 'respond to the society's cry for justice against the criminal'.

30. In view of the above propositions of law, the paramount principle that should be the guiding laser beam is that the punishment should be proportionate to the gravity of the offence.

31. The Apex Court in the case of **G. V. Siddaramesh Versus of State of Karnataka, 2010 (87) AIC 43 (SC)**, where appeal was filed by convict husband in a dowry death case, while deciding the appeal of the appellant, modified the sentence. Paragraph 31 of the said judgment is reproduced below:

"31. In conclusion, we are satisfied that in the facts and circumstances of the case, the appellant was rightly convicted under Section 304-B I. P. C. However, his sentence of life imprisonment imposed by the Courts below appears to us to be excessive. The appellant is a young man and has already undergone 6 years of imprisonment after being convicted by the Additional Sessions Judge and the High Court. We are of the view, in the facts and circumstances of the case, that a sentence of 10 years' rigorous imprisonment would meet the ends of justice. We accordingly, while confirming the conviction of the appellant under Section 304-B, I. P. C., reduce the sentence of imprisonment for life to 10 years' rigorous imprisonment. The other conviction and sentence passed against the appellant are confirmed."

32. Applying the principles laid down by the Hon'ble Apex Court in the aforesaid judgements and having regard to the totality of the facts and circumstances of the case, particularly, the fact that no minimum sentence has been provided for the offence under Section 304 IPC, it appears to us from a perusal of the impugned judgment that sentence awarded by learned trial court for life term is very harsh keeping in view the entirety of facts and circumstances of the case and gravity of offence. Hon'ble Apex Court, as discussed above, has held that undue harshness should be avoided taking into account the reformatory approach underlying in criminal justice system. Adopting the same reformatory approach, we consider that no accused person is incapable of being reformed and, therefore, all measures should be applied in order to bring them in the social stream.

33. Keeping in view the reformatory theory of punishment and "doctrine of proportionality", it appears to us that the sentence of life imprisonment awarded under Section 304 (Part-I) IPC by

learned trial Court to the appellant is too harsh and severe. The appellant is in jail for the last more than twelve years. This fact is also admitted by the learned AGA.

34. Hence, we are of the considered view that since the appellant has already served-out more than twelve years jail sentence, the sentence of life imprisonment under Section 304 (Part-I) IPC is converted into the sentence already undergone, which would meet the ends of justice but the fine amount imposed by the trial court in the impugned judgment order shall be deposited by the appellant within two months from the date of his release and in case he fails to deposit the same, he will serve out two months sentence in default thereof.

35. The jail appeal is, accordingly, **partly allowed**, subject to the above observations and modification of sentence.

36. The accused-appellant be freed from jail forthwith, if not wanted in any other case.

37. Registry is directed to transmit the record to the Trial Court for necessary compliance.

(2026) 4 ILRA 553
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 01.04.2026

BEFORE

THE HON'BLE AJAY BHANOT, J.
THE HON'BLE DIVESH CHANDRA SAMANT, J.

Jail Appeal No. 357 of 2018

Ram Sagar @ Vikram Kol
State of U.P.

...Appellant
Versus
...Respondent

Issue for consideration

Matter pertains to legality of judgement dated 24.10.2017 u/s 302, 420, 467 IPC convicting the Appellant guilty of the offence under Section 302 I.P.C.

Headnotes

Circumstantial evidence-Indian penal Code-sec. 302-date and timeline of the incident cannot be reconciled with the medical evidence-contradictions in the testimonies of P.W. 1 and P.W. 2-margin of error acknowledged in the post-mortem report- inconsistency regarding date and timeline of the incident in the testimonies of P.W. 1 and P.W. 5-cannot be said that the deceased was last seen by the P.W. 1 at a time close to her death- motive on part of appellant to commit the offence could not be established by the prosecution.-prematurely invoke Section 106 of Evidence Act -to shift the burden upon the appellant- without satisfying the pre-requisites of establishing the primary facts-links in the chain of incriminating circumstances were not proved-**Jail Appeal allowed.** (E-9)

Case Law Cited

1. Vikramjit Singh alias Vikki Vs. State of Punjab, 2006 (12) SCC 306
2. Sharad Birdhichand Sarda v. State of Maharashtra, (1984) 4 SCC 116

3. Kaleeswaran v. State of T.N., (2022) 17 SCC 699
4. Naval Kishore Singh v. State of Bihar, (2004) 7 SCC 502
5. Maheshwar Tigga v. State of Jharkhand, (2020) 10 SCC 108

List of Acts

1. Indian Penal Code, 1860
2. Indian Evidence Act, 1872

List of Keywords

Incriminating circumstance; shift the burden; Critical links; chain of incriminating circumstances.

Appearances of parties

Counsel for Appellant(s) : Diksha Verma, From Jail;

Counsel for Respondent(s) : A.G.A.

(Delivered by Hon'ble Ajay Bhanot, J.)

1. The instant appeal arises out of the judgement dated 24.10.2017 rendered by the learned sessions court in Sessions Trial No. 48 of 2016 State vs. Ram Sagar @ Vikram Kol registered as Case Crime No. 313 of 2015 under Section 302, 420, 467 IPC at P.S. Gopiganj, District Bhadohi.

2. The learned trial court by the impugned judgement has found the appellant guilty of the offence under Section 302 I.P.C. and has imposed a punishment of life imprisonment and fine of Rs. 10,000/- and in default of payment of fine two years rigorous imprisonment. Further the learned trial court finding the appellant guilty of the offences under Section 420 & 467 I.P.C. has accordingly imposed a punishment of five years rigorous imprisonment and fine of Rs. 5,000/- and in default of payment of fine one year rigorous imprisonment, and a punishment of five years rigorous imprisonment and fine of Rs. 5,000/- and in default of payment of fine one year rigorous imprisonment for the respective offences. The impugned judgement of the trial court also stipulates that all sentences will run concurrently.

3. Briefly put the prosecution case set out in the FIR is that on 08.08.2015 at about 05:00 P.M. Vikram and his wife Pooja Devi came to the house of the first informant and asked her to lease out one room to them. The first informant declined to let out the room due to lack of acquaintance with the aforesaid persons. Later Ram Lal, the Muneem of Persian Rang Manufacturing claimed that Vikram worked in his company, and he stood as a guarantor for rent due from the couple. On Ram Lal's assurance the first informant leased out the room to Vikram. The couple were staying in the aforesaid room. On 09.08.2015 she found the room locked. Being a Sunday she assumed that the couple must have gone out. A foul smell was emanating from the room on 10.08.2015 at about 10:00 AM. The first informant peered through a crack in the door and saw Pooja lying dead in the room. She had a firm belief that the deceased was done to death by her husband, who had then locked the door and made good his escape.

4. Pursuant to the FIR police investigations were set into motion. Upon conclusion of the investigations a chargesheet was submitted against the appellant on 25.12.2015. Cognizance of the offence was taken by the learned trial court on 14.04.2016.

Charge:

5. The appellant was charged by the learned trial court on 26.07.2016. The charges are extracted hereunder:

"प्रथम- यह कि दिनांक 08/09.08.2015 को किसी समय स्थान राधा देवी का मकान बहद ग्राम रघुनाथपुर रामपुर रोड थाना-गोपीगंज, जिला-भदोही में आपने अपनी पत्नी रामकली उर्फ पूजा की हत्या कर दिये।

इस प्रकार आपने ऐसा अपराध कारित किया जो भारतीय दण्ड संहिता की धारा-302 के अधीन दण्डनीय है और जो मेरे प्रसंज्ञान में है।

द्वितीय- यह कि दिनांक 08.08.2015 से 6-7 साल पहले मृतका पूजा के साथ छल कर बेईमानी से उत्प्रेरित कर उसे भगाकर गलत नाम पते से कोर्ट मैरेज किया।

इस प्रकार आपने ऐसा अपराध कारित किया जो भारतीय दण्ड संहिता की धारा-420 के अधीन दण्डनीय है और जो मेरे प्रसंज्ञान में है।

तृतीय - यह कि आपने अपनी पत्नी मृतका पूजा से कोर्ट मैरेज कराने के लिए मूल्यवान प्रतिभूति की रचना कर गलत नाम पते से मृतका के साथ कोर्ट मैरेज किया।

इस प्रकार आपने ऐसा अपराध कारित किया जो भारतीय दण्ड संहिता की धारा-467 के अधीन दण्डनीय है और जो मेरे प्रसंज्ञान में है।

एवं मैं आपको निर्देशित करता हूं कि उपरोक्त आरोपों के लिए आपका विचारण इस न्यायालय द्वारा किया जावेगा।"

6. During the course of investigations the investigation officer took the evidences of various witnesses and also gathered documentary evidence.

Evidences:

7. The tabular chart depicting both categories of evidences is extracted hereunder:

Oral Evidence:- List of prosecution witnesses**Prosecution Witnesses**

S No.	Witness No.	Witness	Nature of Witness
1.	PW (1)	Radha Devi	First Informant/Landlord
2.	PW (2)	Bhagotti Shankar Maurya	Panch Witness
3.	PW (3)	Vinay Kumar Jaiswal	Panch Witness
4.	PW (4)	Ram Lal	Scribe
5.	PW (5)	Dr B.K. Maurya	Conducted Post Mortem
6.	PW (6)	Ramesh Chaubey Inspector	Investigating Officer

Documentary evidences:

S No.		Proved by	Date	Exhibit
1.	Written report	P.W. 1	10.08.2015	Ka 1
2.	Recovery memo	P.W. 1 and 4	10.08.2015	Ka 2
3.	Panchayatnama	P.W. 2 and 3	10.08.2015	Ka 3
4.	Re-marriage letter	P.W. 4	20.04.2012	Ka 4
5.	Postmortem report	P.W. 5	11.08.2015	Ka 5
6.	F.I.R.	P.W. 6	10.08.2015	Ka 6
7.	G.D. Entry	P.W. 6	10.08.2015	Ka 7
8.	There is no Ex. Ka 8 on record.			Ka 8
9.	F.I.R. (Section 174 A)	P.W. 6	03.11.2015	Ka 9
10.	Chargesheet	P.W. 6	25.12.2015	Ka 10
11.	Site plan	P.W. 6	10.08.2015	Ka 11
12.	Charge addition by police	P.W. 6	16.08.2015	Ka 12
13.	Arrest memo	P.W. 6	01.01.2016	Ka 13

FIR:-

8. The F.I.R. was lodged on 10.08.2015 at 10:40 AM. Facts narrated in the F.I.R. disclose that the deceased was last seen by the first informant on 08.08.2015 at 5 pm with the accused. The first informant saw the body of the deceased on 10.08.2015 at about 10:00 A.M. The FIR was proved by PW 6 and marked as Exhibit Ka-6.

Place of occurrence:

- (a) Inquest Report
- (b) Recovery Memo
- (c) Site Plan

9. As per the prosecution case the incident occurred in the room which was leased to the deceased and her husband by the first informant. The body of the deceased was found on 10.08.2015 at about 10:00 A.M. by PW 1 in the aforesaid room. The police team arrived at the spot after receiving the tehrir from PW 1 and lodgement of FIR. The inquest proceedings commenced at the site on 10.08.2015 at about 11:40 A.M. and were concluded at 01:30 P.M. The inquest report which was drawn up by Inspector Gulafsha was proved by P.W.-2 and P.W.-3 who were witnesses to the same and marked as Exhibit Ka-3.

10. Recovery proceedings were conducted at the place of incident. A recovery memo drawn up at the site on 10.08.2015 depicted that following articles were found at the site (a) an affidavit affirming re-marriage of the deceased with the appellant, (b) Voter I.D. Card of one Dhan Kumari, wife of Jamuna, resident of P.S. Lalganj, District Mirzapur. The recovery memo proved by witnesses to the recovery i.e. P.W.-1 and P.W.-4 was marked as Exhibit Ka-2.

11. P.W. 6 prepared the site plan at the pointing out of the first informant on 10.08.2015. P.W. 6 proved the site plan which was marked as Exh Ka- 11. The site plan depicts Point C as the place where the body of the deceased was found in the room and also the main gate/door which was locked by the accused before he escaped. The site plan also depicts the gaps in the brick lattice/vent fixed outside the room.

Cause & Time of Death:

(i) PM report (ii) FSL report (iii) Medical Evidence

12. After discovery of the body, the post mortem was conducted by Dr. B.K. Maurya at 03:30 P.M. on 11.08.2015. Dr. B.K. Maurya while testifying as PW 5 proved the post-mortem report which was then marked as Exhibit Ka5. The relevant parts of the post mortem report are extracted hereunder:

A.M. Injuries-

External injuries

Middle of the face, frontal and lateral aspect is blackish charred, scattered patching area of charred burn patches present on the front of chest and breast, both upper extremities and lower extremities.

Whole of the body is decomposed and malodorous and exudation from the body, lots of maggots on whole of the body"

External Examination - Body is muscular, stout with no presence of regormertis, presence of decomposition and lots of maggots.

Eyes are charred and blackish.

Nose and Mouth was charred and blackish

Vagina was decomposed.

Scalp and hair charred

Membranes of the skull, brain and the base of the head showed Edematous (swollen due to fluid build up)

Vertabrae and spinal cord not opened.

Walls of the thorax were decomposed

pleura was swollen due to edematous

Larynx and trachea were swollen due to edematous.

Both lungs and pericardium were swollen due to edematous.

Cause of death could not be ascertained, so viscera preserved and handed over to police constable.

Time of death : 3 to 5 days."

13. P.W.-5 Dr. B.K. Maurya testified before the trial court that the body of the deceased was badly decomposed and maggot infested. The face and the auxiliary hair were burnt. Acid burns were visible on the entire body. The natural pores in the body including face, mouth, ears, anus and vagina also had acid burn marks. Due to thorough decomposition of the body, details of acid could not be ascertained.

14. P.W.-6 under cross-examination deposed that the clothes which were worn by the deceased did not bear any burn marks.

15. The post-mortem report does not depict any injuries which would go to show that the deceased had offered resistance to the assailant. The clothes worn by the deceased were intact. These findings in the post-mortem report and the testimonies of the PW 5 raises a cloud of suspicion on the prosecution case of homicidal death.

16. Paper No. 20Ka/27 dated 17.06.2016 in the record is the FSL report submitted after analysing the viscera sample. The FSL report opines that no poison was found in the viscera sample.

17. No material from any recognized authority of medical jurisprudence was cited to the Court so as to infer that the death occurred due to ante mortem injuries (as recorded in the post-mortem report), and that the same was homicidal.

18. The cumulative effect of the medical evidence in the record is that the prosecution could not establish the cause of death, and was unable to prove beyond reasonable doubt that the death was homicidal.

19. Proof of homicidal death is the pre-requisite of establishing the charge under Section 302 I.P.C.

20. The Court now proposes to examine as to whether the appellant was in any manner culpable for causing death of the deceased by appraising other evidences in the record.

Oral Evidences:

PW 1: Radha Devi- First informant

21. First informant-Radha Devi was introduced as P.W. 1. The P.W. 1 had testified that she had declined to rent out the premises to the deceased and her husband due to lack of acquaintance with the couple. P.W. 1 stated before the trial court that she later leased out the room to the couple at the assurance of Ram Lal who worked as Munim in the Persian Colour Manufacturing Company.

The said Ram Lal had stated that he would give the room rent on behalf of the couple. Thereafter, the couple entered the room on 08.08.2015.

22. Continuing her deposition P.W. 1 stated that the room was found locked on Sunday i.e. 09.08.2015, and assumed that the couple must have left on account of a holiday. On 10.08.2015 at about 10:00 AM when foul smell came from the said room, P.W. 1 peeped through a crack in the door and saw that the deceased was lying dead. She had a firm belief that the appellant had committed the murder of his wife and thereafter fled after locking the door.

23. PW 1 thereafter deposed that she called Ramlal and went with him to the police station. At her behest Ramlal reduced the Tehrir to writing at the police station, Gopiganj and the same was made over to the police station incharge. PW 1 identified her signatures and proved the tehrir which was then marked as Exh. Ka 1.

24. According to the testimony of PW 1, after receipt of tehrir the police came to the spot. At her pointing out the police party inspected the site and opened the lock of the house. The body of the deceased was taken out of the room, and various articles depicted in the recovery memo were recovered and other documentation was completed. PW 1 identified her signatures on the recovery memo which was marked as Exh. Ka 2.

25. Under cross-examination, P.W. 1 reiterated that she had given the room on rent to the couple on 08.08.2015 at the assurance of Ram Lal Munim. The couple had brought few belongings with them, and that she (P.W. 1) gave the room keys to the appellant. She did not accompany the couple to the room. P.W. 1 has also stated that she had not seen the deceased or the appellant on 09.08.2015.

PW 2 Bhagotii Shankar Maurya and PW 3 Vinay Kumar Jaiswal

26. P.W. 2 and P.W. 3 are witnesses to the inquest report. Nothing material hinges on their testimonies.

PW 4 : Ram Lal

27. Ram Lal, who had taken down the complaint in writing at the asking of the first informant entered the witness box as P.W. 4. P.W. 4 in the examination in chief stated that he helped the couple in renting the premises. Under cross examination PW 1 also stated that he had taken down tehrir in writing at the behest of Radha Devi which she had later signed and submitted before the police station.

28. During cross examination P.W. 4 stated that he had no acquaintance with the appellant and that he got him a job at the recommendation of a co worker. Under cross-examination he also denied any role in renting out of the premises to the couple. In fact, P.W. 4 has categorically testified that he did not accompany the couple to Radha Devi's house.

29. More importantly, under cross-examination, P.W. 4 has stated that the Tehreer/written report was prepared at the house of the Chairman where Radha Devi already was present. P.W. 4 stated that the appellant Vikram and his wife were working in the Persian Colour Manufacturing Company since past 2-3 days. At the say so of the Chairman, he brought Radha Devi to the Police Station.

PW 6 : Inspector Ramesh Chaubey- Investigating Officer

30. Inspector Ramesh Chaubey was the Investigating Officer who deposed before the trial court as P.W. 6. In his testimony P.W. 6 described the process of investigation. PW 6 deposed that he had gone to the house of the previous husband of the deceased, and also the ex-wife of the appellant Vikram. The first wife of the appellant informed him that the accused Vikram and the deceased had eloped together and later got married. None of the witnesses stated that the relationship between the appellant and the deceased was strained. The I.O. had also stated that only those items which were mentioned in the recovery memo were recovered from the site.

Proceedings under Section 313 Cr.P.C.

31. The proceedings under Section 313 Cr.P.C., the learned trial court virtually extracted the statements of P.W. 1, P.W. 2 and P.W. 4. The appellant was alerted to the affidavit depicting marriage of the deceased with the appellant.

32. The other incriminating circumstances pointed out to the accused in the said proceeding was the post-mortem report and other exhibits.

33. Prior to commencing with the evaluation of the evidences, the court would like to reiterate its earlier finding that the prosecution has failed to prove that the death in the instant case is homicidal.

Submissions from the Bar:

Arguments on behalf of appellant

34. Shri Dharmendra Singhal, learned Senior Counsel and learned amicus curiae for the appellant assisted by Ms. Deeksha Verma, learned counsel and amicus curiae assailing the impugned judgement of the learned trial court submits as under:

I. The prosecution has failed to establish that the cause of death of the deceased.

II. PW 1 is not a witness of last seen, inasmuch as, here was a huge time gap between the death of the deceased and the event of last seen.

III. The room in which the body of the deceased was accessible by PW 1.

IV. There were material contradictions in the testimonies of PW 1 and PW 4 on the most relevant aspects of the prosecution case. The said witnesses were not reliable.

V. The investigations were flawed, inasmuch as, the exculpatory lines of investigations were eschewed and the role of Prahlad Das was not examined.

VI. Incriminating circumstances relied upon by the prosecution were not put to the accused appellant in the proceedings under Section 313 Cr.P.C.

Arguments on behalf of State

35. Shri Paritosh Kumar Malviya, learned AGA-I submits:

I. The prosecution have proved its case beyond reasonable doubt.

II. The deceased died under unnatural circumstances.

III. PW 1 was a reliable witness, inasmuch as, she was the landlady of the couple who had last seen them together.

IV. The conduct of the appellant after the incident was incriminatory

11. Heard learned counsel for the parties.

36. The evidences led before the trial court shall be appraised in the light of fundamental aspects of the prosecution case and the sequence of events, which culminated in the impugned judgement.

A. Circumstantial Evidence

37. The prosecution case against the appellant is one of circumstantial evidence.

38. The prosecution has to prove various links in light of law laid down in **Sharad Birdhichand Sarda v. State of Maharashtra**:

“151. It is well settled that the prosecution must stand or fall on its own legs and it cannot derive any strength from the weakness of the defence. This is trite law and no decision has taken a contrary view. What some cases have held is only this: where various links in a chain are in themselves complete, then a false plea or a false defence may be called into aid only to lend assurance to the court. In other words, before using the additional link it must be proved that all the links in the chain are complete and do not suffer from any infirmity. It is not the law that where there is any infirmity or lacuna in the prosecution case, the same could be cured or supplied by a false defence or a plea which is not accepted by a court.

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

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

It may be noted here that this Court indicated that the circumstances concerned "must or should" and not "may be" established. There is not only a grammatical but a legal distinction between "may be proved" and "must be or should be proved" as was held by this Court in "Shivaji Sahabrao Bobade v. State of Maharashtra [(1973) 2 SCC 793 : 1973 SCC (Cri) 1033 : 1973 CrL LJ 1783] where the observations were made: [SCC para 19, p. 807: SCC (Cri) p. 1047]

"Certainly, it is a primary principle that the accused "must" be and not merely "may" be guilty before a court can convict and the mental distance between "may be" and "must be" is long and divides vague conjectures from sure conclusions."

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

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

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

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

159. It will be seen that this Court while taking into account the absence of explanation or a false explanation did hold that it will amount to be an additional link to complete the chain but these observations must be read in the light of what this Court said earlier viz. before a false explanation can be used as additional link, the following essential conditions must be satisfied:

(1) various links in the chain of evidence led by the prosecution have been satisfactorily proved,

(2) the said circumstance points to the guilt of the accused with reasonable definiteness, and

(3) the circumstance is in proximity to the time and situation."

I. FIR

39. As per the time line narrated in the F.I.R. there is no inordinate delay in lodgement of the same. However, the correctness of this time line shall be determined upon appraisal of prosecution evidence.

40. Contradictions in the manner of drawing up of tehrir as brought out in the conflicting versions given by PW 1 and PW 4 in their testimonies raises a certain doubt about the veracity of the prosecution case as regards the Tehrir which forms the basis of the FIR. Further, the date and timeline of the incident recorded in the FIR and in the prosecution evidence cannot be reconciled with the medical evidence of the highly decomposed and maggot infested body of the deceased. The doubts about the veracity of the prosecution case are heightened by the contradictions in the testimonies of P.W. 1 and P.W. 2 regarding the time and manner of letting out of the premises to the appellant and the deceased.

II. Last seen

41. The chain of incriminating circumstances and the manner in which the prosecution has attempted to prove the same, shall be discussed in the succeeding paragraphs.

42. According to the prosecution the first incriminating is that the appellant was last seen with the deceased, and PW 1 was witness to the event of last seen.

43. P.W. 1, has testified that she had last seen the appellant with the deceased on 08.08.2015 at about 5:00 PM. Further, P.W. 1 has specifically deposed that she did not see the accused and the deceased on 09.08.2015. As per the post-mortem report dated 11.08.2015, the death occurred between three to five days. Furthermore, the deep state of decomposition of the body as depicted in the testimony of P.W. 5 does not reconcile with the incident, date and timeline set out in the FIR and the testimony of P.W. 1. Considering the margin of error acknowledged in the post-mortem report, and inconsistency regarding date and timeline of the incident in the testimonies of P.W. 1 and P.W. 5, it cannot be said that the deceased was last seen by the P.W. 1 at a time close to her death.

44. The deceased being last seen by PW 1 at time stated by her also becomes questionable in view of the material contradictions between the testimonies of PW 1 and PW 4 regarding the time and manner of letting out of the premises (discussed in detail in succeeding paragraphs).

III. Contradictions between PW 1 and PW 4/ Credibility of witnesses –

45. There are material contradictions in the statements of P.W. 1 and P.W. 4 regarding the place and manner in which the written report/Tehrir was reduced to writing. PW 1 deposed that she went to the police station with PW 4 immediately after sighting the body of the deceased. As per PW 1's testimony the tehrir was reduced to writing at the police station. On the contrary PW 4 has deposed that PW 1 accompanied him to the residence of Prahlad Das where the tehrir was got written and further course of action was decided. Prahlad Das does not find a mention in the testimony of P.W. 1. The aforesaid contradictions are grave enough to discredit the prosecution case.

46. The first incriminating circumstance that the appellant was last seen with the deceased at the time of proximate to her death has not been established by the prosecution.

47. The observations of this Court will be buttressed by the holding of Supreme Court in **Kaleeswaran v. State of T.N.** as regards the attributes of a witness of last seen:

14. It is well settled that if there is considerable time gap between the persons seeing together and the proximate time of the crime, the circumstances of last seen together, even if proved cannot clinchingly fasten the guilt of the accused."

IV. Motive

48. Injuries on the person of the deceased clearly reflect a depravity of mind where the accused person sought to degrade the womanhood of the deceased. However, reliable prosecution

evidence, actually shows the couple was living happily and there were no reports of any quarrels between them.

49. The appellant did not have any motive to commit the offence. The motive on part of appellant to commit the offence could not be established by the prosecution.

50. PW 1 and PW 4 are mutually incompatible other aspects as well. PW 4 has squarely denied any role in recommending the deceased and her husband as tenants to the PW 1. However, PW 1 emphatically testified that the premises were leased out the couple at the asking of PW 4.

V. Place of occurrence

51. The body was found at the house of PW 1 which she had rented out to the appellant. Various documentations including the inquest report and the recovery memo also established that the body of the deceased was found at the aforesaid premises.

52. P.W. 1 has testified that room was not broken into by the police, but had been opened. Clearly keys to the lock were also in possession of P.W. 1.

53. The aforesaid deposition also contradicts the recitals in the inquest report that the lock was broken open and the testimony of P.W. 4 to that effect.

54. Even if the prosecution version set out in the case diary/ inquest report about breaking open the lock is accepted, the accessibility to the room by P.W. 1 at all relevant times cannot be denied.

VI. Alternative Hypothesis

55. Various suggestions given to the prosecution witnesses including the role of Prahlad Das in the drawing up of the complaint which were not investigated by the police authorities. PW 1 has testified the deceased was a beautiful lady who was working in the factory of the said Prahlad Das. Further as per PW 4, the PW 1 and PW 4 had gone to the house of Prahlad Das where the tehrir was got written down and further course of action was decided.

56. The police investigation adopted a rigid inculpatory approach only to burnish the credentials of the investigators. The police investigation failed to follow upon the exculpatory materials and did not pursue the lines of investigations which would have yielded the evidence consistent with whole truth of the matter.

57. Prosecution sought to prematurely invoke Section 106 of Evidence Act with a view to shift the burden upon the appellant without satisfying the pre-requisites of establishing the primary facts.

58. The prosecution is not relieved of his burden to prove the guilt of the accused by simple invoking Section 106 of Evidence Act. The Supreme in **Vikramjit Singh alias Vikki Vs. State of Punjab**³ held thus:

“14. Section 106 of the Evidence Act does not relieve the prosecution to prove its case beyond all reasonable doubt. Only when the prosecution case has been proved the burden in regard to such facts which was within the special knowledge of the accused may be shifted to the accused for explaining the same. Of course, there are certain exceptions to the said rule e.g. where burden of proof may be imposed upon the accused by reason of a statute.

59. Critical links in the chain of incriminating circumstances against the appellant could not be established by the prosecution beyond reasonable doubt. Infact various aspects which are consistent with the innocence of the accused are borne out from the chain of circumstances suggested by the prosecution.

VII. Conduct of the Accused

60. At this stage it was urged on behalf of the State that the accused had been absconding for about six months after the incident. This itself is sufficient to draw an adverse inference and convict him for the offence. Responding to the aforesaid argument, Shri Dharmendra Singhal, learned Senior Counsel submits that this allegedly incriminating circumstance was never put to the accused in the proceedings under Section 313 Cr.P.C. and any weight given to the said argument would prejudice the appellant beyond recall. The appellant would not be able to tender his defence to the same at this belated stage.

61. The sanctity and the importance of Section 313 Cr.P.C. as the indispensable element of a fair trial is embedded in authorities in point. The Supreme Court in **Naval Kishore Singh v. State of Bihar** held as under :

“5. Counsel for the appellant pointed out that the Sessions Court committed serious error in not properly examining the accused under Section 313 CrPC. Our attention was drawn to the statement taken from the present appellant. Only three questions were put to the appellant. The first question was whether he heard the statement of the witnesses and the second question was that the evidence given by the witnesses showed that he committed the murder of the deceased and whether he had to say anything in defence. The questioning of the accused under Section 313 CrPC was done in the most unsatisfactory manner. Under Section 313 CrPC the accused should have been given opportunity to explain any of the circumstances appearing in the evidence against him. At least, the various items of evidence, which had been produced by the prosecution, should have been put to the accused in the form of questions and he should have been given opportunity to give his explanation. No such opportunity was given to the accused in the instant case. We deprecate the practice of putting the entire evidence against the accused put together in a single question and giving an opportunity to explain the same, as the accused may not be in a position to give a rational and intelligent explanation. The trial Judge should have kept in mind the importance of giving an opportunity to the accused to explain the adverse circumstances in the evidence and the Section 313 examination shall not be carried out as an empty formality. It is only after the entire evidence is unfurled the accused would be in a position to articulate his defence and to give explanation to the circumstances appearing in evidence against him. Such an opportunity being given to the accused is part of a fair trial and if it is done in a slipshod manner, it may result in imperfect appreciation of evidence.

62. A similar view was taken in **Maheshwar Tigga v. State of Jharkhand** :

“8. It stands well settled that circumstances not put to an accused under Section 313 CrPC cannot be used against him, and must be excluded from consideration. In a criminal trial, the importance of the questions put to an accused are basic to the principles of natural justice as it provides him the opportunity not only to furnish his defence, but also to explain the incriminating circumstances against him. A probable defence raised by an accused is sufficient to rebut the accusation without the requirement of proof beyond reasonable doubt.”

B. Culpability of accused appellant under Section 420, 467 IPC

63. The appellant has been convicted by the learned trial court under Section 420, 467 IPC on the footing that a false affidavit depicting the marriage of the appellant with the deceased was recovered from the site of the incident near the body of the deceased.

64. According to the prosecution case the accused appellant had falsely depicted his address in the said affidavit. However, the prosecution overlooks the fact that the accused appellant and his wife were migrant labourers and often moved from one place to another. They did not have any permanent place of resident. Further, falsity of the address recorded in the affidavit itself was not proved. Secondly the aforesaid document did not constitute a valuable security in any manner. Thirdly the said document was nowhere used to dupe any one nor any unlawful gain accrued to the appellant by the said document.

65. Ingredients of the offence under Section 420, 467 IPC are not disclosed from the prosecution evidences led before the trial court. The prosecution has failed to establish the offence under Section 420, 467 IPC by bringing the credible evidence and proving the guilt of the appellant beyond reasonable doubt.

Trial court judgement

66. Learned trial court erred in law by convicting the appellant primarily by drawing an adverse inference against him by invoking Section 106 of the Evidence Act read with Section 114 of the Evidence Act. The aforesaid finding as deemed earlier is untenable in law in view of the failure of the prosecution to establish the prerequisites or fundamental facts for invoking the presumption under Section 106 of the Evidence Act and drawing any adverse inference under Section 114 of the Evidence Act. In the instant case the links in the chain of incriminating circumstances were not proved and the prosecution cannot be relieved of the aforesaid burden on the footing of Section 106 Evidence Act. The said findings of the learned trial court is in the teeth of the law laid down in **Vikramjit Singh @ Vikki (supra)**.

67. Secondly, the finding of the trial court to bring home the charges against the appellant to the effect that he was last seen immediately prior to the death of the accused is a perverse finding which does not find support from the evidences in the record.

68. The learned trial court in the impugned judgement has not adverted to the uncontroverted fact that medical evidence in the record does not establish homicidal death .

69. The impugned judgement rendered by the learned trial court overlooks the material contradictions in the testimonies of P.W. 1 and P.W. 4.

70. The impugned judgement is liable to be set aside and is set aside.

Conclusions

71. In the wake of the preceding discussion this Court finds that the prosecution has failed to prove the charges under Section 302, 420, 467 I.P.C. against the appellant beyond reasonable doubt. The accused is acquitted of the offences he was charged with by the learned trial court.

72. The Jail Appeal is allowed.

73. The appellant shall be forthwith released from prison and set forth at liberty unless required in any other criminal case.

74. The Court would like to accord its deep appreciation for the scholarly assistance rendered by Shri Dharmendra Singhal, learned Senior Counsel and also the assistance of Ms. Deeksha Verma, learned counsel for the appellant. Shri Shivendra Singhal, learned counsel ably pro bono assisted the Court.

75. A copy of this judgement translated in Hindi to be communicated to the appellant by the Secretary, District Legal Services Authority.

(2026) 4 ILRA 567
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 20.04.2026

BEFORE

THE HON'BLE RAJNISH KUMAR, J.
THE HON'BLE ZAFEER AHMAD, J.

Criminal Appeal No. 694 of 2016

Kamal Prasad

...Appellant

Versus

State of U.P.

...Respondent

Issue for Consideration

Matter pertains to whether, on the basis of the circumstances established by the prosecution, the offence committed by the accused falls within the ambit of "murder" under S. 300 I.P.C. punishable under S. 302 I.P.C., or whether it constitutes culpable homicide not amounting to murder punishable under S. 304 I.P.C.;

and whether the chain of circumstances established the involvement of the accused in causing the death of the deceased. (Paras 34-52)

Headnotes

Criminal Law - Circumstantial Evidence - Appreciation of evidence - Indian Penal Code, 1860 - Ss. 302, 304 Part II - Indian Evidence Act, 1872 - S. 134 - Credibility of related/interested witnesses - Evidence of a related or interested witness is not to be discarded merely on the ground of relationship; law only requires that such evidence be subjected to careful scrutiny; if testimony is found to be natural, consistent and trustworthy, it can safely form the basis of conviction - PW-1 being son of deceased and accused was a natural witness; PW-2 corroborated testimony of PW-1 on material particulars; occurrence took place inside house where ordinarily independent witnesses would not be available; non-examination of scribe, panch witnesses and other witnesses not fatal as quality of evidence and not quantity is material - Testimonies of PW-1 and PW-2 found consistent, natural and inspiring confidence - Presence of accused, quarrel immediately prior to incident and accused leaving spot established. (Paras 26-33)

Criminal Law - Circumstantial Evidence - Indian Penal Code, 1860 - Ss. 302, 304 Part II - Principles governing circumstantial evidence - Panchsheel principles - Circumstances established that accused and deceased were present inside house; accused was involved in quarrel with deceased; cries heard; accused seen leaving place of occurrence immediately after incident; deceased found dead with injuries; axe found at place of occurrence; accused remained absconding; accused failed to offer any explanation under S. 313 Cr.P.C. - Cumulative effect of circumstances clearly established that accused caused injuries to deceased resulting in death. (Paras 34-38)

Criminal Law - Murder and Culpable Homicide - Distinction - Indian Penal Code, 1860 - Ss. 299, 300, 302, 304 Part II - Exception to murder - Sudden quarrel - Absence of premeditation - Determination of mens rea - Incident occurred inside house in course of quarrel between accused and deceased; no material to suggest premeditated intention to cause death; occurrence took place on spur of moment; prosecution failed to establish prior planning, preparation or design; though sharp-edged weapon was used on vital part of body, surrounding circumstances created doubt regarding existence of intention to cause death; accused must be attributed with knowledge that such act was likely to cause death - Prosecution failed to establish element of intention required under S. 300 I.P.C.; knowledge attributable to accused clearly established - Conviction altered from S. 302 I.P.C. to S. 304 Part II I.P.C. (Paras 39-55)

Criminal Law - Sentence - Indian Penal Code, 1860 - S. 304 Part II - Accused had already undergone incarceration for a period of 15 years, 04 months and 14 days as on 21.02.2026, exceeding maximum sentence prescribed under S. 304 Part II I.P.C. - Period of imprisonment already undergone held sufficient sentence; sentence of fine maintained - Appeal partly allowed and accused directed to be released forthwith if not required in any other case. (Paras 56-60)

Held: The testimonies of PW-1 and PW-2 are consistent, natural and inspire confidence. Their evidence clearly establishes that the accused was present at the place of occurrence, was involved in a quarrel with the deceased immediately prior to the incident, and was seen leaving the spot thereafter. (Para 33)

The cumulative effect of the established circumstances clearly establishes that it was the accused who caused the injuries to the deceased which resulted in her death. However, the occurrence took place in the course of a sudden quarrel and there was absence of any premeditation. (Paras 37-38)

The prosecution has not been able to establish the element of intention required to bring the case within the ambit of S. 300 I.P.C. However, the knowledge attributable to the accused is clearly established. Consequently, the offence committed by the accused would fall within the ambit of S. 304 Part II I.P.C. and the conviction under S. 302 I.P.C. is liable to be altered to one under S. 304 Part II I.P.C. (Paras 51-55)

The conviction under S. 302 I.P.C. is altered to a conviction under S. 304 Part II I.P.C. The period of imprisonment already undergone is held to be sufficient sentence for the offence under S. 304 Part II I.P.C. The sentence of fine is maintained. The **appeal stands partly allowed** and the accused-appellant is directed to be released forthwith, if not required in any other case. (Paras 56-60) (E-7)

Case Law Cited

M.C. Ali v. State of Kerala, (2010) 4 SCC 573; *State of U.P. v. Anil Singh*, (1988) 3 SCC 686; *Sharad Birdhichand Sarda v. State of Maharashtra*, (1984) 4 SCC 116; *Pundalik v. State of Maharashtra*, (2010) 15 SCC 122; *Surinder Kumar v. Union Territory of Chandigarh*, (1989) 2 SCC 217; *Rambir v. State (NCT Delhi)*, (2019) 6 SCC 122; *Kesar Singh v. State of Haryana*, (2008) 15 SCC 753.

List of Acts

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

List of Keywords

Circumstantial evidence; interested witness; related witness; credibility of witness; quarrel; sudden quarrel; premeditation; chain of circumstances; ocular evidence; murder; culpable homicide not amounting to murder; intention; knowledge; mens rea; absconding; axe; recovery; S. 302 I.P.C.; S. 304 Part II I.P.C.; S. 313 Cr.P.C.; S. 134 of the Indian Evidence Act

Case Arising From

APPELLATE JURISDICTION: Arising out of judgment and order dated 29.03.2016 passed by Sessions Judge, Balrampur in S.T. No. 145/2013, arising out of Case Crime No. 356/2012, Police Station Pachperwa, District Balrampur, whereby conviction under S. 302 of Indian Penal Code, 1860 and sentence of rigorous imprisonment for life with fine were recorded.

Appearances for Parties**Advs. for the Appellant:**

Sri Piyush Kumar Singh

Advs. for the Respondents:

Learned A.G.A. for the State.

(Delivered by Hon'ble Zafeer Ahmad, J.)

1. Heard, Sri Piyush Kumar Singh, learned counsel for the appellant and learned A.G.A for the State. Perused the records.

2. The aforesaid criminal appeal arises out of judgment and order dated 29.03.2016 passed by Sessions Judge, Balrampur in S.T. No. 145/2013 (State v. Kamal Prasad), arising out of Case Crime No. 356/2012, Police Station Pachperwa, District Balrampur whereby the appellant has been convicted under Section 302 of Indian Penal Code, 1860 (in short I.P.C) and sentenced to rigorous imprisonment for life along with a fine of Rs. 10,000/- and in default of payment of fine, to undergo an additional one year of simple imprisonment.

Prosecution Story in Nutshell:

3. The prosecution story, in brief, is that on 19.04.2012, the complainant Anil Kumar s/o Kamal Prasad r/o Semrahwa, Police Station Pachperwa, District Balrampur submitted a written report at Police Station Pachperwa stating therein that at about 2:30 PM, his mother, Indravati, was alone at home when his father, Kamal Prasad, entered the house and started quarrelling with her and, in a fit of rage, assaulted her with an axe, causing her death. It was further stated that the complainant, along with his friend Kunjan Chaudhary s/o Raja Ram, was present at some distance and when they heard cries from the house, immediately rushed towards the spot. It was further

alleged that upon reaching there, they saw the accused Kamal Prasad fleeing from the house. It was also stated that when the complainant entered the house, he found his mother lying dead therein.

4. On the basis of the written report (Ext. Ka- 1), a check FIR (Ext. Ka- 3) was registered under Section 302 IPC against accused-appellant, Kamal Nath. The investigation commenced on 19.04.2012, and after completion of the investigation, a charge-sheet (Ext. Ka- 14) under Section 302 IPC was submitted against the accused-appellant. The case was committed to the Court of Session, where charge under Section 302 IPC was framed against the accused. The accused denied the charge, pleaded not guilty, and claimed trial.

5. In order to prove its case, the prosecution examined seven witnesses, namely: PW- 1 Anil Kumar, PW- 2 Kunjan Chaudhary, PW- 3 SI Anirudh Kumar Singh, PW- 4 Constable Akhilesh Yadav, PW- 5 Dr. Rajendra Kapoor, PW- 6 IO Dinesh Singh Yadav and PW-7 SHO Uma Shankar Yadav.

6. The following documents were produced and proved before the trial court:

EXHIBITNUMBER	PARTICULARS
Ext. Ka-1	Written Report
Ext. Ka-2	Panchayatnama
Ext. Ka-3	Check FIR
Ext. Ka-4	Copy of Report
Ext. Ka-5	Post-mortem Report
Ext. Ka-6	Letter to RI
Ext. Ka-7	Letter to CMO
Ext. Ka-8	Sketch of Dead Body
Ext. Ka-9	Inquest of Dead Body
Ext. Ka-10	Sample seal
Ext. Ka-11	Site plan of the place of occurrence
Ext. Ka-12	Recovery Memo of blood-stained and plain soil
Ext. Ka-13	Recovery Memo of blood-stained axe
Ext. Ka-14	Charge Sheet
Ext. Ka-15	Supplementary Charge Sheet

7. The following material exhibits were produced and proved before the trial court:

EXHIBIT NUMBER	ITEM/DESCRIPTION
Material Exhibit-1	Sample of plain earth from the place of occurrence
Material Exhibit-2	Sample of blood-stained earth from the place of the occurrence
Material Exhibit-3	Axe

8. Furthermore, the appellant, in his statement recorded under Section 313 of the Code of Criminal Procedure, 1973 (in short "Cr.P.C."), denied the prosecution allegations and asserted that he has been falsely implicated due to prior enmity and a conspiracy aimed at usurping his property.

9. Upon a comprehensive appraisal of the oral and documentary evidence on record, the learned Trial Court found the accused guilty under Section 302 of IPC and sentenced him to undergo rigorous imprisonment for life along with a fine of Rs. 10,000/- and in default of payment of fine, to undergo an additional one year of simple imprisonment.

Submissions made by learned counsel for the accused-appellant:-

10. Learned counsel for the accused-appellant has contended that the impugned judgment of conviction suffers from serious infirmities and is liable to be set aside. It is submitted that there exist material contradictions between the F.I.R. and the testimonies of PW-1, complainant, and PW-2, alleged eye-witness, which go to the root of the prosecution case and render it unreliable. It is further contended that the medical evidence, particularly the post-mortem report, does not fully corroborate the prosecution version, thereby creating reasonable doubt regarding the manner of occurrence. It is further submitted that the learned trial court has failed to appreciate that the present case is essentially based on circumstantial evidence and the prosecution has not been able to establish a complete chain of circumstances pointing unerringly towards the guilt of the accused. It is argued that important links in the chain are missing, and the possibility of false implication cannot be ruled out. Learned counsel has also argued that PW-1 and PW-2 are interested witnesses, being closely related and acquainted with the deceased, and their testimonies have not been corroborated by any independent witness. It is contended that reliance upon such interested testimony without adequate corroboration is unsafe. On the aforesaid grounds, it is submitted that the prosecution has failed to prove its case beyond reasonable doubt and the appellant is entitled to benefit of doubt and consequent acquittal.

Submissions made by learned A.G.A. :-

11. Per contra, learned A.G.A. has supported the impugned judgment and order and submitted that the prosecution has successfully established the guilt of the accused beyond reasonable doubt. It is contended that the testimonies of PW-1 and PW-2 are natural, consistent and trustworthy and there are no material contradictions affecting the core of the prosecution case. The minor discrepancies, if any, are only natural and do not go to the root of the matter. It is further submitted that the ocular version is fully corroborated by the medical evidence, as the nature of injuries found on the body of the deceased clearly support the prosecution case regarding the manner of assault and the weapon used. The recovery of the blood-stained axe from the place of occurrence further lends assurance to the prosecution story. Learned A.G.A. has also argued that merely because PW-1 and PW-2 are related or known to the deceased, their testimonies cannot be discarded, especially when the same inspire confidence and are otherwise reliable. It is submitted that the presence of the accused at the place of occurrence, his conduct in fleeing from the spot, and his failure to offer any plausible explanation under Section 313 Cr.P.C. constitute strong incriminating circumstances. It is further submitted that the alleged lapses in investigation are not sufficient to discredit the otherwise cogent and reliable evidence on record. The prosecution has been able to establish a complete chain of circumstances pointing towards the guilt of the accused. On these grounds, it is submitted that the appeal is devoid of merit and is liable to be dismissed.

Oral Testimonies:

In order to appreciate the issues arising in the present appeal, it is appropriate to examine, in brief, the oral evidence adduced by the prosecution.

12. **PW-1 Anil Kumar**, son of the deceased Indra Devi and the accused, deposed that the incident occurred on 19.04.2012 at about 2:30 P.M., when his mother was alone in the house. He further deposed that he was sitting along with Kunjan Chaudhary, PW-2, at a place approximately 20 meters from his house, when he saw the accused in an intoxicated condition, entering the house and quarrelling with the deceased, which was audible to him. As such quarrels were a routine occurrence on account of the accused demanding money for liquor, he did not immediately intervene. However, upon hearing the screams of his mother, he rushed towards the house and saw the accused coming out therefrom. Upon entering, he found his mother lying dead in a pool of blood between two dehri (earthen vessel used to store grains). The accused could not be traced thereafter. He further deposed that a written report was scribed on his narration and lodged, pursuant to which the Investigating Officer reached the spot and conducted the inquest and other necessary proceedings.

13. **During cross-examination**, he admitted that the door of his house was not visible from the place where he was sitting and that he had not witnessed the actual assault. He deposed that upon hearing a scream, he rushed to the house and found his mother already dead. He denied the suggestion of any property dispute or false implication of the accused. He further deposed that he was about 16 years of age at the time of the incident and that he was in a sound mental condition at the time of making his statement.

14. **PW-2 Kunjan Chaudhary** deposed that on 19.04.2012, at approximately 2:30 P.M., he was conversing with PW-1 Anil Kumar near the house of Ram Gulam Chaudhary, situated about 20 meters from the accused's residence. He saw the accused-appellant enter his house, followed by the sound of him abusing the deceased over demands for liquor money. After nearly ten minutes, upon hearing a scream, the witness rushed to the spot and saw the accused fleeing the house. Inside, he discovered the deceased in a pool of blood between two dehri (grain storage vessels) with her throat slit. A blood-stained axe was lying near the body. The witness further deposed that his siblings were away at work and that he was present when the police prepared the inquest report (Ext. Ka-2) at approximately 4:00 P.M.

15. **During cross-examination**, the witness affirmed that there were no structural obstructions between his location and the place of occurrence. He maintained that despite his orientation facing north, he witnessed the accused entering the house from the east and subsequently fleeing towards the west post-incident. The witness provided specific details regarding the posture of the deceased, noting she lay north of the dehri with her head toward the east. He denied any ulterior motive or false implication predicated on his friendship with PW-1 or disputes over labour wages. PW-2 further corroborated the accused's history of alcoholism and habitual domestic violence, affirming his long-standing acquaintance with the family through the accused's employment as a labourer.

16. **PW-3 Anirudh Kumar Singh**, Sub-Inspector, Police Station Pachperwa, deposed that on 19.04.2012 he was posted as Head Constable at the said police station. He further deposed that on the basis of the written report submitted by the complainant, Case Crime No. 356 of 2012 under Section 302 IPC was registered. He proved the check F.I.R. as Ext. Ka-3. He further deposed that on the basis of the said check F.I.R., he made the corresponding entry in the General Diary as Report No. 32 at about 4:30 P.M. on 19.04.2012.

17. **During cross-examination**, he deposed that the complainant had brought the written report (Ext. Ka-1) already prepared and signed, and on the basis thereof he prepared the check F.I.R. He further deposed that the complainant came alone to the police station and that he did not inquire as to who had scribed the complaint or the distance between the place of occurrence and the police station. He further deposed that the check F.I.R. bore the signature of the then Station House Officer, who had taken over the investigation. He clarified that he first prepared the check F.I.R. and thereafter made the General Diary entry. He denied the suggestion that the written report was prepared at his instance or under any influence, or that the check F.I.R. and G.D. entry were fabricated.

18. **PW-4 Akhilesh Yadav**, Constable, Police Station Pachperwa, deposed that on 19.04.2012 he was posted as Constable at the said police station. He further deposed that on the said date, he accompanied the Investigating Officer to the place of occurrence, where the inquest proceedings of the deceased Indravati were conducted, which he proved as Ext. Ka-2. He further deposed that after the inquest proceedings, the dead body was wrapped, stitched and sealed, and was handed over to his custody along with Constable Santram Verma for being taken for post-mortem examination. He further deposed that they transported the dead body to the mortuary at Gonda, where the post-mortem was conducted after due identification. He further deposed that the post-mortem report was thereafter received and submitted at the police station.

19. **During cross-examination**, he deposed that the articles and ornaments worn by the deceased at the time of inquest were duly noted and the body was sent for post-mortem in the same condition. He further deposed that no broken bangles were found near the body. He further deposed that the relatives of the deceased accompanied the body for post-mortem and that the post-mortem was conducted on the next day. He, however, expressed inability to recall certain details, including whether the F.I.R. was registered prior to the inquest or whose seal was used at the time of sealing.

20. **PW-5 Dr. Rajendra Kapoor**, Senior Consultant, District Hospital, Gonda, deposed that on 20.04.2012 at about 3:15 P.M., he conducted the post-mortem examination on the dead body of Indravati, aged about 45 years, and proved the post-mortem report. He found the following ante-mortem injuries on the body:

Injury No. 1: Incised wound measuring 6 cm X 3 cm X bone deep on the right side of the neck, located 5cm below the right ear and just below the right side of the jaw. The blood vessels of the neck were found severed.

Injury No. 2: Incised wound measuring 6.5 cm X 3 cm X flesh deep, on the right side of the neck, situated 2 cm below injury no. 1.

He opined that the death occurred due to shock and hemorrhage as a result of the aforesaid injuries, which were sufficient in the ordinary course of nature to cause death. He further deposed that the injuries could be caused by a sharp-edged weapon like an axe and that the death had occurred about one day prior, consistent with the time of incident.

21. **During cross-examination**, he admitted that the time "3:15 P.M." mentioned in the post-mortem report appeared to be overwritten. He further deposed that on internal examination, the neck bone of the deceased was not found cut. He further deposed that he cannot state with certainty the specific sharp-edged weapon which caused the injuries. He further admitted that he had not mentioned in the post-mortem report as to whether rigor mortis was present at the time of examination, nor had he recorded observations in the column of external examination. He accepted that the estimation of time of death is ordinarily based on the condition of rigor mortis and that there may be a variation of about six hours on either side. At this stage, on a query put by the Court regarding determination of time of death, he stated that the same was assessed on the basis of stiffness and condition of the dead body; however, he admitted that such relevant details were not specifically recorded in the post-mortem report. He further deposed that he had not mentioned whether the eyes, mouth or nostrils of the deceased were open or closed at the time of post-mortem. He, however, clarified that since the major blood vessels of the neck were severed, it is difficult to say as to whether the deceased could have been saved even with immediate medical aid. He denied the suggestion that he had not conducted the post-mortem or that the report was fabricated.

22. **PW-6 Dinesh Singh Yadav**, SHO Police Station Pachperwa, deposed that on 19.04.2012 he was posted as Station House Officer and took over the investigation of the case. He further deposed that after perusing the check F.I.R., he proceeded to the place of occurrence, conducted the inquest proceedings of the deceased, and proved the panchayatnama as Ext. Ka-2, letter to R.I., letter to C.M.O., sketch of the dead body, inquest of the dead body, and sample seal as Ext. Ka-6 to Ka-10 respectively. He further deposed that he inspected the place of occurrence and prepared the site plan (Ext. Ka-11). He further collected blood-stained soil and plain soil from the spot, sealed them separately and prepared the recovery memo (Ext. Ka-12). The said articles were produced and proved before the Trial Court as Material Ext.-1 (plain earth) and Material Ext.-2 (blood-stained earth). He further deposed that an axe with blood-stained blade was recovered from near the dead body lying in the veranda of the house, which was sealed and taken into possession, and the recovery memo thereof was proved as Ext. Ka-13. He further deposed that the said axe was produced before the Trial Court as Material Exhibit-3. He further deposed that thereafter he was transferred and the further investigation was conducted by Uma Shankar Yadav.

23. **During cross-examination**, he deposed that he reached the place of occurrence at about 5:45 P.M. and took samples of blood-stained earth, plain earth and recovered the axe, which were sealed and deposited at the police station on the same day. He admitted that the seized articles were first sealed separately and thereafter wrapped together. He identified Material Exhibits 1 to 3, which had been produced before the Trial Court. He deposed that the sample seal marked as Exhibit Ka-10 was not his, and that the signature appearing on Exhibit Ka-10 was also not his. He further deposed that he could not identify the handwriting on Exhibit Ka-9 and did not recall who had written the same on his instructions. He also deposed that Exhibit Ka-8 was not written by him; however, the signature appearing thereon was his. He further admitted that though the complainant

was made a panch witness, certain other persons, including Kunjan Chaudhary, were not formally appointed as panch witnesses, and that the panchayatnama does not record any opinion regarding the accused having committed the offence. He further deposed that he did not examine the family members of the deceased and did not record exact distances in the site map of the place of the occurrence. He deposed that during the entire course of the investigation conducted under his authority, no circumstantial evidence was revealed except the statements of PW-1 and PW-2. He further deposed that he neither arrested the accused-appellant nor any recovery was made from him. He denied the suggestion that the investigation was false or that any documents were fabricated.

24. **PW-7 Uma Shanker Yadav**, Station House Officer, Police Station Pachperwa, deposed that on 25.05.2012 he was posted on the same position and he took over the investigation of the case after transfer of the previous Investigating Officer. He perused the case diary and continued the investigation. He further deposed that on 06.06.2012 he recorded the statements of panch witnesses and witnesses of recovery. He further deposed that since the accused-appellant Kamal Prasad was absconding, attachment proceedings were initiated against him and executed. He further submitted the charge sheet, which he proved as Ext. Ka-14. He further deposed that on 23.10.2013, acting on information from a informant, he apprehended the accused near Narihwa village. He further deposed that the accused made a confessional statement regarding commission of the offence and disclosed that he had killed his wife with an axe and had fled from the spot. He further submitted a supplementary charge sheet, which he proved as Ext. Ka-15. He further deposed that the material exhibits were sent for forensic examination to the Forensic Science Laboratory.

25. **During cross-examination**, he admitted that no recovery of any incriminating article was made from the accused and that no further material evidence was discovered during his investigation beyond what had already been collected by the previous Investigating Officer. He further deposed that the alleged confession of the accused did not lead to any recovery. He also admitted certain lapses, including non-recording of some details in the case diary and non-examination of certain aspects, but denied the suggestion that the charge sheet was filed without evidence or that the investigation was false.

Court Analysis:

Credibility and reliability of ocular evidence

26. The prosecution case primarily rests upon the testimonies of PW-1 Anil Kumar and PW-2 Kunjan Chaudhary. It has been contended by learned counsel for the accused-appellant that both these witnesses are interested witnesses and, therefore, their testimonies ought not to be relied upon. This Court finds no merit in the said contention.

27. It is a settled principle of criminal jurisprudence that the evidence of a related or interested witness is not to be discarded merely on the ground of relationship. The law only requires that such evidence be subjected to careful scrutiny. If upon such scrutiny, the testimony is found to be

natural, consistent and trustworthy, it can safely form the basis of conviction. Moreover, in ***M.C. Ali v. State of Kerala, (2010) 4 SCC 573***, the Hon'ble Supreme Court has held:

“51. On the basis of the law as settled by this Court in a number of judgments which are noticed by the High Court, it is held that relationship is not a factor to affect credibility of a witness. It is more often than not that a relation would not conceal actual culprit and make allegations against an innocent person leaving a way for the real accused to escape..”

28. In the present case, PW-1, being the son of the deceased and the accused, is a natural witness. His presence near the place of occurrence stands duly established. He has consistently deposed that the accused entered the house, started quarrelling with the deceased, and shortly thereafter, upon hearing screams, he rushed and found the deceased lying in a pool of blood, while the accused was seen fleeing from the spot.

29. PW-2, though acquainted with PW-1, cannot be termed as an interested witness in the strict sense, as no animus or motive for false implication has been attributed to him. He is an independent neighbour, who has corroborated the testimony of PW-1 on material particulars, namely, that the accused entered the house, quarrelled with the deceased, and immediately thereafter fled from the spot when cries were heard.

30. It is true that neither PW-1 nor PW-2 has witnessed the actual act of assault. However, their testimonies clearly establish the circumstances immediately preceding and succeeding the occurrence, which form part of the same transaction and are highly relevant for determining the involvement of the accused.

31. It is also to be noted that the occurrence took place inside the house, where ordinarily independent witnesses would not be available. In such circumstances, the evidence of natural witnesses present nearby cannot be discarded merely on the ground that they are related or known to the deceased.

32. Moreover, the contention that all the witnesses cited in the charge-sheet have not been examined, including the scribe of the written report, certain panch witnesses, and other listed witnesses, also does not merit acceptance. It is well settled that the prosecution is not bound to examine each and every witness cited in the charge-sheet. Under Section 134 of the Indian Evidence Act, 1872, no particular number of witnesses is required to prove a fact, and it is the quality of evidence and not the quantity which is material. The Supreme Court in ***State of U.P. v. Anil Singh, (1988) 3 SCC 686***, has held that it is not necessary for the prosecution to examine all witnesses and non-examination of some witnesses is not a ground to reject the prosecution case, if the evidence of the witnesses examined is found to be reliable. In the present case, the witnesses examined by the prosecution are found to be cogent and trustworthy, and no prejudice has been shown to have been caused to the accused by non-examination of the scribe or panch witnesses. Therefore, such omission is not fatal to the prosecution case.

33. Upon careful scrutiny, this Court finds that the testimonies of PW-1 and PW-2 are consistent, natural and inspire confidence. Their evidence clearly establishes that the accused was

present at the place of occurrence, was involved in a quarrel with the deceased immediately prior to the incident, and was seen leaving the spot thereafter.

Chain of Circumstances

34. It is well settled that in cases based on circumstantial evidence, the chain of circumstances must be such as to establish the involvement of the accused and must be consistent with the prosecution case. However, the nature of the offence-whether it amounts to murder or culpable homicide-depends upon the accompanying mental element, which is required to be independently assessed.

35. The foundational principles governing appreciation of circumstantial evidence were laid down by Supreme Court in ***Sharad Birdhichand Sarda v. State of Maharashtra***, (1984) 4 SCC 116, wherein the well-known panchsheel principles were formulated, namely:

(1) The circumstances from which the conclusion of guilt is to be drawn should be fully established. There is not only a grammatical but a legal distinction between 'may be proved' and 'must be or should be proved'. It is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions.

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

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

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

(5) There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

36. Applying the aforesaid principles to the facts of the present case, the following circumstances stand firmly established:

(i) The accused and the deceased were present inside the house at the relevant time;

(ii) The accused was seen entering the house and was involved in a quarrel with the deceased;

(iii) Shortly thereafter, cries were heard from inside the house;

(iv) The accused was seen leaving the place of occurrence immediately after the incident;

(v) The deceased was found lying dead inside the house with injuries;

(vi) The weapon of offence (axe) was found at the place of occurrence;

(vii) The accused remained absconding after the incident and was apprehended later upon information;

(viii) The accused has failed to offer any explanation under Section 313 Cr.P.C. regarding the circumstances in which the deceased sustained injuries.

37. The cumulative effect of the aforesaid circumstances clearly establishes that it was the accused, who caused the injuries to the deceased which resulted in her death. However, the nature of circumstances, particularly the fact that the occurrence took place in the course of a sudden quarrel and absence of any premeditation, assumes significance while determining the nature of the offence and the degree of culpability of the accused.

38. Thus, while the chain of circumstances clearly establishes the involvement of the accused in causing the death of the deceased, the precise nature of the offence is required to be determined on the basis of the mental element attributable to the accused, which is being considered separately.

Whether the offence amounts to murder under Section 302 I.P.C. or culpable homicide not amounting to murder under Section 304 I.P.C.

39. Having given consideration to the entire evidence on record, this Court proceeds to determine as to whether the act attributed to the accused falls within the ambit of "murder" under Section 300 I.P.C. punishable under Section 302 I.P.C., or whether it constitutes culpable homicide not amounting to murder punishable under Section 304 I.P.C.

40. Learned counsel for the accused-appellant has contended that there was no premeditation on the part of the accused and that the incident occurred in the course of a sudden quarrel. In support of the said submission, reliance has been placed upon *Pundalik v. State of Maharashtra, (2010) 15 SCC 122*; *Surinder Kumar v. Union Territory of Chandigarh, (1989) 2 SCC 217* and *Rambir v. State (NCT Delhi), (2019) 6 SCC 122*.

41. Before advertng to the applicability of the aforesaid judgments, it would be apposite to briefly notice the legal framework governing the distinction between culpable homicide and murder. Section 299 I.P.C. defines culpable homicide, whereas Section 300 I.P.C. specifies when such culpable homicide amounts to murder. The exceptions engrafted in Section 300 carve out situations where, despite the act resulting in death, the offence would not amount to murder.

42. Section 304 I.P.C. is divided into two parts. Part I applies where there is intention to cause death or such bodily injury as is likely to cause death, whereas Part II applies where there is no intention, but the act is done with the knowledge that it is likely to cause death. The distinction, therefore, hinges upon the degree of mens rea.

43. The Supreme Court in *Kesar Singh v. State of Haryana, (2008) 15 SCC 753* has held that culpable homicide is the genus and murder is its species, and that where the special characteristics of murder are absent, the offence would fall within the lesser category. It has further been observed that where intention is not proved but knowledge is attributable, the case would fall under Section 304 Part II I.P.C.

44. In *Surinder Kumar* (supra), it has been held that the number of injuries is not decisive, but what is relevant is whether the occurrence was sudden and without premeditation and whether the act was committed in the heat of passion without taking undue advantage. Similarly, in *Pundalik*

(supra), on facts involving a sudden quarrel without premeditation, the conviction under Section 302 I.P.C. was altered to Section 304 Part I I.P.C.

45. On the other hand, in *Rambir* (supra), the Hon'ble Supreme Court declined to extend the benefit of Exception 4 to Section 300 I.P.C., where the act was found to be cruel and indicative of clear intention, holding that such conduct could not be said to be an act committed in a fit of anger.

46. Applying the aforesaid principles to the facts of the present case, it emerges that the incident occurred inside the house in the course of a quarrel between the accused and the deceased. The evidence on record indicates that such quarrels were not uncommon; however, there is no material to suggest that the accused had any premeditated intention to cause the death of the deceased.

47. The occurrence appears to have taken place on the spur of the moment. The prosecution has not established any prior planning, preparation or design on the part of the accused. The entire incident was triggered by a sudden quarrel arising out of domestic discord.

48. It is true that the accused used a sharp-edged weapon and caused injury on a vital part of the body. However, the surrounding circumstances, particularly the absence of premeditation and the suddenness of the occurrence, create a doubt regarding the existence of intention to cause death.

49. At the same time, it cannot be ignored that the accused, by using such a weapon on a vital part, must be attributed with the knowledge that such an act is likely to cause death.

50. The present case, therefore, stands on a footing closer to *Pundalik* (supra) and *Surinder Kumar* (supra), where the offence was held to have been committed without premeditation, rather than *Rambir* (supra), where the act was found to be cruel and deliberate.

51. In view of the aforesaid, this Court is of the considered opinion that the prosecution has not been able to establish the element of intention required to bring the case within the ambit of Section 300 I.P.C. However, the knowledge attributable to the accused is clearly established.

52. Consequently, the offence committed by the accused would fall within the ambit of Section 304 Part II I.P.C. The conviction of the accused under Section 302 I.P.C. is, therefore, liable to be altered to one under Section 304 Part II I.P.C.

Conclusion:

53. In view of the foregoing discussion and upon a comprehensive re-appreciation of the entire evidence on record, this Court is of the considered opinion that the prosecution has been able to establish beyond reasonable doubt that it was the accused who caused the injuries to the deceased which resulted in her death. The findings of the learned trial court to this extent, regarding the involvement of the accused, are affirmed.

54. However, this Court finds that the prosecution has not been able to establish the element of intention so as to bring the case within the ambit of Section 300 I.P.C. The evidence on record indicates that the occurrence took place in the course of a sudden quarrel without premeditation. At the same time, considering the nature of the act and the injury caused, the accused can be said to be attributed with the knowledge that such act was likely to cause death.

55. Accordingly, the conviction of the accused under Section 302 I.P.C. is liable to be altered to one under Section 304 Part II I.P.C.

56. The conviction of the accused-appellant under Section 302 I.P.C., as recorded by the learned trial court, is hereby altered to a conviction under Section 304 Part II I.P.C.

57. Insofar as the sentence is concerned, it is noted that the accused has already undergone incarceration for a period of 15 years, 04 months and 14 days as on 21.02.2026, which exceeds the maximum sentence prescribed under Section 304 Part II I.P.C., i.e., imprisonment for a term which may extend to 10 years.

58. In view of the aforesaid, the period of imprisonment already undergone by the accused is held to be sufficient sentence for the offence under Section 304 Part II I.P.C. The sentence of fine, imposed by the trial court, is maintained. However, in case the fine has already been deposited, no further order is required; and in case of default sentence, it is observed that the accused has already undergone incarceration exceeding even the maximum prescribed term.

59. The appeal, therefore, stands **partly allowed**.

60. The accused-appellant is directed to be released forthwith, if not required in any other case.

61. Pending applications, if any, shall stand disposed of.

62. Let a certified copy of this judgment along with the lower court record be transmitted to the court concerned forthwith, and in any case within a period of one week, for compliance.

(2026) 4 ILRA 580
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 02.04.2026

BEFORE

THE HON'BLE CHANDRA DHARI SINGH, J.
THE HON'BLE DEVENDRA SINGH-I, J.

Criminal Appeal No. 2402 of 1989

Tej Bir & Ors.

State of U.P.

...Appellants

Versus

...Respondent

Issue for Consideration

Matter pertains to whether the conviction under S. 302 IPC could be sustained on the testimony of the sole eyewitness, who was an interested and related witness, when the other eyewitness did not support the prosecution case and was declared hostile, and whether the prosecution had established the guilt of the appellant beyond all reasonable doubt. (Paras 27, 39-49)

Headnotes

Criminal Law - Murder - Appreciation of Evidence - Indian Penal Code, 1860 - S. 302 - Hostile witness - Evidentiary value - Evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross-examined him and evidence of such witnesses cannot be treated as effaced or washed off the record altogether but can be accepted to the extent their version is found to be dependable on a careful scrutiny thereof - One eyewitness did not support the prosecution case from the very beginning and stated that as it was a dark night he could not see the face of the accused and nothing could be elicited from his mouth to support the prosecution case - No benefit could be derived by the prosecution from his evidence. (Paras 31-38)

Criminal Law - Murder - Appreciation of Evidence - Interested and related witness - Indian Penal Code, 1860 - S. 302 - Rule of prudence - Evidence of a related and interested witness should be meticulously and carefully examined and where such witness may have some enmity with the assailant, the evidence would have to be examined by applying a standard of discerning scrutiny - Sole eyewitness was uncle of the deceased and admitted source of identification was torchlight on a dark night - Testimony found improbable and discrepant - Evidence did not inspire confidence. (Paras 39-47)

Criminal Law - Murder - Benefit of doubt - Indian Penal Code, 1860 - S. 302 - Enmity as double-edged weapon - Enmity provides motive for the commission of the offence but also does not rule out the possibility of false implication - Possibility of false implication on account of previous enmity could not be ruled out from the nature of evidence placed on record - Appellant entitled to benefit of doubt. (Paras 29, 48)

Criminal Law - Acquittal - Failure of prosecution to prove case beyond reasonable doubt - Indian Penal Code, 1860 - S. 302 - Sole eyewitness not reliable and hostile witness not supporting prosecution - Prosecution failed to establish guilt beyond all reasonable doubt - Conviction and sentence set aside and appellant acquitted. (Paras 47-50)

Held: A witness in a crime is a vital component in the administration of justice and by now it is well settled by a catena of judgements of Hon'ble Supreme Court that enmity is a double edged weapon which on one hand provides motive for the commission of the offence and on the other hand does not rule out the possibility of false implication - the first informant was admittedly not an eyewitness of the case and had admitted his enmity with the accused - one of the two eyewitnesses did not support the prosecution case from the very beginning and stated in clear terms that although he saw 4-5 persons running after committing the murder of the deceased but as it was a dark night he could not see the face of the accused and therefore no benefit could be derived by the prosecution from his evidence - the evidence of the sole remaining eyewitness who was the uncle of the deceased was required to be meticulously and carefully examined - admittedly at the place of occurrence there was no source of light and while they were moving forward they were flashing torch to see the pathway - when pathway was not clearly visible to the witnesses it was improbable that they had seen all the accused carrying country made pistols in their respective hands - the conduct of the witness after the incident was also improbable and clearly shows that no one has seen the assailants and after the occurrence the FIR has been lodged after due consultation with each other dragging the appellants in the case due to previous enmity - there was also discrepancy in his evidence regarding inspection of the torch - conviction of the sole surviving appellant could not be made on the testimony of the sole eyewitness whose evidence does not inspire confidence - the possibility of the appellant being falsely implicated on account of previous enmity cannot be ruled out and the appellant is entitled to benefit of doubt - the prosecution failed to establish the guilt of the appellant beyond all reasonable doubt and the conviction and sentence under S. 302 IPC were liable to be set aside - Appeal allowed. (Paras 28-30, 37-50) (E-7)

Case Law Cited

Khujji alias Surendra Tiwari Vs. State of Madhya Pradesh, (1991)3 SCC 627; State of U.P. Ramesh Prasad Mishra, (1996) 10 SCC 635; Bhajju Vs. State of Madhya Pradesh, (2012) 4 SCC 327; Selvamani Vs. State represented by Inspector of Police, 2024 SCC OnLinw SC 837; Dadu alias Ankush and another Vs. State of Madhya Pradesh and another, 2025 LiveLaw (SC) 1178; Masalti Vs. State of U.P., (1964) 8 SCR 133; Raju Vs. State of Tamil Nadu, (2012)4 SCC (Cri) 184; Edakkandi Dineshan alias P. Dineshan and others Vs. State of Kerala, (2025) 3 SCC 273; Chhote Lal Vs. Rohtash and others, (Criminal Appeal No. 2490 of 2014, decided on 14.12.2023)

List of Acts

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

List of Keywords

Murder; eyewitness; hostile witness; related witness; interested witness; enmity; double edged weapon; benefit of doubt; appreciation of evidence; dark night; torch light; false implication; beyond reasonable doubt; conviction; acquittal; testimony not inspiring confidence; sole eyewitness; prosecution failed to establish guilt.

Case Arising From

APPELLATE JURISDICTION: Criminal Appeal arising from the judgement and order dated 19.12.1989 passed by the Special/Additional District and Sessions Judge, Saharanpur in ST No. 662 of 1988, whereby the appellant was convicted and sentenced to life imprisonment under S. 302 IPC.

Appearances for Parties**Advs. for the Appellant:**

Mr. Mohammad Kalim, learned counsel for the appellant.

Advs. for the Respondents:

Shri R.K. Gupta, learned Additional Government Advocate for the State.

(Delivered by Hon'ble Chandra Dhari Singh, J.)

1. This criminal appeal has been filed against a judgement and order dated 19.12.1989 passed by the Special/Additional District and Sessions Judge, Saharanpur in ST No. 662 of 1988, under Sections 302 and 302/34 IPC, police Station Manglaur, district Haridwar, whereby the learned Judge convicted and sentenced the appellants Nepal, Raj Kumar and Ved Pal to life imprisonment under Section 302 read with 34 IPC whereas appellant Tejbir was convicted and sentenced to life imprisonment under Section 302 IPC.

2. Pursuant to the order of this Court dated 30.01.2026, criminal appeal filed on behalf of appellant No. 2, 3 and 4, namely Nepal, Ved Pal and Raj Kumar is disposed of as abated.

3. Now, this Court is concerned with the criminal appeal filed on behalf of appellant No. 1. Tejbir.

Facts of the case

4. The facts that formed the bedrock of the present criminal appeal, are that a written report was given by Asghar, son of Allah Rakha at the police station Manglaur, district Haridwar with the allegations that certain portion of land belonging to Bidmani Pandit was purchased by his brother Rahman. Nepal and Tejbir wanted to purchase the said land. At the time of purchase of the said

land, altercation took place, due to which Nepal and Tejbir used to harbour animosity. When his brother was constructing the house over the said plot, they also made obstructions. In front of the house of his brother, there was a hut of Nepal and Tejbir and they were asked to remove the hut, but they refused and threatened of dire consequences. On 17.08.1987 at about 09:00 PM, when his cousin Rahman, Allah Rakha and Akram were coming back to village from Gurukul after supply of milk, on the way at the turning of Gurukul-Mohammadpur, they met Nepal, Tejbir, Ved Pal and Raj Kumar (herein after referred to as the accused), who were armed with country made pistols. On seeing his brother, accused-Nepal, Raj Kumar and Ved Pal exhorted that he be killed and thereupon Tejbir, with an intention to kill, fired at Rahman (hereinafter referred to as the deceased), due to which he fell down. However, accused managed to escape. The accused were identified by Allah Rakha and Akram in the light of torch and brought the deceased to Gurukul and the first informant was called from the village. Thereafter, deceased was taken to Muzaffarnagar.

5. On the basis of the aforesaid written report, a Chik FIR was registered by Clerk Constable Sunil Kumar, Ext. Ka-4, which was entered in GD, Ext. Ka-5.

6. After the registration of the case, the law set into motion and investigation of the case was entrusted to PW-5, SI Yogendra Singh. On the pointing out of witnesses Allah Rakha and Akram, he inspected the spot and prepared site plan, Ext. Ka-6. He also collected bloodstained and simple earth, Ext. Ka-7. Thereafter, he recorded the statements of witnesses Akram and Allah Rakha. After the death of the deceased-Rahman, he converted the case to one under Section 302 IPC vide GD No. 10 at 07:20 AM. Thereafter, the investigation of the case was taken up by SO Shri Virendra Kumar Sharma.

7. PW-4, SO Virendra Kumar Sharma in his examination-in-chief deposed that earlier investigation of the case was conducted by SI Yogendra Singh. On 18.08.1987, he recorded the statement of witness Bidmani Pandit. He arrested accused Raj Kumar on 24.08.1987, accused Nepal Singh on 25.08.1987 and accused Tejbir Singh on 02.09.1987. After completing necessary formalities, he submitted charge sheet against the appellants on 03.11.1987, which he proved as Ext. Ka-3.

8. As the case was exclusively triable by the Court of Sessions, the learned Magistrate committed the case to the Court of Sessions, where case was registered as ST No. 662 of 1988. Learned Special/Additional Sessions Judge, Saharanpur vide order dated 12.04.1989 framed the charge against the appellants Nepal Singh, Ved Pal and Raj Kumar under Section 302/34 IPC, whereas charge against the appellant Tejbir Singh was framed under Section 302 IPC, which was read over and explained to the accused in Hindi, who pleaded not guilty and claimed to be tried.

9. To bring home guilt of the appellants, the prosecution has examined as many as six witnesses. PW-1, Asghar is the first informant of the case, PW-2, Akram and PW-3, Allah Rakha are the witnesses of fact, PW-4, SHO Vinod Kumar Sharma, the second investigating officer of the case, who submitted the charge sheet, PW-5, SI Yogendra Singh, the first investigating officer of the case and PW-6, Dr. N.P. Sharma, who conducted autopsy on the cadaver of the deceased.

10. PW-1, Asghar is the first informant of the case. He reiterated the versions given in the FIR. He further deposed that on 17.08.1987, he was present at his home. At about 09:15 PM, 2-3 persons came and told him that some one has fired at his brother. He came to Gurukul, where he saw that Rahman was lying. Allah Rakha and Akram were with him, who told him about the story of the incident. Accordingly, he wrote the report and handed over at the police station Manglaur, Ext. Ka-1. Allah Rakha and Rahman took Rahman to Muzaffarnagar, where he succumbed to the injury.

11. PW-2, Akram, in his examination-in-chief deposed that deceased was his brother-in-law (Sala). He knows accused Tejbir, Nepal, Raj Kumar and Ved Pal, who are the resident of Mohammadpur. Deceased was also the resident of Mohammadpur. On the date of incident when he along with Allah Rakha and Rahman was coming back to Mohammadpur after supply of milk to Gurukul in three different cycles and when reached near the turning at about 09:00 PM, someone fired at Rahman. It was a dark night and he could not see as to who fired shot. He saw 4-5 persons running, but he could not see the face of the accused.

12. At this juncture, on the request of prosecution, this witness has been declared hostile and prosecution were permitted to cross examine him.

13. PW-3, Allah Rakha in his examination-in-chief, deposed that he along with Rahman and Akram used to sell milk. When he along with Rahman and Akram was coming back to village on cycle after supply of milk to Gurukul. This witness and Akram were having a torch, they kept on flashing the torch and when they reached near the turning at about 09:00 PM, four persons met them on the way. They were Nepal, Tejbir, Ved Pal and Raj Kumar of the village. They were having separate country made pistol. On seeing Rahman, Nepal, Raj Kumar and Ved Pal exhorted to kill him. Thereupon accused Tejbir fired at Rahman (deceased), who, on being injured, fell down. He further deposed that after the incident 2-3 unknown persons met him at the place of occurrence and they were told by this witness to inform at his home about the incident. After sometimes, his son Asghar and other persons reached Gurukul, to whom he told about the incident. Thereafter, Asghar wrote the report and handed over at the police station Manglaur. Injured was taken to Muzaffarnagar Hospital, where he breathed his last.

14. The evidence of PW-4, Virendra Kumar Sharma, the second investigating officer and PW-5, SI Yogendra Singh, the first investigating officer has already been discussed above.

15. PW-6, N.P. Sharma, deposed that on 18.08.1987, he was posted at Muzaffar Nagar Hospital. On that date at about 03:30 PM, he conducted autopsy on the body of the deceased-Rahman, who was brought by Constable 251 Jagveer Singh and Home Guard 1496 Ghanshyam along with relevant documents. He found the following injuries on the person of the deceased:

“1. Multiple gun shot wound of entries in an area of 30 cm x 28 cm on both side of chest and upper part of abdomen and front of neck size varying 2 cm x 1 cm to $1\frac{1}{2}$ cm x $1\frac{1}{2}$ cm depth- skin to cavity deep. Margins are lacerated and inverted. No blackening and tattooing is present.

2. Three gun shot would of entry in an area of 6 cm x 3 cm on the front and inner aspect of left upper arm, size $^{1/2}$ cm x $^{1/2}$ cm x skin deep. Margin lacerated. No blackening and tattooing present.

3. Five gun shot wound of entry in an area of 8 cm x 4 cm on the front and outer aspect of right upper arm, size $^{1/2}$ cm x $^{1/2}$ cm x skin deep. Margin lacerated. No blackening and tattooing present.

4. Abrasion 3 cm x 1 cm over back of right elbow.

5. Abrasion 2 cm x 1 cm over the upper part of left thigh.

6. Abrasion 3 cm x 1 cm over upper part of right thigh.

16. In the opinion of the doctor, the cause of death was shock and haemorrhage as a result of ante-mortem injuries. The death could have been caused after 09:00 PM on 17/18.08.1987.

17. Doctor also found three small metallic pellets from right lung, four small metallic pellets from left lung, five small metallic pellets recovered in chest cavity, three small metallic pellets are recovered from chest wall.

18. During cross-examination, to a specific question, doctor stated that fire was made from the distance beyond 6 feet. He further deposed that he cannot tell definitely that the injuries was the result of how many fires.

19. After the closure of the prosecution evidence, the statement of the accused was recorded under Section 313 Cr.P.C., in which he denied the charges levelled against him and claimed false implication.

20. Learned Special/Additional District and Sessions Judge, Saharanpur after hearing the learned counsel for the parties and assessing, evaluating and scrutinizing the evidence on record, convicted and sentenced the accused-appellants as indicated herein above.

21. Hence, this appeal.

22. Mr. Mohammad Kalim, learned counsel for the appellant submits that there is no eyewitness of the occurrence and the appellants have been falsely dragged in the present case due to enmity.

23. Learned counsel for the appellant further submits that PW-2, Akram, who claimed himself to be the eyewitness of the occurrence, did not support the prosecution case and declared hostile.

24. Learned counsel for the appellant also argued that PW-3, who claimed himself to be the eyewitness is close relative of the deceased and the first informant.

25. On the other hand, Shri R.K. Gupta, learned Additional Government Advocate representing the State supported the findings of the learned trial court by stating that the prosecution has discharged its burden by establishing the guilt of the appellant beyond reasonable

doubt. He further submitted that the judgement is well reasoned and calls for no interference by this Court.

26. Heard Mr. Mohammad Kalim, learned counsel appearing on behalf of surviving appellant-Tejbir and Mr. R.K. Gupta, learned Additional Government Advocate representing the State and perused the record of the case.

27. The first argument of learned counsel for the appellant is that there was no eye witness of the occurrence and appellant has been dragged in the instant case due to enmity.

28. A witness in a crime is a vital component in the administration of justice. By providing evidence related to the allegation of the offence, the witness fulfils a holy obligation of aiding the court in discovering the truth or rather facts. That is why before presenting testimony, a witness takes an oath in the name of God or makes a solemn statement that he/she will narrate the truth, the entire truth and nothing but the truth. In our justice system, witnesses play a critical role in assisting courts in making effective judgements, ensuring that justice is given to those who need it the most.

29. By now it is well settled by a catena of judgements of Hon'ble Supreme Court that enmity is a double edged weapon. On one hand, it provides motive for the commission of the offence, on the other hand it also does not rule out the possibility of false implication.

30. Now, coming to the evidence of prosecution witnesses. PW-1, Asghar, who is the first informant of the case, was admittedly not an eyewitness of the case. He has lodged the first information report only on the narration of PW-2, Akram and PW-3, Allah Rakha. In the first information report as well as in his evidence before the Court, PW-1, Asghar has admitted his enmity with the accused-Nepal and Tejbir.

31. In this case two prosecution witnesses, namely PW-2, Akram and PW-3, Allah Rakha have been shown as eyewitness of the occurrence. PW-2, Akram, who is the real brother-in-law (Bahnoi) of the deceased did no support the prosecution case from the very beginning and has been declared hostile.

32. So far as the evidence of hostile witness is concerned, a three Judge Bench of Hon'ble Supreme Court in **Khujji alias Surendra Tiwari Vs. State of Madhya Pradesh** (1991)3 SCC 627, relying upon catena of judgement of Hon'ble Supreme Court, held that "evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross-examined him. It was further held that the evidence of such witnesses cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent their version is found to be dependable on a careful scrutiny thereof.

33. In **State of U.P. Ramesh Prasad Mishra**, (1996) 10 SCC 635, Hon'ble Supreme Court held that evidence of a hostile witness would not be totally rejected if spoken in favour of the prosecution or the accused, but required to be subjected to close scrutiny and that portion of the evidence which is consistent with the case of the prosecution or defence can be relied upon.

34. Hon'ble Supreme Court in **Bhajju Vs. State of Madhya Pradesh** (2012) 4 SCC 327 discussed the worth of the evidence of a hostile witness in the following words:

"It is settled law that the evidence of hostile witnesses can also be relied upon by the prosecution to the extent to which it supports the prosecution version of the incident. The evidence of such witnesses cannot be treated as washed off the records, it remains admissible in trial and there is no legal bar to base the conviction of the accused upon such testimony, if corroborated by other reliable evidence.."

35. In **Selvamani Vs. State represented by Inspector of Police**, 2024 SCC OnLinw SC 837, after considering a catena of its earlier judgements on the point, Hon'ble Supreme Court held as under:

"Thus, the law can be summarised to the effect that the evidence of a hostile witness cannot be discarded as a whole, and relevant parts thereof which are admissible in law, can be used by the prosecution or the defence."

36. The judgement in Ramesh Prasad Mishra (Supra) was reiterated by the Hon'ble Supreme Court in **Dadu alias Ankush and another Vs. State of Madhya Pradesh and another**, 2025 LiveLaw (SC) 1178.

37. In the light of the above settled proposition of law, we shall not discuss the evidence of PW-2, Akram. In his evidence, PW-2 has stated that deceased was his brother-in-law (Sala). He knows accused Tejbir, Nepal, Raj Kumar and Ved Pal, who are the resident of Mohammadpur. Deceased was also the resident of Mohammadpur. On the date of incident when he along with Allah Rakha and Rahman were coming back to Mohammadpur after supply of milk to Gurukul in three different cycles and when they reached near the turning at about 09:00 PM, some one fired at Rahman. It was a dark night and he could not see as to who fired shot. He saw 4-5 persons running, but he could not see the face of the accused.

38. Since, from the very beginning of his evidence, he did not support the prosecution case and stated in clear terms that although he saw 4-5 persons running after committing the murder of Rahman, the deceased, but as it was a dark night, he could not see the face of the accused. This witness PW-2, Akram was also subjected to lengthy cross-examination, but nothing could be elicited from his mouth to support the prosecution case. Therefore, from his evidence no benefit can be derived by the prosecution.

39. Now, coming to the testimony of PW-3, Allah Rakha, who supported the prosecution case and who is related and interested witness being the uncle of the deceased.

40. The rule of prudence of the point of related and interested witnesses is that their evidence should be meticulously and carefully examined. Before discussing the evidence of PW-3, Allah Rakha, it would be useful to refer to certain pronouncement of Hon'ble Supreme Court on the point:

41. In **Masalti Vs. State of U.P.** (1964) 8 SCR 133 the Supreme Court observed:

"But it would, we think, be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses. The mechanical rejection of such evidence on the sole ground that it is partisan, would invariably lead to failure of justice. No hard and fast rule can be laid down as to how much evidence should be appreciated. Judicial approach has to be cautious in dealing with such evidence; but the plea that such evidence should be rejected because it is partisan cannot be accepted as correct."

42. In **Raju Vs. State of Tamil Nadu** (2012)4 SCC (Cri) 184 ,Hon'ble Supreme Court held as under:

"The sum and substance is that the evidence of a related or interested witness should be meticulously and carefully examined. In a case where the related and interested witness may have some enmity with the assailant, the bar would need to be raised and the evidence of the witness would have to be examined by applying a standard of discerning scrutiny."

43. The aforesaid decision in Raju (Supra) was followed by Hon'ble Supreme Court in **Edakkandi Dineshan alias P. Dineshan and others Vs. State of Kerala**, (2025) 3 SCC 273.

44. In **Criminal Appeal No. 2490 of 2014 (Chhote Lal Vs. Rohtash and others)**, decided on 14.12.2023, Hon'ble Supreme Court held as under:

"It may not be out of context to mention that the appellant/complainant, a sole eyewitness, happens to be the most interested witness being the father of the deceased and having long enmity with the group to which the accused persons belong, therefore, his testimony was to be examined with great caution and the High Court was justified in doing so and in doubting it so as to uphold the conviction on his solitary evidence"

45.. Keeping in view the observations of Hon'ble Supreme Court in the judgements referred to above, we shall not proceed to discuss the evidence of PW-3, Allah Rakha, who is the uncle of the deceased. Admittedly, at the place of occurrence, there was not source of light as is evident from the evidence of PW-3, Allah Rakha himself. PW-3, Allah Rakha in his evidence has stated that he along with Rahman and Akram was coming back to village on cycle after supply of milk to Gurukul. He along with Akram was having a torch, they kept on flashing the torch and when they reached near the turning at about 09:00 PM, four persons met them on the way. They were Nepal, Tejbir, Ved Pal and Raj Kumar of the village. They were having separate country made pistols. On seeing Rahman, Nepal, Raj Kumar and Ved Pal exhorted to kill him. Thereupon accused Tejbir fired at Rahman (deceased), who, on being injured, fell down. He further deposed that after the incident 2-3 unknown persons met at the place of occurrence and they were told by this witness to inform at his home about the incident. After sometimes, his son Asghar and other persons reached Gurukul, to whom he

told about the incident. Thereupon, his son by sitting at the same place written the report and left for police station Manglaur and thereafter Injured was taken to Muzaffarnagar Hospital, where he breathed his last. (emphasis added).

46. From the perusal of the above statement of PW-3, Allah Rakha it transpires that it was a dark night and while they were moving forward, they were flashing torch to see the pathway, which goes to suggest that they were even not in a position to see the pathway without the light of the torch. When pathway was not clearly visible to the witnesses, how they have seen all the four accused were having country made pistols in their respective hand. Further the conduct of the witnesses after the incident was also improbable inasmuch as after the occurrence, the injured instead of being taken to the hospital, he was taken to Gurukul and made him to lay on the road, waited for the arrival of his son and after the arrival of his son, he narrated the entire story to him, thereafter, he wrote the first information report by sitting on the road and thereafter, his son went to the police station to get the first information report lodged and this witness (PW-3 Allah Rakha) along with PW-2 Akram, took the injured to Muzaffarnagar, where he succumbed to his injuries. The aforesaid conduct of PW-3, Allah Rakha clearly shows that no one has seen the assailants and after the occurrence, the FIR has been lodged after due consultation with each other dragging the appellants in the case due to previous enmity. Further there is certain discrepancy in his evidence inasmuch PW-3, Allah Rakha in his examination-in-chief deposed that on the next day of the occurrence, Daroga Ji met him and inspected his torch, whereas in his cross examination he stated that Daroga Ji has inspected his torch after one month of the occurrence.

47. In view of the above, the conviction of the sole surviving appellant Tejbir cannot be made on the testimony of sole eyewitness PW-3, Allah Rakha, who is uncle of the deceased and whose evidence does not inspire confidence.

48. It is a settled law that enmity is a double-edged weapon. On one hand, it provides motive, on the other hand it also does not rule out the possibility of false implication. From the nature of the evidence placed on record by the prosecution, the possibility of the present appellant Tejbir being falsely implicated on account of previous enmity cannot be ruled out. In our opinion, therefore, the appellant is entitled to benefit of doubt.

49. In view of the above, we are of the view that the prosecution has failed to establish the guilt of the appellant-Tejbir beyond all reasonable doubt.

50. Accordingly, the appeal is allowed. The order dated 19.12.1989 passed by the Special/Additional District and Sessions Judge, Saharanpur in ST No. 662 of 1988 convicting and sentencing the appellant Tejbir to life imprisonment under Section 302 IPC is set aside. The appellant-Tejbir is acquitted of the charge levelled against him.

51. The appellant-Tejbir is on bail. His bail bond is cancelled and sureties are discharged.

52. Office is directed to send a copy of this order to the court concerned for compliance and compliance report be submitted to this Court within two months.

(2026) 4 ILRA 590
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 01.04.2026

BEFORE

THE HON'BLE AVNISH SAXENA, J.

Criminal Appeal No. 2403 of 1988

Shalauddin & Anr.

...Appellants

Versus

State of U.P.

...Respondent

Issue for consideration

Matter pertains to unlawful assembly.

Headnotes

Indian Penal Code-Sec. 307 - Appellants shown to be the part of unlawful assembly -charged for the offence of rioting, armed with deadly weapon- no evidence on record to show when the unlawful assembly was created and when the common object to eliminate injured was found- the injured has suffered gun shot injury-injury report does not contain either the signatures or the thumb impression of the injured - nothing on record to show that the police was informed and the injured was admitted in the hospital- three accused who remain unidentified have merely been disclosed to attract Section 141 IPC- five accused with three unnamed, unidentified and without description for identification-prosecution has failed to establish guilt- judgment of conviction and sentence set aside.- **Criminal Appeal allowed.** (E-9)

Case Law Cited

1. Mohan Singh and another Vs. State of Punjab, 1962 SCC On Line SC 82; AIR 1963 SC 174
2. Ashok Kumar Chaudhary Vs. State of Bihar, (2008) 12 SCC 173
3. M. Nageshwara Reddy Vs. State of Andhra Pradesh and others, (2022) 5 SCC 791
4. State of Punjab Vs. Gurpeet Singh and others, (2024) 4 SCC 469
5. Jitendra Kumar Mishra alias Jittu Vs. State of Madhya Pradesh, (2024) 2 SCC 666

List of Acts

Indian Penal Code, 1860

List of Keywords

Unlawful assembly; common object; unidentified; gun shot injury.

Appearances of parties

Counsel for Appellant(s) : Digvijay Tiwari, Intekhab Alam Khan, Krishna Ji Khare
Counsel for Respondent(s) : A.G.A.

(Delivered by Hon'ble Avnish Saxena, J.)

1. Heard, Shri Dharmendra Kumar Chaubey, learned counsel, holding the brief, Sri Intekhab Alam Khan, learned counsel appears on behalf of both the appellants and Sri Raj Shekhar Srivastava, learned A.G.A. for the State.

2. The present criminal appeal has been preferred by the accused appellants on being aggrieved by the conviction and sentence dated 11.10.1988 passed by 2nd Additional Sessions Judge, Ghazipur in Session Trial No. 208 of 1986 (State Vs. Shalauddin and another) arose out of Case Crime No. Nil, under Sections 147, 148, 307 IPC [later on entered the Case Crime No. 10 of 1986], P.S.- Kotwali Sadar, District- Ghazipur, whereby the trial judge has convicted the accused for offence under Sections 148 and 307 read with Section 149 IPC and sentenced each accused of one year rigorous imprisonment for offence under Section 148 IPC and four years rigorous imprisonment for offence under Section 307 read with Section 149 IPC (sic. Section 149 IPC not mentioned in charge).

3. The prosecution case set out from the FIR dated 19.01.1986 lodged at 17:40 hours reveals that it is registered on the basis of written information sent by the injured informant Moinuddin Khan S/o Ibrahim, R/o Tajpur Kurra P.S. Dildar Nagar, District Ghazipur got written by Mohd. Ali Khan, S/o Munnawar of the same village disclosing therein that on 19.01.1986 at about 8:30 a.m. the injured Moinuddin Khan was going to Dildar Nagar at his Picture Hall from his village Tajpur Kurra. He reached one kilometer from the village to the north west corner of Teliyabag, where the accused appellants Shalauddin S/o Badshah Jyada Khan and Kamaluddin @ Jokhan S/o Shahjad Khan along with three other miscreants, wielding Ballam and Gandasa, had challenged the injured. Shalauddin was having rifle and Kamaluddin was having gun in their hands. They suddenly came out from the heap of puwal (straw). Shalauddin has exhorted that the victim shall not be escaped this time, on which Shalauddin and Kamaluddin have started firing at the injured. Injured ran towards nearby culvert (Puliya) to save himself. While running to the place he was hit by a bullet. To save himself he has taken out his revolver and took position. Seeing the revolver in the hand of the injured, the accused appellants have stopped at a distance and kept on firing. The injured saw Rashid Khan S/o Rauf, Mohd. Ali S/o Munawwar and Tasadduk Hussain Khan S/o Ibrahim of his village and cried for help. After hearing the firing other villagers also came to the place. The accused then sprinted away threatening the persons gathered at the place. The accused appellants were nurturing old enmity with the informant and tried to kill him earlier, as well. The persons gathered took the injured to Ghazipur hospital for treatment.

4. The charge sheet is submitted against two appellant, as the three miscreants who were stated to be present at the place of incident remain fugitive and unidentified.

5. The injured Moinuddin Khan was treated at district hospital Ghazipur where Dr. A.K. Srivastava has carried out the medico legal examination of the injured on 19.01.1986 at 11:00 a.m. and found two firearm injured on the person of injured. The injuries are reiterated underneath:-

"1) Gun shot wound of entry 0.5cm x 0.5cm x deep. Kept under observation. Advised X-ray chest on the right side of back (upper) 10cm below right shoulder joint. Margin inverted. Fresh bleeding present .

2) *Gun shot wound of entry 0.5cm 0.5cm x deep. Kept under observation. In the right side. Upper back 12cm below injury no. 1. Advised X-ray chest. Margin inverted. Fresh bleeding present.* ”

It is opined that the injuries are caused by firearm. It is also mentioned that police has been informed and patient admitted. This medico legal injury report is proved by PW-10 Dr. A.K. Srivastava as Exhibit KA-11. The X-ray report is proved by Dr. Kamta Prasad PW-8, as Exhibit KA-6, wherein it is found that 'four radiopaque metallic shadow (big size pellets) are seen in right side chest.' It is made clear that there is no supplementary medical report and x-ray plates filed by the prosecution during the trial and not even an iota of reference by the trial Judge in the judgment.

6. After submission of chargesheet, the charges have been framed against both the appellants on 15.01.1987. The perusal of the charge shows that both the accused were firstly charged for offence under Section 148 IPC and secondly, charged for offence under Section 307 IPC (The contents of charge reflects invoking the offence of attempt to murder in furtherance of common object with deadly weapon but Section 149 IPC is not mentioned in the charge). Though, the order framing charge reveals that the charge under Section 307 read with Section 149 IPC is framed against the accused.

7. Prosecution has produced **six witnesses of fact** including the injured and scribe of written information, namely **PW-1 Mohd. Kuddus Khan**, who is the witness of memo of recovery of brick, carrying bullet mark; **PW-2 Mohd. Hanif**, who is the witness of recovery of Kurta and Sweater of injured, soaked in blood; **PW-3 Mohd. Ali Khan**, the scribe of written information and an eye witness; **PW-4 Abdul Rashid Khan**, an eye witness; **PW-5 Tasadduk Hussain Khan**, an eye witness; and **PW-6 Moinuddin Khan**, the injured and informant. The prosecution has also produced **four formal witnesses** namely **PW-7 H.C. Bihari Pandey**, the scribe of Chik FIR and G.D.; **PW-8 Dr. Kamta Prasad**, Radiologist who has given X-ray report; **PW-9 Dashrath Tiwari**, who has been produced as secondary witness for Late Inspector Doodh Nath Upadhyay, the Investigating Officer; and **PW-10 Dr. A.K. Srivastava**, who has conducted medico legal examination of injured.

8. The prosecution has proved 10 exhibits from Exhibit Ka-1 to Ka-11 [Exhibit Ka-8 is inadvertently jumped and numbered as Exhibit Ka-9 and so on], but not taken into consideration in the judgment.

9. The prosecution has proved three material exhibits 1 to 3, the brick, Kurta and Sweater, respectively.

10. The accused appellants in the statement under Sections 313 CrPC had denied all the inculpatory evidences and stated that they have been falsely implicated in this case due to previous enmity between the parties. It is also mentioned that previously the injured has leveled charge of attempt to murder but the accused appellants were acquitted by the court.

11. In the defence they have filed the certified copies of the judgments and the certified copy of the statement of Tasadduk Hussain Khan who did not support the prosecution case in the previous trial.

12. Learned counsel for the appellants has submitted that the incriminating weapon has not been recovered. There is a previous history of enmity between the parties. The charge of common object has been levelled against the accused, despite the fact that the accused are two in number and the remaining three accused have never been traced or arrested or charge sheeted, as the three unnamed and unidentified accused were non-existent. PW-6 Moinuddin Khan, who is the injured witness, absconded, which led the trial court to issue process under Section 82 CrPC to procure his presence for examination. The case thrust upon the accused appellants is false and bogus case. There is marked delay in lodging the FIR, which is unexplained and was for concocting story against the accused appellants. The prosecution witnesses 3 to 5 claimed themselves to be the eye witnesses of the incident, but their place is not shown in the site plan. They are relative and tutored witnesses. The medico legal examination report is fabricated. The x-ray plate is not produced before the trial court in corroboration with the statement of radiologist-PW 8. The Investigating Officer has wrongly investigated case under the influence of informant, who runs the cinema hall. The secondary witness produced by the prosecution merely proved the site plan and charge sheet. Lastly submits that the trial court has convicted the accused appellants without considering the cross examination of the witnesses in the attendant circumstances. Hence submitted that the accused appellants are liable to be acquitted.

13. Learned AGA submits that the matter pertains to offence of attempt to murder where the victim PW-6 has lodged the FIR disclosing the name of accused appellants that the incriminating shot has been fired by Salauddin after exhortation. The injury report proved by the two medical witnesses PW-8 and PW-10 have specifically stated above that the injury suffered by the informant victim was the gun shot injury. The prosecution has proved the recovery of brick from the culvert in the statement of PW-1, which carries the bullet mark. The sweater and Kurta of the injured was also recovered, the memo of the same was proved by PW-2 Mohd. Hanif. FIR and G.D. Entry have been proved by PW-7 scribe of Chik FIR and G.D. All the witnesses have proved the case against the accused beyond the shadow of duty. The presence of three eye witnesses, who have supported the prosecution case cannot be belied. Hence, submitted that the appeal is devoid of merit and liable to be dismissed.

14. This Court has taken into consideration the rival submission of the parties and perused the record.

15. Before dealing with the judgment of the trial court convicting the accused appellants invoking the provisions of common object, despite the fact that for the purpose of framing the charge of common object there must be five or more persons, it would be expedient to proceed with the case along with the arguments raised by the learned counsel for the parties.

16. The points of concern in the present appeal are:-

16.1. Whether the trial court has rightly convicted the accused appellants for the offence of attempt to murder in furtherance of common object, despite the fact that the charge sheet is submitted against two accused, who were charged for the offence of common object?

16.2. Whether the trial court has rightly appreciated the entire evidence in the right perspective, considering the facts and circumstances of the case pertaining to delay in FIR and testimony of interested witnesses?

17. So far as the allegation against the accused appellants that they have committed the offence being members of the unlawful assembly with the design to eliminate the informant Moinuddin in furtherance of common object, the contents of the FIR is quite relevant. It is disclosed in the written information Exhibit Ka-3 written by PW-3 Mohd. Ali Khan on the dictation of PW-6 Moinuddin Khan that the accused appellant Salauddin was having rifle in his hand and Kamaluddin @ Jokhan was wielding a gun and three other anonymous persons wielding Ballam and Gadasa in their hands came out from the heap of straw. The details and description of other three unnamed accused has never been revealed in the investigation and no effort has been made to get their identity disclosed. The charge sheet is submitted against two appellants without disclosing that the investigation is continuing against the unnamed three accused. The trial court has not only framed charge under Section 148 IPC against the appellants but has also convicted them without proving their being members of unlawful assembly.

18. It is pertinent to point out here that the definition of unlawful assembly provided under Section 141 IPC clearly mandates the assembly of five or more persons having a common object to compose the assembly to carry out the sinister design. In the present case it is apparent that the three accused who remain unidentified have merely been disclosed to attract Section 141 IPC.

19. In the case of **Mohan Singh and another Vs. State of Punjab**, a Five Judges Bench of Hon'ble the Supreme Court headed by the Chief Justice way back in 1962 have considered the requirement and ingredients of the offence carried out by the unlawful assembly in furtherance of 'common object'. Relevant paragraphs 8 and 9 are reiterated underneath:-

“8. The true legal position in regard to the essential ingredients of an offence specified by Section 149 are not in doubt. Section 149 prescribes for vicarious or constructive criminal liability for all members of an unlawful assembly where an offence is committed by any member of such an unlawful assembly in prosecution of the common object of that assembly or such as the members of that assembly knew to be likely to be committed in prosecution of that object. It would thus be noticed that one of the essential ingredients of Section 149 is that the offence must have been committed by any member of an unlawful assembly, and Section 141 makes it clear that it is only where five or more persons constituted an assembly that an unlawful assembly is born, provided, of course, the other requirements of the said section as to the common object of the persons composing that assembly are satisfied. In other words, it is an essential condition of an unlawful assembly that its membership must be five or more. The argument, therefore, is that as soon as the two Piara Singhs were acquitted, the membership of the assembly was reduced from five to three and that made Section 141 inapplicable which inevitably leads to the result that Section 149 cannot be invoked against the appellants. In our opinion, on the facts of this case, this

argument has to be upheld. We have already observed that the point raised by the appellants has to be dealt with on the assumption that only five persons were named in the charge as persons composing the unlawful assembly and evidence led in the course of the trial is confined only to the said five persons. If that be so, as soon as two of the five named persons are acquitted, the assembly must be deemed to have been composed of only three persons and that clearly cannot be regarded as an unlawful assembly.

9. In dealing with the question as to the applicability of Section 149 in such cases, it is necessary to bear in mind the several categories of cases which come before the criminal courts for their decision. If five or more persons are named in the charge as composing an unlawful assembly and evidence adduced by the prosecution proves that charge against all of them, that is a very clear case where Section 149 can be invoked. It is, however, not necessary that five or more persons must be convicted before a charge under Section 149 can be successfully brought home to any members of the unlawful assembly. It may be that less than five persons may be charged and convicted under Section 302/149 if the charge is that the persons before the Court along with others named constituted an unlawful assembly; the other persons so named may not be available for trial along with their companions for the reason, for instance, that they have absconded. In such a case, the fact that less than five persons are before the Court does not make Section 149 inapplicable for the simple reason that both the charge and the evidence seek to prove that the persons before the Court and others number more than five in all and as such, they together constitute an unlawful assembly. Therefore, in order to bring home a charge under Section 149 it is not necessary that five or more persons must necessarily be brought before the court and convicted. **Similarly, less than five persons may be charged under Section 149 if the prosecution case is that the persons before the Court and others numbering in all more than five composed an unlawful assembly, these others being persons not identified and so not named. In such a case, if evidence shows that the persons before the Court along with unidentified and un-named assailants or members composed an unlawful assembly, those before the Court can be convicted under Section 149 though the un-named and un-identified persons are not traced and charged.** Cases may also arise where in the charge, the prosecution names five or more persons and alleges that they constituted an unlawful assembly. In such cases, if both the charge and the evidence are confined to the persons named in the charge and out of the persons so named two or more are acquitted leaving before the court less than five persons to be tried, then Section 149 cannot be invoked. Even in such cases, it is possible that though the charge names five or more persons as composing an unlawful assembly, evidence may nevertheless show that the unlawful assembly consisted of some other persons as well who were not identified and so not named. In such cases, either the trial court or even the High Court in appeal may be able to come to the conclusion that the acquittal of some of the persons named in the charge and tried will not necessarily displace the charge under Section 149 because along with the two or three persons convicted were others who composed the unlawful assembly but who have not been identified and so have not been named. In such cases, the acquittal of one or more persons named in the charge does not affect the validity of the charge under Section 149 because on the evidence the Court of facts is able to reach the conclusion that the persons composing the unlawful assembly nevertheless were five or more than five. It is true that in the last category of cases, the court will have to be very careful in reaching the said conclusion. But there is no legal bar which prevents the court from reaching such a conclusion. The failure to refer in the charge to other members of the unlawful assembly un-named and un-identified may conceivably raise the point as to whether prejudice would be caused to the

persons before the court by reason of the fact that the charge did not indicate that un-named persons also were members of the unlawful assembly. But apart from the question of such prejudice which may have to be carefully considered, there is no legal bar preventing the Court of facts from holding that though the charge specified only five or more persons, the unlawful assembly in fact consisted of other persons who were not named and identified. That appears to be the true legal position in respect of the several categories of cases which may fall to be tried when a charge under Section 149 is framed."

20. As the appellants were shown to be the part of unlawful assembly who were charged for the offence of rioting, armed with deadly weapon. There is no evidence on record to show when the unlawful assembly was created and when the common object to eliminate injured was found, but complete evidence is to be marshalled to reach to the conclusion.

21. Now the point of concern is the role of accused for the offence of attempt to murder.

22. As per the written information Exhibit Ka-3 the injured PW-6 Moinuddin was going to his cinema hall at Dildarnagar from his residence at Village Tajpur Kurra P.S.- Dildarnagar. At about 8:30 a.m. when he reached one kilometre from his village near the North West corner of Teliyabag, Salauddin having rifle and Kamalluddin @ Jokhan having gun suddenly came out from the heap of straw, they have exhorted and fired at Moinuddin. He ran to the culvert to save himself and taken out his revolver. He has taken position to fire on the accused appellants, and also cried for help, hearing which the witnesses namely Mohd. Ali Khan PW-3, Abdul Rashid PW-4 and Tasadduk Hussain Khan PW-5 reached to the spot. The accused appellants then sprinted away.

23. PW-3 Mohd. Ali Khan, PW-4 Abdul Rashid Khan and PW-5 Tasadduk Hussain Khan in their examination in chief repeated the same story, verbatim as is mentioned in the FIR. Mohd. Ali Khan and Abdul Rashid Khan are the real nephews of injured- Moinuddin Khan, whereas Tasadduk Hussain Khan is the real brother of Moinuddin Khan. The inconsistency in their statement is about the firing by injured Moinuddin from his revolver, which is denied by the informant in his deposition as PW-6.

24. It is consistent statement of three witnesses of fact namely PW-3 to PW-5 that they were present at the time of incident. The incident took place at 8:30 a.m. They have taken the injured to his cinema hall from where the injured was taken to District Ghazipur. On questioning to the eye witnesses and the injured witness PW-6 that they have not reported the matter at the concerned police station but has lodged report at Police Station- Kotwali Ghazipur had replied that for better treatment the victim was taken to District Hospital Ghazipur from where the injured has dictated the FIR to PW-3 Mohd. Ali Khan and send it to P.S.- Kotwali. It seems a plausible answer. In such circumstances the other facts is also required to be seen, because the witnesses are related therefore their testimony is to be closely scrutinized and not discredited merely because they are related. As is laid down by Hon'ble the Supreme Court in the cases of **Ashok Kumar Chaudhary Vs. State of Bihar**; **M. Nageshwara Reddy Vs. State of Andhra Pradesh** and others, **State of Punjab Vs. Gurpreet Singh and others** and plethora of other cases and became a settled law.

25. Medico legal examination report Exhibit Ka-11 is prepared by Dr. A.K. Srivastava PW-10. This witness has stated that the injured has suffered gun shot injury. The examination of injured is carried out on 19.01.1986 at 11:00 a.m. In his cross examination he has stated that the gun shot injury may be ten hours old. It skipped the attention of prosecution, defence and trial court that the injury report does not contain either the signatures or the thumb impression of the injured Moinuddin Khan, though there are specific space provided in the document for left hand thumb impression of the injured. The vagueness of medico legal examination report is further attributed to the fact that the Doctor PW-10 has admitted the patient and informed the police, there is nothing on record to show that the police was informed and the injured was admitted in the hospital. It is further required to be considered that the injured himself was produced in the hospital through Mohd. Rashid Khan. There is not even an iota of reference made in the medico legal examination report that how the injured suffered the gun shot injury and about the time of the injury. The x-ray report exhibited as Exhibit Ka-6 is proved by PW-8 Dr. Kamta Prasad, Radiologist. This report is on plain paper dated 19.01.1986 shows that 'four radiopaque metallic shadow (big size pellets) are seen in the right side of chest.' This report is not supported by the x-ray plate. The x-ray plate in such circumstances becomes an important material to establish the gun shot injury suffered by PW-6 Moinuddin Khan.

26. This Court has already observed that the doctor while entering the medico legal examination report had mentioned that the police has been informed. This information, if found to be true might have been given after 11:00 a.m. to the police and at no stretch of imagination after lodging of the FIR at 17:40 hours. This puts a dent on the prosecution case about the gunshot injury.

27. The written information was written by Mohd. Ali Khan PW-3 and send to P.S.- Kotwali District- Ghazipur. PW-7 H.C. Bihari Pandey has proved the chik FIR and G.D. No. 40 Exhibit Ka 4 & 5 which reveals that Rashid Khan and Rauf Khan came to the police station with the written report. In his cross examination he has stated that the injuries of the injured has not been mentioned in the G.D. The delay in lodging of the FIR is not explained by the prosecution. The previous enmity between the accused appellants and injured is not only reflected from the statement of eye witnesses and the injured but the certified copy of previous accusation and acquittal of the accused is established by the defence in filing the certified copies of the judgment.

28. The trial court has found the eye witnesses as trustworthy and the injured witness having suffered the gun shot injury proved by the doctor without considering the glitches in the prosecution case. These glitches which are discussed here-in-above are material in nature and pointing towards the fact that concocted FIR has been lodged by informant belatedly against the appellants implicating them for the offence of attempt to murder.

29. The entire oral and documentary evidence upon appreciation leading to the bundle of facts that the injured suffered gunshot injury at 8:30 a.m. in the presence of witnesses but reached hospital only at 11:00 a.m. without informing police, waited for the whole day for registration of F.I.R., which was finally registered at 5:40 p.m. There is no explanation for delay. The previous enmity is disclosed in the F.I.R. and gives ample reason for false implication, which further gives impetus when medico-legal examination report did not carry the signature or thumb impression of

injured on it, with no document of admission or X-ray plate or supplementary medical report filed to show that it is the injured who was treated. The falsity and vagueness of prosecution case in showing the presence of five accused with three unnamed, unidentified and without description about their built, physique, complexion and features for identification. Thus, the prosecution has utterly failed to establish guilt of accused, who shall be given benefit of doubt.

30. In the case of **Jitendra Kumar Mishra alias Jittu Vs. State of Madhya Pradesh** Hon'ble the Supreme Court held that an appellate court should be slow in interfering with conviction recorded by courts below but where evidence on record indicates that prosecution has failed to prove guilt of accused beyond reasonable doubt and that a plausible view, different from one expressed by trial court, can be taken. The appellate court should not shy away in giving benefit of doubt to the accused.

31. Thus, the judgment of conviction and sentence dated 11.10.1988 passed by 2nd Additional Sessions Judge, Ghazipur in Session Trial No. 208 of 1986 (State Vs. Shalauddin and another) arose out of Case Crime No. 10 of 1986, P.S.- Kotwali Sadar, District- Ghazipur, is hereby **set aside**.

32. The appellant no. 1 Shalauddin and appellant no. 2 Kamaluddin are **acquitted** for offence under Sections 148 and 307 read with Section 149 IPC.

33. Accordingly, the criminal appeal is **allowed**.

34. The material exhibits shall be disposed of as per law.

(2026) 4 ILRA 598
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 02.04.2026

BEFORE

THE HON'BLE CHANDRA DHARI SINGH, J.
THE HON'BLE DEVENDRA SINGH-I, J.

Criminal Appeal No. 2487 of 1985

Bhanwarkali & Anr.

...Appellants

Versus

State of U.P.

...Respondent

Issue for consideration

Matter pertains to legality of dying declaration.

Headnotes

Dying Declaration; Burn Injury-Indian Penal Code-sec. 302-Deceased was brought home by the father-in-law and Sarpanch -next day-informant he received information about the burning of his daughter-died in the hospital -neither his son-in-law nor any member of his family visited there-75% burn injuries-

doctor certified that the statement has been recorded in his presence and approval of the patient was obtained-non-smell of kerosene from the body of the deceased -not fatal for the prosecution -as the body was inspected after more than 28 hours of the incident-prosecution proved its case beyond all reasonable doubt-
Criminal Appeal dismissed. (E-9)

Case Law Cited

1. Jayamma and another Vs. State of Karnataka (Criminal Appeal No. 758 of 2010 (Supreme Court)
2. Suresh Vs. State (2025)4 SCC 794
3. Manjunath and others Vs. State of Karnataka, 2023 INSC 978
4. Sampat Babso Kale and another Vs. State of Maharashtra (Criminal Appeal Nos. 694-695 of 2011) (Supreme Court)
5. Rameshwar Lal Chauhan Vs. State of U.P. (Criminal Appeal No. 6920 of 2017(Allahabad High Court)
6. Tarun Sharma Vs. State of Haryana, (2026)(1)JIC 130 (SC)
7. Laxman Vs. State of Maharashtra, (2002) 6 SCC 710
8. Poparambaka Rosamma and others Vs. State of Andhra Pradesh, 1999 (7) SCC 695
9. Koli Chunilal Savji and another Vs. State of Gujarat, 1999 (9) SCC 562
10. Paparambaka Rosamma and others Vs. State of Andhra Pradesh, 1999 (7) SCC 695
11. Koli Chunilal Savji and another Vs. State of Gujarat, 1999(9) SCC 562
12. Ravi Chander Vs. State of Punjab, 1998 (9) SCC 303
13. Harjeet Kaur VS. State of Punjab 1999(6) SCC 545
14. Suresh Vs. State (2025)4 SCC 794
15. Munnu Raja and another Vs. State of Madhya Pradesh, 1976 (2) SCR 764
16. Bhagirath Vs. State of Haryana, AIR 1997 SC 234
17. State of Karnataka Vs. Shariff, (2003)2 SCC 473
18. State of Jharkhand Vs. Shailendra Kumar Rai, 2022 Live Law (SC) 890
19. Tarun Sharma Vs. State of Haryana, 2026(1) JIC 130
20. Munnu Raja and another Vs. State of Madhya Pradesh, (1976) 3 SCC 104
21. Jai Karan Vs. State of Delhi (NCT) (1999) 8 SCC 161
22. Naeem Vs. State of U.P., 2024 SCC OnLine SC 237

List of Acts

1. Indian Penal Code, 1860
2. Code of Criminal Procedure,1973

List of Keywords

Dying declaration; Nemo moriturus praesumitur mentire; Laterm Mortem.

Appearances of parties

Counsel for Appellant(s) : Amit Daga, R.N.sharma;
Counsel for Respondent(s) : A.G.A.

(Delivered by Hon'ble Chandra Dhari Singh, J.)

1. This Criminal Appeal has been filed against a judgement and order dated 12.09.1985 passed by the Fourth Additional Sessions Judge, Meerut in ST No. 319 of 1980 whereby the learned Judge convicted and sentenced the appellants Bhanwarkali and Shyam Kali to imprisonment for life and a fine of Rs. 2,000/- each under section 302/34 IPC and in case of default in payment of fine, they shall further undergo imprisonment for three months.

2. Pursuant to the order of this Court dated 02.02.2026, criminal appeal filed on behalf of the appellant Bhanwarkali has been disposed of as abated and now this Court is only concerned with the appeal of Shyam Kali.

Facts of the case

3. The facts that formed the bedrock of the present appeal are that a written report was given at police station Baghpat at 11:00 PM on 30.05.1979 by Tota Ram, son of Sher Singh, resident of Village Saroorpur Kalan (hereinafter referred to as the first informant) with the allegations inter alia that he got her daughter married to Shiv Kumar, son of Ziley Singh about five years back. There were certain differences, which were mutually resolved. On 29.05.1979, i.e. a day before the occurrence. The daughter of the first informant, Smt. Santosh went to her in-law's house with Ziley Singh and Sarpanch Kalu Ram. On 30.5.1979, a person from village Mawi Kalan informed him that his daughter has been burnt. On that information, the first informant reached the village Mawi Kalan where he came to know that Bhanwar Kali had sprinkled kerosene on the body of the Smt. Santosh and Shyam Kali had set her on fire with an intention to kill her, due to which she had badly injured. The first informant took his daughter to Delhi Hospital where after getting her admitted, went to the police station and lodged the report. The first information report further recounts that in the incident in question, Ziley Singh and his son have also hands because before leaving the house, they had given certain instructions to the accused.

4. On the basis of the aforesaid information, a Chik report was prepared for the offence at 11:00 PM on 30.5.1979. On completion of investigation, the investigating officer submitted the charge sheet against the appellants.

5. Before the first information report could be lodged PW-6, ASI Ranbir Singh, who was posted as In-Charge, Out Post, on getting Medico Legal Sheet through Constable Ram Autar, in respect of Smt. Santosh, he rushed to the spot and recorded the dying declaration of Smt. Santosh (hereinafter referred to as the deceased), which ended at 06:15 PM on 30.5.1979. The deceased died in Delhi, but before her death, her dying declaration was recorded.

6. As the case was exclusively triable by the Court of Sessions, learned Magistrate committed the case to the Court of Sessions, where case was registered as ST No. 319 of 1980 and the learned 7th Additional Sessions Judge, Meerut, vide order dated 28.10.1980 framed the charges against the accused-appellants under Section 302/34 IPC, which was read over and explained to the accused, who pleaded not guilty and claimed to be tried.

7. To bring home guilt of the appellants, the prosecution has examined as many as six witnesses. PW-1, Total Ram, is the first informant of the case, PW-2, Smt. Mahendri is the mother of the deceased, PW-3, Pran Sukh Sharma was the Chik writer of the FIR, PW-4, Dr. Vishnu Kumar, who inspected the body of the deceased after her death, PW-5, Dr. P.K. Govila, who proved the admission slip and endorsement of Dr. Ashok Gupta and PW-6, ASI Ranbir Singh, who recorded the dying declaration of the deceased.

8. PW-1, Tota Ram is the first informant of the case and father of the deceased. In his examination-in-chief, he has stated that his daughter was married to Shiv Kumar about five years prior to the alleged occurrence. The accused are the daughters of Ziley Singh with whose son, his daughter was married. After the marriage, his daughter went to her in-laws' house where she was ill-treated. Since 1-1/2 year prior to the alleged occurrence, his daughter was living with him. His daughter had also sent a complaint on 27.2.1979 to the District Magistrate, Meerut. The police and certain persons of the village reconciled the matter and they also took the responsibility for any happening with his daughter. He further deposed that on 29.05.1979, Ziley Singh, the father-in-law of the deceased and Kalu Ram (Sarpanch of the village Mawi Kalan) came to his house. The deceased was sent with them and on the next day at about 07:00 AM, he received information about the burning of his daughter. On this information, he and his wife went to village Mawi Kalan where in the house of his Samdhi, he found that his daughter (deceased) was lying burnt on a cot in the courtyard. His daughter was alive at that time. On queries, her daughter told him that accused-Bhanwar Kali had sprinkled kerosene over her and accused-Shyam Kali had set her on fire with match. She also informed that when she raised noise, the two accused persons had beaten her and dragged her on the cot. He also deposed that he was informed by his daughter that at the time of occurrence, her father-in-law Ziley Singh had gone to village Katha for oil extraction and was not present at the residence, but before he left the house had had given some instructions to the accused-persons. Deceased had also informed the complainant that at the time of incident, her husband was in the field. This witness has further stated that he took the deceased on a truck to Irwin Hospital at Delhi, where she was admitted and then at about 11.00 in the night he went to the police station where he lodged the report, which he proved as Ext. Ka-1. After lodging the report at the police station, the witness has said that he went to his home at village Saroorpur Kalan. The next day, his daughter died in the hospital at Delhi. Neither his son-in-law Shiv Kumar nor any member of his family visited there. This witness has further explained that relations between his daughter and her in-laws were not good due to non-fulfillment of unreasonable demands of his son-in-law.

9. PW-2, Smt Mahendri is the wife of the first informant-Tota Ram and mother of the deceased. In her examination-in-chief, she deposed that deceased was married to Shiv Kumar of Mawi Kala, 5-6 years prior to the occurrence. After the marriage, there was differences between the deceased and her husband. Twice in the Panchayat matter was compromised, but there was no improvement in the behaviour of husband of the deceased. She sent her daughter to her in-laws house along with Ziley Singh (father-in-law of the deceased) and Sarpanch of the village on the assurance of the Sarpanch that they shall not ill-treat the deceased. On the next day of sending the deceased, she got the information about burning of the deceased. She got the information in the morning. She reached at the matrimonial house of the deceased at about 8-9 AM. The name of her daughter (deceased) was Santosh. She further deposed that when she reached the house of Santosh, she was lying burnt and told that she has been burnt by Bhanwar Kali and Shyam Kali. Bhanwarkali sprinkled kerosene over her and Shyam Kali set her ablaze. She further deposed that she took the deceased to the hospital at Delhi.

10. PW-3, Pran Sukh Sharma, in his examination-in-chief deposed that on 30.05.1979, he was posted as Sub-Inspector at police station Kanghla. He further deposed that the investigation of this

case was handed over to him and on 01.6.1979, he recorded the statement of Tota Ram, the complainant and thereafter the investigation was handed over to another Sub-Inspector.

11. PW-4, Dr. Vishnu Kumar is the Professor and Head of Department of Forensic Medicines at Maulana Azad Medical College, Delhi. He had performed autopsy on the dead body of Smt. Santosh. There were burn injuries on almost all over the body and about 75% portion of the body was affected due to these burns. In the opinion of the doctor, the death was caused due to toxemia and shock which was due to the burn injuries. The doctor has proved the postmortem examination report, Ext. Ka-4). He further opined that burn injuries could be caused at about 06:15 AM on 30.5.1979.

12. PW-5, Dr. P.K. Govila was the A.C.H.O in the Casualty Ward of Irwin Hospital at Delhi on 30.5.1979. The name of the hospital is now changed to Jai Prakash Narayan Hospital, Delhi. He has stated that on 30.5.1979 at about 1:40 PM, Smt. Santosh was brought by Subedar Tota Ram. The lady had sustained burn wounds. She was admitted in the hospital and was referred to the Specialist. The doctor has proved the admission slip, Ext Ka-9, which was filled by him. The doctor has further proved the endorsement of Dr. Ashok Guupta, who made a note that the patient was fit for statement. This endorsement was made at 4:50 PM. After the death of the patient, the death summary was prepared by Dr. Ram Phal, which has been proved by Dr. P.K. Govila as Ext. Ka-10. This witness has also proved the endorsement of Dr. Ashok Gupta on the dying declaration itself. Dr. Ashok Gupta has certified that the statement has been recorded in his presence and approval of the patient was obtained.

13. PW-6, ASI Ranbir Singh, in his examination-in-chief has deposed that on 30.5.1979, he was posted as In-charge at the police outpost at Jain Prakash Narayan Hospital, New Delhi. He received a medico-legal sheet through Constable Ram Autar and on the basis thereof, he went to record the statement of Smt. Santosh. He further deposed that on his dictation, Constable Ram Kumar had recorded the statement. Whatever was told by Smt. Santosh was recorded. This witness has stated that Smt. Santosh had voluntarily given her statement. After her statement was recorded, her thumb impression was also obtained thereon. He stated that the entire statement was recorded in the presence of Dr. Ashok Gupta and this witness has put his signature after reading it, which he proved as Ext. Ka-11.

14. After the closure of prosecution evidence, the statement of the accused Shyam Kali recorded under Section 313 Cr.P.C. in which she denied the charges levelled against her. However, she further stated that deceased-Santosh had gone to her maternal home 2-3 months ago. Father of the deceased wanted to usurp the ornaments which was given to her in marriage and he wanted to get Smt. Santosh remarry. She further stated that when this fact came to the knowledge of his father-Ziley Singh, he went to the house of Tota Ram with Panchayat. On the persuasion of Panchayat, Tota Ram has sent Smt. Santosh (deceased) with her father Ziley Singh and on the next morning she set herself ablaze. She further stated that she had gone to field and was not present at the house.

15. One Shri Ram Kishan, son of Khajan Singh has been produced in defence as DW-1. He stated that he is the Villae Pradhan of Mawi Kalan. On the date of occurrence at about 6.00 AM,

when he was on morning walk, on getting information that daughter-in-law of Ziley Singh has been burnt, he went to the house of Ziley Singh, where Smt. Santosh (deceased) was lying on the cot. She was alive. On his queries, she told him that she herself had set on fire. On asking the reason, she told that whatever was destined had happened. He then called Ziley Singh and his two daughters from the field and also sent information to the father of Smt. Santosh through Ram Singh who is the neighbour of Ziley Singh. This witness has also stated that he along with other villagers has also informed the police Inspector that Smt. Santosh was not burnt but she herself set her on fire.

16. Learned Fourth Additional Sessions Judge, Meerut after hearing the learned counsel for the parties and assessing, evaluating and scrutinizing the evidence on record, convicted and sentenced the accused-appellant as indicated herein above.

17. Hence, this appeal.

Submissions on behalf of the appellant

18. Learned counsel for the appellant submitted that since the deceased was having a burn of 75%, she must not have been in a position to give her statement. In support of this contention, learned counsel has placed reliance upon the judgement of Hon'ble Supreme Court in **Jayamma and another Vs. State of Karnataka (Criminal Appeal No. 758 of 2010 (Supreme Court))**.

19. Learned Senior Advocate further submits that there was no smell of kerosene in the body of the deceased when she was not brought to the hospital, which makes the prosecution story doubtful. In support of his case, learned counsel for the appellant has relied upon the judgement of Hon'ble Supreme Court in the case of **Suresh Vs. State (2025)4 SCC 794**.

20. Learned counsel for the appellant further submits that dying declaration of the deceased was recorded by a Constable, which was only signed by the Sub-Inspector, the Constable who recorded the dying declaration of the deceased has not been examined. He further submits that dying declaration was not recorded by the Magistrate. In support of his contention, learned counsel for the appellant has placed reliance upon the judgement of Hon'ble Supreme Court in **Manjunath and others Vs. State of Karnataka, 2023 INSC 978**.

21. Learned counsel also submitted that none of the witnesses from the neighbourhood have been examined and that no incriminating material appearing against her was put to the accused in her statement under Section 313 Cr.P.C. In support of the contention, learned counsel for the appellant has relied upon the decision of Hon'ble Supreme Court as well as Allahabad High Court in **Sampat Babso Kale and another Vs. State of Maharashtra (Criminal Appeal Nos. 694-695 of 2011) (Supreme Court)** and **Rameshwar Lal Chauhan Vs. State of U.P. (Criminal Appeal No. 6920 of 2017 (Allahabad High Court))**.

22. Learned counsel for the appellant contended that the prosecution has failed to produce the doctor, who had issued fitness certificate of deceased, which creates grave doubt about the authenticity of the fitness certificate. For the said proposition, learned counsel for the appellant has

relied upon the judgement of Hon'ble Supreme Court in **Tarun Sharma Vs. State of Haryana, (2026)(1)JIC 130 (SC)**.

23. Learned counsel for the appellant has lastly contended that the investigating officer has not been produced by the prosecution.

24. On the other hand, Shri Satyendra Tiwari, learned Additional Government Advocate submits that deceased was burnt to death by the accused-appellants. The deceased has specifically named the accused in her dying declaration.

Submissions on behalf of the State

25. Shri Tiwari further submits that since the Sub-Inspector had injury on his thumb, he got the dying declaration recorded by the constable and put his signature, which is not fatal for the prosecution.

26. Learned Additional Government Advocate supported the findings of the learned trial court by stating that the learned trial court has correctly martialled the evidence and considered each and every aspect of the case while convicting the appellant.

27. Heard Shri Amit Daga, learned Senior Advocate assisted by Shri Bihaan Pandey, learned counsel for the appellant and Shri Satyendra Tiwari, learned Additional Government Advocate representing the State and have gone through the record of the case.

Analysis and conclusion

28. Before advertng to the arguments advanced on behalf of the learned counsel for the parties, it would be useful to quote the dying declaration of the deceased:

बयान- श्रीमती सन्तोश W/O श्री शिव कुमार R/O गाँव मवी कलॉ थाना बागपत जिला मेरठ (U.P.) व उम्र 20 साल व्यान किया कि मैं पता बाला पर अपने पती व सास ससुर के साथ रहती हूँ मेरी शादी को करीब 5 साल हो गये हैं, 5 साल के दौरान मेरे सास ससूर और मेरा पती व मेरी नन्द भंवर कली उम्र 20 साल जो शादी सूदा हैं व श्याम कली उम्र करीब 18 साल यह सभी लोग मुझे मारते पीटते थे और मैं इन लोगों से तंग आकर अपने पीहर मोजा सरूरपुर कला जिला मेरठ में चली जाती थी कई बार पहले भी पंचायत के फैसले पर मेरे माता पिता ने मेरी ससुराल वालों के साथ भेज दिया था फिर मुझे वह लोग तंग करते थे करीब 1-1/2 साल से मैं अपने पीहर अपने माता पिता के पास रह रही थी करीब 2 माह पहले मैंने मेरठ कलेक्टर को अपनी ससुराल वालों के बारे में दरखास्त दी थी जो कलेक्टर साहब ने थाना बागपत पुलिस को लिखा जो पुलिस ने मेरे पीहर व ससुराल वालों को बुलाकर करीब 1-1/2 माह पहले फैसला करा दिया जो कल दिनांक 29.5.79 को मेरे ससुरजी जिले सिंह व वहाँ का संपंच श्री कालू राम मेरे पीहर से मुझे मेरी ससुराल ले गये जो शाम को व रात भर मुझे उन्होंने तंग रखी गालिया वगैरा देते रहे और खाना भी नहीं दी आज सुबह करीब 6

बजे मेरा ससुर काठा गाँव मे तेल निकल वाने चला गया। और मेरा आदमी उसी समय खेत में चला गया और मेरी सास कुछ दिन पहले अपने पीहर गई हुई है जो मेरी नन्द भंवर कली ने मेरे उपर मिट्टी का तेल डाल दिया और दूसरी नन्द श्याम कली ने मेरे को माचिश लगाई जो मेरे कपड़ो को आग लग गई आग लगने के बाद मैंने शोर मचाया तो उन दोनो ने मुझे पीटना शुरू कर दिया जो मैंने खुद ही अपने कपडे उतार फेंके और गिर पड़ी यह वाकिया करीब 6/30 बजे सुबह का है उसने हमारे पड़ोसी श्री राम सिंह ने जाकर मेरी पीहर में मेरी माता जी को बतलाया जो मेरी माता जी करीब 9 बजे दिन मेरे पास पोहच गई और उसके बाद थोड़ी देर बाद मेरे पिता जी भी पोहुच गये जिन्होने मुझे लाकर J.P.M. अस्पताल दाखिल करा दिया उन्होने मुझे जान बूझ कर मारने के लिये जलाया है मेरे दोनों हाथ छाती पेट कमर दोनों पैर जल गये है मुंह और सर बचा है उनके खिलाफ कानूनी कार्यवाही की जावे मेरे दोनो हाथ जले हुये है।

RTI of Patient

Statement has been recorded before me and approval of patient has been taken for what has been recorded.

SD 06:15 PM
(Dr. Ashok Gupta (H.S. Bang)
30.05.1979

(Randhir Singh)
I/c P.P. J.P.N. Hospital
30.5.1979

29. The maxim "*Nemo moriturus praesumitur mentire*" is the basis for "dying declaration", which means, " a man will not meet his maker with a lie in his mouth". A dying declaration is called as "*Latent Mortem*" which means "word said before death.

30. Recording of dying declaration is very important task and utmost care is to be taken while recording a dying declaration. If a dying declaration is recorded carefully by a proper person, keeping in mind the essential ingredients of the dying declaration such declaration retains it full value.

31. Law on the subject is very clear after the decision of five Judges Bench of the Supreme Court in **Laxman Vs. State of Maharashtra, (2002) 6 SCC 710**, Prior to this judgement, there were conflicting decisions of three Judges Benches of the Supreme Court, i.e. **Poparambaka Rosamma and others Vs. State of Andhra Pradesh, 1999 (7) SCC 695** and **Koli Chunilal Savji and another Vs. State of Gujarat, 1999 (9) SCC 562**.

32. In **Paparambaka Rosamma and others Vs. State of Andhra Pradesh, 1999 (7) SCC 695** the dying declaration in question had been recorded by a judicial Magistrate and the Magistrate had made a note that on the basis of answers elicited from the declarant to the questions put, he was

satisfied that the deceased is in a fit disposing state of mind to make a declaration. Doctor had appended a certificate to the effect that the patient was conscious while recording the statement, yet the court came to the conclusion that it would not be safe to accept the dying declaration as true and genuine and was made when the injured was in a fit state of mind since the certificate of the doctor was only to the effect that the patient is conscious while recording the statement. Apart from the aforesaid conclusion in law the court also had found serious lacunae and ultimately did not accept the dying declaration recorded by the magistrate.

33. In **Koli Chunilal Savji and another Vs. State of Gujarat**, 1999(9) SCC 562 it was held that the ultimate test is whether the dying declaration can be held to be a truthful one and voluntarily given. It was further held that before recording the declaration the officer concerned must find that the declarant was in a fit condition to make the statement in question. The court relied upon the earlier decision in **Ravi Chander Vs. State of Punjab**, 1998 (9) SCC 303 wherein it had been observed that for not examining by the doctor the dying declaration recorded by the executive magistrate and the dying declaration orally made need not be doubted. The Magistrate being a disinterested witness and is a responsible officer and there being no circumstances or material to suspect that the magistrate had any animus against the accused or was in any way interested for fabricating a dying declaration, question of doubt on the declaration, recorded by the magistrate does not arise.

34. The Supreme Court also in the aforesaid case relied upon its earlier decision in **Harjeet Kaur VS. State of Punjab** 1999(6) SCC 545, wherein the Magistrate in his evidence had stated that he had ascertained from the doctor whether she was in a fit condition to make a statement and obtained an endorsement to that effect and merely because an endorsement was made not on the declaration but on the application would not render the dying declaration suspicious in any manner.

35. The Supreme Court in **Laxman Vs. State of Maharashtra (Supra)**, while affirming the law laid down in **Koli Chunilal Savji and another Vs. State of Gujarat**, 1999(9) SCC 562 has laid down the principle to the following effect:

“The juristic theory regarding acceptability of a dying declaration is that such declaration is made in extremity, when the party is at the point of death and when every hope of this world is gone, when every motive to falsehood is silenced, and the man is induced by the most powerful consideration to speak only the truth. Notwithstanding the same, great caution must be exercised in considering the weight to be given to this species of evidence on account of the existence of many circumstances which may affect their truth. The situation in which a man is on death bed is so solemn and serene, is the reason in law to accept the veracity of his statement. It is for this reason the requirements of oath and cross-examination are dispensed with. Since the accused has no power of cross-examination, the court insist that the dying declaration should be of such a nature as to inspire full confidence of the court in its truthfulness and correctness. The court, however has to always be on guard to see that the statement of the deceased was not as a result of either tutoring or prompting or a product of imagination. The court also must further decide that the deceased was in a fit state of mind and had the opportunity to observe and identify the assailant. Normally, therefore, the court in order to satisfy whether the deceased was in a fit mental condition to make the dying declaration look up to the medical opinion. But where the

eyewitnesses state that the deceased was in a fit and conscious state to make the declaration, the medical opinion will not prevail, nor can it be said that since there is no certification of the doctor as to the fitness of the mind of the declarant, the dying declaration is not acceptable. A dying declaration can be oral or in writing and in any adequate method of communication whether by words or by signs or otherwise will suffice provided the indication is positive and definite. In most cases, however, such statements are made orally before death ensues and is reduced to writing by someone like a magistrate or a doctor or a police officer. When it is recorded, no oath is necessary nor is the presence of a magistrate is absolutely necessary, although to assure authenticity it is usual to call a magistrate, if available for recording the statement of a man about to die. There is no requirement of law that a dying declaration must necessarily be made to a magistrate and when such statement is recorded by a magistrate there is no specified statutory form for such recording. Consequently, what evidential value or weight has to be attached to such statement necessarily depends on the facts and circumstances of each particular case. What is essentially required is that the person who records a dying declaration must be satisfied that the deceased was in a fit state of mind. Where it is proved by the testimony of the magistrate that the declarant was fit to make the statement even without examination by the doctor the declaration can be acted upon provided the court ultimately holds the same to be voluntary and truthful. A certification by the doctor is essentially a rule of caution and therefore the voluntary and truthful nature of the declaration can be established otherwise."

(emphasis supplied)

36. As per the principle laid down by the Supreme Court in **Laxman Vs. State of Maharashtra (Supra)** that the court also must further decide that the deceased was in a fit state of mind and had the opportunity to observe and identify the assailant, we are of the opinion that when the dying declaration of the deceased was recorded by PW-6, ASI Randhir Singh, who was posted as In-charge of the Police Outpost at Jai Prakash Narayan Hospital, New Delhi, the deceased was in a fit state of mind to give her statement. PW-6, ASI who recorded the statement of the deceased has stated in his evidence that Smt. Santosh (deceased) had voluntarily given her statement. After her statement was recorded, her thumb impression was also obtained. The signature of Dr. Ashok Gupta was also obtained on it. He further stated that the entire statement was recorded in the presence of Dr. Ashok Gupta. At the time of recording of dying declaration, the relatives or family members of Smt. Santosh (deceased) were not present. He also stated that Smt. Santosh was mentally fit to give the statement. Dr. Ashok Gupta has certified that the statement has been recorded in his presence and approval of the patient was obtained.

37. In view of the above, it cannot be said that Smt. Santosh (deceased), who was having a burn of 75% must not have been in a position to give her statement.

38. The next contention of learned counsel for the appellant is that there was no smell of kerosene in the body of the deceased when she was brought to the hospital, which makes the prosecution story doubtful. In support of his case, learned counsel for the appellant has relied upon the judgement of Hon'ble Supreme Court in the case of **Suresh Vs. State (2025)4 SCC 794**.

39. In the case in hand, the incident in question took place at about 06:30 AM on 30.5.1979. The information about the incident was given to the first informant by one Ram Singh. After getting the information the first informant reached the matrimonial house of Smt Santosh (deceased) and admitted her to Irwin Hospital, Delhi at 01:40 PM, where she was under treatment. PW-5, Dr. P.K. Govila, who was on duty in the Casualty Ward of Irwin Hospital at Delhi on 30.5.1979 has stated that on 30.5.1979 at about 1:40 PM, Smt. Santosh was brought by Subedar Tota Ram. The lady had sustained burn wounds. She was admitted in the hospital and was referred to the Specialist. She died at 05:30 AM on 31.5.1979, the death summary was prepared vide Ext. Ka-10. PW-4, Dr. Vishnu Kumar, Professor and Head of Department, Forensic Medical, Maulana Azad Medical College, Delhi, who inspected the dead body at 11:00 AM on 31.5.1979 stated that there was no smell of kerosene. Here it is pertinent to mention that the incident in question took place at 06:30 AM on 30.5.1979, whereas PW-4, Dr. Vishnu Kumar inspected the body on 31.5.1979, i.e. after 28-1/2 hours. Further, the deceased in her dying declaration has stated that Bhanwarkali sprinkled kerosene over her and Shyam Kali set her on fire and after she caught fire, she took off her clothes herself. Therefore, non-smell of kerosene from the body of the deceased is not fatal for the prosecution in the present case as the body was inspected after more than 28 hours of the incident in question.

40. In **Suresh (Supra)** relied upon by the learned counsel for the appellant, the deceased was immediately brought to the hospital barely within a few hours of the incident and in that background, Hon'ble Supreme Court held that normally where the death is caused by burning through kerosene, the smell of kerosene would definitely remain for a few hours, however, the smell does weaken after some time.

41. Since, in the present case, the deceased was examined after more than 28 hours, therefore, the aforesaid case is not applicable to the facts of the present case.

42. Next submission of learned counsel for the appellant is that dying declaration of the deceased was recorded by a Constable, which was only signed by the Sub-Inspector, the Constable who recorded the dying declaration of the deceased has not been examined. Further Magistrate was not called to record the dying declaration of the deceased.

43. This contention of learned counsel for the appellant is misconceived inasmuch as in this case the dying declaration of the deceased was recorded by ASI Ranbir Singh, who was posted as In-charge of Jai Prakash Narayan Hospital, New Delhi. In his evidence, he deposed that on 30.5.1979, he was posted as In-charge at the police outpost at Jain Prakash Narayan Hospital, New Delhi. He received a medico-legal sheet through Constable Ram Autar and on the basis thereof, he went to record the statement of Smt. Santosh. He further deposed that since he has injury on his thumb, he got the statement written by Constable Ram Kumar and put his signature. Whatever was told by Smt. Santosh was recorded. This witness has stated that Smt. Santosh had voluntarily given her statement. After her statement was recorded, her thumb impression was also obtained thereon. He stated that the entire statement was recorded in the presence of Dr. Ashok Gupta.

44. Therefore, the judgement in **Manjunath (Supra)** relied upon by the learned counsel for the appellant is of no help to the appellant.

45. Further, so far non-recording of the dying declaration by the Magistrate is concerned, there is no rule to the effect that a dying declaration is inadmissible when it is recorded by a police officer instead of a Magistrate.

46. Learned Trial Court has observed that in the present case, no doubt the dying declaration was recorded by a police inspector and it was not recorded by the Magistrate, but the circumstances indicate that the patient was so seriously burnt that there were hardly any chances for her survival. The doctor immediately sent a slip to the police outpost from where the Sub-Inspector Ranbir Singh came and in the presence of the doctor, the statement was recorded. The statement was recorded at 06:15 PM, i.e. after the normal court hours. The doctor and the police officer might have thought it better to record the statement first rather than to go in search of the Magistrate in a metropolitan city like Delhi. The police officer, who recorded the statement of the deceased, was not the investigating officer of the case and in no way connected with the investigation of the case and was an independent person.

47. In **Munnu Raja and another Vs. State of Madhya Pradesh**, 1976 (2) SCR 764, wherein the statement made by the deceased to the investigating officer at the police station by way of First Information Report, which was recorded in writing, was held to be admissible in evidence.

48. In **Bhagirath Vs. State of Haryana**, AIR 1997 SC 234, on receiving message from the hospital that a person with gun shot injuries had been admitted a head constable rushed to the place after making entry in the police register and after obtaining certificate from the doctor about the condition of the injured took his statement for the purposes of registering the case. It was held that the statement recorded by the head constable was admissible as dying declaration.

49. In **State of Karnataka Vs. Shariff**, (2003)2 SCC 473, it has been held by the Hon'ble Supreme Court as under:

"It is true that PW 11 and PW 14 were Police personnel and a Magistrate could have been called to the hospital to record the dying declaration of Muneera Begum, however, there is no requirement of law that a dying declaration must necessarily be made to a Magistrate."

50. In **State of Jharkhand Vs. Shailendra Kumar Rai**, 2022 Live Law (SC) 890, Hon'ble Supreme Court held as under:

"There is no Rule to the effect that a dying declaration is inadmissible when it is recorded by a police officer instead of a Magistrate. Although a dying declaration ought to ideally be recorded by a Magistrate if possible, it cannot be said that dying declarations recorded by police personnel are inadmissible for that reason alone. The issue of whether a dying declaration recorded by the police is admissible must be decided after considering the facts and circumstances of each case."

51. Next submission of learned counsel for the appellant is that none of the witnesses from the neighbourhood have been examined and no incriminating material appearing against the accused was to her in her statement under Section 313 Cr.P.C.

52. Admittedly, the incident in question took place at the matrimonial home of the deceased at Village Mawi Kalan, which is situated in district Baghpat, whereas the first informant is the resident of district Meerut. PW-1, Tota Ram, in his evidence before the Court has stated that Mawi Kalan is situated at about 11-12 miles away from his village and when he reached at the matrimonial house of the deceased, about 20-25 persons were present at the house of Ziley Singh. It is to be mentioned that the first informant was the resident of other village and the persons, who gathered at the door of Ziley Singh were the resident and neighbour of Ziley Singh and instead of examining them by the prosecution, rather they have to be examined by the defence and their non-examination by the prosecution is not fatal to the prosecution. Further the statement of the accused was recorded under Section 313 Cr.P.C. in question-answer form and the circumstances appearing against her was put to the accused and, therefore, judgements relied upon by the learned counsel for the appellant is of no help to her.

53. Next submission of learned counsel for the appellant is that prosecution has failed to produce the doctor, who had given fitness certificate of the deceased, which creates grave doubt about the authenticity of the fitness certificate.

54. **Tarun Sharma Vs. State of Haryana**, 2026(1) JIC 130, relied upon by the learned counsel for the appellant, was a case in which Doctor, who treated the deceased has stated that the deceased remained unconscious almost fully from the time of the assault on 31st March, 2012 until his death on 14th April, 2012 and was never in a condition to speak and hence the the fitness certificate stating that Munish Kumar was fit to give a statement become doubtful. Further the prosecution has failed to identify or examine the doctor, who had issued the fitness certificate certifying that Munish Kumar (deceased) was fit to make a statement, which creates grave doubt about the authenticity of the fitness certificate and that non-examination of the said doctor, deprived the defence an opportunity to discredit the fitness certificate.

55. The aforesaid case (Tarun Sharma) (**Supra**) relied upon by the learned counsel for the appellant is distinguishable on the facts of the present case. In the instant case after the incident at 06:30 AM on 29.5.1979 and till the recording of her statement (dying declaration), the deceased was fully conscious. PW-5, Dr. P.K. Govila in his evidence has stated that on 30.5.1979, he was on duty as A.C.H.O in the Casualty Ward of Irwin Hospital at Delhi on 30.5.1979, which is now Jai Prakash Narayan Hospital, Delhi. On 30.5.1979 at about 1:40 PM, Smt. Santosh was brought by Subedar Tota Ram. The lady had sustained burn wounds. She was admitted in the hospital and was referred to the Specialist. PW-5, Dr. P.K. Govila has proved the admission slip, which contained the endorsement of Dr. Ashok Gupta that the patient was fit for statement at 04:50 PM, which he proved as Ext Ka-9. Admission slip has been prepared by this witness (PW-5 Dr. P.K. Govila). In his cross-examination, PW-5 has certified the signature of Dr. Ashok Gupta on the dying declaration. The endorsement of Dr. Ashok Gupta on the dying declaration that "statement has been recorded before me and approval of the patient has been taken for what has been recorded. The said endorsement has been marked as Ext. Ka-12. The endorsement of Dr. Ashok Gupta was proved by PW-5, Dr. P.K. Govila, which was not challenged in the cross-examination and, thus the endorsement (Ext. Ka-12) has been accepted as true. This endorsement was made at 4:50 PM. Aforesaid dying declaration also contained the time and date of recording the same.

56. Last submission of learned counsel for the appellant is that the investigating officer has not been produced by the prosecution.

57. Before coming to this contention of learned counsel for the appellant that the investigating officer has not been produced by the prosecution, it would be useful to quote Section 294 of the Code of Criminal Procedure:

“ 294. No formal proof of certain documents:

(1) Where any document is filed before any Court by the prosecution or the accused, the particulars of every such document shall be included in a list and the prosecution or the accused, as the case may be, or the pleader for the prosecution or the accused, if any, shall be called upon to admit or deny the genuineness of each such document.

(2) The list of documents shall be in such form as may be prescribed by the State Government.

(3) Where the genuineness of any document is not disputed, such document may be read in evidence in any inquiry, trial or other proceedings under this Code without proof of the signature of the person to whom it purports to be signed.

Provided that the Court may, in its discretion, require such signature to be proved.

58. From the perusal of Section 294(3) of the Code, it is clear that where the genuineness of the documents is not disputed, such documents may be read in evidence in any inquiry, trial or other proceeding under the Code without proof of the signature of the person to whom it purports to be signed.

59. In the instant case, genuineness of the papers, site plan (Ext. Ka-14 and charge sheet (Ext. Ka-15 were admitted by the defence counsel, and hence these two papers were admitted on record without formal proof and no application was moved by the defence counsel to cross examine the prosecution witnesses, the investigating officer, who conducted the investigation and submitted the charge sheet, the Court has no occasion to call him for cross-examination.

60. In **Munnu Raja and another Vs. State of Madhya Pradesh**, (1976) 3 SCC 104, Hon'ble Supreme Court held as under:

"....It is well settled that though a dying declaration must be approached with caution for the reason that the maker of the statement cannot be subject to cross-examination, there is neither a rule of law nor a rule of prudence which has hardened into a rule of law that a dying declaration cannot be acted upon unless it is corroborated...."

It is true that in the same decision, it was held, since the Investigating Officers are naturally interested in the success of the investigation and the practice of the Investigating Officer himself recording a dying declaration during the course of an investigation ought not to have been encouraged.

61. In the instant case, the investigation has not been conducted by PW-6, Randhir Singh, who recorded the dying declaration.

62. In **Jai Karan Vs. State of Delhi (NCT)** (1999) 8 SCC 161, it was held by Hon'ble Supreme Court as under:

"A dying declaration is admissible in evidence on the principle of necessity and can form the basis for conviction if it is found to be reliable. While it is in the nature of an exception to the general rule forbidding hearsay evidence, it is admitted on the premises that ordinarily a dying person will not falsely implicate an innocent person in the commission of a serious crime. It is this premises which is considered strong enough to set off the need that the maker of the statement should state so on oath and be cross-examined by the person who is sought to be implicated. In order that a dying declaration may form the sole basis for conviction without the need for independent corroboration it must be shown that the person making it had the opportunity of identifying the person implicated and is thoroughly reliable and free from blemish. If, in the facts and circumstances of the case, it is found that the maker of the statement was in a fit state of mind and had voluntarily made the statement on the basis of personal knowledge without being influenced by others and the court on a strict scrutiny finds it to be reliable, there is no rule of law or even of prudence that such a reliable piece of evidence cannot be acted upon unless it is corroborated. A dying declaration is an independent piece of evidence like any other piece of evidence neither extra strong nor weak and can be acted upon without corroboration if it is found to be otherwise true and reliable"

63. In **Naeem Vs. State of U.P.**, 2024 SCC OnLine SC 237, Hon'ble Supreme Court held as under:

"It can thus be seen that this Court has clearly held that dying declaration can be the sole basis of the conviction if it inspires the full confidence of the court. The Court is required to satisfy itself that the deceased was in a fit state of mind at the time of making the statement and that it was not the result of tutoring, prompting or imagination. It has further been held that, where the Court is satisfied about the dying declaration being true and voluntary, it can base its conviction without any further corroboration. It has further been held that there cannot be an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated. It has been held that the rule requiring corroboration is merely a rule of prudence. The Court has observed that if after careful scrutiny, the court is satisfied that it is true and free from any effort to induce the deceased to make a false statement and if it is coherent and consistent, there shall be no legal impediment to make it the basis of conviction, even if there is no corroboration.

64. The incident in question has taken place in the matrimonial house of the deceased where in addition to the accused Bhanwar Kali and Shyam Kali, husband and father-in-law of the deceased namely Shiv Kumar and Ziley Singh were also residing in the house, but the deceased in her dying declaration has only assigned the role of sprinkling kerosene and setting her on fire to Bhanwar Kali and Shyam Kali. Further the conduct of appellant's side was also unwarranted inasmuch as after the incident in question took place, they did not take any steps to get the injured (deceased) admitted in the hospital and left her at the mercy of the God. PW-1 Tota Ram in his evidence has stated that on receiving information,

he went to village Mawi Kalan where in the house of his Samdhi, he found that his daughter (deceased) was lying burnt on a cot in the courtyard. His daughter was alive at that time. On queries, her daughter told him that accused-Bhanwar Kali had sprinkled kerosene over her and accused-Shyam Kali had set her on fire with match. She also informed that when she raised noise, the two accused persons had beaten her and dragged her on the cot. Thereafter, PW-1, Total Ram arranged for transport and took to the deceased to Irvin Hospital, Delhi where she was admitted at 01:40 PM.

65. In the present case, there is nothing on record to suggest that there was any occasion for the first informant to falsely implicate the accused rather than to make arrangement for the treatment. We also found that the first informant after being informed about the incident, rushed to the spot, arranged for the vehicle and admitted the injured (deceased) to the hospital. PW-6, SI, Randhir, who recorded the statement of the deceased has stated that when statement of the deceased was being recorded, her family members and relatives were not present there. This statement of PW-6, Randhir Singh is enough to show that he took all precautions that her statement should not be guided by some other person's version. Further PW-6, Randhir Singh, who recorded the dying declaration of the deceased was disinterested person and a responsible officer and he is not connected with the investigation of the case and there is no circumstances or material to suspect that he had any animus against the accused or was in any way interested in fabricating the dying declaration. Moreover, Dr. Ashok Gupta was also present when the statement (dying declaration) of the deceased was being recorded, who also put a note on the dying declaration that the statement has been recorded before me and approval of the patient has been taken for what has been recorded.

66. In addition to the dying declaration, PW-1, Tota Ram, who is the first informant and father of the deceased and PW-2, Smt. Mahendra, who is the mother of the deceased, who reached the spot, took the deceased to the hospital, have also supported the prosecution case.

67. We have carefully scrutinized and examined the evidence of prosecution witnesses and we find that they have been correctly marshalled and assessed by the learned Trial Court. The impugned judgement and order do not call for any interference by this Court.

68. In view of what has been indicated above, we are of the view that the prosecution has successfully proved its case beyond all reasonable doubt against the accused-appellant.

69. Accordingly, the criminal appeal is dismissed.

70 The appellant Shyam Kali is on bail. Her bail bond is cancelled and sureties are discharged. She is directed to surrender before the Court concerned within three weeks to serve out the sentence awarded to her by the learned Trial Court.

71. Office is directed to send a copy of this order to the court concerned along with necessary documents for compliance and compliance report be submitted to this Court within two months.

(2026) 4 ILRA 614
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 07.04.2026

BEFORE

THE HON'BLE RAJNISH KUMAR, J.
THE HON'BLE ZAFEER AHMAD, J.

Criminal Appeal No. 2528 of 2008

Tarsem Singh

...Appellant
Versus

State of U.P.

...Respondent

Issue for consideration

Legality of child witness.

Headnotes

Indian Penal Code-sec 302-Applicant convicted and sentenced to undergo life imprisonment- conviction primarily rests upon the ocular version of PW-4 and PW-5-both are eye-witnesses -minor children of the deceased- both witnesses have given a natural, consistent and vivid account of the occurrence- narrating the sequence of events with minute and specific details- were examined after due satisfaction regarding their competency- ocular version furnished by PW-4 and PW-5 finds complete and consistent support from the medical evidence on record- evidence consistently points towards the guilt of the accused-appellant-**Criminal Appeal dismissed.** (E-9)

Case Law Cited

1. State of M.P. v. Ramesh, (2011) 4 SCC 786
2. Pramila v. State of U.P., (2021) 12 SCC 550
3. Ashok v. State of Uttar Pradesh, (2025) 2 SCC 381
4. Pradeep v. State of Haryana, (2023) 19 SCC 221
5. Zainul v. State of Bihar, 2025 INSC 1192

List of Acts

1. Indian Penal Code, 1860
2. Indian Evidence Act, 1872

List of Keywords

Ocular version; child witnesses; natural witnesses; eye-witnesses

Appearances of parties

Counsel for Petitioner(s) : Arun Kumar Shukla, Anuradha Singh, Farhat Jamal Siddiqui, Furkan, Jaleel Ahmad, Jayant Singh Tomar, Manju Gupta, Rishad Murtaza, Smt. Arpita Srivastava

Counsel for Respondent(s) : Govt. Advocate

(Delivered by Hon'ble Zafeer Ahmad, J.)

1. Heard, Sri Rishad Murtaza and Ms. Farhat Jamal Siddiqui assisted by Ms. Aishwarya Misra, for the appellant and Sri Arunendra, learned AGA for the State and perused the record.

2. The aforesaid criminal appeal arises out of order and judgment dated 05.09.2008 passed by Special/ Additional Sessions Judge, Lakhimpur Kheri, in Sessions Trail No. 419 of 1999 (State v. Gurdeep Kaur (deceased) and another) arising out of case crime no. 57 of 1999, wherein the applicant has been convicted and sentenced to undergo life imprisonment u/s 302 of Indian Penal Code (in short IPC) along with a fine of Rs. 20,000/- and in default of payment of fine further one year additional simple imprisonment; and rigorous imprisonment of two year u/s 404 IPC along with fine Rs. 2000/- and in default of payment of fine further two months additional simple imprisonment. It has further been provided that both the sentences shall run concurrently.

Prosecution Story in Nutshell:

3. The prosecution case, in brief, is that the complainant Gurdeep Kaur lodged a written report stating therein that in the intervening night of 18/19.05.1999 at about 12:00 in midnight, she was present in her house situated at village Phulwaria, Police Station Palia, Kheri. It was further stated that at the relevant time, she was lying in the western room on the second floor along with her children; her mother-in-law; Naseeb Kaur, and her elder, Sukhvinder Kaur, were lying in the middle room, while her husband; Balvinder Singh, and his friend; Sobran Singh Kalsi, were lying in the eastern room. It was further stated that seven to eight miscreants came to the second floor of the house during the night. The miscreants got the middle room opened by her mother-in-law and thereafter entered the room of her husband as well. As soon as they entered, they killed her husband and his companion, as well as her mother-in-law and her elder, by firing bullets and by using sharp-edged weapons. It was further stated that the miscreants looted jewellery and cash kept in the room of her mother-in-law and thereafter started moving downstairs and at that time, the complainant also fired from her licensed gun. Upon hearing the noise, Darshan Singh, Jaswant Singh from the neighbourhood, her servant Ram Seva, and several other persons arrived at the spot and, in the light of electricity and torch, saw and recognised the miscreants. The miscreants were chased, but they managed to escape. It was further stated that all the miscreants were armed with country made pistols and other weapons and that they could be identified along with the looted jewellery if produced. It was also stated that all four dead bodies were lying inside the house. On these allegations, the complainant requested that a report be lodged and appropriate legal action be taken.

4. On the basis of the said written report, on 19.05.1999 at around 1:30 AM a check FIR was registered under Section 396 IPC in police station Palia, as case crime no. 57 of 99 and GD entry no. 2 was made at the same time. The investigation of the case was handed over to SHO Suresh Tripathi. Furthermore, during the investigation the names of Gurdeep Kaur and Tarsem Singh came into the light and it was found that they have committed murder of Balwinder Singh, Sukhvinder Kaur, Sarwan Singh Kalsi, and Naseeb Kaur.

5. During investigation on the basis of the informant, the investigating officer and other police personnel arrested Tarsem Singh on 24.05.1999 from his house in village Pulwariya at around 2:00 PM. This was witnessed by Balwinder Singh, Balkaran Singh, Darshan Singh, and Pardeshi. Thereafter, his interrogation revealed that he had been in an illicit relationship with Gurdeep Kaur

for a long time, and this became known to Balvinder Singh and his family members. Due to this Balvinder Singh had planned to kill them (i.e. Gurdeep Kaur and Tarsem Singh), which was overheard by Gurdeep and she told the same to Tarsem on 18.05.1999 in the afternoon. Thereafter, on the same day at around 11:00 PM he reached Balvinder's house, where Gurdeep handed him licensed gun of Balvinder and cartridges, thereafter, both of them with the use of the gun and knife murdered all the four people and took away a pair of earing, gold bangles, gold ring and a bracelet of Nasib Kaur, which was kept in Nasib Kaur's room. Furthermore, the said gun and knife was kept by Gurdeep

6. Furthermore, during the course of investigation on 24.05.1999, when the accused Tarsem Singh was taken to the place of occurrence, Gurdeep Kaur was found present there. During interrogation, she accepted that she was having an illicit relationship with Tarsem Singh and also confessed her involvement in the crime. In her confession, she stated that Tarsem Singh first opened fire upon Balvinder Singh @ Kaku, and thereafter shot his friend Sarwan Kumar Kalsi. She further confessed that she herself stabbed Naseeb Kaur and Sukhvinder Kaur.

7. It was further stated by her that she handed over the gun and knife used in the commission of the offence and admitted that she had used the same to cause injuries to all the deceased persons. She also confessed that, in order to evade liability, she had lodged a false FIR alleging the incident to be one of dacoity.

8. The said knife and gun were taken into police custody and the recovery memo was prepared in respect thereof (Ext. Ka-1), along with the site map of the place from where the recovery was made (Ext. Ka-19). Furthermore, the recovered goods, gun and cartridges were sent to the Forensic Science Laboratory, Lucknow, and the examination report was obtained from the Laboratory (Ext. Ka-41)

9. Thereafter, upon completion of investigation and finding sufficient evidence, a charge sheet was submitted in the Court against the accused Gurdeep Kaur and Tarsem Singh under Sections 302, 404, 411, and 117 IPC (Ext. Ka-20).

10. On 04.12.1999, charges under Section 302 read with Section 34 IPC were framed against accused Gurdeep Kaur and Tarsem Singh. In addition thereto, a charge under Section 177 IPC was framed against accused Gurdeep Kaur, and a charge under Section 404 IPC was framed against accused Tarsem Singh. Both the accused persons denied the charges and claimed trial.

11. After framing of the charges, accused Gurdeep Kaur died, and consequently, the proceedings against her stood abated in terms of the order passed by the concerned Court dated 06.12.2001.

12. To prove its case, the prosecution examined ten witnesses, namely: PW-1: Darshan Singh, PW-2 Mashwant Singh, PW-3: Balwant Singh, PW-4: Gurvinder Singh, PW-5: Jagjeet Singh, PW-6: Dr. R V Singh, PW-7: S.I. Surendra Tripathi, and CW-1: SI Rajendra Prasad Nishad.

13. The list of the exhibits in this case is as follows:

Exhibit No.	Item / Description
Ext. Ka-1	Recovery memo of licensed single-barrel gun and badi chhuri (knife) recovered at the instance of Gurdeep Kaur
Ext. Ka-2	Recovery memo of ornaments allegedly belonging to deceased Naseeb Kaur (gold earrings, bangles, ring, watch etc.) recovered from the accused
Ext. Ka-3	Inquest report of deceased Balvinder Singh
Ext. Ka-4	Inquest report of deceased Sukhvinder Kaur
Ext. Ka-5	Inquest report of deceased Sarwan Singh Kalsi
Ext. Ka-6	Inquest report of deceased Naseeb Kaur
Ext. Ka-7	Recovery memo of blood-stained country-made pistol (tamancha)
Ext. Ka-8	Recovery memo of cash seized during investigation
Ext. Ka-9	Recovery memo of four empty cartridges (12 bore)
Ext. Ka-10	Recovery memo of blood-stained soil and plain soil from the place of occurrence
Ext. Ka-11	Post-mortem report of deceased Sarwan Singh Kalsi
Ext. Ka-12	Post-mortem report of deceased Naseeb Kaur
Ext. Ka-13	Post-mortem report of deceased Sukhvinder Kaur
Ext. Ka-14	Post-mortem report of deceased Balvinder Singh
Ext. Ka-15	Check FIR
Ext. Ka-16	General Diary (GD) entry relating to registration of FIR
Ext. Ka-17	Site plan of the place of occurrence
Ext. Ka-19	Site map of the place from where gun and knife were allegedly recovered
Ext. Ka-20	Charge-sheet submitted against the accused
Ext. Ka-21 to 24	Police Form No. 13 relating to dispatch of dead bodies for post-mortem
Ext. Ka-25 to 28	Sketches of dead bodies
Ext. Ka-29 to 32	Sample of the seals used to seal the dead bodies
Ext. Ka-33 to 36	Letters to R.I.
Ext. Ka-37 to 40	Letters to C.M.O
Ext. Ka-41	Forensic Examination report of the recovered single barrel gun and four cartridges

14. Furthermore, the list of the material exhibits in this case are as follows: Exhibit No.

Exhibit No.	Item/Description
Material Exhibit-1	Two Gold Earrings
Material Exhibit -2	A broken red bangle
Material Exhibit -3	Two steel bracelets
Material Exhibit -4	One rusted bracelet
Material Exhibit -5	One white HMT ladies watch with chain
Material Exhibit-6	Blood-stained Cloth
Material Exhibit-7	A large knife (badi chhuri)

15. On perusal of the order sheet of the Ld. Trial Court it transpires that appellant in his statements u/s 313 CrPC dated 03.07.2003 expressed his desire to produce defence evidence and thereafter date was fixed on 08.07.2003, but on 08.07.2003 adjournment was sought by Tarseem Singh and the case was adjourned and next date was fixed on 23.07.2003, but again on that date adjournment was sought which was allowed on the condition of last opportunity and the case was listed on 28.07.2003. On 28.07.2003 again adjournment was sought but the same was rejected and the case was listed for argument, that is why appellant has not produced any oral or documentary evidence in his defence. In his statement under Section 313 CrPC, the appellant denied having committed the crime. Thus, the appellant pleaded innocence. 16. Upon a comprehensive appraisal of the oral and documentary evidence on record, the learned Trial Court convicted the appellant to undergo rigorous life imprisonment u/s 302 IPC along with a fine of Rs. 20,000/- and in default of payment of fine further one year additional simple imprisonment; and rigorous imprisonment of two year u/s 404 IPC along with fine of Rs. 2000/- and in default of payment of fine further two months additional simple imprisonment. It has further been provided that both the sentences shall run concurrently.

Submissions made by learned counsel for the accused-appellant:-

17. Learned counsel for the appellant assailed the impugned judgment contending that the prosecution has failed to establish its case beyond reasonable doubt and that the conviction is unsustainable in law. It is submitted that the case rests primarily on the testimony of child witnesses (PW-4 and PW-5), which is unreliable, being susceptible to tutoring and suffering from material inconsistencies, particularly with regard to sequence of events and number of gunshots. It is further contended that their conduct in not disclosing the incident immediately creates serious doubt about their presence. Learned counsel also pointed out that key witnesses, namely PW-1 and PW-3, have turned hostile, thereby weakening the prosecution case. It is argued that there are material inconsistencies between ocular and medical evidence, and submit that such inconsistencies render the prosecution version doubtful. It is further submitted that the recovery of alleged weapon and articles is doubtful, inasmuch as the recovered articles were not properly identified and the recovery proceedings are not free from suspicion. It has also been contended that the learned Trial Court acted grossly in illegal manner so far as it is related to the recording of the statements under Section 313 Cr.P.C. It is also contended that the prosecution has failed to establish any clear

motive. It is lastly argued that the accused has been falsely implicated due to village factionalism and that the trial court has failed to properly appreciate the evidence, thus the appellant is entitled to benefit of doubt.

Submissions made by learned A.G.A : -

18. Per contra, learned A.G.A. appearing for the State opposed the submissions advanced on behalf of the accused-appellant and supported the impugned judgment and order passed by the Trial Court. It was submitted that the prosecution has proved its case beyond reasonable doubt through cogent and reliable evidence and that the testimonies of PW-4 and PW-5, though related witnesses, are natural witnesses, whose presence at the place of occurrence is fully established. Learned A.G.A. further contended that mere hostility of certain witnesses does not demolish the prosecution case, when the core version stands duly proved. It was also urged that the medical and documentary evidence corroborates the ocular account and the recovery effected at the instance of the accused lends further assurance to the prosecution story. Accordingly, learned A.G.A. submitted that no illegality, perversity or infirmity exists in the findings recorded by the Trial Court and the appeal is liable to be dismissed.

Oral Testimonies:

In order to appreciate the issues arising in the present appeal, it is appropriate to examine, in brief, the oral evidence adduced by the prosecution.

1. PW-1 Darshan Singh deposed that about three years prior to his deposition, Balvinder Singh, Nasib Kaur, Sukhvinder Kaur and a guest from Punjab were murdered during the night, and that he came to know about the incident in the morning. He denied having witnessed the occurrence and further stated that no recovery was made from accused Tarsem Singh in his presence. He admitted his signatures on certain documents prepared by the Investigating Officer but deposed that their contents were not read over to him. The witness was declared hostile.

2. During cross-examination, he denied having given any statement under Section 161 Cr.P.C. and disowned the same. He further deposed that the accused was not present at the time when his signatures were obtained on Ext. Ka-5 and Ka-6. He also deposed that he later went to the house of the accused, found him sleeping, woke him up, and thereafter the accused came out and informed the police.

3. PW-2 Mashwant Singh, s/o Harnam Singh, deposed that on 19.05.1999 inspector prepared the panchayatnama of the dead bodies of Balvindra Singh, Sukhvendra Kaur, Sarwan Singh and Naseeb Kaur (Ext. Ka-3 to Ext. Ka-6 respectively).

4. No cross-examination of PW-2 was conducted.

5. PW-3 Balwant Singh deposed that he did not clearly recollect whether the Investigating Officer had taken into possession any blood-stained soil, cartridges or empty shells from the house of Balvinder Singh in his presence. He admitted his signatures on certain

documents (paper no. K-6/1 to K-6/4), but stated that their contents were not read over to him and he was unaware of what was written therein. He gave a similar response with respect to other documents (Ext. Ka-7 to Ka-10). The witness was declared hostile.

6. **During cross-examination**, he denied having given any statement under Section 161 Cr.P.C. and expressed ignorance as to how such a statement came to be recorded. He further denied the suggestion that he was deposing falsely in collusion with the accused.

7. **PW-4 Gurvinder Singh**, son of deceased Balvinder Singh, was examined before the Trial Court. On the date of his deposition, the witness was of 15 years of age. The Trial Court, before recording his testimony, conducted a preliminary inquiry to assess his competence to depose. Upon being asked where he was present, the witness replied that he was in Court. Upon being asked about the duty of the Court, he replied that the function of the Court is to punish the culprit/accused ("*Mulljiman ko saja dena*"). Upon such interaction, the Trial Court formed the opinion that although the witness was of tender age, he possessed sufficient understanding and intelligence to comprehend the nature of questions put to him and to give rational answers. Accordingly, the Court proceeded to record his testimony.

8. **During Examination-in-Chief**, he deposed that he knew the accused, Tarsem Singh, who was a resident of his village Phulvariya. He further deposed that Gurdeep Kaur was his biological mother and that she died after the incident. He further deposed that he was the eldest among three brothers and one sister. He further deposed that his father, deceased Balvinder Singh, had earlier married Sukhavinder Kaur, whom he referred to as his Badi Maa. He further deposed that Sukhavinder Kaur had one daughter who was married prior to the incident. He further deposed that the accused Tarsem Singh had been visiting their house, ever since he became old enough to understand things. He further deposed that his grandmother disliked such visits and had instructed his father as well as his biological mother not to allow Tarsem Singh to visit the house. He further deposed that Tarsem Singh used to visit the house even in the absence of his father. He further deposed that the deceased Sarwan Singh Kalsi, who was a friend of his father, was a resident of Punjab and had come to stay at their house about three to four days prior to the date of the incident. He further deposed that their house was a double-storied structure. He further deposed that on the upper floor there were three rooms—one on the eastern side, one on the western side and one in the middle. He further deposed that he used to address his father as "*Kaku*". He further deposed that the incident occurred in the intervening night of 18/19.05.1999. He further deposed that on that night, his father and Sarwan Singh Kalsi were sleeping in the eastern room on the upper floor. He further deposed that in the middle room, he and his younger brother, Jagjit Singh, were sleeping on one cot, while on the adjacent cot his grandmother Nasib Kaur and his Badi Maa Sukhavinder Kaur were sleeping. He further deposed that his biological mother Gurdeep Kaur, along with her two younger children, was sleeping in the western room. He further deposed that a tube light was on in the middle room as Nasib Kaur had a habit of sleeping with the light on. He further deposed that at about 12:00 midnight, he and his brother woke up after hearing the sound of two gunshots fired from the eastern room. He further deposed that thereafter he saw Tarsem Singh and Gurdeep Kaur entering in their room from the eastern side, there being a door between the two rooms. He further deposed that Tarsem Singh was carrying a single-barrel gun (*ek naali bandook*) and Gurdeep Kaur was carrying a big knife (*badi chhuri*). He further deposed that Gurdeep Kaur was wearing only

drawers (कच्छा) and vest (बनियान) while her face was covered with a red scarf. He further deposed that as soon as she entered the room, she stabbed Nasib Kaur on her body and face. He further deposed that at the same time Tarsem Singh fired upon Sukhavinder Kaur. He further deposed that his grandmother and his Badi Maa died as a result of the injuries sustained. He further deposed that thereafter his biological mother, Gurdeep Kaur, threatened him and his brother not to disclose anything to anyone, failing which Tarsem Singh would kill them. He further deposed that due to this threat he was frightened. He further deposed that after the incident, Tarsem Singh and Gurdeep Kaur left the house. He further deposed that he, thereafter, went to the eastern room and saw his father and Sarwan Singh Kalsi lying dead. He further deposed that he remained silent out of fear and that after about eight days, when the police arrested Tarsem Singh and Gurdeep Kaur, his fear subsided. He further deposed that only thereafter he disclosed the entire incident to the Investigating Officer.

9. During cross-examination, he deposed that his mother belonged to Punjab. However, he was not aware of the exact village or city from where she hailed. He further deposed that his badi maa was a resident of Sampurna Nagar and was first married to his father. He further deposed that she had one daughter, who was married in Khairtiha. He further deposed that her brother-in-law was a resident of Khairtiha and used to visit their house. He further deposed that he, along with his younger brother, used to visit Khairtiha and stay there for one to two days. He further deposed that the information regarding the murder of his badi maa and father reached Khairtiha in the morning and by that time the dead bodies had already been sealed. He further deposed that Tarsem Singh was not present when the dead bodies were being sealed. He further deposed that he was not capable of stating as to whose body was sealed first or last and that no paperwork was done in his presence. He further deposed that no blood sample was collected by the Inspector in his presence and that the Inspector did not question any witness in his presence. He further deposed that the Inspector did not call him to the police station even after eight to ten days of the incident and did not ask him anything about the occurrence, nor did he himself narrate anything to the Inspector. He further deposed that whatever was written by the Inspector was done on his own volition. He further deposed that the testimony given by him was not tutored and that he was not deposing for the first time. He further deposed that he studies at Palia School and that his younger brother, Jagjit, also studies in the same school. He further deposed that at the time of the incident the school was closed due to summer vacation. He further deposed that he was not well-versed in Hindi. He further deposed that he and his brother were sleeping in the same room in which his badi maa and grandmother were sleeping. He further deposed that his grandmother's name was Naseeb Kaur and she was killed while she was sleeping and no gunshot was fired at her. He further deposed that he heard three gunshots during the incident, out of which one was fired in his room and the second shot was heard from the eastern room. He further deposed that after the attackers fled, he and his brother came out of the room and at that time no one from the neighbourhood had arrived. He further deposed that he woke up Seva Ram (servant), who was sleeping downstairs. He further deposed that thereafter Seva Ram went to call the neighbours and then Darshan Singh, Balwant Singh and others came, but Tarsem Singh was not present at that time. He further deposed that when the police arrived, Gurdeep Kaur was present in the house and that there was no other person present except the two offenders. He further deposed that when he went to wake his grandmother Naseeb Kaur, she was already dead. He further deposed that he neither cried nor hugged any of the dead bodies. He further deposed that he and his brother left the house during the night and returned

only after the police arrived. He further deposed that he did not inform any officer that his mother and Tarsem Singh were the murderers of his father, his badi maa and his grandmother. He further deposed that the offenders neither assaulted them nor fired upon them. He further deposed that it would be wrong to say that he and his brother, Jagjit Singh (PW-5), were not present at the time of the incident or that they reached the place after information was sent to Khairtiha. He further deposed that the dead bodies were lying with their heads towards the west and legs towards the east. He further deposed that the bodies were taken down from the cots and kept in the courtyard of the terrace in his presence. He further deposed that when the police arrived, all four bodies were kept in the courtyard in front of the eastern room. He further deposed that at about 4:00 P.M. the bodies were taken to the mortuary, but neither he nor his brother accompanied the bodies and he was unaware as to whether any family member accompanied them. He further deposed that the bodies were later brought back, after which he and his brother participated in the last rites. He further deposed that the offenders looted jewellery, cash and other valuable articles and scattered the contents of the storage boxes. He further deposed that he went to his father's room after he was already dead and clarified that his father's room was situated on the eastern side where he was sleeping. He further deposed that the main door of his room faced north, whereas his father's room was situated towards the south. He further deposed that he witnessed the occurrence from a place between the wall and the door of his father's room, though he did not inform the police about this fact. He further deposed that the offenders were carrying only a chhuri (knife) and a gun and further clarified that none of the offenders carried any other knife. He further deposed that his mother covered her hair with a dupatta and not her face. He further deposed that it would be incorrect to state that he had given a false statement or that he had been tutored regarding his deposition. He further deposed that he had no knowledge as to whether any private counsel had been engaged or whether his mother had been murdered. 10. PW-5 Jagjit Singh, son of deceased Balvinder Singh, was examined before the Trial Court. On the date of his deposition, the witness was 12 years of age. The Trial Court, before recording his testimony, conducted a preliminary inquiry to assess his competence to depose. Upon being questioned, the witness stated that he was studying in Class VII at Edmonton Public School, an English medium institution. When asked about the purpose of his presence in Court, he stated that he had come to give evidence and that the function of the Court is to punish the culprit/accused ("*Mulzim ko saza dena*"). On the basis of these responses, the Trial Court recorded a finding that although the witness was of tender age, he possessed sufficient understanding of the nature of questions and was competent to depose.

11. In his examination-in-chief, he deposed that he knew the appellant Tarsem Singh, who was a resident of his village Phulvariya. He further deposed that Gurdeep Kaur was his biological mother, Sukhavinder Kaur, the first wife of Balvinder Singh, was his "Badi Maa", and that Sarvan Singh Kalsi was his father's friend who had come from Punjab approximately five days prior to the date of the incident. He further deposed that Tarsem Singh used to frequently visit their house, both in the presence and absence of his father Balvinder Singh. He further deposed that his grandmother, Nasib Kaur, did not approve of these visits and had told his father not to allow Tarsem Singh to come to the house. He further deposed that the incident occurred on the night of 18.05.1999. He further deposed that on the same night, he was sleeping in the room situated on the upper floor along with his brother PW-4 Gurvinder Singh, his grandmother Nasib Kaur, and his "Badi Maa" Sukhavinder Kaur. He further deposed that his father Balvinder Singh and guest Sarvan Singh were sleeping in the eastern room, whereas his mother Gurdeep Kaur and his two

younger siblings were sleeping in the western room. He further deposed that at around 12:00-1:00 a.m., he heard the sound of two gunshots emanating from his father's room. He further deposed that upon hearing the gunshots, he and his brother PW-4 woke up. They then saw Tarsem Singh and Gurdeep Kaur enter their room, where the tube light was on. He further deposed that Tarsem Singh was armed with a single-barrel gun, while Gurdeep Kaur was carrying a large knife (badi chhuri). He further stated that Gurdeep Kaur attacked his grandmother Nasib Kaur with the chhuri, and that Tarsem Singh fired at Sukhavinder Kaur, as a result of which both women succumbed to their injuries. He further deposed that his mother Gurdeep Kaur threatened both him and his brother that if they disclosed anything to the police, Tarsem Singh would kill them. He further deposed that thereafter Tarsem Singh left the house, but Gurdeep Kaur remained inside. He further deposed that on the next morning, he saw his father Balvinder Singh and Sarvan Singh lying dead in their room. He further deposed that he did not inform the police immediately due to fear, but disclosed the entire incident to the Investigating Officer after the arrest of Tarsem Singh, when his fear had subsided. 12. During cross-examination, he deposed that in all three gunshots were fired during the incident. He had awakened on hearing the first shot and thereafter heard two more shots. While verifying his statements, he further deposed that he had not informed the police that his mother had fired any shot, and that if any such statement was recorded under his name, he was unaware of the reason for the same. He further deposed that he informed the investigating officer that his mother threatened them (P.W. 4 & P.W. 5) saying that Tarsem would kill all three of them (including the mother) if they disclosed the truth, however, he did not know in what manner exactly did the investigating officer recorded this statement. He denied that his mother had stated that he would get into trouble if he told anyone about the incident. He further deposed that by the time the police arrived, he was no longer afraid and had informed them about the scene of the crime. He further deposed that Sukhavinder Kaur was lying on a cot and had been shot from close range from the western side; however, he corrected himself and clarified that the cot was placed in an East-West direction and not North-South as earlier stated. He further deposed that nothing was looted from the house-neither money nor jewellery-and that the alleged offenders had not scattered any household articles. He further deposed that neither he nor his brother, P.W.-4 Gurvinder Singh, left the cot until the offenders had departed, and thereafter both of them went to wake up the servant, Sewa Ram, but did not disclose to him the identity of the offenders. He also admitted that he did not inform the servant about the murder of his father, mother, and grandmother. He further deposed that he did not inform anyone about the incident until the date of his testimony, except the police. He further denied the suggestion that he had not witnessed the incident or that he was not present at the time of occurrence. He further deposed that the offenders did not assault him and that he had no knowledge as to whether there were bloodstains on his clothes. He further deposed that he did not took the dead bodies in his arms or cry over them, and that he was unaware as to whether the dead bodies were wrapped in cloth and sealed. He further deposed that when the police arrived in the morning, the dead bodies were lying on the cots in the rooms; however, the police did not complete any inquest proceedings regarding the bodies in his presence and subsequently took them away. He also stated that his brother did not accompany the police. He further deposed that at the time of the incident, his sister was two to three years younger than him.

13. **PW-6 Dr. R.V. Singh**, Senior Medical Officer, District Hospital, Kheri, conducted the post-mortem examinations of all four deceased persons on 19.05.1999 at different intervals of time and proved the reports (Ext. Ka-11 to Ka-14). He deposed that all the deceased had died

approximately one day prior and that rigor mortis and post-mortem staining were present on the bodies.

On the body of deceased Sarwan Singh Kalsi, he found one firearm injury on the right side of the face causing extensive fractures of skull bones, with recovery of pellets and wadding material, along with as many as twelve incised wounds on different parts of the body including forehead, shoulder, arms, chest, forearm, hand, thigh and back, indicating repeated assault by a sharp-edged weapon and use of firearm.

On the body of deceased Naseeb Kaur, he found multiple grievous incised and stab wounds, including four deep incised wounds on the head and face causing extensive fracture of skull bones, along with several stab wounds on chest, forearms, back and other parts of the body, totaling about fifteen injuries, all indicative of a brutal assault by a sharp-edged weapon.

On the body of deceased Sukhvinder Kaur, he found a firearm injury of entry on the upper part of the face extending to the temporal region, with blackening and tattooing around the wound, and recovery of twenty-eight metallic pellets and wadding material from the cranial cavity, clearly indicating close-range firing.

On the body of deceased Balvinder Singh, he found a firearm injury on the chin causing extensive cranial damage along with a penetrating stab wound on the abdomen, resulting in injury to internal organs and accumulation of blood in the abdominal cavity.

He opined that the firearm injuries were caused by a gun and the remaining injuries were caused by a sharp-edged weapon such as a knife (chhuri), and that all the deceased died due to shock and haemorrhage as a result of the ante-mortem injuries.

14. **During cross-examination**, he deposed that injuries no. 1, 2, 3, and 4 on the body of deceased Naseeb Kaur could have likely been caused by some heavy sharp weapon like a pickaxe (*ghadashi*) or a billhook (*banka*).

15. **PW-7 Surendra Tripathi**, the Investigating Officer, deposed that on 19.05.1999 at about 1:30 A.M., complainant Gurdeep Kaur lodged a written report at Police Station Paliya, on the basis of which check FIR was prepared, which he proved as Ext. Ka-15, along with the corresponding General Diary entry, proved as Ext. Ka-16. He further proved that the inquest reports (panchayatnama) of the deceased persons, prepared by S.I. K.N. Singh, are Ext. Ka-3 to Ka-6. He further deposed that during investigation, blood-stained and plain soil were collected, which he proved as Ext. Ka-10, and empty cartridges recovered from the place of occurrence were proved as Ext. Ka-9. He further proved the site plan of the place of occurrence prepared by him as Ext. Ka-17. He further deposed that on 24.05.1999, accused Tarsem Singh was arrested and, on the basis of his disclosure statement, articles belonging to deceased Naseeb Kaur, namely gold earrings, bangles, a ring and a watch, were recovered, which he proved as Ext. Ka-2. He further deposed that on the same day, accused Gurdeep Kaur was arrested and at her instance a licensed single-barrel gun and a knife (badi chhuri) were recovered, which he proved as Ext. Ka-1. He further proved that after completion of investigation, charge-sheet was submitted, which he proved as Ext. Ka-20.

16. **During cross-examination**, he admitted that four empty cartridges were recovered from the place of occurrence, two from the upper room and two from the ground floor, and that the recovered firearm was the licensed gun of deceased Balvinder Singh. He further deposed that the recovered articles were not formally identified but were recognized by a neighbour. He denied the suggestion that the accused had been falsely implicated or that the recovery was fabricated.

17. **CW-1 Rajendra Prasad Nishad**, Sub-Inspector, Police Station Kheri, deposed that in compliance of the order dated 27.08.2003 passed by the Fast Track Court-IV against absconding accused Tarsem Singh, he executed the attachment proceedings on 04.09.2003 at the residence of the accused. He proved that the movable property of the accused was taken into police custody and attachment was carried out in the presence of witnesses. He further proved that the attached articles were handed over to Mangal Singh of village Ranjinganj Majra Lughouri under proper documentation and in presence of witnesses. He further deposed that the seizure memo was prepared on the spot, which was read over and explained to the witnesses and was duly signed by them. He also stated that the accused Tarsem Singh was absconding and his whereabouts were not known.

Court Analysis:

Credibility of Child Witnesses and Evidentiary Value of Their Testimony:

19. The conviction in the present case primarily rests upon the ocular version of PW-4 Gurvinder Singh and PW-5 Jagjit Singh, both of whom are stated to be eye-witnesses of the occurrence. A careful reading of their depositions reveals that they have furnished a vivid and graphic account of the incident, narrating the sequence of events with minute and specific details, including the manner in which the accused approached the spot, the role attributed to each accused, the nature of weapons carried, and the manner in which the assault was carried out.

20. The learned counsel for the appellant vehemently argued is that the conviction rests primarily on the testimonies of PW-4 and PW-5, who are minor children of the deceased, and therefore their evidence ought to be discarded being interested and susceptible to tutoring. This Court is unable to accept the said contention of the learned counsel for the following reasons:

a. Firstly, the competency of a witness is governed by Section 118 of the Indian Evidence Act, 1872, which lays down that every person is competent to testify unless the Court considers that due to tender age or other reasons such person is unable to understand the questions or give rational answers. Section 118 of Evidence Act, reads as under:

“Section 118. Who may testify.-All persons shall be competent to testify unless the Court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, by tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind.”

The law relating to appreciation of evidence of child witnesses is well settled. It is not the rule of criminal jurisprudence that the testimony of a child witness is inherently unreliable or liable to

be discarded merely because of age. However, as a matter of judicial prudence, such evidence requires closer scrutiny, as a child witness is always susceptible to tutoring and impressionable influence.

i. The Supreme Court, in **State of M.P. v. Ramesh, (2011) 4 SCC 786**, has reiterated that an inference as to whether a child has been tutored can be drawn from the deposition itself. The Court observed that:

“14. In view of the above, the law on the issue can be summarised to the effect that the deposition of a child witness may require corroboration, but in case his deposition inspires the confidence of the court and there is no embellishment or improvement therein, the court may rely upon his evidence. The evidence of a child witness must be evaluated more carefully with greater circumspection because he is susceptible to tutoring. Only in case there is evidence on record to show that a child has been tutored, the court can reject his statement partly or fully. However, an inference as to whether child has been tutored or not, can be drawn from the contents of his deposition.”

ii. Similarly, in **Pramila v. State of U.P., (2021) 12 SCC 550**, it has been held that even the sole testimony of a child witness can form the basis of conviction, provided the Court is satisfied that the possibility of tutoring is ruled out. The Supreme Court emphasized in paragraph 5 of the case as under:

“5. ...where a child witness is to be considered, and more so when he is the sole witness, a heightened level of scrutiny is called for... The Court has, therefore, to satisfy itself that all possibilities of tutoring or otherwise are ruled out and what was deposed was nothing but the truth.”

iii. Moreover, learned counsel for the appellant placed reliance upon **Ashok v. State of Uttar Pradesh, (2025) 2 SCC 381**, wherein the Supreme Court held that conviction could not be sustained when the sole child witness's testimony lacked sterling quality due to inconsistencies and delay, and that such evidence was unsafe to rely upon without corroboration, particularly when it amounted only to a weak circumstance insufficient to establish guilt beyond reasonable doubt. Learned counsel also relied upon **Pradeep v. State of Haryana, (2023) 19 SCC 221**, wherein the Supreme Court recognized that the testimony of a child witness is admissible and may form the sole basis of conviction if the Court is satisfied about the competence, truthfulness, and reliability of the witness; however, the Court simultaneously cautioned that a child witness of tender age is easily susceptible to tutoring and therefore such evidence must be subjected to careful judicial scrutiny, and that corroboration, though not a rule of law, remains a rule of prudence.

iv. Applying the aforesaid principles to the facts of the present case, this Court finds that the testimonies of PW-4 Gurvinder Singh and PW-5 Jagjit Singh stand on a firm footing. Both the witnesses were examined by the Trial Court after due satisfaction regarding their competency, and nothing has been brought on record to show that they were incapable of understanding the questions or giving rational answers.

b. Secondly, from a careful reading of their depositions, it is evident that both witnesses have given a natural, consistent and vivid account of the occurrence. They have categorically deposed that during the night of the incident, they were present inside the house when the accused-appellant Tarsem Singh along with co-accused Gurdeep Kaur entered the premises. They have specifically stated that the accused was armed with a firearm and a knife, and thereafter committed assault upon the deceased persons. The description given by the witnesses regarding the manner of entry, the weapons carried, and the sequence of assault clearly reflects that they had actually witnessed the occurrence.

i. It is also noteworthy that both the witnesses have stated that they were threatened by the accused not to disclose the incident. They have further explained that due to fear and trauma, they did not immediately narrate the entire incident. This explanation assumes significance. The witnesses were minor children who had just witnessed the brutal murder of their family members, including their father. In such circumstances, their silence or delayed disclosure cannot be termed unnatural; rather, it is a natural human reaction.

ii. The learned counsel for the appellant has laid much emphasis on alleged inconsistencies in their statements, such as the clothes Gurdeep Kaur was wearing at the time of the incident, inability of the child witnesses to answer whose body was sealed first, as to whether Gurdeep Kaur left the house after the occurrence or not, etc. However, upon careful scrutiny, it emerges that these discrepancies are minor in nature and relate to peripheral details. The core of their testimony, namely the presence of the accused, the manner of assault, and the weapons used, remains consistent and unshaken. It is well settled that minor inconsistencies are bound to occur, particularly in the testimony of child witnesses, and such discrepancies often lend credibility rather than detract from it.

c. Thirdly, the argument of tutoring, as advanced by learned counsel for the appellant, also does not hold ground. There is nothing in the cross-examination of these witnesses to suggest that they were tutored or that their statements were the result of external influence. Their deposition appears spontaneous and bears intrinsic truth. The details narrated by them are such that they could not have been fabricated without actual knowledge of the incident.

i. Moreover, the Trial Court has rightly observed that a child would not ordinarily falsely implicate his own mother in a serious offence such as murder, knowing fully well that such implication may lead to her punishment. This observation carries considerable weight. In the present case, the child witnesses have not only implicated the accused-appellant but have also deposed against their own mother, Gurdeep Kaur. Such conduct rules out any possibility of false implication and lends strong assurance to the truthfulness of their testimony.

d. Fourthly, it is also significant to note that both child witnesses, PW-4 and PW-5, did not sustain any injury during the occurrence, despite being present in the very same room where their grandmother Naseeb Kaur and Badi Maa Sukhvinder Kaur were brutally assaulted and killed. This circumstance, rather than creating any doubt, in fact lends further assurance to the prosecution case. The consistent version of both witnesses is that the accused, after committing the assault, threatened them with dire consequences if they disclosed the incident. In such a situation, it is

wholly natural that the assailants would spare the children in order to avoid raising immediate alarm and to facilitate their escape. The absence of injuries on the child witnesses, therefore, is not unnatural but is in consonance with the prosecution version and the conduct attributed to the accused. It further supports the presence of the witnesses at the spot and the truthfulness of their testimony.

e. Lastly, it is also well settled that the testimony of a related witness cannot be discarded merely on the ground of relationship. On the contrary, such witnesses are often the most natural witnesses. In the present case, PW-4 and PW-5 being inmates of the house are the most natural witnesses to the occurrence and there is no reason to disbelieve them.

Effect of General Diary Entry vis-a-vis Testimony of PW-1:

21. From a perusal of the General Diary (GD) entry (Ext. Ka-16), which had been proved by PW-7, it emerges that PW-1 had accompanied co-accused Gurdeep Kaur to the police station during the night for the purpose of lodging the FIR. However, in his deposition before the Trial Court, PW-1 has stated that he came to know about the incident only in the morning and has not supported the prosecution case, thereby turning hostile.

22. This material inconsistency between the contemporaneous police record and the oral testimony of PW-1 cannot be lightly ignored. The presence of PW-1 at the police station at the time of lodging of the FIR clearly indicates that he had knowledge of the incident at the earliest point of time. His subsequent attempt to feign ignorance and disassociate himself from the prosecution case during trial demonstrates that he has not come forward with the true version of facts.

23. The conduct of PW-1 in resiling from his earlier position and withholding material facts strongly suggests that he has been won over by the accused party. It is a common phenomenon in criminal trials, particularly in cases involving serious offences, that witnesses succumb to pressure, inducement or influence and turn hostile in order to shield the accused.

24. It is well settled that the testimony of a hostile witness is not to be discarded in toto, and the Court can rely upon such part of the testimony which finds corroboration from other evidence on record. In the present case, the hostile stance of PW-1 does not demolish the prosecution case; rather, it necessitates a cautious appreciation of his evidence in the light of other reliable material available on record.

25. On the contrary, the inconsistency in the testimony of PW-1, when read with the GD entry, strengthens the prosecution case inasmuch as it reflects an attempt on his part to suppress the truth. The fact that he had accompanied the informant at the earliest stage but later denied knowledge of the occurrence clearly indicates that his testimony before the Court is not trustworthy.

26. It is also pertinent to note that the prosecution case does not hinge solely upon the testimony of PW-1. The same is supported by cogent and reliable evidence of other witnesses, including the eyewitnesses, medical evidence, recovery and forensic report. Therefore, even if PW-1 has turned hostile, the same does not create any dent in the prosecution case.

27. In view of the above, this Court is of the considered opinion that the conduct of PW-1 in giving a false and inconsistent statement before the Court, contrary to the contemporaneous GD entry, does not weaken the prosecution case. Rather, it indicates that the witness has attempted to shield the accused, and his testimony, to that extent, deserves to be discarded.

Recovery of Weapon, Forensic Evidence and Conduct of the Accused-Appellant:

28. This Court now proceeds to examine the evidentiary value of recovery effected at the instance of the accused persons, the accompanying forensic analysis, and the conduct of the accused-appellant. It is well settled that though recovery under Section 27 of the Indian Evidence Act is not substantive evidence of guilt, it constitutes a highly relevant incriminating circumstance, particularly when it is discovered pursuant to the disclosure statement of the accused and is supported by other evidence on record.

29. In the present case, the Investigating Officer has categorically deposed that on 24.05.1999, he arrested accused Tarsem Singh and, on the basis of his disclosure statement, recovered articles belonging to deceased Naseeb Kaur, namely gold earrings, bangles, a ring and a watch (Ext. Ka-2). He has further deposed that on the same day he arrested co-accused Gurdeep Kaur, who pointed out and led to the recovery of a licensed single-barrel gun and a large knife (badi chhuri) (Ext. Ka-1). The said recoveries, having been effected pursuant to disclosure statements, clearly attract the provisions of Section 27 of the Evidence Act and are admissible to the extent they relate to discovery of facts within the special knowledge of the accused.

30. The legal position with respect to such recoveries is well crystallized that the discovery of a fact in consequence of information received from an accused affords a guarantee of truth to that limited extent, as the information leading to discovery is presumed to be within the exclusive knowledge of the accused. In the present case, the recovery of personal belongings of the deceased as well as the weapon of assault at the instance of the accused persons constitutes a strong incriminating circumstance, particularly when there is no plausible explanation offered by the accused as to how he came to have knowledge of the same.

31. The argument of the appellant that independent witnesses have not supported the recovery is of no avail. It is a settled principle that the testimony of the Investigating Officer cannot be discarded merely on the ground that independent witnesses have turned hostile, if the official witness is otherwise found to be reliable and trustworthy. There is no rule of law that recovery must fail in the absence of independent corroboration, especially when the recovery is otherwise duly proved and stands corroborated by surrounding circumstances.

32. The contention regarding non-production of certain recovered articles or alleged lapses in handling of material exhibits also does not go to the root of the prosecution case, as it is well settled that defective or negligent investigation cannot be a ground for acquittal, unless such lapses create a serious dent in the prosecution case. In the present case, the factum of recovery and the use of weapon are otherwise established through ocular testimony, medical evidence and forensic report, therefore, such lapses do not materially affect the substratum of the case.

33. The forensic analysis report (Ext. Ka-41) indicates that the 12 bore S.B.B.L. gun bearing No. 1262 was subjected to examination along with four cartridges marked as E.C.-1 to E.C.-4. The report records the presence of lead and nitrite residues in the barrel of the said firearm, thereby clearly indicating that the weapon had been used. The ballistic expert has further opined that cartridges marked as E.C.-2 and E.C.-4 were fired from the said firearm, as they bore characteristics similar to the test cartridges (T.C.-1 and T.C.-2) discharged from the weapon. Though it has been observed that cartridges E.C.-1 and E.C.-3 could not be conclusively compared due to absence of sufficient individual characteristic marks, such inability does not dilute the evidentiary value of the report to the extent it positively establishes firing from the said weapon.

34. The learned counsel for the accused-appellant sought to raise a doubt by contending that as per the prosecution version, co-accused Gurdeep Kaur had fired only a single shot in retaliation from the licensed gun when the assailants were leaving the house, whereas the forensic report indicates that more than one cartridge was fired from the said firearm. This Court finds that the said contention, weakens the appellant's case because:

1. The written report states that after the assailants entered the house, committed the murders of four persons and were retreating from the ground floor, Gurdeep Kaur fired one shot from the licensed gun in retaliation. However, the investigation led to recovery of four empty cartridges from the scene of occurrence, out of which at least two cartridges have been conclusively matched with the licensed S.B.B.L. gun. This factual position assumes significance.

2. If the version of the defence is to be accepted that the said licensed gun was used only once for the purpose of retaliation, then, in the ordinary course, only one cartridge would have been found to be fired from that weapon. However, the forensic report clearly establishes that more than one cartridge was discharged from the said firearm. This circumstance indicates that the said gun was not used merely for a solitary act of defence but was in fact used more than once during the occurrence.

3. Furthermore, the evidence on record shows that three deceased persons had sustained firearm injuries. In such a situation, the recovery of multiple cartridges and the scientific matching of more than one cartridge with the licensed gun provides a strong and cogent indication that the said firearm formed part of the weapons used in the commission of the offence. The version that the firearm was used only for a single retaliatory shot thus stands rendered improbable in light of the scientific evidence.

35. It is also important to note that the inability of the ballistic expert to conclusively match cartridges E.C.-1 and E.C.-3 does not create any dent in the prosecution case. It is well settled that forensic evidence is corroborative in nature, and even partial matching is sufficient to lend assurance to the prosecution version. The absence of identifiable marks on certain cartridges is a known limitation in ballistic science and cannot be treated as a circumstance adverse to the prosecution.

36. The trial court has, therefore, rightly appreciated this aspect and has correctly observed that even if one proceeds on the assumption that a single shot was fired in retaliation, such fact

would be of no consequence in the backdrop of a coordinated and brutal assault by multiple assailants. A solitary shot fired by one person would not have been sufficient to repel the attack. On the contrary, the forensic evidence demonstrates that the firearm was used in a manner consistent with the prosecution case.

37. Furthermore, the learned counsel for the accused-appellant argued that the Investigating Officer failed to segregate cartridges recovered from different places and prepared a single recovery memo also does not go to the root of the matter. Such lapse, at best, reflects lack of meticulousness in investigation. However, the core fact remains that empty cartridges were recovered from the scene, which corroborates the ocular version, medical evidence and the forensic report regarding use of firearm. It is trite that procedural lapses in investigation cannot outweigh substantive evidence establishing the occurrence.

38. The conduct of the accused-appellant is another relevant circumstance under Section 8 of the Evidence Act. From the evidence on record, it is apparent that the accused has failed to furnish any plausible explanation regarding the incriminating circumstances appearing against him in his statement under Section 313 Cr.P.C.. It is well settled that while the burden of proof primarily lies on the prosecution, when facts are especially within the knowledge of the accused, the failure to offer any explanation assumes significance under Section 106 of the Evidence Act and it is well settled that conduct often speaks louder than words, and the behaviour of the accused, when read in conjunction with other evidence, provides an additional link in the chain of circumstances.

39. In the present case, the recovery of incriminating articles at the instance of the accused, the corroborative forensic evidence indicating use of firearm, and the unexplained conduct of the accused collectively form a coherent and reliable set of circumstances. These circumstances are not to be viewed in isolation but in conjunction with the ocular testimony (especially of PW-4 and PW-5) and medical evidence, which together establish the prosecution case to the hilt.

40. Accordingly, this Court finds that the recovery of weapon and articles, the forensic evidence relating to firearm and cartridges, and the conduct of the accused-appellant constitute strong corroborative circumstances. The alleged discrepancies pointed out by the learned counsel for the appellant are minor, do not go to the root of the matter, and are insufficient to create any reasonable doubt in the prosecution case.

Ocular Evidence Corroborated by Medical Evidence:

41. It is a well-settled principle of criminal jurisprudence that where the ocular testimony of witnesses is found to be credible and trustworthy, the same is to be given primacy, and the medical evidence acts as a corroborative piece. In the present case, the ocular version furnished by PW-4 and PW-5 finds complete and consistent support from the medical evidence on record.

42. It is crystal clear that upon careful appreciation of the testimonies of PW-4 and PW-5, both eye-witnesses have consistently deposed in their examination-in-chief that they had seen the accused-appellant present inside their house at an odd hour, where his presence was wholly unnatural and unexplained. Once such a circumstance stands established, the burden shifts upon the

accused to offer a plausible explanation. However, in the present case, the accused has failed to furnish any explanation in his statement under Section 313 Cr.P.C., nor has he led any evidence in defence to rebut the said incriminating circumstance. This failure on the part of the accused constitutes an additional link pointing towards his guilt.

43. Learned counsel for the appellant has placed reliance on *Zainul v. State of Bihar*, 2025 INSC 1192, wherein the Hon'ble Supreme Court reiterated that where medical evidence renders the ocular account improbable or inconsistent on material particulars, the Court must exercise greater caution in placing reliance upon such testimony. There is no dispute with regard to the said legal proposition.

44. Both PW-4 Gurvinder Singh and PW-5 Jagjit Singh have categorically deposed that the accused-appellant Tarsem Singh was armed with a firearm, while co-accused Gurdeep Kaur was carrying a sharp-edged weapon (badi chhuri), and that both of them inflicted fatal injuries upon the deceased persons in a sequential manner inside the house.

45. The post-mortem reports of all four deceased persons, as proved by PW-6 Dr. R.V. Singh, clearly establish that the injuries sustained were a combination of firearm wounds and incised/stab wounds caused by a sharp-edged weapon. For instance, deceased Balvinder Singh and Sukhvinder Kaur sustained firearm injuries, while multiple incised and stab wounds were found on the bodies of Naseeb Kaur and Sarwan Singh Kalsi.

46. The nature, location and multiplicity of injuries, including firearm entry wounds with blackening and tattooing, presence of pellets and wadding pieces, as well as deep incised and stab wounds, fully correspond with the manner of assault as narrated by the eyewitnesses. The medical opinion that such injuries could be caused by a firearm and a sharp-edged weapon like a knife (badi chhuri) lends complete assurance to the ocular account.

47. There is no inconsistency between the ocular and medical evidence which may discredit the prosecution case. On the contrary, both are in complete harmony. It is well settled that unless medical evidence completely rules out the possibility of the occurrence as narrated by eyewitnesses, the ocular testimony cannot be discarded. In the present case, the medical evidence not only supports but reinforces the prosecution version.

48. Thus, the ocular testimony of PW-4 and PW-5 stands duly corroborated by the medical evidence, thereby strengthening the case of prosecution and lending credibility to the prosecution case.

Alleged Vague and Omnibus Questioning under Section 313 Cr.P.C.

49. Learned counsel for the appellant has contended that the statement of the accused recorded under Section 313 Cr.P.C. suffers from serious infirmity inasmuch as the incriminating circumstances were not put to the accused in a proper and specific manner, and that the questioning was vague and omnibus in nature, thereby causing prejudice to the appellant.

50. Before advertg to the said contention, it would be apposite to briefly notice the scope and object of Section 313 Cr.P.C. The provision casts a mandatory duty upon the Court to put to the accused all incriminating circumstances appearing against him in the prosecution evidence so as to afford him an opportunity to explain the same. The object of such examination is not merely procedural but substantive, as it enables the accused to offer his explanation and serves as an important safeguard against miscarriage of justice.

51. In the present case, learned counsel for the appellant has drawn attention to Question No. 11 put to the accused, which reads as under:

" प्रश्न नं० 11:- आपने गवाहान पी०डब्लू० 1 दर्शन सिंह, पी०डब्लू० 2 बसंत सिंह पी०डब्लू० 3 बलवन्त सिंह पी०डब्लू० 4 गुरुविन्दर सिंह, पी०डब्लू० 5 जगजीत सिंह पी०डब्लू० 6 डा० आर० बी० सिंह, पी०डब्लू० 7 सुरेन्द्र त्रिपाठी प्रभारी निरीक्षक के बयान को सुना। इस विषय में आपको क्या कहना है? उत्तर:- पुलिस के असर से झूठी गवाही देते हैं। "

52. It is contended that the aforesaid question is omnibus in nature and does not specifically put individual incriminating circumstances to the accused. This Court, however, finds that the said submission does not merit acceptance.

53. A perusal of the statement under Section 313 Cr.P.C. indicates that prior to the aforesaid question, specific questions had already been put to the accused covering all material and incriminating circumstances, including his presence at the place of occurrence, recovery of weapon and articles, and the evidence of prosecution witnesses. Thus, even if Question No. 11 appears to be general in nature, the same is merely cumulative and does not constitute the sole basis of examination.s

54. It is well settled that mere irregularity or defect in framing of questions under Section 313 Cr.P.C. would not vitiate the trial unless it is shown that prejudice has been caused to the accused. In the present case, no such prejudice is demonstrated. On the contrary, the accused was fully aware of the case against him and had adequate opportunity to explain the incriminating material.

55. Furthermore, the appellant, despite being afforded opportunity, did not choose to lead any defence evidence, as is evident from the order-sheet of the Trial Court. His response under Section 313 Cr.P.C. is a bald denial without any plausible explanation. Thus, even assuming that one of the questions was broadly framed, the same has not resulted in any failure of justice.

56. Thus, this Court is of the considered view that no prejudice has been caused to the appellant on account of the alleged defect in questioning under Section 313 Cr.P.C., and the same does not vitiate the trial. The contention raised by the learned counsel for the appellant is accordingly rejected.

Conclusion:

57. In view of the foregoing discussion, this Court is of the considered opinion that the testimony of PW-4 and PW-5, who are natural child witnesses of the occurrence, has been found to be cogent, credible and trustworthy. Their presence at the place of occurrence is natural and their version stands fully corroborated by the medical evidence as well as the forensic report. The nature of injuries, the weapons used, and the manner of assault, as deposed by them, find complete support from the post-mortem reports. The recovery of incriminating articles and weapon at the instance of the accused, coupled with the forensic evidence establishing the use of firearm, lends further assurance to the prosecution case. The conduct of the accused, his failure to furnish any plausible explanation under Section 313 Cr.P.C., and the inconsistency in the testimony of PW-1, read with the General Diary entry, further strengthen the prosecution version. The alleged discrepancies and contradictions pointed out by the learned counsel for the appellant are minor in nature and do not go to the root of the prosecution case. It is well settled that minor inconsistencies are bound to occur in truthful testimonies and cannot be a ground to discard otherwise reliable evidence. Thus, on an overall appreciation of the ocular evidence, medical evidence and forensic analysis on record, it stands established that PW-4 and PW-5, who are the eye witness of the incident, are credible and reliable and their testimonies inspire confidence. The evidence consistently points towards the guilt of the accused-appellant, leaving no reasonable ground for a conclusion consistent with his innocence.

58. Accordingly, the criminal appeal is **dismissed**. The impugned judgment and order dated 05.09.2008 passed by the learned Special/Additional Sessions Judge, Lakhimpur Kheri in Sessions Trial No. 419 of 1999 are hereby **affirmed**.

59. The appellant, Tarsem Singh, is in jail and shall continue to serve out the remaining part of his sentence in accordance with law.

60. Pending applications, if any, shall stand disposed of.

61. Let a certified copy of this judgment along with the lower court record be transmitted to the court concerned forthwith, and in any case within a period of one week, for compliance.

(2026) 4 ILRA 634

APPELLATE JURISDICTION

CIVIL SIDE

DATED: ALLAHABAD 01.04 .2026

BEFORE

THE HON'BLE SANDEEP JAIN, J.

First Appeal Defective No. 221 of 2022

State of U.P.

...Appellant

Versus

Uday Bhan (Deceased) & Anr.

...Respondents

Issue for Consideration

Matter pertains to whether the First Appeal filed by State against a deceased respondent, without impleading his legal heirs and representatives, is legally maintainable; and whether such defect can be cured by filing an application for substitution of legal heirs at a subsequent stage, particularly when the appellant had prior knowledge of the death of respondent.

Headnotes

Land Acquisition Act, 1894 - s. 54 - Code of Civil Procedure, 1908 - O. XXII R. 4 - Death of respondent prior to filing of appeal - Appeal filed against dead person - Maintainability - The instant matter arose from a First Appeal preferred by State of Uttar Pradesh challenging the judgment and award dated 31.03.2018 passed by Reference Court, whereby compensation was enhanced in favor of land owners - The appeal was filed after an inordinate delay of 1516 days - During the pendency of proceedings relating to condonation of delay, it came on record that one of respondents, Kailash Singh, had expired prior to institution of appeal - Despite having knowledge of his death through the proceedings and pleadings filed before the Court, the State failed to implead his legal heirs within the prescribed period of limitation and subsequently moved an application for substitution only after an abatement application was filed by legal heir of deceased respondent - The controversy before the High Court, therefore, centred around the maintainability of an appeal instituted against a deceased respondent and whether such defect could be cured by subsequent substitution of legal representatives.

Held: The abatement application of Kuwar Prakash Singh and substitution application of State along with delay condonation application are dismissed, being legally not maintainable because the appeal was filed against dead respondent Kailash Singh - Had he died after the filing of appeal, then, abatement and substitution application were legally maintainable - The appeal having being filed against dead respondent, was itself not legally maintainable, which was non-est, as such, no question of condoning the delay, in its filing arises - In view of the facts, all the applications being legally not maintainable are dismissed - Consequently, the appeal being filed against dead respondent Kailash Singh is also dismissed as a nullity - Accordingly, the impugned judgment and award dated 31.03.2018 of Reference Court affirmed. [Paras 13 to 15] (E-13)

Case Law Cited

State of West Bengal v. Manisha Maity and others **1963 SCC OnLine Cal 85**; *Ravinder Dabas v. Govt. of NCT of Delhi* **2023 SCC OnLine Del 4458**

List of Acts

Land Acquisition Act, 1894; Code of Civil Procedure, 1908

List of Keywords

First Appeal; s. 54 of Land Acquisition Act, 1894; Reference Court; Compensation; Land owners; Delay condonation Application; Limitation; Substitution application; Legal heir; Legal representative; Abatement Application; Execution Proceedings; Decree Holder; Maintainability; Non-Est; Nullity; Dead respondent; Impleadment; Negligence; Prescribed period of limitation; Statutory benefits; Award; Appeal filed against dead person; O.XXII R. 4 CPC - Substitution of legal heirs; Dismissed as not maintainable.

Case Arising From

APPELLATE JURISDICTION: First Appeal Defective No. - 221 of 2022

From the Judgment and Decree dated 31.03.2018 passed by the Additional District Judge & Judge Land Acquisition/FTC-II, Mau in L.A.R. No.46 of 1991.

Appearances for Parties

Adv. for the Appellant(s):
Tej Bhanu Pandey

Adv. for the Respondent(s):
Anand Prakash Pandey, Sushma Dwivedi

(Delivered by Hon'ble Sandeep Jain, J.)

InRe: Civil Misc. Abatement Application No.9 of 2025

1. This application has been filed by Kuwar Prakash Singh the legal heir of deceased respondent no.1/1 Kailash Singh on the ground that Kailash Singh has died on 07.06.2021 and its information was also given to the appellant-State in the counter affidavit filed to the delay condonation application of the appellant, a copy of which was received by the State on 02.02.2024 but still the substitution application was not moved by the State within the prescribed period of limitation. It was further submitted that when the substitution application was not moved by the appellant, then this abatement application was filed on 16.09.2025 for abating the appeal and then substitution application along with the condonation of delay has been filed by the State on 24.09.2025. Learned counsel submitted that from the above facts, it is apparent that there was deliberate delay on the part of the appellant in not bringing on record the legal heir of deceased respondent Kailash Singh which cannot be condoned, keeping in view the conduct of the appellant.

Order on Civil Misc. Delay Condonation Application No.2 of 2022, Civil Misc. Delay Condonation Application No.10 of 2025, Civil Misc. Substitution Application No.11 of 2025 & First Appeal

1. According to office report, the instant appeal has been filed with a delay of 1516 days on 09.09.2022.

2. The instant appeal under Section 54 of the Land Acquisition Act, 1894 has been filed by the State for reduction of compensation awarded by the Reference Court through judgment and decree dated 31.03.2018 passed by the Additional District Judge & Judge Land Acquisition/FTC-II, Mau in L.A.R. No.46 of 1991 [Uday Bhan (Deceased) through legal heirs vs. State of U.P. through Collector, Mau] whereby a compensation @ Rs.2,00,000/- per acre has been awarded to the land owners along with other statutory benefits admissible under the Act.

3. Learned counsel for the State submitted that the delay in filing the appeal occurred because permission was sought from the higher officials and only after obtaining permission, the appeal was filed. Learned counsel submitted that ultimately the permission was granted by the State on 19.05.2022 for filing this appeal, thereafter, this appeal has been filed with delay on 09.09.1992. Learned counsel submitted that since the permission from the State was obtained with delay, as such, the delay in filing the instant appeal be condoned and thereafter, the appeal be decided on merits.

4. It was further submitted that only after filing of abatement application on 16.09.2025, the appellant became aware that the respondent Kailash Singh has died, as such, the substitution has

been filed within the period of limitation, from the date of knowledge, on 24.09.2025. It was submitted that there is no delay in filing the substitution application, and if there is any delay, then it be condoned, and the application be allowed.

5. Per contra, learned counsel for the respondent land owners submitted that the award of the Reference Court was passed on 31.03.2018 but when the State did not pay the compensation as awarded by the Reference Court then the land owner was compelled to file execution proceeding, which was numbered as Execution Case No.5 of 2019 (Kailash Singh and others vs. State of U.P.), in which the District Government Counsel(D.G.C.) remained present, who from time to time sought adjournment in the matter, which was granted by the executing court. Learned counsel further submitted that when the State failed to pay the compensation then an order was passed by the executing court for attaching the account of the State. It was further submitted that the State moved an application to recall attachment, which was also dismissed by the executing court on 11.10.2021 but even then the appeal was not filed. Learned counsel further submitted that the executing court from time to time recorded the assurances given by the D.G.C. regarding filing of appeal by the State but deliberately neither the appeal was filed nor any payment was made to the land owners. Learned counsel further submitted that in the counter affidavit filed by the land owner to the delay condonation application of the State, it was informed that the land owner Kailash Singh has died and even the counter affidavit was filed by his heir Kuwar Prakash Singh but even then substitution application was not moved by the State within the prescribed period of limitation. It was further submitted that ultimately when the abatement application was filed by the land owner, then substitution application was filed on 24.09.2025, which was more than four years after the death of the respondent Kailash Singh, who died on 07.06.2021. Learned counsel submitted that it is apparent from the above facts that State has remained negligent in moving the substitution application as well as in pursuing the remedy before this Court and conduct of the State disentitles it from getting any relief from this Court. With these submissions, it was prayed that the substitution application of the State be dismissed since the appeal has already abated and the delay condonation application of the State be also dismissed.

6. I have heard learned counsel for the parties and perused the record.

7. It is apparent that the judgment and award of the Reference Court was passed on 31.03.2018 and the execution case was filed by the land owner, which was numbered as Execution Case No.5 of 2019. The respondent land owner has filed certified copy of the proceedings of the execution case, which disclose that State was well aware of the execution proceedings but no appeal was filed within the prescribed period of limitation and even the account of the State was attached in compliance of the order of the executing court. It is further evident that the executing court also wrote a letter to the Secretary, Department of Revenue, State of U.P for making payment to the land owners but even then no appeal was filed by the State. Ultimately, the executing court was compelled to pass the order dated 03.08.2021 whereby the account of the State in the treasury was attached in order to make payment of the compensation to the land owners. It is further apparent that an application was moved by the State for recalling that order, which was also rejected. By order dated 03.08.2021 of the executing court, the decree holder was directed to take steps for the attachment of the account of the State. It is further apparent that Kuwar Prakash Singh moved an application disclosing that decree holder Kailash Singh has died on 27.06.2021 and an application

was moved for bringing on record legal heir of the deceased decree holder, which was allowed on 27.08.2021. It is further apparent that by order dated 01.10.2021, the account of the Collector/District Magistrate, Mau in Union Bank of India, Collectorate Branch, Mau was attached for an amount of Rs.25,50,000/- but even then the appeal was not filed by the State.

8. It is further apparent that the instant appeal was filed by the State on 09.09.2022 with the delay of 1516 days and a delay condonation application was filed against which a counter affidavit was filed by the respondent land owner, who opposed the delay condonation on the above grounds. It is specifically averred in the counter affidavit that the appellant-State was very well aware of passing of the impugned judgment and decree by the Reference Court but deliberately no appeal was filed within the prescribed period of limitation. The counter affidavit has been filed by Kuwar Prakash Singh, who is the legal heir of deceased-respondent Kailash Singh, who died on 27.06.2021, prior to filing of the appeal, as such, the State was supposed to move impleadment application promptly, for bringing on record Kuwar Prakash Singh, but it was ultimately filed after a delay of more than three years, when an abatement application was moved by Kuwar Prakash Singh on 16.09.2025 to abate the appeal. It is apparent that the appeal was filed against the dead respondent Kailash Singh, and in the execution proceeding, the State was aware that he has died on 27.06.2021.

9. The above facts and circumstances amply demonstrate that the State has always been negligent in pursuing the remedy available to it and only on this ground that the permission for filing of the appeal was granted belatedly, the delay in filing the instant appeal cannot be condoned. It is further apparent that there was gross negligence on the part of the State in preferring this appeal, which was filed against dead respondent, and not bringing on record the legal heirs of deceased respondent Kailash Singh for more than three years, inspite of knowledge, for which there cannot be any plausible explanation because for bringing on record, the legal heir of deceased respondent, no permission of higher officials of the State was required.

10. It is apparent that the appeal of the State filed against dead respondent, is a nullity and non-est. The conduct of the State, debars it from getting any relief from this Court.

11. The High Court of Calcutta in the case of ***State of West Bengal vs. Manisha Maity and others*** 1963 SCC OnLine Cal 85, held as under:-

*“15. Rule 4 of Order 22 of the Code of Civil Procedure, providing for the procedure for substitution of the heirs and legal representatives of deceased defendants, no doubt applies to appeals and provides for substitution of the heirs of a deceased respondent. But the rule has no application when the appeal itself was preferred against a dead person. In other words, if the appeal had been preferred against a respondent, who was alive at the time of the filing of the appeal, but died subsequent thereto, his heirs and legal representatives may be brought on the record, by way of substitution, within the time allowed by law. If an application for substitution of the heirs of a respondent, who died during the pendency of the appeal, be not made within the time allowed by law, the appeal abates but rule 9 of Order 22 of the Code of Civil Procedure provides for a procedure for setting aside abatement. **But if an appeal be preferred against a dead respondent, the appeal itself is still born and is no appeal in the eye of law. Nothing in Order 22***

of the Code of Civil Procedure will revive the appeal, when the death of the respondent comes to light.

16. In order to prefer an appeal against a decree obtained by a person, who was dead at the time of the filing of the appeal, it would be necessary to make his heirs or legal representatives respondents to the appeal. The factum of the death of the decree-holder and names of his heirs or legal representatives may be incorporated, for greater safety, in an affidavit accompanying the memorandum of appeal, and an order may be sought from the appeal court to proceed with the appeal against the heirs of the person, who had obtained the decree.

17. The remedy of an appellant, who has unknowingly filed an appeal against a dead person, is to file an application for presentation of the appeal against the heirs of the dead person afresh. If the time for filing the appeal was in the meantime over, he is to present an application, under section 5 of the Limitation Act, therein explaining the delay in presenting the appeal afresh against the heirs of the dead person. If he can make out sufficient cause for making the belated prayer, the court may allow the same, amend the cause title of the memorandum of appeal by incorporation of the names of the heirs and legal representatives of the dead person and treat the appeal as a freshly presented appeal against the heirs.”

(emphasis supplied)

12. Similarly, the High Court of Delhi in the case of ***Ravinder Dabas vs. Govt. of NCT of Delhi 2023 SCC OnLine Del 4458***, held as under:-

“11. Having heard learned counsels for the parties, this Court is of the view that the present appeal stands abated qua deceased respondent No. 3. Perusal of the appeal filed by the appellant herein demonstrates that it has been clearly stated on behalf of the appellant that Gian Chand died in the year 2020. **Thus, the appeal was filed on behalf of the appellant against a dead person. An appeal filed against a dead person is clearly not maintainable and is a nullity.** Thus, provisions under Order XXII Rule 4 CPC for bringing on record the legal heirs of deceased respondent No. 3, cannot be invoked by the appellant herein. The provision of Order XXII Rule 4 CPC will apply only in a case when a party dies during the pendency of the proceedings. A bare perusal of provisions of Order XXII Rule 4 CPC manifest that the said provisions apply only in case of death of the respondent during the subsistence of the case.”

(emphasis supplied)

13. In view of the above facts, the abatement application of Kuwar Prakash Singh and the substitution application of the State along with delay condonation application are dismissed, being legally not maintainable because the appeal was filed against dead respondent Kailash Singh. Had he died after the filing of appeal, then, abatement and substitution application were legally maintainable. The appeal having being filed against dead respondent, was itself not legally maintainable, which was non-est, as such, no question of condoning the delay, in its filing arises.

14. In view of the above facts, all the applications being legally not maintainable are dismissed. Consequently, the appeal being filed against dead respondent Kailash Singh is also dismissed as a nullity.

15. The impugned judgment and award dated 31.03.2018 of the Reference Court is affirmed.

(2026) 4 ILRA 640
APPELLATE JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 08.04.2026

BEFORE

THE HON'BLE SHEKHAR B. SARAF, J.
THE HON'BLE ABDHESH KUMAR CHAUDHARY, J.

Income Tax Appeal No. 4 of 2026

Principal Commissioner Of Income Tax I, Lucknow ...Petitioner
Versus
Medharaj Techno Concept Pvt. Ltd. ...Respondent

Issue for Consideration

Matter pertains to whether, in exercise of jurisdiction u/s 260A of Income Tax Act, 1961, the High Court is required to interfere with the order of Income Tax Appellate Tribunal on the ground that the findings recorded by the Tribunal regarding the genuineness and explanation of cash deposits made during the demonetisation period are perverse, contrary to the evidence on record, or give rise to any substantial question of law.

Headnotes

Income Tax Act, 1961 - ss. 68, 260A - Appeal - Substantial question of law - Scope of interference - Demonetisation period - Cash deposits - Burden of proof - Cash credit - The instant matter arose from an Income Tax Appeal preferred by Revenue u/s 260A of Income Tax Act, 1961, challenging the judgment and order passed by Income Tax Appellate Tribunal, Lucknow, whereby the Tribunal deleted the addition made u/s 68 of Income Tax Act in respect of cash deposits made by the assessee during the demonetisation period - During assessment proceedings, the Assessing Officer treated the cash deposits as unexplained cash credits and made an addition, doubting the explanation furnished by assessee regarding availability of cash in hand - The assessee argued that the deposits represented cash balance duly reflected in the audited books of account, and no defect had been pointed out by Assessing Officer - The Tribunal, upon appreciation of material available on record, accepted the explanation of assessee and held that the addition was based merely on suspicion and conjectures - Aggrieved by order of Tribunal, the Revenue approached the High Court, raising the issue whether the findings recorded by Tribunal suffered from perversity or involved any substantial question of law warranting interference u/s 260A of Act.

Held: *Once the availability of cash in hand was established and Assessing Officer could not indicate anything to the contrary as to how that cash in hand was spent, the explanation of assessee that the cash in hand was deposited in the banks could not have been rejected by Assessing Officer - Thus, no substantial question of law arises in the present case, as there is no perversity in the findings of Tribunal whatsoever - Accordingly, appeal dismissed. [Paras 7, 14] (E-13)*

Case Law Cited

Arulvelu v. State reported in (2009) 10 SCC 206; S.R. Tewari v. Union of India reported in (2013) 6 SCC 602; CIT v. Ajay Kapoor reported in 2013 SCC OnLine Del 2779 - referred to

Pr. CIT, Bareilly, UP v. Dharam Singh; (2025) 342 CTR 653: 245 DTR 369 - relied on

List of Acts

Income Tax Act, 1961

List of Keywords

Income Tax Appeal; s. 260A of the Income Tax Act, 1961; Income Tax Tribunal; Assessment Year; Substantial question of law; Addition u/s 68; Cash Balance; Books of Account; Genuineness; Credibility; Unexplained cash credits; Cash in hand; Assessing Officer; Cash deposits; Demonetisation period; Audited Books; Defect in Books of Account; Assessment order; Preponderance of probability; Appeal Dismissed.

Case Arising From

APPELLATE JURISDICTION: Income Tax Appeal No. - 4 of 2026

From the Judgment and Order dated 22.08.2025 passed by the Income Tax Tribunal, Lucknow for the Assessment Year 2017-18

Appearances for Parties

Advs. for the Appellant(s):

Kushagra Dikshit, Neerav Chitravanshi

Adv. for the Respondent(s):

P.K. Bajaj

(Delivered by Hon'ble Shekhar B. Saraf, J.
&
Hon'ble Abdhesh Kumar Chaudhary, J.)

1. Heard learned counsel for the petitioner and Sri P.K. Bajaj, learned counsel for the respondent.

2. This is an appeal filed under Section 260 A of the Income Tax Act, 1961, by the revenue interdicting the judgment and order dated 22.08.2025 passed by the Income Tax Tribunal, Lucknow for the Assessment Year 2017-18:-

3. The revenue has raised the following substantial questions of law:-

"1. Whether, on the facts and in the circumstances of the case, the Ld. ITAT was justified in law in deleting the addition made under section 68 of the Income-tax Act, 1961, merely on the basis of availability of cash balance in the books of account, without examining whether the assessee had discharged the statutory onus of proving the genuineness and credibility of such cash balance?

2. Whether the Ld. ITAT erred in law in holding that the Assessing Officer could not make an addition under section 68 when the books of account were not rejected, ignoring the settled legal principle that unexplained cash credits can be brought to tax independently of rejection of books?

3. Whether the Ld. ITAT was correct in law in overlooking the relevance of abnormal cash deposits during the demonetisation period and in failing to apply the test of human

probabilities, surrounding circumstances, and past business trends while adjudicating the issue under section 68?

4. Whether the Ld. ITAT has misapplied the ratio of decisions relating to suspicion versus proof, by treating a case involving unexplained cash deposits during demonetisation as one of mere estimation or conjecture, rather than one involving statutory burden of proof under section 68?"

4. Primarily, the issue engaging the attention of this Court in the present appeal is with regard to whether Tribunal has acted in a proper manner in appreciating the evidence that was provided by the assessee with regard to cash deposits made by them during the demonetization period so as to allow the appeal in their favour.

5. This Court finds that the Tribunal after considering all the evidences came to the conclusion that books of the assessee were duly audited and the Assessing Officer had not pointed out a single defect in the said books. The Tribunal further held that the Assessing Officer had completely disregarded the voluminous evidences filed by the assessee and had proceeded to disbelieve the explanation of the assessee without bringing on record anything to the contrary. The Tribunal while setting aside the assessment order arrived at a finding that the Assessing Officer had acted on presumption and on preponderance of probability and not on the evidences available on record. The relevant portion of the judgment of Tribunal is delineated below:-

"11. Though preponderance of probability is an accepted principle to judge reliability of evidences as held by the various Hon'ble Courts in plethora of cases but its application in judging the quality of evidences should be done in a reasonable manner. The action of the AO is not reasonable in as much as he was not able to point any defect in the books of account of the assessee. When as per the submission of the assessee, cash in hand was the source of the impugned cash deposit, then some further enquiries ought to have been made by the AO before rejecting the Assessee's explanation outright.

12. It will not be out of place at this juncture to refer to the judgment of the Hon'ble Apex Court in the case of Dhakeshwari Cotton Mills Ltd vs. CIT (1954) 26 ITR 775 (SC) on the issue of suspicion vs. proof. The Hon'ble Apex Court held as under:

"As regards the second contention, although ITO is not fettered by technical rules of evidence and pleadings, and that he is entitled to act on material which may not be accepted as evidence in a court of law, but there the agreement ends; because it is equally clear that in making the assessment under section 23(3) he is not entitled to make a pure guess and make an assessment without reference to any evidence or any material at all and there must be something more than bare suspicion to support the assessment under section 23(3). The rule of law on this subject has been fairly and rightly stated by the Lahore High Court in the case of Seth Gurmukh Singh v. CIT [1944] 12 393. In the instant case, the Tribunal violated certain fundamental rules of justice in reaching its conclusions. Firstly, it did not disclose to the assessee what information had been supplied to it by the departmental representative. Next, it did not give any opportunity to the assessee to rebut the material furnished to it by him, and lastly, it declined to take all the material that the assessee wanted to produce in support of its case. The result was that the assessee had not had a fair hearing. The estimate of the gross rate of profit on sales, both by the ITO and the

Tribunal, was based on surmises, suspicions and conjectures. The Tribunal took from the representative of the department a statement of gross profit rates of other cotton mills but did not show that statement to the assessee did not give him a opportunity to show that statement had no relevancy whatsoever to the case of the mill in question. It was not known whether the mills which had disclosed these rates were similarly situated and circumstanced. Not only did the Tribunal not show the information given by the representative of the department to the assessee, but it refused even to look at books and papers which assessee's representative produced before the Accountant Member in his chamber. The assessment in this case and in the connected appeal, was above the figure of Rs. 55 lakhs and it was just and proper when dealing with a matter of this magnitude not to employ unnecessary haste and show impatience, particularly when it was known to the department that the books of the assessee were in the custody of the Sub-Divisional Officer. Thus both the ITO and the Tribunal in estimating the gross profit rate on sales did not act on any material but acted on pure guess and suspicion. It was thus a fit case for the exercise of power under Article 136. In the result, the appeal was to be allowed and the order of the Tribunal was to be set aside and the case was to be remanded to it with direction that in arriving at its estimate of gross profits and sales it should give full opportunity to the assessee to place any relevant material on the point that it has before the Tribunal, whether it is found in the books of account or elsewhere and it should also disclose to the assessee the material on which the Tribunal is going to found its estimate and then afford him full opportunity to meet the substance of any private inquiries made by the ITO if it is intended to make the estimate on the foot of those enquiries."

13. The issue of cash deposits during demonetization has come up before various Benches of this Tribunal. The Ld. AR has also referred to many such cases during the course of his arguments. The Pune Bench of the ITAT has recently, vide order dated 24.04.2023, in Usha Nararayan Chaware vs. ITO deleted the addition of cash deposits during demonetization on proper explanation as to utilization of the cash deposit. The Bench noted that "Once the availability of cash in hand was established and it was not shown by the AO that such cash was spent elsewhere, the explanation of the assessee as to its utilization has to be accepted."

14. Keeping the above cited judicial precedents in mind and also on the facts of this case, we are of the considered view that the AO was not legally correct in making the impugned addition that that the Ld. First Appellate Authority has rightly deleted the said addition. Accordingly, the grounds raised by the Department are dismissed.

15. In the final result the appeal of the Department is dismissed."

6. Upon a perusal of the judgment of the Tribunal, it is crystal clear that the cash deposits by the petitioner during the period of demonetization were from the cash in hand that was available to the petitioner and was very much explained.

7. In light of the above, once the availability of the cash in hand was established and the Assessing Officer could not indicate anything to the contrary as to how that cash in hand was spent, the explanation of the assessee that the cash in hand was deposited in the banks could not have been rejected by the Assessing Officer. We are of the view that no substantial question of law arises in the present case, as there is no perversity in the findings of the Tribunal whatsoever.

8. The Hon'ble Apex Court has defined 'perversity' by tracing various earlier precedents in the case of ***Arulvelu v. State reported in (2009) 10 SCC 206*** wherein the Supreme Court arrived at a conclusion, which is extracted hereinbelow:

"24. The expression "perverse" has been dealt with in a number of cases. In *Gaya Din v. Hanuman Prasad* ((2001) 1 SCC 501] this Court observed that the expression "perverse" means that the findings of the subordinate authority are not supported by the evidence brought on record or they are against the law or suffer from the vice of procedural irregularity.

25. In *Parry's (Calcutta) Employees' Union v. Parry & Co. Ltd.* [AIR 1966 Cal 31] the Court observed that "perverse finding" means a finding which is not only against the weight of evidence but is altogether against the evidence itself. In *Triveni Rubber & Plastics v. CCE* [1994 Supp (3) SCC 665: AIR 1994 SC 1341] the Court observed that this is not a case where it can be said that the findings of the authorities are based on no evidence or that they are so perverse that no reasonable person would have arrived at those findings.

26. In *M.S. Narayanagouda v. Girijamma* [AIR 1977 Kant 58] the Court observed that any order made in conscious violation of pleading and law is a perverse order. In *Moffett v. Gough* [(1878) 1 LR Ir 331] the Court observed that a "perverse verdict" may probably be defined as one that is not only against the weight of evidence but is altogether against the evidence. In *Godfrey v. Godfrey* [106 NW 814] the Court defined "perverse" as turned the wrong way, not right; distorted from the right; turned away or deviating from what is right, proper, correct, etc.

27. The expression "perverse" has been defined by various dictionaries in the following manner:

1. *Oxford Advanced Learner's Dictionary of Current English*, 6th Edn.

"Perverse. Showing deliberate determination to behave in a way that most people think is wrong, unacceptable or unreasonable."

2. *Longman Dictionary of Contemporary English*, International Edn.

Perverse. Deliberately departing from what is normal and reasonable.

3. *The New Oxford Dictionary of English*, 1998 Edn.

Perverse. Law (of a verdict) against the weight of evidence or the direction of the judge on a point of law.

4. *The New Lexicon Webster's Dictionary of the English Language (Deluxe Encyclopedic Edn.)*

Perverse. Purposely deviating from accepted or expected behavior or opinion; wicked or wayward; stubborn; cross or petulant.

5. *Stroud's Judicial Dictionary of Words & Phrases*, 4th Edn.

"Perverse. A perverse verdict may probably be defined as one that is not only against the weight of evidence but is altogether against the evidence."

9. Furthermore, the Hon'ble Supreme Court in the case of ***S.R. Tewari v. Union of India reported in (2013) 6 SCC 602*** has laid down the attributes of perversity in the following manner:-

"30. The findings of fact recorded by a court can be held to be perverse if the findings have been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant/inadmissible material. The finding may also be said to be perverse if it is "against the weight of evidence", or if the finding so outrageously defies logic as to suffer from the vice of

irrationality. If a decision is arrived at on the basis of no evidence or thoroughly unreliable evidence and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, the conclusions would not be treated as perverse and the findings would not be interfered with. (Vide Rajinder Kumar Kindra v. Delhi Admn. [(1984) 4 SCC 635: 1985 SCC (L&S) 131: AIR 1984 SC 1805], Kuldeep Singh v. Commr. of Police [(1999) 2 SCC 10: 1999 SCC (L&S) 429: AIR 1999 SC 677], Gamini Bala Koteswara Rao v. State of A.P. [(2009) 10 SCC 636: (2010) 1 SCC (Cri) 372: AIR 2010 SC 589] and Babu v. State of Kerala [(2010) 9 SCC 189: (2010) 3 SCC (Cri) 1179].)"

10. The Delhi High Court in case of **CIT v. Ajay Kapoor reported in 2013 SCC OnLine Del 2779** has further elaborated as to what constitutes 'perversity'. The relevant paragraphs of the judgment are extracted below:

"14. Perversity, in the present case, is occasioned due to two reasons: firstly, by wrongly placing onus on the revenue though the facts were in personal knowledge of the assessee, and secondly, by ignoring the admission of the respondent that they had indulged in unaccounted sales of Rs. 9.7 crores. In spite of admission and the seized document, it has been observed that there was no material with the revenue to prima facie justify any addition towards unrecorded investment in stock. Allegations, in the present case, are not based upon weighing of evidence but for altogether a wrong decision. The decision suffers from vice of irrationality, rendering it infirm in law. In Municipal Committee, Hoshiarpur v. Punjab SEB (2010) 13 SCC 216 it has been held that:

"28. If a finding of fact is arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant material or if the finding so outrageously defies logic as to suffer from the vice of irrationality incurring the blame of being perverse, then the finding is rendered infirm in the eye of the law. If the findings of the Court are based on no evidence or evidence which is thoroughly unreliable or evidence that suffers from the vice of procedural irregularity or the findings are such that no reasonable person would have arrived at those findings, then the findings may be said to be perverse. Further if the findings are either ipse dixit of the Court or based on conjecture and surmises, the judgment suffers from the additional infirmity of non-application of mind and thus, stands vitiated. (Vide Bharatha Matha v. R. Vijaya Renganathan [(2010) 11 SCC 483: AIR 2010 SC 2685].)"

15. Earlier in *Dhirajlal Girdharilal v. CIT (1954) 26 ITR 736 (SC)* it was observed:-"

....if the court of fact, whose decision on a question of fact is final, arrives at this decision by considering material which is irrelevant to the enquiry, or by considering material which is partly relevant and partly irrelevant, or bases its decision partly on conjectures, surmises and suspicions, and partly on evidence, then in such a situation clearly an issue of law arise....

.....It is well established that when a court of fact acts on material, partly relevant and partly irrelevant, it is impossible to say to what extent the mind of the court was affected by the irrelevant material used by it in arriving at its finding. Such a finding is vitiated because of the use of inadmissible material and thereby an issue of law arises,"

16. In *CIT v. Daulat Ram Rawat Mull (1973) 87 ITR 349* it has been held that onus of proving what is apparent is not real is on the party who claims it to be so. There should be direct nexus between the conclusions of fact arrived at, or inferred, and the primary facts upon which the conclusion is based. When irrelevant consideration and extraneous materials form the substratum

of an order, or the authority has proceeded in a wrong presumption which is erroneous in law, as in the present case, question of law arises and when the said contention is found to be correct, then the order is perverse. A factual decision is perverse when it is without any evidence or when the factual decision, in view of the fact on record, cannot be reasonably entertained. Finding based upon surmises, conjectures or suspicion or when they are not rationally possible have to be struck down. In CIT v. S.P. Jain (1973) 87 ITR 370 (SC) it has been observed that a factual conclusion is regarded as perverse when no person duly instructed or acting judicially could upon the record before him, have reached the conclusion arrived at by the tribunal/authority."

11. As a sequel to the aforesaid judgment of the Hon'ble Supreme Court and High Court, we are of the view that unless there is perversity in the findings of fact, no substantial questions of law would arise. Further more, as far as the present case is concerned, we find that findings of the Tribunal are supported by cogent evidence brought on record and they are not in any manner against law or suffers from any procedural irregularities.

12. Thus, we are unable to subscribe to the view of the learned counsel appearing for the revenue and reject that there is any perversity in the impugned judgment of the Tribunal. We hold that the findings are based on the available records that clearly indicates that the cash deposited in the banks was only the cash in hand available with the assessee. In the judgment of a Co-ordinate Division Bench of this Court one of us (Hon'ble Shekhar B. Saraf,J.) examined an identical issue wherein the Bench after examining a catena of judgments of Hon'ble Supreme Court and High Court categorically held in ***Pr. CIT, Bareilly, UP Vs. Dharam Singh; (2025) 342 CTR 653: 245 DTR 369 (Allahabad High Court)*** that unless there is perversity in findings of fact, no substantial questions of law would arise.

13. In the present case, keeping in view the findings arrived at by the Tribunal to be in great detail and based on evidence brought on record by the assessee, we do not find any perversity whatsoever nor any substantial questions of law arises, which is required to be decided.

14. Accordingly, the appeal is dismissed.

(2026) 4 ILRA 646
APPELLATE JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 03.04.2026

BEFORE

THE HON'BLE RAJAN ROY, J.
THE HON'BLE MANJIVE SHUKLA, J.

Special Appeal No. 163 of 2021
 With Writ A No. 8721 of 2021

U.P.P.S.C.

Ashish Tyagi & Ors.

...Appellant
Versus
...Respondents

Issue for Consideration

- (1) Competence of State government to make rules to prescribe the qualification for the post of Drug Inspector under the Drugs and Cosmetics Act, 1940.
(2) Vires of the Rule 8 of the U.P. Food and Drug Administration Department Gazetted Officers (Drug) Service (Third Amendment) Rules, 2015.

Headnotes

(A) Service law – Selection – Post of Drug Inspector – Qualification – Central government prescribed the qualifications vide Rule 49 of the Rules, 1945 made u/s 33(2)(b) r/w S. 21(1) of the Act, 1940 – However, the State government also framed the Rule 8 of the Rules, 2015 prescribing the qualification – Competence of State government to make rules and vires of Rule 8 was challenged – Writ court vide impugned judgment, quashed the selection – Validity challenged: (E-1)

Held: The State of U.P. lacks the competence to prescribe qualification for the post of Drug Inspector in view of Section 21(1) r/w Section 3(i) of the Act, 1940. Further, the Central Government, which is competent in this regard, has already prescribed the qualifications vide Rule 49 of the Rules, 1945 made under Section 33(2)(b) read with Section 21(1) of the Act, 1940. Apparently, under Rule 8, though, the essential qualifications as mentioned in Rule 49 of the Rules, 1945 have been mentioned but the proviso to Rule 49, which is not part of the essential qualifications prescribed by the Central Government, has been incorporated by the State Government in Rule 8 as an essential qualification which it could not have done – We, accordingly, declare Rule 8(ii)(a) to (c) of the Rules, 1945 as *ultra vires*. [Para 13 and 18]

Further held: Selection in pursuance to the said advertisement has already been completed and persons have been appointed, we, therefore, do not find it reasonable to quash the advertisement and selection held in pursuance thereof, especially as, those selected do possess the essential qualifications prescribed by the Central Government, and in addition to it, they also fulfill the requirements in the proviso to Rule 49, therefore, these reliefs are declined. [Para 19]

Case Law Cited

State of Haryana vs. Krishan Kumar and others, 2026 INSC 63; S. Satyapal Reddy and Others vs. Government of Andhra Pradesh and others, 1994 (4) SCC 391; Writ A No. 82 of 2026, Deepak Kumar & 32 others vs. State of U.P. & another decided on 08.01.2026; Civil Appeal 10389 of 2024, Chandra Shekhar Singh vs. State of Jharkhand decided on 28.03.2025 – **referred to.**

List of Acts

Constitution of India – Article 309, Entry 19 of the Concurrent List of the Seventh Schedule; Drugs and Cosmetics Act, 1940 – Ss 3(i), 21 and 33; U.P. Food and Drug Administration Department Gazetted Officers (Drug) Service (Third Amendment) Rules, 2015 – Rule 8.

List of Keywords

Selection, Essential qualification, Certiorari, Mandamus, Exercise of power, Recruitment, Condition of service, Competence, *Intra vires*, *Ultra vires*, Advertisement, Requirement, Inequitable, Unjust, Public employment, Prejudice, Prescription of qualification.

Case Arising From

Judgment and order dated 08.01.2021 passed in Writ Petition No. 262 (S/S) of 2021.

Appearances for Parties

Advs. for the Appellant: Raj Kumar Upadhyaya, Nishant Shukla (ACSC).

Advs. for the Respondents: Anurag Shukla (Sr. Adv.), Vineet Kumar Pandey, Pt. S. Chandra, Purnima Mayank.

(Delivered by Hon'ble Rajan Roy, J.

&

Hon'ble Manjive Shukla, J.)

1. Heard Shri Anurag Shukla, learned Senior Advocate assisted by Shri Vineet Kumar Pandey, learned counsel for the respondent-petitioner, Shri R.K. Upadhyaya, learned counsel for the Commission and Shri Nishant Shukla, learned Additional Chief Standing Counsel appearing on behalf of the State.

2. There are two cases before us. One is Special Appeal No. 163 of 2021 filed by the U.P. Public Service Commission challenging a judgment and order dated 08.01.2021 passed in Writ Petition No. 262 (S/S) of 2021 by which the selection to the post of Drug Inspector which was advertised on 10.08.2016 has been quashed. The other case is Writ A No. 8721 of 2022 filed by the petitioners wherein the vires of Rule 8 of U.P. Food and Drug Administration Department Gazetted Officers (Drug) Service (Third Amendment) Rules, 2015 (hereinafter referred to as 'the Rules, 2015') has been challenged apart from seeking a writ of Certiorari for quashing the advertisement dated 18.05.2018 for the post of Drug Inspector. A Mandamus has also been sought for issuance of fresh advertisement for direct recruitment to the aforesaid post as per essential qualifications prescribed under the statutory rules i.e. Rule 49 of the Drugs and Cosmetics Rules, 1945. The petitioners of this writ petition are respondents in the special appeal referred above, meaning thereby, they were petitioners in the writ petition out of which the said special appeal arises.

3. First and foremost, we will consider the relief prayed in the writ petition, specially with regard to the vires of Rule 8 of the Rules, 2015. Rule 8 of the Rules, 2015 reads as under:-

"8. Academic qualification

A candidate for direct recruitment to the post of Inspector of Drugs must possess the following qualifications:

(i) Degree in Pharmacy or Pharmaceutical Sciences or Medicine with specialization in Clinical Pharmacology or Microbiology or equivalent from a recognized University.

(ii) (a) Eighteen months' experience in the manufacture of at least one of the substances specified in Schedule 'C' to the Drug and Cosmetics Rules, 1945; or

(b) Eighteen months' experience in testing of atleast one of the substances specified in Schedule 'C' to the Drugs and Cosmetics Rules, 1945 in laboratory approved for this purpose by the licensing authority; or

(c) Three years' experience in the inspection of firms manufacturing any of the substances specified in Schedule 'C' to the Drugs and Cosmetics Rules, 1945 during the tenure of their services as Drug Inspector of any State Government or Central Government.

4. These rules have been made by the State Government in exercise of its powers under the proviso to Article 309 of the Constitution of India. Article 309 of the Constitution of India reads as under:-

"309. Recruitment and conditions of service of persons serving the Union or a State -
Subject to the provisions of this Constitution, Acts of the appropriate Legislature may regulate the

recruitment, and conditions of service of persons appointed, to public services and posts in connection with the affairs of the Union or of any State:

Provided that it shall be competent for the President or such person as he may direct in the case of services and posts in connection with the affairs of the Union, and for the Governor of a State or such person as he may direct in the case of services and posts in connection with the affairs of the State, to make rules regulating the recruitment, and the conditions of service of persons appointed, to such services and posts until provision in that behalf is made by or under an Act of the appropriate Legislature under this Article, and any rules so made shall have effect subject to the provisions of any such Act."

5. As would be evident from a bare reading of the aforesaid Article, recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State are to be regulated by Acts of appropriate legislature, subject to the provisions of the Constitution. It is not out of place to mention that the post of Drug Inspector is covered within the meaning of the term "Public Services" and is a post in connection with the affairs of the State of Uttar Pradesh. The proviso to Article 309 permits making of rules regulating recruitment and conditions of service of such persons, as referred hereinabove, until provision in that behalf is made by or under an Act of the appropriate legislature under Article 309 and any rules so made shall have effect, subject to the provisions of any such act. Thus, the rule making power vested with the State Government under the proviso to Article 309 is to be exercised, firstly, when such recruitment and conditions of service are not regulated by any enactment of an appropriate legislature. Secondly, such rules are subject to the provisions of any such enactment. The law in this regard is very well settled that if recruitment and conditions of service have been regulated by an enactment of an appropriate legislature and on the same subject there are rules which are in conflict with the enactment, then the enactment will prevail. Further, if any rules have been made under an enactment then they will prevail over a rule made under the proviso to Article 309, if the said rule has not been made under any enactment. We may in this regard refer to a recent judgment of Hon'ble the Supreme Court rendered in Civil Appeal No. 1725-1731 of 2023 and connected matters, State of Haryana Vs. Krishan Kumar.

6. Now, the contention of the counsel for the petitioner in the case at hand is that as regards recruitment and conditions of service on the post of Drug Inspector is concerned, the post finds mention in a central enactment i.e. Drugs and Cosmetics Act, 1940 (hereinafter referred to as 'the Act, 1940') which is referable to Entry 19 of the Concurrent List of the Seventh Schedule of the Constitution of India. Section 21 thereof, reads as under:-

"21. Inspectors. - (1) *The Central Government or a State Government may, by notification in the Official Gazette, appoint such persons as it thinks fit, having the prescribed qualifications, to be Inspectors for such areas as may be assigned to them by the Central Government or the State Government, as the case may be.*

(2) *The powers which may be exercised by an Inspector and the duties which may be performed by him, the drugs or [classes of drugs or cosmetics or classes of cosmetics] in relation to which and the conditions, limitations or restrictions subject to which, such powers and duties may be exercised or performed shall be such as may be prescribed.*

(3) No person who has any financial interest [in the import, manufacture or sale of drugs or cosmetics] shall be appointed to be an Inspector under this section.

(4) Every Inspector shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code (45 of 1860). and shall be officially subordinate to such authority having the prescribed qualifications, as the Government appointing him may specify in this behalf."

7. On a reading of Sub-section 1 of Section 21, it is evident that the qualifications for the post of Inspector i.e. Drug Inspector have to be such as are prescribed. Now, the word 'prescribed' has been defined in Section 3(i) of the Act, 1940 to mean 'prescribed by rules made under the Act, 1940'. Reliance has then be placed upon Section 33 of the same act which mentions the power of the Central Government to make rules. Section 33(2)(v) empowers the Central Government specifically to make rules prescribing the qualifications of Inspector i.e. Drug Inspector. The general powers are also vested in the Central Government under Sub-Section 1. It may be pointed out at this stage that under the Act, 1940 there is no provision vesting any power in the State Government for prescribing qualification of Inspectors. Section 38 of the Act, 1940 prescribes the procedure as to how a rule made under Section 33 would be laid before the Parliament etc..

8. As, drugs and cosmetics is referable to Entry 19 of the Concurrent List of the Seventh Schedule of the Constitution of India, the State also has power to legislate over the subject. However, the State of Uttar Pradesh has not promulgated any such enactment pertaining to drugs and cosmetics that is the subject matter over which a central enactment i.e. the Act, 1940, exists. As already stated, the State Government has not been vested with any power to make Rules prescribing qualification for the post of Drug Inspector which is vested under Section 21(1) read with Section 33(2)(b) of the Act, 1940 in the Central Government. Reference may be made to the rules made by the Central Government in exercise of its powers under Section 33(2)(b) read with Section 21(1) of the Act, 1940 namely the Drugs & Cosmetics Rules, 1945. Rule 49 thereof reads as under:-

"49. Qualifications of Inspectors-- *A person who is appointed an Inspector under the Act shall be a person who has a degree in Pharmacy or Pharmaceutical Sciences or Medicine with specialization in Clinical Pharmacology or Microbiology from a University established in India by law:*

Provided that only those Inspectors—

(i) who have not less than 18 months' experience in the manufacture of at least one of the substances specified in Schedule C, or

(ii) who have not less than 18 months' experience in testing of at least one of the substances in Schedule C in a laboratory approved for his purpose by the licensing authority, or

(iii) who have gained experience of not less than three years in the inspection of firm manufacturing any of the substances specified in Schedule C during the tenure of their services as Drugs Inspectors ; shall be authorized to inspect the manufacture of the substances mentioned in Schedule C:

Provided further that the requirement as to the academic qualification shall not apply to persons appointed as Inspectors on or before the 18th day of October, 1993."

9. The submission on behalf of the petitioners is that the qualification for the post of Inspector, as prescribed by the Central Government under the said rules which have statutory force is a degree in Pharmacy or Pharmaceutical Sciences or Medicine with specialization in Clinical Pharmacology or Microbiology from a University established in India by law. The proviso to the said rule, as per Shri Anurag Shukla, learned Senior Advocate appearing for the petitioners is referable to the duties to be performed by the Inspectors and creates an embargo on inspection of manufacture of substances mentioned in Schedule 'C' only by such Inspectors who fulfill the experience mentioned in Clause 1, 2 and 3 of the proviso. The submission is that apart from the aforesaid, the Drug Inspector performs many other functions and duties. Inspection of manufacture of substances mentioned in Schedule 'C' is only one of the functions, for which, only such Inspectors are entitled who fulfill the experience mentioned in Clause 1, 2 & 3 of the proviso, which does not mean that this experience is an essential qualification prescribed under Rule 49. The proviso has specific purpose in respect of a specific duty to be performed by the Drug Inspectors, which is only part of all the duties performed by them. A reference has been made to Section 22 and 23 pertaining to powers of Inspectors and procedure of Inspectors, as also, Rule 51 & 52 of the Rules, 1945 pertaining to duties of Inspectors.

10. Against the aforesaid background, it has been contended, firstly that in view of Section 21(1) read with Section 3(i) and Section 33(2)(b) of the Act, 1940, the Central Government alone is empowered under the aforesaid enactment to prescribe qualifications for the post of Drug Inspector, which has been done by the Rules, 1945. The State of Uttar Pradesh lacks competence to make rules prescribing qualifications for the post of Drug Inspector under the Act, 1940, and as there is an enactment i.e. the Act, 1940 and the Rules made thereunder i.e. the Rules, 1945 framed by the Central Government, prescribing qualifications for the post of Inspector, therefore, the field being covered by a Central enactment, there is no question of application of proviso to Article 309 to the subject at hand. Even otherwise, if any rule is made by the State Government under the proviso to Article 309, it will, in the event of conflict, have to give way to these rules made by the Central Government under an enactment. For this reason, he also referred to Article 254 of the Constitution of India in this very context, as has been considered by Hon'ble the Supreme Court in the case of **State of Haryana Vs. Krishan Kumar and others**, [2026 INSC 63]. For all these reasons, he has submitted that Rule 8 of the Rules, 2015 is ultra vires Section 21(1) read with Section 3(i) and Section 33(2) of the Act, 1940 read with Rule 49 of the Rules, 1945.

11. On being confronted with the aforesaid situation, learned State Counsel submitted that Entry 41 of the State list dealing with public services, empowers the State of Uttar Pradesh to make rules governing the terms and conditions pertaining to the services and posts connected with the affairs of the State of Uttar Pradesh, therefore, the rules are referable to the said Entry and it cannot be said that the State does not have the competence. However, on being confronted with the law as elucidated by Hon'ble the Supreme Court in the case of **Krishan Kumar (Supra)**, which was also a case similar to the one at hand, wherein certain qualifications had been prescribed by the State of Haryana, which were in conflict with the rules made by the Central Government and the same were struck down by Hon'ble the Supreme Court, the State Counsel for obvious reasons could not dispute this legal position. Reference may be made in this regard to Paragraph 42 to 46 of the aforesaid dictum of Hon'ble the Supreme Court in this regard which reads as under:-

"Doctrine of Occupied Filed vis-a-vis Article 309 of the Constitution of India"

42. The question of applicability of Article 309 of the Constitution of India in the context of promotional rules arose in *A.B. Krishna and Others Vs. State of Karnataka and Others*. In this case, the Mysore Fire Force (Cadre Recruitment) Rules, 1971 were framed by the State of Karnataka under Section 39 of the Fire Force Act, 1964, being a State Act. The 1971 Rules required qualifying an examination for the purpose of promotion. This Court upheld the applicability of the 1971 Rules over an amendment made by the Governor of Karnataka to the Karnataka Civil Services (General Recruitment) Rules, 1977 in exercise of powers under Article 309 of the Constitution of India. The observations made in this regard are necessary below for ready reference:-

"8. The Fire Services under the State Government were created and established under the Fire Force Act, 1964 made by the State Legislature. It was in exercise of the power conferred under Section 39 of the Act that the State Government made Service Rules regulating the conditions of the Fire Services. Since the Fire Services had been specially established under an Act of the legislature and the Government, in pursuance of the power conferred upon it under that Act, has already made Service Rules, any amendment in the Karnataka Civil Services (General Recruitment) Rules, 1977 would not affect the special provisions Validly made for the Fire Services. As a matter of fact, under the scheme of Article 309 of the Constitution, once a legislature intervenes to enact a law regulating the conditions of service, the power of the Executive, including the President or the Governor, as the case may be, is totally displaced on the principle of "doctrine of occupied field". If, however, any matter is not touched by that enactment, it will be competent for the Executive to either issue executive instructions or to make a rule under Article 309 in respect of that matter.

9. It is no doubt true that the rule-making authority under Article 309 of the Constitution and Section 39 of the Act is the same, namely, the Government (to be precise, the Governor, under Article 309 and the Government under Section 39), but the two jurisdictions are different. As has been seen above, power under Article 309 cannot be exercised by the Governor, if the legislature has already made a law and the field is occupied. In that situation, rules can be made under the law so made by the legislature and not under Article 309. It has also to be noticed that rules made in exercise of the rule-making power given under an Act constitute delegated or subordinate legislation, but the rules under Article 309 cannot be treated to fall in that category and, therefore, on the principle of "occupied field", the rules under Article 309 cannot supersede the rules made by the legislature."

43. In light of the facts of the present appeals and the judgment of this Court in *A.B. Krishna* (Supra), we are of the considered opinion that the Doctrine of Occupied Field is applicable. The D&C Act being a central law confers power to the Central Government to prescribe the qualification for appointment of Inspectors, which has been exercised by framing the Drug Rules. Thus, it is the primary legislation on the subject and occupies the field. The Drug Rules, were framed by the Central Government in exercise of powers conferred by the D&C Act. The Rules of 2018 framed by the State of Haryana under the proviso to Article 309 of the Constitution of India cannot override the Drug Rules in so far as it relates to prescription of qualification for appointment of Inspector. Similar is the case in the State of Karnataka where the Rules of 2013 were framed in exercise of powers under Section 3(1)(b) of the KSCSA.

44. *It is therefore apposite to underscore the material distinction in the manner of framing of the two sets of Rules. While the Rules of 2013 trace their authority to a State enactment, the Drug Rules emanate from a central legislation enacted under the Concurrent List, wherein the central law, along with the Rules framed thereunder, constitutes the primary and dominant regulatory framework. Consequently, the Rules of 2013 cannot be construed so as to invalidate or prevail over the central Drug Rules.*

45. *Additionally, Section 33(2)(b) read with Section 33(2)(n) of the D&C Act confer exclusive jurisdiction upon the Central Government to frame rules for the purpose of appointment of Inspector 'Expressio unius est exclusio alterius' means the "express mention of one thing excludes others." This internal aid to statutory interpretation further reinforces the legislative intent that the power to prescribe qualifications and conditions for appointment of Inspectors vests exclusively with the Central Government under the D&C Act. Once the Centre has consciously and expressly occupied the field by placing the Drug Rules framed under the D&C Act before both Houses of the Parliament as provided under Section 38, any inconsistent exercise of power by the State, even under the proviso to Article 309 of the Constitution of India, stands impliedly excluded.*

46. *Reverting to the issue as raised regarding inconsistency between the laws made by the Parliament and the laws made by legislature of the State is also a point which requires consideration. As discussed, the power for appointment to the post of DI/DCO is co-extensive with the Central and State Governments, and they may assign the duties as they think fit. As analysed above, under the D&C Act, the power to prescribe the qualification of Inspectors is the domain of the Central Government. In the previous paragraphs, it is also said that the provisions of the D&C Act regarding power of the Central Government to prescribe the qualification has not been amended by the respective States. Since the subject matter is under Entry No. 19 by Concurrent List of List III, therefore, on the subject occupied by the Central Legislation, the power of State legislation does not flow to the State on the subject so occupied."*

12. Learned counsel for the Commission, though he does not have much of a locus in the matter, as the rules under challenge have been made by the State Government and Commission is only the recruiting authority, nevertheless, argued on the same lines as the State Counsel, and the said arguments are also not acceptable for obvious reasons.

13. We find merit in the submission of Shri Shukla, as regards Rule 8 of the Rules, 2015 framed by the State Government under the proviso to Article 309 of the Constitution of India being ultra vires Section 21(1) read with Section 3(i), Section 33(2)(b) of the Act, 1940 and Rule 49 of the Rules, 1945. The matter is squarely covered by the decision of Hon'ble the Supreme Court in Krishan Kumar's case, (Supra) relevant extracts of which have already been quoted hereinabove. The State of U.P. lacks the competence to prescribe qualification for the post of Drug Inspector in view of Section 21(1) read with Section 3(i) of the Act, 1940. Further, the Central Government, which is competent in this regard, has already prescribed the qualifications vide Rule 49 of the Rules, 1945 made under Section 33(2)(b) read with Section 21(1) of the Act, 1940. Apparently, under Rule 8, though, the essential qualifications as mentioned in Rule 49 of the Rules, 1945 have been mentioned but the proviso to Rule 49, which is not part of the essential qualifications prescribed by the Central Government, has been incorporated by the State Government in Rule 8 as an essential qualification which it could not have done, firstly for the reason, it lacked competence to do so, which in fact, is an error so fundamental and fatal that no other reason is required for

declaring the same as ultra vires but, additionally, it is also in conflict with Rule 49 of the Rules, 1945.

14. As regards, reliance placed by learned counsels appearing for the State and Commission on the decision of Hon'ble Supreme Court in the case of **S. Satyapal Reddy and Others Vs. Government of Andhra Pradesh and others, 1994 (4) SCC 391**, the same has already been considered by Hon'ble the Supreme Court in the case of Krishan Kumar (Supra) in Paragraph 47 and 48 which reads as under:-

*"47. Learned Additional Solicitor General, Mr. Vikramjeet Banerjee appearing on behalf of the State of Haryana has heavily placed reliance on the judgment of **S. Satyapal Reddy** (Supra) wherein the qualification for appointment on the post of Assistant Motor Vehicles Inspector in the State of Andhra Pradesh as per State rules was an issue. In the facts of the said case, the Central Government framed the rules in exercise of power under Section 213(4) of the Motor Vehicles Act, 1988 vide S.O 443(E) dated 12.06.1989 prescribed a diploma in Mechanical Engineering as the 'minimum qualification' for appointment to the said post. The Government of Andhra Pradesh in exercise of powers under proviso to Article 309 of the Constitution of India, framed the Andhra Pradesh Transport Subordinate Service Rules, 1984 and enhanced the qualification of diploma into degree as qualification for appointment. In the said context, this Court held as under:*

*"5. It is seen that marginal note in Section 213 for "appointment of Motor Vehicles Officers" indicates the subject-matter of the section. Sub-section (1) says that the State Government may, for the purpose of carrying into effect the provisions of this Act, establish Motor Vehicles Department and "appoint as officers thereof such persons as it thinks fit". The power of appointment includes the power to select a fit and competent person who it thinks fit to hold the post and would discharge efficiently the functions assigned under the Act. **It includes the power to prescribe qualifications to select suitable officers.** The Parliament preserved that power to the State Government under Section 213(1) itself by allowing it to appoint the officers whom it finds fit to carry into effect the provisions of the Act. Sub-section (4) gives power to the Central Government, having regard to the object of the Act, by a notification in the Official Gazette "to prescribe minimum qualification" which the officers or class of officers thereof shall possess for being appointed as such officer or to the cadre belonging to the State Government. Under Entry 41 of List II (State List) of VIIth Schedule to the Constitution, the public service includes the services of the officers to be appointed under sub-section (1) of Section 213 of the Act. No doubt, as contended by the learned counsel for the appellants that the Act receives paramountcy, since under Entry 35, the subject under the Act covers the concurrent field. **Sub-section (4) of Section 213 also preserves the power to prescribe qualifications higher than that "minimum qualification" prescribed by the Central Government to appoint the "said officers or any class thereof shall possess for being appointed as such."***

48. In light of the said observations, if we examine the scheme of the Motor Vehicle Act, 1988, Section 213 deals with the appointment of Assistant Motor Vehicle Inspectors. Sub-section (iv) therein confers power on the Central Government to prescribe the 'minimum qualification' which the said officers or any class thereof shall possess for being appointed as such. However, prescribing the 'minimum qualification' i.e., holding a diploma in Mechanical Engineering was 'minimum' Section 213(iii) of the Motor Vehicles Act, 1988 also confers powers on the State Government to make rules for regulating the discharge of functions by officers of the motor vehicle

department and in particular, and without prejudice to the generality of forgoing power, prescribe the uniform to be worn by them, the authorities to which they shall be sub-ordinate, the duties to be performed by them, the powers (including the powers exercisable by police officers under this Act) to be exercised by them and the conditions governing the exercise of such power. Therefore, to sustain the discharge of the duties of the powers were given to the State Government. In the said case, the State Government by its rules under the proviso to Article 309 of the Constitution of India prescribed the educational qualification as a degree in Mechanical Engineering for the post of Assistant Motor Vehicle Inspector. However, the said qualification was above that prescribed by the Central Government i.e., a diploma in Mechanical Engineering which was the minimum qualification. This Court while dealing with the issue has observed as under –

"7. It is thus settled law that Parliament has exclusive power to make law with respect to any of the matters enumerated in List I or concurrent power with the State Legislature in List III of the VIIth Schedule to the Constitution which shall prevail over the State law made by the State Legislature exercising the power on any of the entries in List III. If the said law is inconsistent with or incompatible to occupy the same field, to that extent the State law stands superseded or becomes void. **It is settled law that when Parliament and the Legislature derive that power under Article 246(2) and the entry in the Concurrent List, whether prior or later to the law made by the State Legislature, Article 246(2) gives power, to legislate upon any subject enumerated in the Concurrent List, the law made by Parliament gets paramountcy over the law made by the State Legislature unless the State law is reserved for consideration of the President and receives his assent.** Whether there is an apparent repugnance or conflict between Central and State laws occupying the same field and cannot operate harmoniously in each case the court has to examine whether the provisions occupy the same field with respect to one of the matters enumerated in the Concurrent List and whether there exists repugnancy between the two laws. Article 254 lays emphasis on the words "with respect to that matter". Repugnancy arises when both the laws are fully inconsistent or are absolutely irreconcilable and when it is impossible to obey one without disobeying the other. The repugnancy would arise when conflicting results are produced when both the statutes covering the same field are applied to a given set of facts. But the court has to make every attempt to reconcile the provisions of the apparently conflicting laws and the court would endeavour to give harmonious construction. The purpose to determine inconsistency is to ascertain the intention of Parliament which would be gathered from a consideration of the entire field occupied by the law. The proper test would be whether effect can be given to the provisions of both the laws or whether both the laws can stand together. Section 213 itself made the distinction of the powers exercisable by the State Government and the Central Government in working the provisions of the Act. It is the State Government that operates the provisions of the Act through its officers. Therefore, sub-section (1) of Section 213 gives power to the State Government to create Transport Department and to appoint officers, as it thinks fit. Sub-section (4) thereof also preserves the power. **By necessary implication, it also preserves the power to prescribe higher qualification for appointment of officers of the State Government to man the Motor Vehicles Department. What was done by the Central Government was only the prescription of minimum qualifications, leaving the field open to the State Government concerned to prescribe if it finds necessary, higher qualifications.** The Governor has been given power under proviso to Article 309 of the Constitution, subject to any law made by the State Legislature, to make rules regulating the recruitment which includes prescription of qualifications for appointment to a office or post under the State. Since the Transport Department under the Act is constituted by the State Government and

the officers appointed to those posts belong to the State service, while appointing its own officers, the State Government as a necessary adjunct is entitled to prescribe qualifications for recruitment or conditions of service. But while so prescribing, the State Government may accept the qualifications or prescribe higher qualification but in no case prescribe any qualification less than the qualifications prescribed by the Central Government under sub-section (4) of Section 213 of the Act. In the latter event, ie.. prescribing lesser qualifications, both the rules cannot operate without colliding with each other. When the rules made by the Central Government under Section 213(4) and the statutory rules made under proviso to Article 309 of the Constitution are construed harmoniously, there is no incompatibility or inconsistency in the operation of both the rules to appoint fit persons to the posts or class of officers of the State Government vis-a-vis the qualifications prescribed by the Central Government under sub-section (4) of Section 213 of the Act."

15. Therefore, the reliance placed on the said decision is of no avail.

16. At this very stage, we may consider a Co-ordinate Bench Judgment dated 08.01.2026 rendered in ***Writ-A No. 82 of 2026, Deepak Kumar & 32 others Vs. State of U.P. & Another***, wherein the similar issue, as has been considered herein, was involved and the rule was held to be intra vires, however, this judgment was rendered prior to judgment of Hon'ble the Supreme Court in the case of Krishan Kumar (Supra), which has been rendered subsequently on 13.01.2026, therefore, the Co-ordinate Bench did not have the benefit of the aforesaid Supreme Court's decision. In view of this, there is no need to refer the matter to a larger Bench, as, the issue involved is directly covered by a Supreme Court decision which has been recently pronounced, which for obvious reasons, prevails, and by which, we are bound.

17. In fact, we find that in context of the Food Safety Act, 2006 also, a similar controversy arose where rules were made by the Government of Jharkhand in conflict with rules made by the Central Government and Hon'ble the Supreme Court in a recent decision dated 28.03.2025 rendered in ***Civil Appeal 10389 of 2024, Chandra Shekhar Singh Vs. State of Jharkhand***, held that the State lacked the competence to make the rules, as the field was covered by the provisions of a central enactment and rules made by the Central Government.

18. We, accordingly, declare Rule 8(ii)(a) to (c) of the Rules, 1945 as *ultra vires*. Consequences shall follow accordingly as per law.

19. As regards, the other reliefs in the writ petition regarding quashing of the advertisement dated 18.05.2018 and issuance of a fresh advertisement for the post of Drug Inspector, we have been informed that selection in pursuance to the said advertisement has already been completed and persons have been appointed, we, therefore, do not find it reasonable to quash the advertisement and selection held in pursuance thereof, especially as, those selected do possess the essential qualifications prescribed by the Central Government, and in addition to it, they also fulfill the requirements in the proviso to Rule 49, therefore, these reliefs are declined. It is, however, made clear that in all pending and future selections for the post of Drug Inspector, the qualification prescribed shall be such, as is prescribed by the Central Government by Rules made under Section

33(2)(b) read with Section 21 and 3(i) of the Act, 1940 unless the statutory provision and law undergoes a change. The petition stands **allowed in part** in the aforesaid terms.

20. We, now, come to the Special Appeal No. 163 of 2021. In this appeal, the Writ Court has allowed the writ petition of the respondent-petitioners by considering the legal position as to the competence of the State Government to prescribe qualification for the post of Drug Inspector. The Writ Court has found that the State Government lacks such competence. This aspect has already been discussed by us while deciding the writ petition as aforesaid, therefore, we need not reiterate the same. To this extent, we do not find any error in the judgment of the learned Single Judge on the point of law decided by him, however, so far as, the relief granted by him is concerned, as he has quashed the advertisement dated 18.05.2016 and the selection held in pursuance thereof, therefore, this aspect requires consideration. This is for the reason, out of 27 posts of Drug Inspector which had been advertised, 23 have already been filled up, albeit after passing of the interim order in this appeal filed by the Commission, and no doubt, their joining is also subject to result of this appeal but, the fact of the matter is that these persons after joining in 2021 have been continuing for almost five years. Further, all of them possess the qualifications prescribed in Rule 49 of the Rules, 1945, and additionally, also possess the experience mentioned in the proviso to the said Rule, which though not an essential qualification, is satisfied by them, therefore, they being qualified, we find it inequitable and unjust to throw them out of service after five years, as all their experience would go waste. This aspect has also been dealt with while allowing the writ petition pertaining to the Advertisement of 2018, therefore, purely on facts, the selection, joining and appointment of the said candidates need not be interfered.

21. As regards the rights of respondent-petitioners to be considered for public employment having been violated and prejudice caused to them, it is informed that there is one selection to the post in question pending which is at its nascent stage, having been initiated in pursuance to the advertisement dated 22.12.2025, as informed by learned Counsel for the Commission, Shri R. R. Upadhyay. As, the respondent-petitioners were deprived of an opportunity to appear in the selection on account of prescription of qualifications in excess of what has been prescribed by the Central Government, and as, we have declared Rule 8 (ii)(a) to (c) ultra vires, therefore, it is equitable that the Respondent No's. 1 to 8 are permitted to participate in the selection which has been initiated as aforesaid in 2025 by being permitted therein to apply for the same, and further they should be considered as per law keeping in mind what has been stated hereinabove, provided they satisfy other conditions of recruitment as per law. The Commission is directed to make necessary arrangement to facilitate submission of applications by Respondent No's. 1 to 8 with respect to the aforesaid selection and consider them as per law. We have already observed and directed while deciding the writ petition earlier, that any selection to the post of Drug Inspector which is pending or which takes place in future will have to be considered in the light of the qualifications prescribed by the Central Government under Section 21(1) read with Section 3(i) and Section 33(2)(b) and Rules made thereunder, unless the law undergoes a change.

22. We have been told that Respondent no. 1 participated in the advertisement but did not submit requisite documents on account of which, he was not called for interview. Be that as it may, there are certain exceptions to the rule of estoppel in cases where a person has appeared in a selection and then proposes to challenge the same subsequently, one of the exceptions is, where

there is an apparent error in the sense that the advertisement is in the teeth of statutory rules or law on the subject, as in this case. We are of the opinion that the writ petition, as also, the special appeal at the behest of Respondent No. 1, was / is maintainable as it falls in the aforesaid exception.

23. The judgment of learned Single Judge stands modified to the aforesaid extent. The appeal is **allowed in part** as stated hereinabove.

(2026) 4 ILRA 658
APPELLATE JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 03.04.2026

BEFORE

THE HON'BLE ARUN BHANSALI, C.J.
THE HON'BLE KSHITIJ SHAILENDRA, J.

Special Appeal No. 1205 of 2025

Smt. Rinku Ram @ Rinku Devi & Anr. ...Appellants
Versus
State of U.P. & Ors. ...Respondents

Issue for Consideration

- (1) Maintainability of Habeas Corpus writ petition filed by the mother to take custody of her minor child.
- (2) Validity of the order dismissing the writ petition of Habeas Corpus on the ground that the remedy is available under the provisions of Guardians and Wards Act, 1890.

Headnotes

(A) Constitutional law – Writ of Habeas corpus – Maintainability – Matrimonial dispute – Custody matter – Mother filed writ petition alleging that the respondent-husband forcibly taken away the minor child and child was not handed over to her despite the order of C.W.C. – Writ petition was dismissed on the ground that the remedy is available under the provisions of Guardians and Wards Act, 1890 – Validity challenged: (E-1)

Held: The view taken by the learned Single Judge is contrary to the decision of the Hon'ble Supreme Court in Yashita Sahu's case – It is too late in the day to urge that a writ of habeas is not maintainable if the child is in the custody of another parent and the court can invoke its extraordinary writ jurisdiction for the best interest of the child – In custody matters, it is only the welfare of the child that is of paramount consideration and once we have arrived at a conclusion that writ petition could not be dismissed as not maintainable or the forum of the writ court as not the appropriate one, the matter has to be considered by the writ court on merits where the parties would have their full say. [Para 16 and 18]

Case Law Cited

Yashita Sahu vs. State of Rajasthan and others, (2020) 3 SCC 67; Elizabeth Dinshaw vs. Arvand M. Dinshaw and others, (1987) 1 SCC 42; Nithya Anand Raghavan vs. State (NCT of Delhi) and another, (2017) 8 SCC 454; Lahari Sakhamuri vs. Sobhan Kodali, (2019) 7 SCC 311; R. vs. Greenhill, (1836) 4 Ad and El p. 640: 111 ER at p. 927; CRWP 5617 of 2020, Arvinder Kaur vs. State of Punjab and others, decided on 09.11.2020; Gohar Begum vs. Suggi, AIR 1960 SC 93; Writ Petition (Civil) No. 35211 of 2024, xxxxxx vs. State of Kerala and others, 2024:KER:79513; Special Appeal No. 1015 of 2014, Mohd. Irfan vs. State of U.P. and 2 others, decided on 11.12.2014; Writ Petition No. 737 of 2026, Kanchan Akshay Shinde vs. The State of Maharashtra and other decided on 10.03.2026; Manju Tiwari vs. Rajendra Tiwari, AIR 1990 SC 1156; Syed Saleemuddin vs.

Dr. Rukhsana, 2001 (2) R.C.R. (Criminal) 591; Tejaswini Gaud and others vs. Shekhar Jagdish Prasad Tewari and others, 2019 (3) R.C.R. (Civil) 104; Smt. Nandita Virmani vs. Raman Virmani (Deli HC), 1983 Cri. L.J. 794; Durgesh Kumar Ahuja vs. Vineet Khurana and another (Delhi HC): 1985 Cri. L.J. 1195 – **referred to.**

List of Acts

Constitution of India – Article 226; Guardians and Wards Act, 1890.

List of Keywords

Matrimonial dispute, Minor child, Custody, Child Welfare Committee, Amicable settlement, Process of mediation and conciliation, Remedy, Maintainability, Welfare of the child, Extraordinary writ jurisdiction.

Case Arising From

Judgment and order dated 06.11.2025 passed in Habeas Corpus Writ Petition No. 931 of 2025.

Appearances for Parties

Advs. for the Appellant: Kamla Kant Mishra, Varun Mishra.

Advs. for the Respondents: Rakesh Pande (Sr. Adv.), Ram Kesh, Rajiv Singh (S.C.), Virendra Pratap Pal.

(Delivered by Hon'ble Arun Bhansali, C.J.

&

Hon'ble Kshitij Shailendra, J.)

1. Heard Shri Kamla Kant Mishra, learned counsel for the appellants, learned Standing Counsel for respondents no. 1 to 5 and Shri Rakesh Pande, learned Senior Counsel assisted by Shri Ram Kesh for respondent no. 6.

2. This appeal is directed against order dated 06.11.2025, whereby learned Single Judge has dismissed Habeas Corpus Writ Petition No. 931 of 2025 filed by the appellants.

3. The writ petition was filed by Smt. Rinku Ram (appellant no. 1), mother of Vishwajeet (minor) (appellant no. 2), stating that the appellant no. 2 was born on 13.08.2024 out of the wedlock between appellant no. 1 and respondent no. 6 and matrimonial dispute arose between the parties to the marriage wherein some proceedings were allegedly sought to be initiated/undertaken at the instance of respondent no. 6. It was further stated that the child had been forcibly taken away by the respondent no. 6 and despite an order dated 10.09.2025 passed by the Child Welfare Committee ('C.W.C.'), whereby the respondent no. 6 was directed to handover custody of the child to the appellant no. 1, child was not handed over to her.

4. The learned Single Judge, on the first date of consideration of the writ petition, dismissed the same with the following observations:

“5. A writ of habeas corpus is a prerogative writ aimed at safeguarding an individual's liberty by providing an immediate and effective remedy for release from unlawful or improper detention. The writ can also be invoked to restore the custody of a minor to their lawful guardian if they have been wrongfully deprived of it. The detention of a minor by a person not entitled to legal custody is considered equivalent to illegal detention, warranting the issuance of a writ for the minor's custody.

6. The law governing guardianship and custody matters is primarily encapsulated in the Guardians and Wards Act, 1890, under which a guardian may be appointed or entitled to custody upon a proper application filed by a person asserting such a claim.

7. Upon careful review of the facts in the present case, no evidence has been presented to establish that the custody of petitioner no.2 is illegal or improper. Therefore, the writ of habeas corpus, which is invoked for the release from illegal custody, is not applicable in the present case.

8. As regards the issue of custodial rights, it is open to the parties to approach the appropriate forum for the determination of such rights in accordance with the law."

5. This Court, by order dated 11.12.2025, issued notice to respondents no. 6 to 8, pursuant whereeto, appearance was put by them through counsel. On 02.02.2026, the Court granted time to the learned Standing Counsel to obtain instructions as to why the directions of the C.W.C. had not been complied with. Pursuant thereto, instructions were furnished by the learned Standing Counsel and following order was passed on 25.02.2026:-

"1. On 02.02.2026, learned Standing Counsel was granted time to obtain instructions as to why directions of the Child Welfare Committee (Annexure-3) have not been complied with, pursuant to which, instructions have been produced inter alia indicating that the SHO, Haldi, Ballia gave a report to the Superintendent of Police, Ballia regarding non-compliance based on which, the Superintendent of Police, Ballia has written a communication to the Superintendent of Police, Jaunpur where respondent no. 7 is posted requiring him to take appropriate steps.

2. It is surprising that despite the orders passed by this Court, the officers are busy in writing letters to one another and the child, contrary to the order passed by the Child Welfare Committee, is at Police Lines, Jaunpur.

3. Learned Standing Counsel prays for time to obtain further instructions in the matter.

4. If appropriate instructions are not produced by the next date, the Court will be constrained to summon Superintendent of Police"

6. The appeal was heard on 11.03.2026 and matter was adjourned after some hearing, on the request of the learned Senior Counsel appearing for respondent no. 6 and following order was passed:-

"1. Learned Senior Counsel appearing for respondent no. 6 submits that he has been briefed this morning only and seeks time to make submissions after getting full information qua the subject matter.

2. Learned Standing Counsel has produced factual reports of Senior Superintendent of Police, Jaunpur and S.H.O., Police Station Haldi, Ballia. Both the reports reinforce the observations/opinion of the Court that the officers of respondent no. 6, Police Constable, are providing full protection to the said respondent no. 6 in violating the directions of C.W.C., which conduct of the officers cannot be appreciated and appropriate orders in this regard would be passed while dealing with the main matter.

3. List on 18.03.2026, as fresh."

7. Thereafter, on 25.03.2026, learned Senior Counsel appearing for respondent no. 6 made a statement that the department had initiated proceedings against respondent no. 6 for not obeying the

directions issued by the C.W.C., however, respondent no. 6 has challenged the order dated 10.09.2025 passed by C.W.C. by way of appeal, which is pending. He also expressed his concern about the custody of minor child and made a statement that he would try to convince his client to act in the interest of the family.

8. Today, learned Senior Counsel has made submissions that this Court may explore possibility of amicable settlement of the matrimonial discord between the parties through process of mediation and conciliation so that they may sit together and explore terms of settlement. He also submitted that his client is inclined to divorce the appellant no. 1, though no such proceedings have yet been initiated.

9. To this contention, learned counsel for the appellants made vehement submissions that proceedings of any other nature may or may not take place in future but, in so far as the present matter is concerned, the same is confined to custody of the minor child, who is of such a tender age of 15 months that it is only his mother, i.e. the appellant no. 1, who can take care of him.

10. Considering the stands taken by the counsel for the parties, we proceeded to hear the matter on merits.

11. Learned counsel for the appellants has made submissions that the respondent no. 6 was bound to obey the order passed by the C.W.C. and when the same was not obeyed, the learned Single Judge should have issued a writ of habeas corpus for production of appellant no. 2 before the Court and handover his custody to appellant no. 1, who is his mother and natural guardian. Further submission has been made that dismissal of the writ petition on the ground that remedy is available under the provisions of Guardians and Wards Act, 1890 is contrary to the position of law settled to the effect that a petition for habeas corpus cannot be dismissed only on this ground.

12. It is further submitted that the respondent no. 6, being in police service, has throughout been influential to a great extent so as to manage 'no action' against him, either by the Department or otherwise. Further submission has been made that the welfare of the son aged 15 months is always with his mother and, therefore, in the facts and circumstances of the case, interference by the writ court was warranted but the same has been denied on a ground which is not sustainable. In support of his submissions, learned counsel has placed reliance on the following judgments:-

(i) **Arvinder Kaur Vs. State of Punjab and others:** CRWP 5617 of 2020, decided on 09.11.2020;

(ii) **Gohar Begum Vs. Suggi:** AIR 1960 SC 93;

(iii) **xxxxxx Vs. State of Kerala and others,** Writ Petition (Civil) No. 35211 of 2024, 2024:KER:79513; decided on 25.10.2024;

(iv) **Mohd. Irfan Vs. State of U.P. and 2 others:** Special Appeal No. 1015 of 2014, decided on 11.12.2014;

(v) **Kanchan Akshay Shinde Vs. The State of Maharashtra and others:** Writ Petition No. 737 of 2026, decided on 10.03.2026

(vi) **Manju Tiwari Vs. Rajendra Tiwari:** AIR 1990 SC 1156;

(vii) **Syed Saleemuddin Vs. Dr. Rukhsana:** 2001 (2) R.C.R. (Criminal) 591;

- (viii) **Tejaswini Gaud and others Vs. Shekhar Jagdish Prasad Tewari and others: 2019 (3) R.C.R. (Civil) 104;**
 (ix) **Smt. Nandita Virmani Vs. Raman Virmani (Deli HC): 1983 Cri. L.J. 794;**
 (x) **Durgesh Kumar Ahuja Vs. Vineet Khurana and another (Delhi HC): 1985 Cri. L.J. 1195**

13. Per contra, learned Senior Counsel appearing for respondent no. 6 has made submissions that the basis of the writ petition was an ex-parte order dated 10.09.2025 passed by the CWC and once the same is under challenge in appeal, no interference is warranted by this Court. It is further submitted that custody of the minor son with the respondent No. 6 cannot be said to be illegal as he, being his father, is also his natural guardian entitled to custody of the child and, therefore, the writ petition was otherwise not maintainable. He also made submission that welfare of the child is with the respondent No. 6 and not with the appellant No. 1 who cannot arrange funds for the well being of her son.

14. We have considered the submissions made and perused the material available on record.

15. We find that the claim of the appellant No. 1 to get custody of her minor son, who is now aged about 20 months, has not been considered by the writ court on merits and the opinion formed by the learned Single Judge is that availability of remedy under Guardians and Wards Act, 1890, renders the petition for Habeas Corpus either not maintainable or the writ court as not an appropriate forum.

16. In our opinion, the view taken by the learned Single Judge is contrary to the decision of the Hon'ble Supreme Court in **Yashita Sahu Vs. State of Rajasthan and others: (2020) 3 SCC 67**, wherein, after placing reliance on judgments in **Elizabeth Dinshaw Vs. Arvand M. Dinshaw and others: (1987) 1 SCC 42**, **Nithya Anand Raghavan Vs. State (NCT of Delhi) and another: (2017) 8 SCC 454** and **Lahari Sakhamuri Vs. Sobhan Kodali: (2019) 7 SCC 311**, it has been held that it is too late in the day to urge that a writ of habeas is not maintainable if the child is in the custody of another parent and the court can invoke its extraordinary writ jurisdiction for the best interest of the child.

17. The Hon'ble Supreme Court, in the case of **Gohar Begum (supra)**, quoted observations of Lord Denman C. J., in **R. Vs. Greenhill, (1836) 4 Ad and El at p. 640: 111 ER at p. 927**, as under:-

"When an infant is brought before the Court by habeas corpus, if he be of an age to exercise a choice, the Court leaves him to elect where he will go. If he be not of that age, and a want of direction would only expose him to dangers or seductions, the Court must make an order for his being placed in the proper custody."

.....

"Where, as frequently occurs in the case of infants, conflicting claims for the custody of the same individual are raised, such claims may be enquired into on the return to a writ of habeas corpus, and the custody awarded to the proper person."

18. There is no need to refer judgments on the settled proposition of law that in custody matters, it is only the welfare of the child that is of paramount consideration and once we have arrived at a conclusion that writ petition could not be dismissed as not maintainable or the forum of the writ court as not the appropriate one, the matter has to be considered by the writ court on merits where the parties would have their full say.

19. The special appeal is, accordingly, **allowed**.

20. The order dated 06.11.2025 passed by the learned Single Judge is **set aside**.

21. **Habeas Corpus Writ Petition No. 931 of 2025** is restored to its original number and status and the same shall be listed before appropriate Bench on **16.04.2026** as a **fresh case**.

(2026) 4 ILRA 663
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 01.04.2026

BEFORE

THE HON'BLE VIVEK KUMAR SINGH, J.

Application U/S 528 BNSS No. 1655 of 2026

Akash

...Applicant
Versus

State of U.P. & Ors .

...Opposite Parties

Issue for consideration

The applicant filed a petition to quash criminal proceedings u/s 363, 366, 376 IPC and section 34 of the POCSO Act, arising out of an FIR alleging the abduction of a minor girl.

Headnotes

A. Indian Penal Code,1860-Sections 363, 366, 376 & section 34 of the POCSO Act-Criminal Procedure Code,1973-Section 482(BNSS, 2023-Section 528)-Quashing of criminal proceedings-Subsequent developments-Amicable settlement and marriage between applicant and victim-Absence of any allegation of kidnapping, inducement or sexual assault in statements u/s 161 and 164 CrPC and deposition before Trial Court-Medical evidence assessing victim as major-Birth of a child from the wedlock-Informant filing counter-affidavit accepting compromise and expressing intent not to proceed-Continuation of trial would amount to abuse of process and disruption of matrimonial harmony-Application allowed.(Para 10 to 27)

Held

The court emphasized that while settlement in heinous offenses is ordinarily discouraged, it cannot turn a blind eye to ground realities or sacrifice substantial justice at the altar of technicalities when the parties are leading a happy married life with a child and the informant has entered into a compromise. Continuation of trial would serve no meaningful purpose, waste valuable judicial hours and cause undue harassment by disrupting a stable matrimonial relationship. Hence, entire proceedings quashed. (E-6)

Case law Cited

Juhi Devi Vs. State of Bihar and Others (2005) SCC 376, Suhani and Another Vs. State of U.P. and Others (2018) 3 AICLR 183, Reena Vs. State of U.P. (2012) 2 ACR 2349, Shaheen Parveen and Another Vs. State of U.P. and Others (2015) 7 ADJ 713, Sunil Tiwari Vs. State of U.P. and Another (Application u/s 482 Cr.PC No. 5471 of 2016), S. Varadarajan Vs. State of Madras (1965) AIR SC 942, Sriram Urav Vs. State of Chhattisgarh (CRLA No. 41 of 2021), Dasari Srikant Vs. State of Telangana (2024) SCC OnLine SC 936, K. Dhandhapani Vs. The State by the Inspector of Police (2022) SCC Online SC 1056, Mafat Lal and Others Vs. The State of Rajasthan (2022) SCC OnLine SC 433, Mahesh Mukund Patel Vs. State of U.P. and Others (2025) SCC Online SC 614, Madhukar and Others Vs. The State of Maharashtra and Another, arising out of SLP(Cri.) No. 7212 of 2025, Prabhakar Vs. The State of Maharashtra and Another, arising out of SLP (Cri.) No. 7495 of 2025-referred to.

List of Acts

Indian Penal Code, 1860, POCSO Act-Criminal Procedure Code, 1973(BNSS, 2023)

List of Keywords

POCSO Act, Kidnapping and Abduction, Rape, Abuse of process of court, Statement u/s 161 and 164, Consenting parties, Age of discretion, Medical examination, Arya Samaj Marriage registration, Amicable settlement/Compromise deed, Futility of trial, Substantial justice, Technicality, Welfare of Child, Matrimonial harmony.

Case Arising from

CRIMINAL JURISDICITON: APPLICATION U/S 528 BNSS No.-1655 OF 2026

Akash Vs. State of U.P. And 3 Others

From the judgment and order dated 01.04.2026 of the High Court of judicature at Allahabad.

Appearances for Parties

Adv. for Applicant(s)

Dharmendra Kumar Patel

Advs for Opposite Party(s)

Chandra Prakash Pandey, G.A.

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

1. Counter affidavit filed today is taken on record.

2. Heard Sri Dharmendra Kumar Patel, learned counsel for the applicant, Sri Brij Kishore Singh, Advocate holding brief of Sri Chandra Prakash Pandey, learned counsel for first informant/opposite party no.2 and Sri Prashant Kumar Singh, learned A.G.A. for the State.

3. Present application under Section 528 Bhartiya Nagrik Suraksha Sanhita (in short 'BNSS') has been filed seeking to quash the charge sheet no.225 of 2018 dated 13.09.2018 and cognizance/summoning order dated 25.09.2019 as well as proceeding of Special Session Trial No.195 of 2019 (State Vs. Akash), arising out of Case Crime No.207 of 2018, under Sections 363, 366 & 376 I.P.C. and Section 3/4 of POCSO Act, Police Station Rajpura, District Bheem Nagar (Sambhal), pending in the court of learned Special Judge POCSO Act/ Additional Session Judge, Sambhal at Chandausi.

4. Brief facts of the case are that the opposite party no.2/ first informant lodged the first information report against the applicant on 20.06.2018 at 12:51 hours in respect of alleged incident

dated 17.06.2018 at 9:00 A.M. The first information report was registered as Case Crime No.0207 of 2018, under Sections 363 and 366 of I.P.C. at Police Station Rajpura, District Bheem Nagar. The Investigating Officer, after due investigation, added Section 376 I.P.C. and Section 3/4 of POCSO Act. The first informant stated in the first information report that his daughter, aged about 13 years was alone in the house and on 17.06.2018 she went to the field but did not return. The first informant later came to know that his daughter was taken by the applicant.

5. During the course of investigation, the victim was recovered by the police and her statement under Section 161 Cr.P.C. was recorded, wherein she has categorically stated that she left her house one month ago with the applicant and they have solemnized a court marriage in Ghaziabad. She is living as wife of the applicant in her village for the last one month. She is a major girl and she has solemnized her marriage on her own will. She further expressed her desire to live with the applicant, with whom she had been in a relationship for the past two years. Similarly, in her statement recorded under Section 164 Cr.P.C., the victim stated that no incident had taken place with her and she is a major girl. She joined the applicant on her own will and no offence has been committed with her.

6. The victim was medically examined, and no injury was seen on her body. As per report of the Chief Medical Officer, Sambhal, dated 07.08.2018, the victim was 18 years of age, a copy of which has been appended as Annexure No.5 to the present application. The Investigating Officer concluded the investigation in this matter and submitted the charge-sheet against the applicant on 13.09.2018. Learned court concerned took cognizance of offence vide order dated 25.09.2019. A compromise deed dated 13.12.2025 has been appended by the applicant as Annexure No.10 to the present application, which has been duly signed by the applicant and the victim. A copy of the birth certificate of the baby girl has also been appended along with the present application as Annexure No.11 and as per the birth certificate, a baby girl was born to the applicant and the victim on 10.12.2018. The marriage registration certificate of the applicant and the victim has also been appended as Annexure No.6 to the present application and as per the marriage registration certificate, the marriage between the applicant and the victim was registered on 03.07.2018.

7. The learned counsel for the opposite party no.2/ informant has also filed his vakalatnama along with counter affidavit, sworn by the informant/ opposite party no.2 of the present case, wherein it is accepted by the opposite party no.2/ informant that a compromise has taken place between the parties and he does not intend to proceed with the criminal case against the applicant. No averment of the affidavit filed in support of the application under Section 528 BNSS has been controverted by the informant/ opposite party no.2.

8. Per contra, the learned A.G.A. has opposed the prayer made by the applicant but could not dispute the fact that the marriage of the victim has been solemnized with the applicant. He further submitted that since the prosecutrix was a child within the definition of term 'child' as defined in the POCSO Act, therefore, subsequent development, if any will not wipe out the criminality committed by the applicant. Further, he admitted that no allegation was levelled by the victim against the applicant in her statements recorded under sections 161 and 164 Cr.P.C. in respect of her alleged kidnapping or rape.

9. I have heard rival submissions of the parties and perused the records.

10. Learned counsel for the applicant submitted that the victim was a major girl at the time of alleged incident and she was a consenting party with the applicant. She left her house on her own will and she did not level any allegation against the applicant when her statements were recorded under Sections 161 and 164 Cr.P.C. The marriage between the applicant and the victim was solemnized on 03.07.2018 at Arya Samaj Mandir Shastri Nagar, Ghaziabad and was got registered on the same day. Now the applicant and the victim have been blessed with a baby girl, who is aged about 7 years. The statement of the victim has already been recorded in the trial court on 16.09.2025 as PW-2, wherein too she stated that she solemnized her marriage with the applicant and since then she has been living in the house of the applicant. She claimed that at the time of incident she was aged about 19 years. No allegation has been levelled against the applicant when her statement was recorded in the trial court on 16.09.2025. It is further submitted by the learned counsel for the applicant that, in view of the statements made by the victim before the police, the Magistrate, and the learned trial court, no offence under Sections 363, 366, and 376 of the I.P.C., read with Section 3/4 of the POCSO Act, is made out against the applicant. Consequently, the impugned charge-sheet, cognizance order and the entire criminal proceedings, are liable to be quashed.

11. Reliance is placed by the learned counsel for the applicant on **Juhi Devi vs. State of Bihar and Others, 2005(13) SCC 376; Suhani and Another vs. State of U.P. and Others, 2018 (3) AICLR 183** and this Court's decisions in **Reena vs. State of U.P., 2012 (2) ACR 2349; Shaheen Parveen and Another vs. State of U.P. and Others, 2015(7) ADJ 713 and Sunil Tiwari vs. State of U.P. and Another, (Application under Section 482 Cr.P.C. No. 5471 of 2016)**, decided on 21.10.2016.

12. The applicant is accused of committing an offence under Sections 363 and 366 of the IPC. Section 363 of the IPC provides that whoever kidnaps any person from lawful guardianship shall be punished in terms of sentence provided in the provision.

13. "Kidnapping from lawful guardianship" has been defined under Section 361 of the IPC. The provision when extracted reads as under:

*"Whoever takes or entices any minor under *[sixteen] years of age if a male, or under **[eighteen] years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship."*

Explanation : *The words "lawful guardian" in this section include any person lawfully entrusted with the care or custody of such minor or other person.*

Exception : *This section does not extend to the act of any person who in good faith believes himself to be the father of an illegitimate child, or who in good faith believes himself to be entitled to the lawful custody of such child, unless such act is committed for an immoral or unlawful purpose."*

14. Section 366 of the IPC inheres that whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse, shall be punished with a sentence, as provided in the provision. At the time of considering the allegations made in the F.I.R., whether the offence has been committed or not, the ingredients of the offence are required to be considered in context of the evidence collected during the course of investigation.

15. In the peculiar facts and circumstances of this case, the Court has minutely examined the facts that have emerged on investigation of the case. There is sufficient evidence on record to show that the prosecutrix has solemnized marriage with the applicant.

16. Somewhat similar facts came up for consideration before the Hon'ble Supreme Court of India in **Juhi Devi Versus State of Bihar and Others**, reported in (2005) 13 SCC 376, where Hon'ble Supreme Court observed that prosecutrix who has attained the age of discretion, has a right to enjoy her liberties by virtue of constitutional guarantee. The relevant para is quoted below :-

"2. The petitioner herein is alleged to have married another person of her age and the 5th respondent herein, the father of the petitioner, objected to the said marriage. It seems that the petitioner had eloped with that person and the father of the petitioner-5th respondent, has filed a complaint and the petitioner was produced before the C.J.M., Patna. The petitioner claims that she was major and voluntarily left with her husband. The father of petitioner alleged that the petitioner was a minor and the question of age was referred to a Medical Board. The Medical Board opined that as on 17.05.2003, the petitioner must have been aged between 16 and 17 years. However, the father of the petitioner produced two certificates before the Revisional Court and contended that her date of birth is 12.10.1985 and she has not attained majority. However, the medical report shows that she must have been aged more than 16 years, even on 17.05.2003. Having regard to these facts, we are of the view that she must have attained majority and her stay at the remand home would not be in the interest of justice and we think that her continued stay at the remand home would be detrimental and she would be in a better environment by living with the person whom she had allegedly married. (Emphasis supplied)

17. A Division Bench of this Court in **Smt. Reena Versus State of U.P. and Others (Habeas Corpus Writ Petition No. -10180 of 2012)**, decided on 24.5.2012 observed that in pure and simple case of elopement of prosecutrix it is to be seen that her right to enjoy her liberties by virtue of the constitutional guarantees are not curtailed or encroached upon. The relevant paragraphs of the judgment are quoted below:-

"We find from facts of the case that it was a pure and simple case of elopement of petitioner, Smt. Reena with Rabdullah and the petitioner, thereafter went straight away to his house from where she appears recovered. There was some dispute in respect of the age of the girl but we find from argument appearing at page 20 of the present petition that the Chief Medical Officer, Maharajganj had assessed her 18 years of age. Thus, the lady was undisputedly above 18 years of age, if we add three years to the medically assessed age. In our considered view in case of being a conflict between the age recorded in any school document and that assessed by the doctor

then only for the present purposes, the court should lean towards acting upon the opinion of the doctor furnished after carrying out scientific tests to assess the age of a victim. This is necessary as liberty of a person has to be protected. No person could be deprived of his liberty unless reasonable procedure has been adopted. Medical opinion on age may not be exact, but it is generally acceptance and it is based on scientific method of assessing the age. As such, inspite of there being some sort of margin in assessing the age and actual age, there could be chances that the assessed age is almost exact.

We have already noted that the personal liberty of a person should be paramount consideration in such cases and keeping that in view and for protecting the personal liberty of a person, the court should lean towards considering the medical age than to consider the age which is recorded in school documents. Besides, there is no dispute in the fact that the petitioner, Smt. Reena had eloped with Rabdullah on 3-3-2011 and had wet into his house and was living there. Under the present set of facts, there could not be any doubt that it is a simple and pure case of elopement and as such no offence or offences could be said to be constituted under the admitted facts.

...There is no age, as regards the personal liberty of a person. Anyone who is born as a human being and who is found living in India even if he is not an Indian, has a right to enjoy his or her liberties by virtue of the constitutional guarantees. Any order which curtails or encroaches upon the liberties of such a person and has always to be held falling short of the constitution requirements and safeguards and, as such, we have to struck down the same in exercise of the powers Under Article 226 of the Constitution of India."

(Emphasis supplied)

18. In the instant case, the point for consideration is whether the applicant has committed offence in context of the victim or not. It will be appropriate here to mention the judgement dated 23.07.2015 of this Court passed in **Writ Petition No. 3519(MB) of 2015 (Shaheen Parveen and Another Vs. State of U.P. through Principal Secretary, Home Department, and Others)**, where this Court observed that a girl who has attained the age of discretion and was on the verge of attaining majority and is capable of knowing what was good and what was bad for her, cannot be said to be a victim of inducement, particularly when the case of the victim/girl herself is that it was on her initiative and on account of her voluntary act that she had gone with the boy and got married to him. In such circumstances, desire of the girl/victim is required to be seen. Ingredients of Section 361 of the I.P.C. are required to be considered accordingly, and not in mechanical or technical interpretation. In this case the Charge sheet under Sections 363 and 366 of the IPC, was quashed where the prosecutrix was found to have attained the age of discretion and was just below 17 years of age. The prosecutrix gave the statement that she was neither kidnapped nor abducted who went in the company of the accused, willingly and knowingly. She has been living with petitioner No. 2 as his wife and was an expecting mother carrying a pregnancy of 31 weeks. This Court quashed the Charge sheet observing that substantial justice cannot be sacrificed at the altar of technicality. The relevant paragraphs are quoted below:-

"18. Petitioner No. 1 the victim/prosecutrix would be the best witness, rather the only witness of commission of offence under Sections 363/366 of the IPC. Surely, the victim will not support the prosecution case, as has been made evident by her in her statement, recorded in the

course of investigation under Section 164 Cr.P.C., and therefore the trial would result in acquittal. During course of trial, considerable number of man hours would be wasted in prosecution/defending and judging the case. No useful purpose would be served and the entire exercise of trial would be in futility because the victim has declared that she was not victimised or kidnapped.

19. The facts that have emerged from the record make it evident that the impugned criminal proceedings have been initiated because mother of the Prosecutrix/victim (respondent No. -4) has not accepted the marriage of her daughter with petitioner No. 2.

20. In case, despite the evidence that has come on record, as noted above, proceedings are not quashed, petitioner No. -2 would be required to face criminal charges and undergo the agony of a trial.

21. We have also taken into account the fact that in case the petitioner No. 2 is allowed to be prosecuted, the matrimonial life of petitioner No. 1/the alleged victim would be disrupted. Her husband would be incarcerated and there would be no one to take care of her child, who is yet-to-be-born.

22. If a minor, of her own, abandons the guardianship of her parents and joins a boy without any role having been played by the boy in her abandoning the guardianship of her parents and without her having been subjected to any kind of pressure, inducement, etc and without any offer or promise from the accused, no offence punishable under Section 363 I.P.C. will be made out when the girl is aged more than 17 years and is mature enough to understand what she is doing. Of course, if the accused induces or allures the girl and that influences the minor in leaving her guardian's custody and the keeping and going with the accused, then it would be difficult for the Court to accept that minor had voluntarily come to the accused. In case the victim/prosecutrix willingly, of her own accord, accompanies the boy, the law does not cast a duty on the boy of taking her back to her father's house or even of telling her not to accompany him.

27. The writ Court considering totality of fact and circumstances, cannot ignore or disregard the welfare of the petitioners, particularly when the exercise of trial is going to be in futility, as observed hereinabove.

28. In view of the facts and circumstances of the case noted above, the Court is convinced that the impugned proceedings have been initiated in abuse of process of the Court and process of the law. A personal grudge against marriage of choice of the daughter is being settled by virtue of initiating impugned criminal proceedings, which would not be permissible in law. Such prosecution would abrogate constitutional right vested in the petitioners to get married as per their discretion, particularly when there is no evidence to indicate that the marriage is void.

29. The stand of the Prosecuting Agency that the victim was a few months below age of majority when she joined the company of the accused/petitioner No. 2, and therefore offence has been committed, cannot be accepted if ground reality is taken into account. It has come on record that the prosecutrix is an expecting mother and is carrying a pregnancy of 31 weeks. Coupled with this fact is the statement of the prosecutrix wherein she has said that she was neither kidnapped nor abducted, rather has been living with petitioner No. 2 as his wife. It is the prosecutrix who went in the company of the accused, willingly, knowingly, and rather than the accused taking the prosecutrix out of the custody of the lawful guardian; the victim herself had eloped with petitioner No. 2. In the considered opinion of the Court, substantial justice cannot be sacrificed at the altar of technicality, as is being concluded by the Investigating Agency.

30. In view of above, petitioner No. 2 cannot be said to have committed offence either under Section 363 I.P.C. read with Section 361 I.P.C. or under Section 366 I.P.C."

(Emphasis supplied)

19. The Honble Apex Court in the case of **S.Varadarajan vs. State of Madras**, reported in **AIR1965 SC 942**, has interpreted the meaning of Section 361 of the IPC and has held that if the victim had voluntarily joined the accused then in such case it could not be said that the accused had taken her away from the protection of lawful guardian within the meaning of Section 361 of the Code. The judgment of S.Varadarajan (supra) is reproduced in its entirety:

"11. It must, however, be borne in mind that there is a distinction between "taking" and allowing a minor to accompany a person. The two expressions are not synonymous though we would like to guard ourselves from laying down that in no conceivable circumstance can the two be regarded as meaning the same thing for the purposes of section 361 of the Indian Penal Code. We would limit ourselves to a case like the present where the minor alleged to have been taken by the accused person left her father's protection knowing and having capacity to know the full import of what she was doing voluntarily joins the accused person. In such a case we do not think that the accused can be said to have taken her away from the keeping of her lawful guardian. Something more has to be shown in a case of this kind and that is some kind of inducement held out by the accused person or an active participation by him in the formation of the intention of the minor to leave the house of the guardian.

12. It would, however, be sufficient if the prosecution establishes that though immediately prior to the minor leaving the father's protection no active part was played by the accused, he had at some earlier stage solicited or persuaded the minor to do so. In our opinion if evidence to establish one of those things is lacking it would not be legitimate to infer that the accused is guilty of taking the minor out of the keeping of the lawful guardian merely because after she has actually left her guardian's house or a house where her guardian had kept her, joined the accused and the accused helped her in her design not to return to her guardian's house by taking her along with him from place to place. No doubt, the part played by the accused could be regarded as facilitating the fulfillment of the intention of the girl. That part, in our opinion, falls short of an inducement to the minor to slip out of the keeping of her lawful guardian and is, therefore, not tantamount to "taking".

Whatever may be the position with respect to an offence under that section and even assuming that a minor cannot in law abandon the guardianship of her lawful guardian, for the reason which we have already stated, the accused person in whose company she is later found cannot be held guilty of having taken her out of the keeping of her guardian unless something more is established.

After pointing out that there is an essential distinction between the words "taking" and "enticing" it was no doubt observed that the mental attitude of the minor is not of relevance in the case of taking and that the word "take" means to cause to go, to escort or to get into possession. But these observations have to be understood in the context of the facts found in that case. For, it had been found that the minor girl whom the accused was charged with having kidnapped had been persuaded by the accused when she had gone out of her house for answering the call of nature, to go along with him and was taken by him to another village and kept in his uncle's house until she was restored back to her father by the uncle later. Thus, here there was an element of persuasion by the accused person which brought about the willingness of the girl and this makes all the difference. In our opinion, therefore, neither of these decisions is of assistance to the State.

We are satisfied, upon the material on record, that no offence under section 363 has been established against the appellant and that he is, therefore, entitled to acquittal. Accordingly we allow the appeal and set aside the conviction and sentence passed upon him."

20. The Apex Court in the case of **Shriram Urav Vs. State of Chhattisgarh** in Criminal Appeal No(S). 41/2021, decided on 10.01.2025, also quashed the conviction as well as the sentence imposed upon the appellant on the ground that the appellant/accused and the complainant/victim had married each other.

21. Similarly, in the case of **Dasari Srikant vs. State of Telangana** reported in (2024) SCC OnLine SC 936, wherein, under identical circumstances and almost identical provisions the Supreme Court quashed the proceedings instituted against the accused therein. The relevant paragraph 8 to 10 of the **Dasari Srikant (supra)** read as under:-

"8. Since, the appellant and the complainant have married each other, the affirmation of the judgment rendered by the High Court would have the disastrous consequence on the accused appellant being sent to jail which in turn could put his matrimonial relationship with the complainant in danger.

9. As a consequence, we are inclined to exercise the powers under Article 142 of the Constitution of India for quashing the conviction of the accused appellant as recorded by the learned trial Court and modified by the High Court. 10. As a result, the impugned judgment dated 27th June, 2023 passed by the High Court and judgment dated 9th April, 2021 passed by the trial Court are hereby quashed and set aside."

22. The facts of the present case are very similar to the above judgments. Here also I find that the victim has not at all supported the prosecution version instead according to her she voluntarily went with the applicant-accused on the date of alleged offence. Thereafter, she married him. The victim also did not level any allegation against the applicant in her statement recorded under Section 161 and 164 of Cr.P.C. Therefore, by no stretch of imagination, it can be said that no offence under Sections 363, 366 & 376 of the I.P.C. read with Section 3/4 of the POCSO Act has been made out. The police has submitted chargesheet in a mechanical manner without due application of mind and unfortunately the trial court has also not considered the matter in correct perspective. Secondly, the question arises here as to whether the proceedings of criminal case under section 363, 366 & 376 of the IPC and 3/4 of the POCSO Act can be quashed by the High Court in the Application under Section 482 Cr.P.C. or 528 BNSS, if the parties have settled their dispute amicably and living as husband and wife for a long period.

23. The Apex Court in the case of **K. Dhandapani Vs. The State by the Inspector of Police, 2022 SCC onLine SC 1056 and Mafat Lal and Others vs. The State of Rajasthan, 2022 SCC OnLine SC 433**, also quashed the proceedings against the accused therein on the grounds that the accused had solemnized marriage with the prosecutrix and secondly, the court cannot turn a blind eye to the said fact. Since the judgement rendered by Apex Court in the case of **K. Dhandapani (supra)** is a short one, therefore, the same is reproduced in its entirety:

"Leave granted.

The appellant who is the maternal uncle of the prosecutrix belongs to Valayar community, which is a most backward community in the State of Tamilnadu. He works as a woodcutter on daily wages in a private factory. FIR was registered against him for committing rape under Sections 5(j)(ii) read with Section 6, 5(I) read with Section 6 and 5(n) read with Section 6 of Protection of Child from Sexual Offences (POCSO) Act, 2012. He was convicted after trial for committing the said offences and sentenced to undergo rigorous Reason: imprisonment for a period of 10 years by the Sessions Judge, Fast Track Mahila Court, Tiruppur on 31.10.2018. The High Court, by an order dated 13.02.2019, upheld the conviction and sentence. Aggrieved thereby, the appellant has filed this appeal.

Mr. M.P.Parthiban, learned counsel appearing for the appellant, submitted that allegation against him was that he had physical relations with the prosecutrix on the promise of marrying her. He stated that, in fact, he married the prosecutrix and they have two children.

The appellant submitted that this Court should exercise its power under Article 142 of the Constitution and ought to do complete justice and it could not be in the interest of justice to disturb the family life of the appellant and the prosecutrix.

After hearing the matter for some time on 08 th March, 2022, we directed the District Judge to record the statement of the prosecutrix about her present status. The statement of the prosecutrix has been placed on record in which she has categorically stated that she has two children and they are being taken care of by the appellant and she is leading a happy married life.

Dr. Joseph Aristotle S., learned counsel appearing for the State, opposed the grant of any relief to the appellant on the ground that the prosecutrix was aged 14 years on the date of the offence and gave birth to the first child when she was 15 years and second child was born when she was 17 years. He argued that the marriage between the appellant and the prosecutrix is not legal. He expressed his apprehension that the said marriage might be only for the purpose of escaping punishment and there is no guarantee that the appellant will take care of the prosecutrix and the children after this Court grants relief to him.

In the peculiar facts and circumstances of this case, we are of the considered view that the conviction and sentence of the appellant who is maternal uncle of the prosecutrix deserves to be set aside in view of the subsequent events that have been brought to the notice of this Court. This Court cannot shut its eyes to the ground reality and disturb the happy family life of the appellant and the prosecutrix. We have been informed about the custom in Tamilnadu of the marriage of a girl with the maternal uncle.

For the aforesaid mentioned reasons, the conviction and sentence of the appellant is set aside in the peculiar facts of the case and shall not be treated as a precedent. The appeal is accordingly, disposed of. Pending application(s), if any, shall stand disposed of.

In case, the appellant does not take proper care of the prosecutrix, she or the State on behalf of the prosecutrix can move this Court for modification of this Order."

24. In another judgment of **Mahesh Mukund Patel vs. State of U.P. and Others**, reported in **2025 SCC OnLine SC 614**, the Hon'ble Supreme Court quashed the proceedings of offence, punishable under Sections 354A, 363, 366, 376 of the IPC and Section 3 and 4 of the POCSO Act on the ground of marriage between the accused and the victim. It was brought on record that from the wedlock between the accused and the victim, two children were born, whose documents were produced alongwith the appeal. The Apex Court in this case quashed the proceedings on the ground

that no purpose would be served by continuing the prosecution as it would cause undue harassment to the appellant/accused and the victim and their children.

25. The Supreme Court in another judgment of **Madhukar and Others vs. The State of Maharashtra and Another, arising out of SLP (Criminal) No. 7212 of 2025, alongwith Prabhakar vs. The State of Maharashtra and Another, arising out of SLP (Criminal) No. 7495 of 2025**, quashed the proceedings of Case Crime No.302 of 2023, dated 20.11.2023, under Sections 324, 141, 143, 147, 149, 452, 323, 504 and 506 of the IPC as well as quashed the proceedings of Case Crime No.304 of 2023, dated 21.11.2023, under Sections 376, 354-A, 354-D, 509 and 506 IPC on the basis of compromise between the parties. Paragraph nos.6, 7 and 8 of the said judgment are reproduced herein:-

"6. At the outset, we recognise that the offence under Section 376 IPC is undoubtedly of a grave and heinous nature. Ordinarily, quashing of proceedings involving such offences on the ground of settlement between the parties is discouraged and should not be permitted lightly. However, the power of the Court under Section 482 CrPC to secure the ends of justice is not constrained by a rigid formula and must be exercised with reference to the facts of each case.

7. In the present matter, we are confronted with an unusual situation where the FIR invoking serious charges, including Section 376 IPC, was filed immediately following an earlier FIR lodged by the opposing side. This sequence of events lends a certain context to the allegations and suggests that the second FIR may have been a reactionary step. More importantly, the complainant in the second FIR has unequivocally expressed her desire not to pursue the case. She has submitted that she is now married, settled in her personal life, and continuing with the criminal proceedings would only disturb her peace and stability. Her stand is neither tentative nor ambiguous, she has consistently maintained, including through an affidavit on record, that she does not support the prosecution and wants the matter to end. The parties have also amicably resolved their differences and arrived at a mutual understanding. In these circumstances, the continuation of the trial would not serve any meaningful purpose. It would only prolong distress for all concerned, especially the complainant, and burden the Courts without the likelihood of a productive outcome.

8. Therefore, having considered the peculiar facts and circumstances of this case, and taking into account the categorical stand taken by the complainant and the nature of the settlement, we are of the opinion that the continuation of the criminal proceedings would serve no useful purpose and would only amount to abuse of process."

26. In my considered opinion, no offence is made out under Sections 363, 366 & 376 of the I.P.C. and Section 3/4 of POCSO Act since the victim has not levelled any allegation against the applicant in relation to the aforementioned sections inasmuch as the victim at no point of time stated that she was sexually assaulted or abducted by the applicant. Therefore, the basic ingredient to constitute an offence punishable under Sections 363, 366 & 376 of I.P.C. and Section 3/4 of POCSO Act is missing. Contrary to this, the victim has solemnized marriage with the applicant and they are living a happy married life for the last several years and the opposite party no.2/first informant has also entered into settlement agreement with the applicant. If the proceedings of the trial court is not quashed by this Court, the applicant and the victim may sustain legal injury and the case of the applicant is squarely covered with the cases mentioned hereinabove.

27. In view of the discussion made herein above, the present application succeeds and is liable to be allowed. It is accordingly **allowed**.

28. The charge sheet no.225 of 2018 dated 13.09.2018 and cognizance/ summoning order dated 25.09.2019 as well as entire proceeding of Special Session Trial No.195 of 2019 (State Vs. Akash), arising out of Case Crime No.207 of 2018, under Sections 363, 366 & 376 I.P.C. and Section 3/4 of POCSO Act, Police Station Rajpura, District Bheem Nagar (Sambhal), pending in the court of learned Special Judge POCSO Act/ Additional Session Judge, Sambhal at Chandausi, are hereby quashed, against the applicant.

29. No order as to costs.

(2026) 4 ILRA 674
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 01.04.2026

BEFORE

THE HON'BLE VIVEK KUMAR SINGH, J.

Application U/S 528 BNSS No. 44853 of 2024

Amir @ Jamir Ahmad

...Applicant
Versus

State of U.P. & Anr.

...Opposite Parties

Issue for consideration

The matter pertains to a criminal application filed u/s 528 BNSS, seeking to quash a trial court's order that rejected a discharge application and subsequently framed criminal charges against the applicant. The case arises from an incident where the applicant was arrested in connection with the illegal transportation of cattle, leading to charges u/s 307 IPC for attempting to run over a police party.

Headnotes

Indian Penal Code,1860-Section 307 & Section 3/5A/8 of U.P. Prevention of Cow Slaughter Act,1955 & Section 11 of Prevention of Cruelty to Animals Act,1960-Criminal Procedure Code,1973-Section 482(section 528 BNSS 2023)-Discharge and framing of charge-Scope of inquiry and jurisdiction of court-Maintainability of successive applications raising identical grounds already adjudicated and refused by a reasoned order-Lapses, manipulation, or contamination by investigating agency cannot form the sole ground for discharge or acquittal-Court must evaluate credible prosecution evidence de hors investigation defects to ensure justice is not subverted-Miniature trial and roving inquiry into pros, cons, or defense materials is impermissible at the pre-trial stage-Charges can be framed on strong suspicion, probative value and final guilt are strictly matters for trial-Application dismissed.(Para 12 to 33) (E-6)

Held

The court held that successive petitions under section 528 BNSS are not maintainable when they raise identical grounds previously rejected under Section 482 Cr.PC. The court further ruled that appreciation of evidence is a function of the trial court at the appropriate stage. At the stage of discharge the court is to examine the materials only with a view to be satisfied that prima facie case of the commission of offence

alleged has been made out against the accused. Marshalling and appreciation of facts is not in the domain of the trial court at the time of considering discharge application.

Case law Cited

Edakkandi Dineshan @ P. Dineshan and others Vs. State of Kerala (CRLA No. 118 fo 2013), Ram Bali Vs. State of U.P. (2004) 10 SCC 598, Chhote Lal Vs. State of U.P. (CRLA No. 3382 of 2010), Soma Chakravarty Vs. State thru CBI (2007) 5 SCC 403, P. Vijayan Vs. State of Kerala and Another (2010) 2 SCC 398, Sajjan Kumar Vs. CBI (2010) 9 SCC 368, Amit Kapoor Vs. Ramesh Chander and another (2012) 9 SCC 460, Tamil Nadu Vs. N. Suresh Rajan and Others (2014) 11 SCC 709, Asim Shariff Vs. National Investigation Agency (2019) 7 SCC 148, M.E. Shivalingamurthy Vs. CBI, Bengaluru, (2020) 2 SCC 768, Madhya Pradesh Vs. Rakesh Mishra (2015) 13 SCC 8, State (By Inspector of Police, Chennai Vs. S. Selvi and Another (2018) SCC 455-referred to.

List of Acts

Indian Penal Code,1860, U.P. Prevention of Cow Slaughter Act,1955 , Prevention of Cruelty to Animals Act,1960,Criminal Procedure Code,1973(BNSS 2023)

List of Keywords

Discharge, Framing of Charges, Defective/Faulty Investigation, Prima Facie case, Strong suspicion, Successive application, Mini Trial, De Hors (Independent of lapses), Case Diary, Cow slaughter, Appreciation of evidence.

Case Arising from

CRIMINAL JURISDICTION: APPLICATION U/S 528 BNSS No.-44853 OF 2024

Amir @ Jamir Ahmad Vs. State of U.P. And Another

From the judgment and order dated 01.04.2026 of the High Court of judicature at Allahabad.

Appearances for Parties

Advs. for Applicant(s)

Aushim Luthra, Mayank Chandra, Surya Pratap Singh, Sr. Advocate

Adv. for Opposite Party(s)

G.A

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

1. Heard Sri Manish Tiwary, learned Senior Counsel assisted by Sri Mayank Chandra, learned counsel for the applicant and Sri Pankaj Kumar, learned A.G.A. appearing for the State respondents.

2. Present application has been filed for quashing the impugned order dated 14.8.2024 passed by learned Additional Sessions Judge / FTC-II, Prayagraj as well as charges framing order dated 12.9.2024 in Session Trial No. 2554 of 2023 (State of U.P. vs. Aamir) arising out of Case Crime No. 372 of 2019, under Section 307 IPC, Section 3/5A/8 of U.P. Prevention of Cow Slaughter Act, 1955 and Section 11 of Prevention of Cruelty to Animals Act, 1960, Police Station Shankargarh, District Prayagraj. Further prayer has been made seeking stay of the aforesaid case.

3. Learned Senior Counsel for the applicant submitted that the first information report of the present case was lodged on 12.12.2019 under Section 307 IPC, Section 3/5A/8 of U.P. Prevention of Cow Slaughter Act, 1955 and Section 11 of Prevention of Cruelty to Animals Act, 1960 as Case Crime No. 372 of 2019 at Police Station Shankargarh, District Prayagraj. It is alleged in the first information report that on 12.12.2019 while the police party was on patrolling duty, they received

an information that a truck loaded with bulls is being transported illegally from Chitrakoot to Bihar. On the basis of this information, police party reached at the place of incident, where two persons managed to escape and five persons including the applicant were arrested by the police on spot. It is also alleged in the first information report that the driver of the truck tried to run over the police party but somehow they saved their life. The driver was running the truck at a very high speed and lost control and was apprehended by the police. On interrogation, the arrested persons disclosed their names. The applicant was one of the accused, who was arrested on spot. The names and identities of the escaped persons were disclosed by the spot arrested accused. On inspecting the truck, it was found that the truck was carrying 19 bulls. The truck was seized by the police and a recovery memo was prepared and thereafter the first information report was lodged against the applicant and other co-accused.

4. It is submitted by the learned Senior Counsel that the applicant was falsely implicated in the present case. Infact he was not arrested on spot and on 12.12.2019 at 10:50 hours Station House Officer, Ghoorpur, through his CUG number, called the applicant on his mobile to meet him. Subsequently, when the applicant reached Ghoorpur Police Station he was arrested by the police and a false recovery was shown by the police and he was made an accused in the present case and all the allegations are a work of fabrication by the police. The applicant was not arrested on spot as alleged by the police in the first information report dated 12.12.2019. The arrest of the applicant in the present case is against the material on record. At the time of alleged arrest of the applicant, he was accompanied by his Gunner and thereafter the applicant's Gunner was asked by the police to leave the place and in the absence of the Gunner, the applicant was taken into custody.

5. Learned Senior Counsel for the applicant has next submitted that the investigation was handed over to the Investigating Officer, who did not conduct a fair and impartial investigation and charge-sheet was submitted against the applicant and other co-accused on 9.2.2020. The learned Magistrate wrongly and illegally took cognizance of the offence.

6. It is further submitted by the learned Senior Counsel that once the police report had been prepared, the matter was ordered to be investigated further vide order dated 20.9.2020 and as such further investigation in the matter took place. Several affidavits were filed by the witnesses to prove innocence of the applicant, which were made part of the case diary vide Parcha No. SCD-7 of the Case Diary. Thereafter the Investigating Officer recorded statement of the Gunner of the applicant in Parcha No. SCD-9 of the Case Diary, wherein the Gunner stated that the applicant was not present at the spot rather he was called from Kanpur City by the police of Police Station Ghoorpur and once he reached there, he was illegally detained by the police. The said Parcha No. SCD-9 was prepared on 24.8.2021, however, later on, the Investigating Officer removed the said parcha and appended a different parcha altogether numbering the same as Parcha No. SCD-9.

7. It is further submitted by the learned Senior Counsel that the statement of the Gunner of the applicant was again recorded vide Parcha No. SCD-18 dated 8.2.2022, however, this time the Gunner had stated nothing about the alleged incident. Thereafter, the Investigating Officer filed a supplementary charge-sheet on 8.2.2022 and the applicant challenged the validity and legality of the charge-sheet dated 8.2.2022 as well as the order dated 21.2.2022 by filing the Application u/s 482 No. 39035 of 2022 but no interference in the charge-sheet was made by this Court.

8. It is further submitted by the learned Senior Counsel that the applicant was subsequently released on bail. On his appearance, the copy of the charge-sheet and other relevant documents were supplied to him as per provision of Section 207 Cr.P.C. However, certain relevant documents were not provided to him. Therefore, the applicant moved an application before the court concerned to provide him Parcha No. SCD-9 of the Case Diary, which has been removed by the Investigating Officer during the course of investigation. The Parcha No. SCD-9 of the Case Diary makes it clear that the applicant was falsely implicated in the present case. The Gunner has given statement under Section 161 Cr.P.C. and stated that the applicant was called by the police of Police Station, Ghoorpur, District Prayagraj and no such incident as alleged in the first information report had taken place. This Parcha No. SCD-9 of the Case Diary was knowingly and illegally removed by the Investigating Officer after recording his statement in Parcha No. SCD-9 of the Case Diary. The Gunner had stated that the applicant at the time of alleged incident was in Kanpur and he was called by the police of Police Station Ghoorpur, where he was illegally detained and the Gunner was asked to return to police lines. It is also submitted that the said Parcha No. 9 of the Case Diary was prepared on 24.8.2024 but later on the same was removed by the Investigating Officer and another parcha altogether numbering the same as SCD-9 was appended. The conduct of the Investigating Officer goes to show that no fair or impartial investigation was conducted by him rather the investigation was tainted, faulty and defective and on the basis of faulty investigation, the applicant cannot be prosecuted in the present case. It is further submitted by learned Senior Counsel that he moved a discharge application under Section 227 Cr.P.C. before the learned trial court, which was wrongly and illegally rejected vide order dated 14.8.2024 and thereafter charges were framed on 12.9.2024. Both the orders dated 14.8.2024 and 12.9.2024 have been challenged by the applicant.

9. Per contra, the learned A.G.A. has submitted, on the basis of counter affidavit, that earlier the applicant filed an Application u/s 482 Cr.P.C. No. 39035 of 2022 (Aamir vs. State of U.P. and another) on the same ground, in which the legality and validity of the charge-sheet was challenged and the prayer made in the aforesaid application for quashing the charge-sheet was refused by this Court vide order dated 17.1.2023 by a reasoned and detailed order. The applicant is again raising the same plea which has already been decided by this Court vide order dated 17.1.2023. The present application under Section 528 B.N.S.S. is not maintainable since the same arguments are being advanced in the present application which have already been adjudicated by this Court. It is further submitted by the learned A.G.A. that the allegations levelled in the first information report and the statements of the witnesses recorded during course of investigation, prima facie, makes an offence against the applicant. The charge-sheet cannot be quashed on account of faulty, defective or impartial investigation. The witnesses have supported the prosecution case, as mentioned in the first information report, when their statements were recorded during course of investigation. All the witnesses stated that the applicant was arrested from the spot.

10. It is further submitted by the learned A.G.A. that Parcha No. 8 of the supplementary case diary was prepared on 19.8.2021. Thereafter the Investigating Officer prepared Parcha No. SCD-8(2) on 24.8.2021 in which statement of the Gunner of the applicant got recorded. In his statement the aforesaid Gunner, namely, Abhimanyu Kumar Bind stated that on 12.9.2019, he was very well present with the applicant and when they were coming from Kanpur, the Station House Officer, Ghoorpur called the applicant, thereafter they reached at Police Station Ghoorpur at about 15:30

hours. The incident in the present case had taken place on 12.12.2019. According to the statement of the Gunner, the applicant along with his Gunner reached the Police Station Ghoorpur on 12.9.2019, though in the present case incident had occurred on 12.12.2019. Therefore, the presence of the applicant along with his Gunner at the Police Station Ghoorpur on 12.9.2019 has no relevance with this case.

11. It is also submitted by the learned A.G.A. that so far as missing of the Parcha No. SCD-8(2) dated 24.8.2021 is concerned, a preliminary inquiry was conducted by the department and after the inquiry, a conclusion was drawn by the Inquiry Officer that the then Station House Officer, Sub Inspector Brijesh Singh was at fault in the matter of missing of Parcha No. SCD-8(2). It is further submitted that on the basis of statements of the witnesses, involvement of the applicant was rightly found in the instant case. Thereafter the Investigating Officer recorded second statement of the Gunner vide Parcha No. SCD-18, who did not state anything regarding the incident dated 12.12.2019. Thereafter on the basis of evidence collected during investigation, the Investigating Officer filed supplementary charge-sheet on 8.2.2022. It is also submitted that the Investigating Officer rightly prepared the case diary but the next Investigating Officer in collusion with the applicant made some overwriting in Parcha No. SCD-8(2) and removed the same from the case diary and he was found guilty after inquiry.

12. It is further submitted that this is defence of the applicant that he was called by the police of Police Station Ghoorpur, District Prayagraj on 12.12.2019 and his defence cannot be appreciated at this stage. The impugned orders cannot be set aside on the ground that some manipulation was done by the Investigating Officer during the course of investigation and it is a subject matter of trial. Learned A.G.A. in last submitted that the impugned orders cannot be set aside at this stage when a prima facie offence is made out against the applicant. Learned trial court passed a well reasoned order dated 14.8.2024 and thereafter framed charge on 12.9.2024 after hearing the applicant.

13. I have heard rival submissions of the parties and perused the record.

14. However, the question that arises is whether an accused may be discharged on account of faulty or impartial or defective investigation. In other words, can the benefit of defective investigation be extended to the accused-applicant?

15. The law relating to faulty or impartial or defective investigation has been discussed by the Hon'ble Supreme Court as well as this Court in several judgments and it has been held that an accused cannot be acquitted on account of defective or faulty investigation. In the case of **Edakkandi Dineshan @ P. Dineshan and others vs. State of Kerala (Criminal Appeal No. 118 of 2013)** decided on 6.1.2025, it has been held that the accused cannot claim acquittal on the ground of faulty investigation done by the prosecution agency. The relevant paragraph is reproduced hereunder:-

"22. A cumulative reading of the entire evidence on record suggests that the investigation has not taken place in a proper and disciplined manner. There are various areas where a properly

investigation could have strengthened its case. In the case of *Paras Yadav & ors. vs. State of Bihar*⁵, the Apex Court observed as under:

"Para 8 - ..the lapse on the part of the Investigating Officer should not be taken in favour of the accused, may be that such lapse is committed designedly or because of negligence. Hence, the prosecution evidence is required to be examined de hors such omissions to find out whether the said evidence is reliable or not. For this purpose, it would be worthwhile to quote the following observations of this Court from the case of *Ram Bihari Yadav v. State of Bihar and others*, J.T. (1998) 3 SC 290.

"In such cases, the story of the prosecution will have to be examined de hors such omissions and contaminated conduct of the officials otherwise the mischief which was deliberately done would be perpetuated and justice would be denied to the complainant party and this would obviously shake the confidence of the people not merely in the law enforcing agency but also in the administration of justice."

Hence, the principle of law is crystal clear that on the account of defective investigation the benefit will not inure to the accused persons on that ground alone. It is well within the domain of the courts to consider the rest of the evidence which the prosecution has gathered such as statement of the eyewitnesses, medical report etc. It has been a consistent stand of this court that the accused cannot claim acquittal on the ground of faulty investigation done by the prosecuting agency. As the version of eyewitnesses in specifically naming the appellants have been consistent throughout the trial, we find that there is enough corroboration to drive home the guilt of the accused persons. When the testimony of PW1 Jitesh, PW 2 and PW4 is seen cumulatively, their versions can be seen to be corroborating each other. All of them being eyewitnesses, what is material to be seen is their stand is consistent when they said that it was A2 who was responsible for inflicting blows on both the deceased. It may not be out of place to mention that though the unfortunate incident took place at midnight around 1 am, it was a full moon night and as such, it was not pitch dark. This has also not been vehemently disputed by the defence counsel. Hence, the version put forth by the prosecution witnesses inspires confidence of this Court. The specific role attributed by the prosecution witnesses cannot be challenged on extraneous grounds which have been raised by the defense. There is no contradiction when it comes to assigning specific role to the above accused. Admittedly, there was an enmity between the witnesses as they were from different political groups. Moreover, it can be seen from the record that the Accused and the witnesses were well acquainted with each other as PW1, PW 2 and PW4 had defected from the CPI and had joined RSS. The witnesses could have tried to implicate anyone had they wished to take advantage of their past acquaintance and recent rivalry."

16. In the case of **Ram Bali vs. State of U.P. (2004) 10 SCC 598**, the Hon'ble Supreme Court has held that an accused cannot be acquitted on account of defect in investigation. The relevant part of *Ram Bali* (supra) is reproduced hereunder:-

"12. The investigation was also stated to be defective since the gun was not sent for forensic test. In the case of a defective investigation the Court has to be circumspect in evaluating the evidence. But it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the investigating officer if the investigation is designedly defective. (See *Karnel Singh v. State of M.P.* (1995 (5) SCC 518).

13. In *Paras Yadav and Ors. v. State of Bihar* (1999 (2) SCC 126) it was held that if the lapse or omission is committed by the investigating agency or because of negligence there had been defective investigation the prosecution evidence is required to be examined de hors such omissions carefully to find out whether the said evidence is reliable or not and to what extent, such lapse affected the object of finding out the truth. The contaminated conduct of officials alone should not stand on the way of evaluating the evidence by the courts in finding out the truth, if the materials on record are otherwise credible and truthful; otherwise the designed mischief at the instance of biased or interested investigator would be perpetuated and justice would be denied to the complainant party, and in the process to the community at large.

14. As was observed in *Ram Bihari Yadav v. State of Bihar and Ors.* (1998 (4) SCC 517) if primacy is given to such designed or negligent investigation, to the omission or lapses by perfunctory investigation or omissions, the faith and confidence of the people would be shaken not only in the Law enforcing agency but also in the administration of justice. The view was again reiterated in *Amar Singh v. Balwinder Singh and Ors.* (2003 (2) SCC 518). As noted in *Amar Singh's* case (supra) it would have been certainly better if the firearms were sent to the forensic test laboratory for comparison. But the report of the ballistic expert would merely be in the nature of an expert opinion without any conclusiveness attached to it. When the direct testimony of the eye-witnesses corroborated by the medical evidence fully establishes the prosecution version, failure or omission or negligence on the part of the IO cannot affect credibility of the prosecution version."

17. The law relating to defective investigation has been summarised by the Division Bench of this Court in the case of **Chhote Lal vs. State of U.P. (Criminal Appeal No. 3382 of 2010)** decided on 24.5.2019, wherein it has been held as hereunder:-

"22. Even assuming that there was some lacuna on the part of investigating agency while conducting investigation like not mentioning of crime number in the documents and some over writing in the documents, the same will not give any benefit to the accused. These deficiencies in the investigation are of insignificant nature.

It is settled proposition of law that for certain defects in investigation, the accused cannot be acquitted. This aspect has been considered in various decisions. In *C. Muniappan v. State of Tamil Nadu*; 2010 ((9) SCC 567, the following discussion and conclusion are relevant which are as follows:-

"55. There may be highly defective investigation in a case. However, it is to be examined as to whether there is any lapse by the IO and whether due to such lapse any benefit should be given to the accused. The law on this issue is well settled that the defect in the investigation by itself cannot be a ground for acquittal. If primacy is given to such designed or negligent investigations or to the omissions or lapses by perfunctory investigation, the faith and confidence of the people in the criminal justice administration would be eroded. Where there has been negligence on the part of the investigating agency or omissions, etc. which resulted in defective investigation, there is a legal obligation on the part of the court to examine the prosecution evidence de hors such lapses, carefully, to find out whether the said evidence is reliable or not and to what extent it is reliable and as to whether such lapses affected the object of finding out the truth. Therefore, the investigation is not the solitary area for judicial scrutiny in a criminal trial. The conclusion of the trial in the case cannot be allowed to depend solely on the probity of investigation.

In *Dayal Singh v State of Uttaranchal*; 2012 (8) SCC 263, while reiterating the principles rendered in *C. Muniappan (supra)*, the Apex Court held thus:

"18. ... Merely because PW 3 and PW 6 have failed to perform their duties in accordance with the requirements of law, and there has been some defect in the investigation, it will not be to the benefit of the accused persons to the extent that they would be entitled to an order of acquittal on this ground. ..."

In *Gajoo v State of Uttarakhand*; 2012 (9) SCC 532, while reiterating the same principle again, the Apex Court held that defective investigation, unless affects the very root of the prosecution case and is prejudicial to the accused should not be an aspect of material consideration by the Court. Since the Court has adverted to all the earlier decisions with regard to defective investigation and outcome of the same, it is useful to refer the dictum laid down in those cases:

20. In regard to defective investigation, this Court in *Dayal Singh v. State of Uttaranchal* while dealing with the cases of omissions and commissions by the investigating officer, and duty of the court in such cases, held as under: (SCC pp. 280-83, paras 27-36)

"27. Now, we may advert to the duty of the court in such cases. In *Sathi Prasad v. State of U.P.*, this Court stated that it is well settled that if the police records become suspect and investigation perfunctory, it becomes the duty of the court to see if the evidence given in court should be relied upon and such lapses ignored. Noticing the possibility of investigation being designedly defective, this Court in *Dhanaj Singh v. State of Punjab*, held: (SCC p. 657, para 5)

"5. In the case of a defective investigation the court has to be circumspect in evaluating the evidence. But it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the investigating officer if the investigation is designedly defective.'

28. Dealing with the cases of omission and commission, the Court in *Paras Yadav v. State of Bihar* enunciated the principle, in conformity with the previous judgments, that if the lapse or omission is committed by the investigating agency, negligently or otherwise, the prosecution evidence is required to be examined de hors such omissions to find out whether the said evidence is reliable or not. The contaminated conduct of officials should not stand in the way of evaluating the evidence by the courts, otherwise the designed mischief would be perpetuated and justice would be denied to the complainant party.

29. In *Zahira Habibullah Sheikh (5) v. State of Gujarat*, the Court noticed the importance of the role of witnesses in a criminal trial. The importance and primacy of the quality of trial process can be observed from the words of Bentham, who states that witnesses are the eyes and ears of justice. The court issued a caution that in such situations, there is a greater responsibility of the court on the one hand and on the other the courts must seriously deal with persons who are involved in creating designed investigation. The Court held that: (SCC p. 398, para 42) "42. Legislative measures to emphasise prohibition against tampering with witness, victim or informant have become the imminent and inevitable need of the day. Conducts which illegitimately affect the presentation of evidence in proceedings before the courts have to be seriously and sternly dealt with. There should not be any undue anxiety to only protect the interest of the accused. That would be unfair, as noted above, to the needs of the society. On the contrary, efforts should be to ensure a fair trial where the accused and the prosecution both get a fair deal. Public interest in the proper administration of justice must be given as much importance, if not more, as the interest of the individual accused. In this courts have a vital role to play.'

(emphasis in original)

30. With the passage of time, the law also developed and the dictum of the court emphasised that in a criminal case, the fate of proceedings cannot always be left entirely in the hands of the parties. Crime is a public wrong, in breach and violation of public rights and duties, which affects the community as a whole and is harmful to the society in general.

31. Reiterating the above principle, this Court in *NHRC v. State of Gujarat* held as under: (SCC pp. 777-78, para 6)

"6. ..."35. ... The concept of fair trial entails familiar triangulation of interests of the accused, the victim and the society and it is the community that acts through the State and prosecuting agencies. Interest of society is not to be treated completely with disdain and as persona non grata. The courts have always been considered to have an overriding duty to maintain public confidence in the administration of justice--often referred to as the duty to vindicate and uphold the 'majesty of the law'. Due administration of justice has always been viewed as a continuous process, not confined to determination of the particular case, protecting its ability to function as a court of law in the future as in the case before it. If a criminal court is to be an effective instrument in dispensing justice, the Presiding Judge must cease to be a spectator and a mere recording machine by becoming a participant in the trial evincing intelligence, active interest and elicit all relevant materials necessary for reaching the correct conclusion, to find out the truth, and administer justice with fairness and impartiality both to the parties and to the community it serves. The courts administering criminal justice cannot turn a blind eye to vexatious or oppressive conduct that has occurred in relation to proceedings, even if a fair trial is still possible, except at the risk of undermining the fair name and standing of the Judges as impartial and independent adjudicators." (*Zahira Habibullah case*, SCC p. 395, para 35)

32. In *State of Karnataka v. K. Yarappa Reddy*, this Court occasioned to consider the similar question of defective investigation as to whether any manipulation in the station house diary by the investigating officer could be put against the prosecution case. This Court, in para 19, held as follows: (SCC p.720)

"19. But can the above finding (that the station house diary is not genuine) have any inevitable bearing on the other evidence in this case? If the other evidence, on scrutiny, is found credible and acceptable, should the court be influenced by the machinations demonstrated by the investigating officer in conducting investigation or in preparing the records so unscrupulously? It can be a guiding principle that as investigation is not the solitary area for judicial scrutiny in a criminal trial, the conclusion of the court in the case cannot be allowed to depend solely on the probity of investigation. It is well-nigh settled that even if the investigation is illegal or even suspicious the rest of the evidence must be scrutinised independently of the impact of it. Otherwise the criminal trial will plummet to the level of the investigating officers ruling the roost. The court must have predominance and pre-eminence in criminal trials over the action taken by the investigating officers. The criminal justice should not be made a casualty for the wrongs committed by the investigating officers in the case. In other words, if the court is convinced that the testimony of a witness to the occurrence is true the court is free to act on it albeit the investigating officer's suspicious role in the case.'

33. In *Ram Bali v. State of UP*, the judgment in *Karnel Singh v. State of M.P.* was reiterated and this Court had observed that: (*Ram Bali case* (SCC p. 604, para 12)

"12. ... In case of defective investigation the court has to be circumspect [while] evaluating the evidence. But it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the investigation officer if the investigation is designedly defective.'

34. Where our criminal justice system provides safeguards of fair trial and innocent till proven guilty to an accused, there it also contemplates that a criminal trial is meant for doing justice to all, the accused, the society and a fair chance to prove to the prosecution. Then alone can law and order be maintained. The courts do not merely discharge the function to ensure that no innocent man is punished, but also that a guilty man does not escape. Both are public duties of the Judge. During the course of the trial, the learned Presiding Judge is expected to work objectively and in a correct perspective. Where the prosecution attempts to misdirect the trial on the basis of a perfunctory or designedly defective investigation, there the court is to be deeply cautious and ensure that despite such an attempt, the determinative process is not subverted. For truly attaining this object of a 'fair trial', the court should leave no stone unturned to do justice and protect the interest of the society as well.

35. This brings us to an ancillary issue as to how the court would appreciate the evidence in such cases. The possibility of some variations in the exhibits, medical and ocular evidence cannot be ruled out. But it is not that every minor variation or inconsistency would tilt the balance of justice in favour of the accused. Of course, where contradictions and variations are of a serious nature, which apparently or impliedly are destructive of the substantive case sought to be proved by the prosecution, they may provide an advantage to the accused. The courts, normally, look at expert evidence with a greater sense of acceptability, but it is equally true that the courts are not absolutely guided by the report of the experts, especially if such reports are perfunctory, unsustainable and are the result of a deliberate attempt to misdirect the prosecution. In *Kamaljit Singh v. State of Punjab*, the Court, while dealing with discrepancies between ocular and medical evidence, held: (SCC p.159, para 8)

"8. It is trite law that minor variations between medical evidence and ocular evidence do not take away the primacy of the latter. Unless medical evidence in its term goes so far as to completely rule out all possibilities whatsoever of injuries taking place in the manner stated by the eyewitnesses, the testimony of the eyewitnesses cannot be thrown out.'

36. Where the eyewitness account is found credible and trustworthy, medical opinion pointing to alternative possibilities may not be accepted as conclusive.

"34. ... The expert witness is expected to put before the court all materials inclusive of the data which induced him to come to the conclusion and enlighten the court on the technical aspect of the case by [examining] the terms of science so that the court although, not an expert may form its own judgment on those materials after giving due regard to the expert's opinion, because once the expert's opinion is accepted, it is not the opinion of the medical officer but [that] of the court."

Above proposition of law has been duly considered by the Apex Court in *Hema* (supra) and it has been further held by the Apex Court:

"(13) It is clear that merely because of some defect in the investigation, lapse on the part of the I.O., it cannot be a ground for acquittal. Further, even if there had been negligence on the part of the investigating agency or omissions etc., it is the obligation on the part of the Court to scrutinize the prosecution evidence de hors such lapses to find out whether the said evidence is reliable or not and whether such lapses affect the object of finding out the truth."

18. Therefore, in view of the aforesaid law, it is clear that an accused cannot be acquitted on account of defects in investigation, much less discharged on the same grounds. It is a settled law that no benefit can be extended to the accused at the stage of discharge, if some defects have occurred during the course of investigation.

19. Now, this Court will examine the second contention of the parties, i.e., whether the evidence, led by the prosecution during course of investigation, is sufficient to proceed against the applicant or he may be discharged at this stage. In order to appreciate rival contentions, the relevant provision of Cr.P.C. and B.N.S.S. may be adverted to.

20. The procedure for trial before a court of session is provided under Chapter XVIII of the Cr.P.C. and Sections 227 and 228 Cr.P.C., which relate to discharge and framing of charges are extracted below:-

"227. Discharge.-- If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.

228. Framing of charge.--(1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which—

(a) is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate, or any other Judicial Magistrate of the first class and direct the accused to appear before the Chief Judicial Magistrate, or, as the case may be, the Judicial Magistrate of the first class, on such date as he deems fit, and thereupon such Magistrate shall try the offence in accordance with the procedure for the trial of warrant-cases instituted on a police report;

(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused.

(2) Where the Judge frames any charge under clause (b) of sub-section (1), the charge shall be read and explained to the accused and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried."

21. Now, the procedure for trial before a court of sessions is provided under Chapter XIX of the BNSS and Section 250 and 251 of the BNSS are relating to discharge and framing of charge, which are reproduced hereunder:-

"250. Discharge.--(1) The accused may prefer an application for discharge within a period of sixty days from the date of commitment of the case under Section 232.

(2) If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.

251. Framing of charge. (1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which-

(a) is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate, or any other Judicial Magistrate of the first class and direct the accused to appear before the Chief Judicial Magistrate, or the Judicial Magistrate of the first class, on such date as he deems fit, and thereupon such Magistrate shall try the offence in accordance with the procedure for the trial of warrant-cases instituted on a police report;

(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused within a period of sixty days from the date of first hearing on charge.

(2) Where the Judge frames any charge under clause (b) of sub-section (1), the charge shall be read and explained to the accused present either physically or through audio-video electronic means and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried."

22. The prerequisites for framing of charge were subject matter of consideration in **Soma Chakravarty vs. State through CBI**, reported in (2007) 5 SCC 403, and it was held that the court can frame the charge if on the basis of material on record it can form an opinion that the commission of offence by the accused was possible. The question as to whether the accused committed the offence can only be decided in the trial, and at the stage of framing of charge the probative value of the material on record cannot be gone into and the said material has to be accepted as true. The paragraph no. 10 of **Soma Chakravarty (supra)** is reproduced hereunder:-

"10. It may be mentioned that the settled legal position, as mentioned in the above decisions, is that if on the basis of material on record the court could form an opinion that the accused might have committed offence it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence. At the time of framing of the charges the probative value of the material on record cannot be gone into, and the material brought on record by the prosecution has to be accepted as true at that stage. Before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commitment of offence by the accused was possible. Whether, in fact, the accused committed the offence, can only be decided in the trial."

23. The question as to when discharge of an accused would be warranted in exercise of powers under Section 227 Cr.P.C. of the Code in the light of its scope and object was considered in **P. Vijayan vs. State of Kerala and another**, reported in (2010) 2 SCC 398, and it was held that at the stage of Section 227 Cr.P.C., the Court has merely to sift the elements in order to find out whether or not there is sufficient ground for proceeding against the accused and if the judge comes to a conclusion that there is sufficient ground to proceed, he will frame a charge under Section 228 Cr.P.C., if not, he will discharge the accused.

24. The scope of exercise of powers under Sections 227 and 228 Cr.P.C. with regard to framing of charge/discharge again fell for consideration in **Sajjan Kumar Vs. Central Bureau of Investigation**, reported in (2010) 9 SCC 368, and it was held that at the stage of framing of

charge under Section 228 or while considering discharge petition filed under Section 227 Cr.P.C., it is not for the Magistrate or a Judge concerned to analyse all the materials including pros and cons, reliability or acceptability thereof, and it is at the trial that the Judge concerned has to appreciate evidentiary value, credibility or otherwise of the material and veracity of various documents. The following principles were laid down by the Hon'ble Supreme Court in paragraph no. 21:-

"21. On consideration of the authorities about the scope of Section 227 and 228 of the Code, the following principles emerge:-

(i) The Judge while considering the question of framing the charges under Section 227 of the Cr.P.C. has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.

ii) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained, the Court will be fully justified in framing a charge and proceeding with the trial.

iii) The Court cannot act merely as a Post Office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

iv) If on the basis of the material on record, the Court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the Court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

vi) At the stage of Sections 227 and 228, the Court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value discloses the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal."

25. The relative scope and distinction between Sections 227 and 228 Cr.P.C. with regard to discharge of accused and framing of charge was discussed and explained in detail in **Amit Kapoor vs. Ramesh Chander and another**, reported in (2012) 9 SCC 460 and it was held that at the stage of Section 228, the Court is not concerned with proof, but with a strong suspicion that the accused has committed an offence and the final test of guilt is not to be applied at the stage of framing of charge. It was stated thus:-

"15.

It was stated thus :-

"17. Framing of a charge is an exercise of jurisdiction by the trial court in terms of Section 228 of the Code, unless the accused is discharged under Section 227 of the Code. Under both these provisions, the court is required to consider the 'record of the case' and documents submitted therewith and, after hearing the parties, may either discharge the accused or where it appears to the court and in its opinion there is ground for presuming that the accused has committed an offence, it shall frame the charge. Once the facts and ingredients of the section exists, then the court would be right in presuming that there is ground to proceed against the accused and frame the charge accordingly. This presumption is not a presumption of law as such. The satisfaction of the court in relation to the existence of constituents of an offence and the facts leading to that offence is a *sine qua non* for exercise of such jurisdiction. It may even be weaker than a *prima facie* case. There is a fine distinction between the language of Sections 227 and 228 of the Code. Section 227 is the expression of a definite opinion and judgment of the Court while Section 228 is tentative. Thus, to say that at the stage of framing of charge, the Court should form an opinion that the accused is certainly guilty of committing an offence, is an approach which is impermissible in terms of Section 228 of the Code.

.....

19. At the initial stage of framing of a charge, the court is concerned not with proof but with a strong suspicion that the accused has committed an offence, which, if put to trial, could prove him guilty. All that the court has to see is that the material on record and the facts would be compatible with the innocence of the accused or not. The final test of guilt is not to be applied at that stage."

26. In **State of Tamil Nadu vs. N. Suresh Rajan and others**, reported in (2014) 11 SCC 709, while considering the scope of exercise of jurisdiction and power by Court at the stage of framing of charges or discharge of accused under Sections 227 and 228 Cr.P.C., it was restated that no mini trial is contemplated at the stage of considering the discharge application and only probative value of materials has to be gone into to see if there is a *prima facie* case for proceeding against the accused without any requirement of going deep into the matter.

27. The exercise of powers under Section 227 Cr.P.C. of the Code and the matters to be considered and the extent of inquiry permissible on part of Court was again subject matter of consideration in **Asim Shariff vs. National Investigation Agency**, reported in (2019) 7 SCC 148, and it was reiterated that the judge while considering the question of framing of charge under Section 227 Cr.P.C. is to sift and weigh the evidence for the limited purpose of finding out whether or not a *prima facie* case against the accused has been made out and the Court, at this stage, is not supposed to hold a mini trial by marshalling the evidence on record. It was held as follows:-

"18.

"18. Taking note of the exposition of law on the subject laid down by this Court, it is settled that the Judge while considering the question of framing charge under Section 227 CrPC in sessions cases (which is akin to Section 239 CrPC pertaining to warrant cases) has the undoubted

power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out; where the material placed before the court discloses grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing the charge; by and large if two views are possible and one of them giving rise to suspicion only, as distinguished from grave suspicion against the accused, the trial Judge will be justified in discharging him. It is thus clear that while examining the discharge application filed under Section 227 CrPC, it is expected from the trial Judge to exercise its judicial mind to determine as to whether a case for trial has been made out or not. It is true that in such proceedings, the Court is not supposed to hold a mini trial by marshalling the evidence on record."

28. The relevant considerations to be made by the Court at the stage of Section 227 Cr.P.C. of the Code were discussed in **M.E. Shivalingamurthy vs. Central Bureau of Investigation, Bengaluru**, reported in **(2020) 2 SCC 768** and it was reiterated that the Court at this stage, without making a roving inquiry into the pros and cons, is only required to consider the broad probabilities and the probative value of material on record is not to be gone into.

29. The ambit and scope of exercise of power under Sections 227 and 228 Cr.P.C. of the Code, are fairly well settled. It has been consistently held that the standard of test and judgment which is to be finally applied before recording of finding regarding the guilt or otherwise of the accused is not exactly to be applied at the stage of framing of charge. The test to be applied at this stage would be whether there is sufficient ground for proceeding and not whether there is sufficient ground for conviction. The Court has clearly to sift the elements in order to find out whether or not there is sufficient ground for proceeding against the accused and if the trial court comes to a conclusion that there is sufficient ground to proceed, it will frame a charge under Section 228 Cr.P.C. of the Code, if not, it will discharge the accused. At the stage of framing of charge or considering discharge of the accused, no mini trial is contemplated and only probative value of material has to be gone into, to see if there is a prima facie case for proceeding against the accused.

30. In the case of State of **Madhya Pradesh vs. Rakesh Mishra (2015) 13 SCC 8**, the Hon'ble Supreme Court has held that only charge-sheet along with the accompanying material is to be considered at the stage of framing of charges, so as to satisfy whether a prima facie case is made out against the accused. The relevant paragraph no. 7 of **Rakesh Mishra (supra)** is reproduced hereunder:-

"7. The major argument advanced by the State of Madhya Pradesh before us has been that the High Court traversed beyond the permissible limit while deciding the legality of order framing charges, being a pre-trial stage. Various authorities have been cited before us to prove that point. However, it would suffice to say that the law on this point is crystal clear that only charge-sheet along with the accompanying material is to be considered at the stage of framing of charges, so as to satisfy whether a prima facie case is made out. It has to be the subjective satisfaction of the Court framing charges. In our opinion, the High Court has only examined the material before it against the prevailing law to reach its conclusions. Thus, the impugned judgment may not be assailable on this ground."

31. In the case of **State (By the Inspector of Police, Chennai vs. S. Selvi and another (2018) SCC 455**, the Hon'ble Supreme Court has held that at the stage of consideration of an application for discharge, the court has to proceed with the presumption that materials on record by the prosecution are true and evaluate such material with a view to find out whether the facts emerging therefrom taken at their face value disclose existence of the ingredients of the offences. The relevant paragraph of **S. Selvi (supra)** are reproduced hereunder:-

"6. It is well settled by this Court in a catena of judgments including *Union of India v. Prafulla Kumar Samal* [*Union of India v. Prafulla Kumar Samal*, (1979) 3 SCC 4 : 1979 SCC (Cri) 609], *Dilawar Balu Kurane v. State of Maharashtra* [*Dilawar Balu Kurane v. State of Maharashtra*, (2002) 2 SCC 135 : 2002 SCC (Cri) 310], *Sajjan Kumar v. CBI* [*Sajjan Kumar v. CBI*, (2010) 9 SCC 368 : (2010) 3 SCC (Cri) 1371], *State v. A. Arun Kumar* [*State v. A. Arun Kumar*, (2015) 2 SCC 417 : (2015) 2 SCC (Cri) 96 : (2015) 1 SCC (L&S) 505], *Sonu Gupta v. Deepak Gupta* [*Sonu Gupta v. Deepak Gupta*, (2015) 3 SCC 424 : (2015) 2 SCC (Cri) 265], *State of Orissa v. Debendra Nath Padhi* [*State of Orissa v. Debendra Nath Padhi*, (2003) 2 SCC 711 : 2003 SCC (Cri) 688], *Niranjan Singh Karam Singh Punjabi v. Jitendra Bhimraj Bijjaya* [*Niranjan Singh Karam Singh Punjabi v. Jitendra Bhimraj Bijjaya*, (1990) 4 SCC 76 : 1991 SCC (Cri) 47] and *Supt. & Remembrancer of Legal Affairs v. Anil Kumar Bhunja* [*Supt. & Remembrancer of Legal Affairs v. Anil Kumar Bhunja*, (1979) 4 SCC 274 : 1979 SCC (Cri) 1038] that the Judge while considering the question of framing charge under Section 227 of the Code in sessions cases (which is akin to Section 239 CrPC pertaining to warrant cases) has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out; where the material placed before the court discloses grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing the charge; by and large if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his rights to discharge the accused. The Judge cannot act merely as a post office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the statements and the documents produced before the court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the materials as if he was conducting a trial.

7. In *Sajjan Kumar v. CBI* [*Sajjan Kumar v. CBI*, (2010) 9 SCC 368 : (2010) 3 SCC (Cri) 1371], this Court on consideration of the various decisions about the scope of Sections 227 and 228 of the Code, laid down the following principles: (SCC pp. 376-77, para 21)

"(i) The Judge while considering the question of framing the charges under Section 227 CrPC has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.

(ii) Where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing a charge and proceeding with the trial.

(iii) The court cannot act merely as a post office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the

evidence and the documents produced before the court, any basic infirmities, etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

(iv) If on the basis of the material on record, the court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

(vi) At the stage of Sections 227 and 228, the court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal."

9. In the matter on hand, the main allegation against the first respondent-Accused 2 as found in the charge-sheet is that while the complainant along with the relevant documents proceeded to the residence of Accused 1 and 2 at Door No. 28, West Gopalapuram, Chennai-86, to get back his money due to him on 20-9-2011, at about 1730 hours, Accused 1 and 2 threatened the complainant, snatched away the documents from him, denied him permission to enter into their house and threatened him with dire consequences if he entered into their house. It is relevant to note that in the complaint dated 21-9-2011 it is stated that when the complainant went to West Gopalapuram and met the accused for an enquiry about payment, the accused got furious, beat him and with the help of four henchmen pushed him out of their house. On the basis of these discrepancies, the contention of the learned counsel for the accused that the case as made out by the prosecution cannot be believed inasmuch as the material on record is not consistent. It may give rise to some suspicion but not grave suspicion, though appears to be attractive, but is not acceptable in view of entire material on record. On going through the judgment of the High Court, we find that the High Court has virtually appreciated the entire material on record as if the High Court is trying a criminal case. It would be difficult to lay down the rule of universal application as to how the prima facie case should be determined. Though the Judge has got power to sift and weigh the evidence, such sifting and weighing evidence is for the limited purpose of finding out whether or not a prima facie case against the accused has been made out for framing of charge. The test to determine a prima facie case would naturally depend upon the facts of each case. At this preliminary stage, the High Court was not justified in concluding that the accused is entitled for discharge merely on the ground of discrepancy in the timings of the incident. The question as to whether Respondent 1 was present on the place of incident or not during the relevant point of time

or she had been in Calcutta as sought to be argued before this Court is a matter of proof. Such fact needs to be gone into by the trial court after recording the evidence."

32. Reverting to the facts of the present case, it is clear that the Investigating Officer has collected evidence in this case and recorded statements of several witnesses, who have given statements against the applicants. Even the statement of the Gunner Abhimanyu Kumar would not help the applicant-accused. Since he stated in his statement that he went to Kanpur with the applicant on 12.9.2019, whereas in the present case the incident had taken place on 12.12.2019. When second statement of the aforesaid Gunner was recorded, he did not state that he went to Kanpur with the applicant on 12.12.2019. The second statement of the Gunner has been appended as Annexure-13 to this application.

33. This Court is of the view that the charge can be framed on strong suspicion against the accused persons. There is no material contradiction with regard to the prosecution case mentioned in the first information report as well as in the statements of the witnesses. The statements of witnesses recorded by the Investigating Officer during course of investigation cannot be brushed aside at the stage of considering the discharge application or framing of charge. It is well settled law that at the stage of considering the discharge application, the defence of the accused cannot be taken into consideration. The ground taken by the applicant in the present application is disputed question of fact, which cannot be adjudicated at the time of framing of charge. This Court is of the view that the appreciation of evidence is a function of the trial court at the appropriate stage. It is crystallized judicial view that at the stage of discharge the court is to examine the materials only with a view to be satisfied that prima facie case of the commission of offence alleged has been made out against the accused. If there is ground for presuming that the accused has committed the offence, the court can justifiably say that prima facie case exists against the accused. Marshalling and appreciation of facts is not in the domain of the trial court at the time of considering discharge application. The broad test to be applied is whether the material on record, if unrebutted, makes a conviction reasonably possible. The final test of guilt is not to be applied at that stage.

34. Considering the facts, circumstances and material available on record, in view of the law laid down by Hon^{ble} Apex Court as well as Division Bench of this Court, I do not find any illegality, infirmity or perversity in the impugned orders dated 14.8.2024 and 12.9.2024, therefore, no case is made out to interfere in the impugned orders. The concerned trial court while passing the impugned orders dated 14.8.2024 and 12.9.2024 has considered all the relevant materials on record and decided the discharge application of the applicant in accordance with law in the light of well settled legal principle laid down by the Hon^{ble} Apex Court. The applicant has a remedy under the law to raise all such plea in his defence before the trial court at the appropriate stage.

35. In view of the above, the present application lacks merit and is, accordingly, dismissed.

36. No orders as to costs.

37. Registrar (Compliance) is directed to send a copy of this order to the trial court concerned.

(2026) 4 ILRA 692
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 17.04.2026

BEFORE

THE HON'BLE SAURABH SHYAM SHAMSHERY, J.

Writ A No. 1456 of 2025

Rameshwar Dayal
State of U.P. & Ors.

...Petitioner
Versus
...Respondents

Issue for Consideration

(1) Validity of initiating the disciplinary proceeding on the charge that a quasi-judicial order was passed without following due process.

Headnotes

(A) Service law – Punishment – Removal – Disciplinary proceeding – Charge of passing an order on the application for mutation without following due process was leveled – The mutation order was passed on the basis of sale deed – In enquiry, charges was found proved and an order of removal was passed – Validity of initiating disciplinary proceeding was challenged – Issue as to when disciplinary proceedings can be initiated on passing of an quasi-judicial order, felt into consideration: (E-1)

Held: An order passed under quasi-judicial proceedings could be challenged on a ground of illegality and only on a ground that an order is illegal would itself not become a ground to initiate disciplinary proceedings except when Officer has acted in a manner as would reflect on his reputation of integrity or good faith or devotion to duty; if there is prima facie material to show recklessness or misconduct in the discharge of his duty; if acted in a manner which is unbecoming of a Government servant; if acted negligently or that he omitted the prescribed conditions which are essential for the exercise of the statutory powers; if acted in order to unduly favour a party; and if actuated by corrupt motive. [Para 19]

Held further: There is no charge that order passed in mutation application was influenced by extraneous factor or with any form of corrupt motive and in case the order was passed in good faith without any indication of dishonesty, entire disciplinary proceedings can be quashed – The petitioner has followed the due process and on basis of registered sale deed which has not been challenged anywhere has allowed application for mutation – Impugned order whereby petitioner was awarded major punishment is set aside and its legal consequence shall follow. [Para 26, 29 and 32]

Case Law Cited

Kaptan Singh vs. State of U.P. and another, 2014:AHC:95008-DB; Karam Singh vs. Amarjit Singh and others, 2025 INSC 1238; Balwant Singh vs. Daulat Singh, (1997) 7 SCC 137; Suraj Bhan vs. Financial Commissioner, (2007) 6 SCC 186; Amresh Shrivastava vs. The State of Madhya Pradesh and others, 2025 INSC 417; Bhikaji Nagarkar vs. Union of India, (1999) 7 SCC 409; Bhupinder Singh Gill vs. State of Punjab and others, 2025 INSC 83 – **referred to.**

List of Keywords

Disciplinary proceeding, Mutation, Revenue record, Irregular manner, Public endowment property, Due process, Spot inspection, Deity, Inquiry, Removal, Quasi judicial proceeding, Oral hearing, Ex-parte report, Punishment, Major punishment, Disproportionate, Reputation of integrity, Good faith, Devotion to duty, Prima

facie material, Recklessness, Misconduct in the discharge of duty, Unbecoming, Negligently, Corrupt motive, Custom, Precaution, Controversy, Extraneous factors, Favoritism, Legal mistake, Judicial independence, Justification, Foundation of disciplinary proceeding, Legal infirmity, Interference, Futile exercise.

Case Arising From

Impugned order dated 16.11.2024/05.12.2024 passed by the respondent.

Appearances for Parties

Advs. for the Appellant: Ashok Khare (Sr. Adv.), Arpit Agarwal, Raunak Parekh.

Advs. for the Respondents: M.C. Chaturvedi (Sr. Adv. and AAG), A. K. Srivastava, Saurabh (S.C.), Abhinava Krishna Srivastava.

(Delivered by Hon'ble Saurabh Shyam Shamshery, J.)

1. This case is arising out of a disciplinary proceedings whereby the petitioner was awarded a punishment of dismissal from service. Basis of the disciplinary proceedings was an order passed by the petitioner while working as Zonal Officer of Nagar Nigam, Varanasi on an application for mutation in regard to a house situated in Varanasi purchased vide a registered sale deed. The petitioner has allowed the application vide an order dated 16.02.2022 and name of vendees were directed to be recorded in revenue records for the purpose of tax collection. Said order was passed after hearing parties including one Raj Kumar (a complainant). For reference, said order in its entirety is quoted below :-

“निर्णय

प्रस्तुत प्रकरण मकान नं० डी० 28/105 के दाखिल खारिज के सम्बन्ध में है। वर्तमान समय में उक्त भवन पर ठाकुर राधा कृष्ण जी महादेव मूर्ति मालिक शिकायती श्रीमती शोभा मुखर्जी, पत्नी स्व० प्रोदियत कुमार मुखर्जी, श्री प्रशान्त कुमार, सुशान्त कुमार, गौतम कुमार पुत्रगण स्व० प्रोदियत कुमार मुखर्जी का नाम दर्ज है। भवन के मालिकान व उनके वारिसान तथा मुख्तारे आम के जरिये चार किता रजिस्टर्ड बैनामा से क्रय करके श्री मोहम्मद जावेद पुत्र हमीद अख्तर व आयशा खातून पत्नी जावेद अख्तर व जमाल अख्तर पुत्र हमीद अख्तर व इरम सबा पत्नी जमाल अख्तर ने दिनांक 17.03.2017 को आवेदन पत्र प्रस्तुत किया है कि उनका नाम भवन पर दर्ज किया जाय। कार्यालय द्वारा दिनांक 07.07.2021 को धारा 213 की नोटिस जारी की गई। इस पर श्री राजकुमार ने आपत्ति प्रस्तुत की। फलस्वरूप विषय विवादित होने की दशा में पत्रावली निस्तारण हेतु मेरे पूर्वाधिकारी के समक्ष विचाराधीन थी। उस समय तक निर्णय नहीं हो पाया। इसलिए पत्रावली मेरे समक्ष निस्तारण हेतु प्रस्तुत की गई।

मैंने सभी पक्षों को सुनवाई का समुचित अवसर देते हुए उनके तथ्यों को सुना तथा पत्रावली का अध्ययन किया। श्री राजकुमार ने स्वयं को कभी वादमित्र तो कभी प्रबन्धक व पुजारी कहकर आवेदन पत्र दिया है। जबकि पत्रावली के अध्ययन से स्पष्ट है कि उक्त भवन से इनका कोई सम्बन्ध नहीं है। हो सकता है

कि कभी पूजा पाठ करते रहे हों और उसी का अनुचित लाभ उठाकर भवन को हड़पने की गरज से तरह-तरह के धमकी भरे शिकायती पत्र दे व दिला रहे हैं। जिसका वास्तविकता से कोई वास्ता व सरोकार नहीं है।

जहाँ तक भवन में मंदिर होने की शिकायत है तो पत्रावली के अध्ययन से ज्ञात हुआ है कि भवन के मालिक जिलाधिकारी महोदय से आदेश प्राप्त करके लखनऊ उठा ले गये और वहाँ पर स्थापित कर दिया। यह कोई सार्वजनिक मंदिर नहीं था। भवन स्वामी अपनी सहूलियत के लिए पूजा पाठ करने हेतु अपने घर में स्थापित किये थे। श्री प्रशान्त कुमार मुखर्जी के आवेदन पत्र पर नगर मजिस्ट्रेट (द्वितीय) वाराणसी व क्षेत्राधिकारी, दशाश्वमेध, वाराणसी की जांच आख्या पत्र सं० 82/अ०न०म०(द्वितीय) दिनांक 18.01.2018 में स्पष्ट कहा गया है कि प्रशान्त मुखर्जी निवासी मकान नम्बर डी० 28/105 मोहल्ला पाण्डे हवेली, वाराणसी को दोनों शिवलिंग/नन्दी महाराज की मूर्ति को लखनऊ अपने निवास स्थान पर ले जाने एवं विधि विधान से स्थापित कर पूजा-पाठ करने में किसी प्रकार की कोई विधिक अड़चन प्रतीत नहीं होती है। तदनुसार जिलाधिकारी महोदय ने पत्र संख्या 4259/ची.री.-2018 दिनांक 12.02.2018 द्वारा प्रशान्त कुमार मुखर्जी को अवगत कराया। श्री राजकुमार स्वयं को मंदिर का पुजारी कहता है परन्तु पत्रावली में कोई ऐसा साक्ष्य नहीं पाया गया, जिससे प्रमाणित होता कि यह कभी पुजारी था और वर्तमान समय में जबकि मंदिर ही नहीं तो यह पूजा-पाठ किसकी करता है। जब भवन स्वामी अपना निजी मंदिर लखनऊ ले गये तो देवता लखनऊ चले गये। अब उस भवन में न कोई मंदिर है, न मूर्ति, न देवता है। भवन में एक दुकान लगभग 12x25 फीट जिसमें श्री राजकुमार के पुत्र मौके पर मिले एवं शेष आवासीय उपयोग में है। असेसमेंट नकल जो पत्रावली में संलग्न है, उसके अवलोकन से स्पष्ट है कि पूर्व में भी इस भवन में किरायेदार थे। श्री राजकुमार शिकायतकर्ता उक्त भवन से अपना कोई सम्बन्ध प्रमाणित करने में मेरे समक्ष असमर्थ रहे। अतः उनका शिकायती पत्र निरस्त किया जाता है।

नगर निगम द्वारा भवन पर नामांकन टैक्स की वसूली के लिए संक्षिप्त प्रक्रिया द्वारा की जाती है। नगर निगम द्वारा किये गये नामांकन से किसी के मालिकाना हक पर कोई प्रतिकूल प्रभाव नहीं पड़ता है। मालिकाना हक का निर्णय न्यायालय द्वारा होता है। आवेदक श्री जावेद वगैरह ने रजिस्टर्ड बैनामे के आधार पर नामांकन हेतु आवेदन पत्र दिया है। बैनामे को किसी न्यायालय द्वारा निरस्त नहीं किया गया है। बैनामा पूर्ण रूप से प्रभावी है। अतः श्री जावेद वगैरह का आवेदन पत्र स्वीकार करके नामांकन किया जाना उचित प्रतीत होता है।

आदेश

अतः मकान नम्बर डी० 28/105 पर दर्ज सभी नाम को खारिज करके उस पर श्री मोहम्मद जावेद पुत्र हमीद अख्तर, आयशा खातून पत्नी जावेद अख्तर, जमाल अख्तर पुत्र हमीद अख्तर व इरम सबा पत्नी जमाल अख्तर का नाम दर्ज किया जाय। असंतुष्ट पक्ष चाहें तो न्यायालय की शरण ले सकते हैं।"

2. It is also brought on record that said order is challenged at behest of Raj Kumar (complainant), which is still pending before Competent Authority.

3. On basis of a complaint filed by aforesaid complainant that petitioner while passing above referred order has acted in irregular manner with undue haste and conferred undue favour upon applicants who have filed mutation application.

14. In aforesaid circumstances, a charge sheet dated 12.12.2022 was served upon petitioner on six charges. All charges were in reference of above referred order passed on application for mutation that petitioner has failed to take note that vendor has no power to make any sale deed through power of attorney since property in question was a public endowment property and registered accordingly in the records of Municipal Corporation and as such, caused damage to endowment property.

5. It was further alleged that the petitioner was failed to follow due process as well as not taken note of legal opinion provided by advocate for department and failed to take note that any public endowment property cannot be transferred and that a proceedings that no permission was prior sought to sell was ignored and further that above referred order was passed without conducting a spot inspection, which led to an act contrary to provisions of Rule 3(1) of U.P. Government Servant Conduct Rules, 1956 which has caused lowering of prestige of department as well as a misconduct of nature of unbecoming of a government servant.

6. The petitioner has submitted a reply to above referred charge sheet on 12.01.2023 and explained legal and factual position so far as order of mutation is concerned that it was based on a registered sale deed which has not been challenged as well as was not set aside by any competent Court. It was also explained that mutation proceedings being summary in nature does not declare title of parties over property in dispute. Referred order was passed under a quasi-judicial proceedings.

7. The complainant has participated in the proceedings and once he has challenged the order of mutation before Competent Court, no charges are made out.

8. Some facts were also mentioned that earlier deity situated in the concerned house was transferred to Lucknow under an order of District Magistrate, Varanasi as well as that on basis of given facts, it was not a public endowment rather a private endowment property. Once deity was transferred, the property loses its endowment character. Required due procedure was followed before order on mutation application was passed. Complainant failed to prove any point to challenge the mutation proceedings.

9. Subsequently, the Inquiry Officer conducted inquiry and an inquiry report dated 10.04.2023 was submitted wherein all six charges were found to be proved. For reference, relevant part of the inquiry report on each charge is quoted below :-

“विश्लेषण- अपचारी अधिकारी श्री रामेश्वर दयाल पर लगाये गये आरोप, उसके पठनीय साक्ष्य तथा अपचारी अधिकारी द्वारा प्रस्तुत उत्तर एवं उसके समर्थन में दिये गये साक्ष्य के आलोक में विश्लेषण किया गया।

प्रथम आरोप में अपचारी अधिकारी को मुख्यतः यह आरोपित किया गया है कि भवन संख्या- 28/105 मोहल्ला- देवानाथपुरा दशाश्वमेघ, वाराणसी, जो कि देवोत्तर सम्पत्ति के रूप में नगर नगम वाराणसी के कर निर्धारण पंजिका में अंकित है, के सेवायत या मुख्तारे आम जिसे देवोत्तर सम्पत्ति को विक्रय करने का अधिकार प्राप्त नहीं है, के द्वारा किये गये त्रुटिपूर्ण बैनामे के आधार पर अपचारी अधिकारी द्वारा नियमों के विरुद्ध नामान्तरण आदेश दिनांक - 16.02.2022 पारित किया गया।

उक्त आरोप के सम्बन्ध में अपचारी अधिकारी ने अपने स्पष्टीकरण में यह कथन किया है कि तत्समय भवन सं० डी 28/105 नगर निगम कर निर्धारण पंजिका में ठाकुर राधाकृष्ण महादेव मूर्ति मालिक एवं बतौर सेवायत शोभा मुखर्जी पत्नी स्व० प्रद्योत कुमार मुखर्जी, प्रशान्त कुमार, सुशान्त कुमार गौतम पुत्रगण प्रद्योत कुमार मुखर्जी का नाम अंकित था। इन सभी भवन स्वामियों द्वारा भवन को पंजीकृत बैनामें द्वारा विक्रय किया गया है। तदनुसार ही अपचारी अधिकारी द्वारा पंजीकृत बैनामें के आधार पर नामान्तरण आदेश दिनांक 16.02.2022 पारित किया गया है। अपचारी अधिकारी का यह भी कथन है कि भवन सं०-डी 28/105 कभी सार्वजनिक देवोत्तर सम्पत्ति नहीं रही है बल्कि व्यक्तिगत देवोत्तर सम्पत्ति रही है। इसमें किसी बाहरी व्यक्ति को प्रवेश का अधिकार नहीं था बल्कि मकान मालिक द्वारा अपनी सुविधा के लिए दो अदद शिवलिंग व नन्दी स्थापित किये गये थे जिनकी पूजा अर्चना मकान मालिक के परिवार द्वारा ही की जाती रही है। रजिस्टर्ड बैनामें को जब तक सक्षम न्यायालय द्वारा त्रुटिपूर्ण घोषित नहीं कर दिया जाता, तब तक उसे त्रुटिपूर्ण माना जाना न्याय संगत नहीं है। जब प्रशासन से अनुमति प्राप्त करके उपरोक्त शिवलिंग व नन्दी को मकान मालिक लखनऊ उठा ले गये तो वह भवन देवोत्तर सम्पत्ति नहीं रही। रजिस्टर्ड बैनामा और कब्जे को देखते हुए टैक्स की वसूली के निमित्त नामान्तरण आदेश जारी किया गया है। किसी देवोत्तर सम्पत्ति को क्षति नहीं पहुंचाई गई है।

अपचारी अधिकारी का उक्त कथन तर्क संगत नहीं है क्योंकि अपचारी अधिकारी ने यह स्वीकार किया है कि प्रश्नगत भवन नगर निगम कर निर्धारण पंजिका में ठाकुर राधाकृष्ण महादेव मूर्ति मालिक एवं बतौर सेवायत शोभा मुखर्जी पत्नी स्व० प्रद्योत कुमार मुखर्जी, प्रशान्त कुमार, सुशान्त कुमार, गौतम पुत्रगण प्रद्योत कुमार मुखर्जी का नाम अंकित था। सेवायत या मुख्तारे आम को देवोत्तर सम्पत्ति को विक्रय करने अथवा अन्य प्रकार से किसी दूसरे व्यक्ति को अन्तरित करने का अधिकार प्राप्त नहीं था। ऐसे में यदि बिना अधिकार के उक्त सम्पत्ति का बैनामा किया गया था तो मात्र दस्तावेज पंजीकृत होने के आधार पर नामान्तरण आदेश पारित किया जाना उचित नहीं था। अपचारी अधिकारी ने यह कहा है कि जब प्रशासन से अनुमति प्राप्त करके उपरोक्त शिवलिंग व नन्दी को मकान मालिक लखनऊ उठा ले गये तो वह भवन देवोत्तर सम्पत्ति नहीं रही। वस्तुतः अपचारी अधिकारी का उक्त कथन तर्कसंगत नहीं है क्योंकि शिवलिंग व

नन्दी को अन्यत्र उठा ले जाने मात्र से प्रश्नगत देवोत्तर सम्पत्ति का स्वरूप स्वमेव परिवर्तित नहीं माना जा सकता है। दूसरी ओर आरोप के पठनीय साक्ष्य के रूप में नगर आयुक्त, नगर निगम, वाराणसी के पत्र दिनांक 06-08-2022 में वर्णित तथ्यों से यह स्पष्ट है कि उक्त मूर्तियों को स्थानान्तरित करने के बावजूद प्रश्नगत देवोत्तर सम्पत्ति का स्वरूप परिवर्तित नहीं हुआ है। इस प्रकार यह स्पष्ट है कि प्रश्नगत भवन (देवोत्तर सम्पत्ति) के सम्बन्ध में सेवायत या मुख्तारे आम द्वारा किये गये त्रुटिपूर्ण बैनामे के आधार पर अपचारी अधिकारी द्वारा पारित नामान्तरण आदेश दिनांक-16.02.2022 नियमों के विरुद्ध है। फलस्वरूप अपचारी अधिकारी द्वारा धारित पद का दुरुपयोग करने एवं देवोत्तर सम्पत्ति को क्षति पहुंचाने का आरोप प्रमाणित होता है।

उपरोक्तानुसार किये गये विश्लेषण एवं वर्णित तथ्यों के आधार पर अपचारी अधिकारी श्री रामेश्वर दयाल के विरुद्ध आरोप संख्या-1 प्रमाणित होता है।

विश्लेषण-

अपचारी अधिकारी श्री रामेश्वर दयाल पर लगाये गये आरोप, उसके पठनीय साक्ष्य तथा अपचारी अधिकारी द्वारा प्रस्तुत उत्तर एवं उसके समर्थन में दिये गये साक्ष्य के आलोक में विश्लेषण किया गया।

द्वितीय आरोप में अपचारी अधिकारी को मुख्यतः यह आरोपित किया गया है कि देवोत्तर सम्पत्ति के सम्बन्ध में सक्षम प्राधिकारी के अनुमति के पश्चात (मा० उच्च न्यायालय इलाहाबाद द्वारा रिट याचिका संख्या-56447/2003 श्यामल कुमार बनर्जी निर्मल रंजन मुखर्जी में मा० उच्च न्यायालय की अवधारणा एवं हिन्दू अप्राप्तवयता एवं संरक्षकता अधिनियम-1956 की धारा-8(2) अन्तर्गत हिन्दू देवता/मूर्ति के स्वामित्व की सम्पत्ति के अन्तरण के पूर्व सक्षम धारिता न्यायालय की अनुमति आवश्यक है) नामान्तरण किये जाने का प्रावधान है। उक्त का उल्लेख विधिक राय दिनांक-21-06-2021 में भी किया गया है। परन्तु अपचारी अधिकारी द्वारा उक्त प्रक्रिया/नियम को पूर्ण किये बिना आदेश दिनांक-16-02-2022 निर्गत किया गया, जो कि नियमों के विपरीत है। इस सम्बन्ध में अपचारी अधिकारी का यह कथन है कि व्यक्तिगत देवोत्तर सम्पत्ति पर उ०प्र० हिन्दू सार्वजनिक धार्मिक संस्था (सम्पत्ति अपव्यय निवारण) अधिनियम 1962 के प्रावधान व्यवहारिक व प्रभावी नहीं हैं। अस्तु व्यक्तिगत देवोत्तर सम्पत्ति पर नामान्तरण के लिए पूर्व अनुमति की आवश्यकता नहीं है। इसी प्रकार नगर निगम द्वारा नामान्तरण से किसी के मालिकाना हक पर कोई प्रभाव नहीं पड़ता है, बल्कि नामान्तरण मात्र टैक्स की वसूली के लिए किया जाता है। यदि अपचारी अधिकारी के उक्त कथन को मान लिया जाय कि प्रश्नगत भवन सार्वजनिक देवोत्तर सम्पत्ति न होकर व्यक्तिगत देवोत्तर सम्पत्ति रहा है तो भी उक्त देवोत्तर सम्पत्ति को सेवायत या मुख्तारे आम को विक्रय करने अथवा अन्य प्रकार से किसी दूसरे व्यक्ति को अन्तरित करने का अधिकार प्राप्त नहीं था। ऐसे में यदि बिना अधिकार के उक्त सम्पत्ति का बैनामा किया गया था तो मात्र दस्तावेज पंजीकृत होने के आधार पर नामान्तरण आदेश पारित नहीं किया जा सकता था। इस प्रकार अपचारी अधिकारी द्वारा पारित नामान्तरण

आदेश दिनांक 16-02-2022 नियम संगत नहीं है। इस परिप्रेक्ष्य में अपचारी कर्मचारी द्वारा उ०प्र० सरकारी कर्मचारी आचरण नियमावली, 1956 के नियम-3(1) का उल्लंघन किये जाने का आरोप प्रमाणित होता है।

उपरोक्तानुसार किये गये विश्लेषण एवं वर्णित तथ्यों के आधार पर अपचारी अधिकारी श्री रामेश्वर दयाल के विरुद्ध आरोप संख्या-2 प्रमाणित होता है।

विश्लेषण

अपचारी अधिकारी श्री रामेश्वर दयाल पर लगाये गये आरोप, उसके पठनीय साक्ष्य तथा अपचारी अधिकारी द्वारा प्रस्तुत उत्तर एवं उसके समर्थन में दिये गये साक्ष्य के आलोक में विश्लेषण किया गया।

तृतीय आरोप में अपचारी अधिकारी को मुख्यतः यह आरोपित किया गया है कि प्रकरण में प्रस्तुत विधिक राय दिनांक-21-06-2021 में उल्लिखित है कि उक्त देवोत्तर सम्पत्ति के विक्रय के बाबत फौजदारी मु.अ.स. 43/2018 अन्तर्गत मुकदमा सं०- 411/2018 आई.पी.सी. विचाराधीन है। साथ ही उल्लिखित है कि मु.स.-19/2016 उक्त सम्पत्ति के विक्रय की पूर्व अनुमति लिये जाने से सम्बन्धित है, जिसे निरस्त किये जाने हेतु वादी का प्रार्थना पत्र निस्तारित है। मुकदमे के परिप्रेक्ष्य में वादीगणों ने बगैर माननीय न्यायालय की अनुमति प्राप्त किये देवोत्तर सम्पत्ति को वसीयतनामे के विधिक प्रावधानों के विरुद्ध उक्त सम्पत्ति को निजी सम्पत्ति बताते हुए जरिये पंजीकृत विक्रय विलेख विक्रय कर दिया गया है, जो कि प्रथम दृष्टया विधि सम्मत नहीं है। अपचारी अधिकारी द्वारा प्रकरण में दिनांक-16-02-2022 को आदेश पारित किये जाने के पूर्व न तो उक्त मुकदमों के सम्बन्ध में और न ही इस सम्बन्ध में प्राप्त विधिक राय पर कोई विचार किया गया तथा प्रकरण में कोई स्थिति स्पष्ट किये बिना आदेश दिनांक-16-02-2022 निर्गत कर दिया गया, जो विभागीय प्रक्रिया के विपरीत मनमानेपन को प्रदर्शित करता है।

उक्त आरोप के सम्बन्ध में अपचारी अधिकारी का यह कथन है कि उनके द्वारा पारित किया गया आदेश विधिक राय दिनांक-21-06-2021 के अनुसार ही है। इस परिप्रेक्ष्य में अपचारी अधिकारी का कथन ग्राह्य नहीं है। प्रश्नगत प्रकरण में अपचारी अधिकारी द्वारा विधिक राय दिनांक-21-06-2021 के अन्तिम पैरा के सम्बन्ध में ध्यान आकृष्ट किया गया है, जिसमें यह उल्लिखित है कि न्यायालय में मुकदमें विचाराधीन रहने मात्र से नगर निगम के नामांकन की कार्यवाही बाधित नहीं होती है। नगर निगम स्वामित्व/स्वत्व का निर्धारण नहीं करता है। न्यायालय में मुकदमें विचाराधीन रहने मात्र से नगर निगम के नामांकन की कार्यवाही बाधित नहीं होती है। नगर निगम स्वामित्व/स्वत्व का निर्धारण नहीं करता है। नामांकन आवेदन का नियमानुसार निस्तारण आवश्यक है। अग्रेतर यह भी उल्लेख है कि उभय पक्षों की सुनवाई करते हुए प्रश्नगत स्थल का स्थलीय परीक्षण आख्या व दाखिल साक्ष्यों के बावत गुण दोष के आधार पर निस्तारण किया जाना विधि सम्मत है। वस्तुतः अपचारी अधिकारी द्वारा विधिक राय दिनांक 21-06-2021 का समग्र रूप से संज्ञान ही नहीं लिया गया है। उक्त विधिक राय के प्रथम बिन्दु में यह स्पष्ट उल्लेख

है कि भवन उपरोक्त पर ठाकुर राधा कृष्ण श्री महादेव मूर्ति मालिक, सेवायत श्रीमती शोभा मुखर्जी पत्नी स्व० प्रद्योत मुखर्जी, श्री प्रशान्त कुमार, सुशान्त कुमार, गौतम कुमार पुत्रगण स्व० प्रद्योत कुमार मुखर्जी का नाम नगर निगम अभिलेखों में दर्ज है। उक्त सेवायतों प्रशान्त कुमार मुखर्जी वगैरह ने भवन उपरोक्त को जरिये पंजीकृत विक्रय-विलेख रजिस्ट्रीकृत दिनांक 07-03-2018 निजी सम्पत्ति बताते हुये विक्रय कर दिया गया है। पत्रावली में संलग्न साक्ष्यों/अभिलेखों, नगर निगम रिकार्ड, आख्या, वाद-पत्र, वसीयतनामा, आपत्ति-पत्र वगैरह के अनुसार भवन उपरोक्त देवता को अर्पित देवोत्तर सम्पत्ति है और विक्रेतागण उक्त सम्पत्ति के सेवायत हैं। सामान्यतः सेवायतों को देवोत्तर सम्पत्ति विक्रय करने का अधिकार विधितः प्राप्त नहीं है। विधि की दृष्टि से सेवाईत/सेवायत शब्द उस व्यक्ति से अभिप्रेत है जिसके माध्यम से मूर्ति कार्य करती है, मूर्ति की सम्पत्ति का स्वामित्व देवता के पास होता है, क्योंकि हिन्दू विधि में मूर्ति को एक विधिक व्यक्ति माना गया है, जिसका प्रबन्धक व अभिभोग सेवायत के पास होता है और स्वामित्व देवता में निहित होता है। ऐसी सम्पत्ति का विक्रय द्वारा हस्तान्तरण प्रारम्भ से ही शून्य होता है। देवोत्तर सम्पत्ति के विलेख में उत्तराधिकार की शर्तें समर्पण का अंग होती हैं और एक बार देवी-देवता के पक्ष में सम्पत्ति का समर्पण कर दिये जाने पर वह सम्पत्ति अप्रतिसंहरणीय हो जाती है। सेवायत को यह भी अधिकार नहीं है कि वह मूर्ति की उपेक्षा कर अपने हित में सम्पत्ति का उपयोग करे। धनलाभ के लिए न तो मंदिर न तो मूर्ति और न ही सेवायती अधिकार का हस्तान्तरण विक्रय के रूप में किया जा सकता है। विशेष स्थितियों में विक्रय सक्षम न्यायालय की अनुमति से ही किया जा सकता है। प्रश्नगत देवोत्तर सम्पत्ति के विक्रय के बाबत फौजदारी मु०अ०सं० 43/2018 अन्तर्गत धारा-419, 420 व 406 आई०पी०सी० विचाराधीन है।

विधिक राय दिनांक 21-06-2021 के द्वितीय बिन्दु में यह उल्लेख है कि प्रकीर्ण वाद सं०-19/2016 प्रशान्त कुमार मुखर्जी वगैरह बनाम राज्य सरकार उपरोक्त सम्पत्ति को देवोत्तर सम्पत्ति और स्वयं को सेवायत बताते हुये वादीगणों प्रशान्त कुमार वगैरह द्वारा उक्त भवन के किरायेदार राम कुमार वगैरह जिन्हें वादीगणों ने उक्त भवन में स्थित देवी देवताओं की मूर्तियों का पूजा-पाठ करने वाला बताया है, को विक्रय करने की अनुमति हेतु जिला जज वाराणसी की अदालत में सम्पत्ति में स्थित देवी देवताओं का पूजा-पाठ, रख-रखाव, राग-भोग, श्रृंगार वगैरह की उचित व्यवस्था तथा उक्त देवोत्तर सम्पत्ति की सुरक्षा हेतु दाखिल किया गया तथा उक्त प्रकीर्ण वाद में माननीय उच्च न्यायालय, इलाहाबाद द्वारा श्यामल रंजन मुखर्जी बनाम निर्मल रंजन मुखर्जी "2007(6) ए०एल०जे०-778" में किये गये निर्देश का भी वाद-पत्र में आधार लिया गया कि देवोत्तर सम्पत्ति को विक्रय करने के पूर्व माननीय न्यायालय से अनुमति प्राप्त किया जाना आवश्यक है। किन्तु वादीगणों ने उक्त मुकदमे को बिना अनुमति प्राप्त किये स्वयं निरस्त करने का प्रार्थना-पत्र मय शपथ-पत्र दिनांकित 27-07-2016 इस आधार पर प्रस्तुत किया कि उपरोक्त देवोत्तर सम्पत्ति वसीयतनामे के विधिक प्रावधानों के अनुसार किसी गैर ब्राह्मण को अन्तरित नहीं किया जा सकता है। अतः उपरोक्त मुकदमे के परिप्रेक्ष्य में वादीगणों ने बगैर माननीय न्यायालय की अनुमति प्राप्त किये देवोत्तर

सम्पत्ति के वसीयतनामे के विधिक प्रावधानों के विरुद्ध उक्त सम्पत्ति को निजी सम्पत्ति बताते हुये जरिये पंजीकृत विक्रय विलेख विक्रय कर दिया है, जो प्रथमदृष्टया विधि सम्मत नहीं है।

इस प्रकार उक्त विधिक राय से यह स्पष्ट है कि मु०स०-19/2016 प्रश्नगत देवोत्तर सम्पत्ति के विक्रय की पूर्व अनुमति लिये जाने के सम्बन्ध में मा० न्यायालय में दाखिल किया गया था, परन्तु बाद में वादीगणों ने उक्त मुकदमे को बिना अनुमति प्राप्त किये स्वयं निरस्त करने का प्रार्थना-पत्र मय शपथ-पत्र दिनांकित 27-07-2016 इस आधार पर प्रस्तुत किया कि उपरोक्त देवोत्तर सम्पत्ति वसीयतनामे के विधिक प्रावधानों के अनुसार किसी गैर ब्राह्मण को अन्तरित नहीं किया जा सकता है। वादीगण का उक्त प्रार्थना-पत्र निस्तारित है। उक्त मुकदमे के परिप्रेक्ष्य में वादीगणों ने प्रश्नगत देवोत्तर सम्पत्ति के विक्रय की अनुमति प्राप्त नहीं किया, अपितु देवोत्तर सम्पत्ति के वसीयतनामे के विधिक प्रावधानों के विरुद्ध उक्त सम्पत्ति को निजी सम्पत्ति बताते हुए जरिये पंजीकृत विक्रय विलेख विक्रय कर दिया गया है, जो कि प्रथम दृष्टया विधि सम्मत प्रतीत नहीं होता है, क्योंकि सेवायतों को प्रश्नगत देवोत्तर सम्पत्ति को विक्रय करने का कोई अधिकार नहीं था। इससे यह भी स्पष्ट है कि अपचारी अधिकारी द्वारा प्रकरण में दिनांक 16-02-2022 को आदेश पारित किये जाने के पूर्व न तो उक्त मुकदमे के सम्बन्ध में और न ही इस सम्बन्ध में प्राप्त विधिक राय पर कोई विचार किया गया तथा प्रकरण में कोई स्थिति स्पष्ट किये बिना आदेश दिनांक 16-02-2022 निर्गत कर दिया गया, जो विभागीय प्रक्रिया के विपरीत मनमानेपन को प्रदर्शित करता है। फलस्वरूप अपचारी अधिकारी के प्रति उ०प्र० सरकारी कर्मचारी आचरण नियमावली, 1956 के नियम-3(1) का उल्लंघन किये जाने का आरोप प्रमाणित होता है।

उपरोक्तानुसार किये गये विश्लेषण एवं वर्णित तथ्यों के आधार पर अपचारी अधिकारी श्री रामेश्वर दयाल के विरुद्ध आरोप संख्या-3 प्रमाणित होता है।

विश्लेषण-

अपचारी अधिकारी श्री रामेश्वर दयाल पर लगाये गये आरोप, उसके पठनीय साक्ष्य तथा अपचारी अधिकारी द्वारा प्रस्तुत उत्तर एवं उसके समर्थन में दिये गये साक्ष्य के आलोक में विश्लेषण किया गया।

चतुर्थ आरोप में अपचारी अधिकारी को मुख्यतः यह आरोपित किया गया है कि अपचारी अधिकारी द्वारा निर्णय दिनांक - 16.2.2022 में जिलाधिकारी के पत्र संख्या - 4259/सी०टी०- 2018, दिनांक - 12.02.2018 का उल्लेख किया गया है। उक्त आदेश में देवोत्तर सम्पत्ति के विक्रय/नामान्तरण के सम्बन्ध में कोई अनुमति नहीं दी गयी है। साथ ही भवन देवोत्तर सम्पत्ति नहीं रहा, का कोई प्रमाण उपलब्ध नहीं है। परन्तु उक्त तथ्य पर विचार किये बिना आदेश दिनांक-16.02.2022 पारित किया जाना नियमों के विपरीत है।

उक्त आरोप के सम्बन्ध में अपचारी अधिकारी का यह कथन है कि श्री प्रशान्त कुमार मुखर्जी ने इस आशय का आवेदन पत्र दिया था कि प्रश्नगत भवन बहुत ही पुराना जर्जर है जो प्रार्थी का पुरतैनी सम्पत्ति है जिसमें शिवलिंग स्थापित है। प्रार्थी उक्त भवन में पूजा पाठ करने या उसमें निवास करने की स्थिति में नहीं है। प्रार्थी ने अपने अन्यत्र क्रय किये भवन (लखनऊ) ले जाकर उक्त देवतागणों को विस्थापित कर विधि विधान के साथ प्राण-प्रतिष्ठा करके पूजा पाठ करने की अनुमति मांगी। इस पर अपर नगर मजिस्ट्रेट (द्वितीय) व क्षेत्राधिकारी (दशाश्वमेध) से जांच कराके लखनऊ ले जाने की अनुमति जिलाधिकारी महोदय ने दी। तदनुसार पक्ष ने शिवलिंग व नन्दी की मूर्ति को ले जाकर लखनऊ अपने निवास स्थान पर स्थापित कर दिये। उक्त भवन अब देवोत्तर सम्पत्ति रही ही नहीं है। वसीयतनामा के पैरा 03 में यह व्यवस्था दी गयी है कि भवन जर्जर हो जाने की स्थिति में उसे बेच कर दूसरा भवन क्रय करके उसमें देवतागण को स्थापित कर विधि सम्मत तरीके से प्राण प्रतिष्ठा कर उनका वंशानुक्रम में सेवा पूजा राग भोग आदि बिना व्यवधान के करता रहे।

अपचारी अधिकारी का उक्त कथन तर्कसंगत न होने के कारण ग्राह्य किये जाने योग्य नहीं है। वस्तुतः नगर आयुक्त, नगर निगम, वाराणसी के पत्र दिनांक 06-08-2022 के प्रस्तर-5 में इस तथ्य का उल्लेख है कि जिलाधिकारी द्वारा प्रशान्त कुमार मुखर्जी को प्रेषित पत्र दिनांक 12-02-2018 में यह लिखा गया है कि "प्रशान्त कुमार मुखर्जी निवासी मकान नं०-डी० 28/105 को दोनों शिवलिंग / नन्दी महाराज की मूर्ति को लखनऊ अपने निवास स्थान पर ले जाने एवं विधि विधान से स्थापित कर पूजा-पाठ करने में कोई विधिक अड़चन प्रतीत नहीं होता।" परन्तु इस तथ्य का कोई साक्ष्य नहीं है कि क्या सभी देवता उक्त देवोत्तर सम्पत्ति से स्थानान्तरित किये गये हैं। इसके विपरीत मौके पर अभी भी भवन में देवता स्थापित हैं तथा वहाँ पूजा-अर्चना होती है। यह नगर निगम द्वारा कभी भी भवन जर्जर व खण्डहर भी घोषित नहीं है। प्रथम दृष्टया मकान नं०-डी० 28/105 की प्रास्थिति अभी भी देवोत्तर सम्पत्ति की ही है तथा यहाँ अभी भी पूजा अर्चना होती है। इस प्रकार इस भवन का जो विक्रय किया गया है वह वस्तुतः देवोत्तर सम्पत्ति का ही विक्रय है। नगर आयुक्त के उक्त पत्र के प्रस्तर-6 में यह भी उल्लेख है कि वर्तमान कर निर्धारण पंजिका में सोमा मुखर्जी आदि का नाम बतौर सेवायत दर्ज है। यदि किसी परिस्थिति में यहाँ से देवताओं को स्थानान्तरित भी कर दिया जाये तो इस सम्पत्ति पर स्वत्व हेतु पक्षों को वाद संस्थित कर इस आशय की घोषणा प्राप्त करनी होगी। इस प्रकार प्रश्नगत भवन को किसी भी दर्ज सेवायत को विक्रय का अधिकार प्राप्त नहीं है।

नगर आयुक्त, नगर निगम, वाराणसी के पत्र दिनांक 06-08-2022 में वर्णित तथ्यों से यह स्पष्ट है कि जिलाधिकारी, वाराणसी के पत्र दिनांक 12-02-2018 द्वारा प्रश्नगत देवोत्तर सम्पत्ति में स्थापित दोनों शिवलिंग / नन्दी महाराज की मूर्ति को प्रार्थी को लखनऊ अपने निवास स्थान पर ले जाने एवं विधि विधान से स्थापित कर पूजा-पाठ करने के सम्बन्ध में अनापत्ति व्यक्त करने के क्रम में उक्त मूर्तियों को स्थानान्तरित करने के बावजूद प्रश्नगत देवोत्तर सम्पत्ति का स्वरूप परिवर्तित नहीं हुआ है और अब भी उक्त देवोत्तर सम्पत्ति में देवता स्थापित हैं तथा यहाँ पूजा-अर्चना होती है। जिलाधिकारी वाराणसी के उक्त पत्र / आदेश में

देवोत्तर सम्पत्ति के विक्रय / नामान्तरण के सम्बन्ध में कोई अनुमति नहीं दी गयी है। सेवायत या मुख्तार आम को देवोत्तर सम्पत्ति को विक्रय करने अथवा अन्य प्रकार से किसी दूसरे व्यक्ति को अन्तरित करने का अधिकार प्राप्त नहीं था। परन्तु, उक्त तथ्यों पर विचार किये बिना अपचारी अधिकारी द्वारा आदेश दिनांक-16-02-2022 पारित किया जाना नियमों के विपरीत है। फलस्वरूप अपचारी अधिकारी के प्रति उ०प्र० सरकारी कर्मचारी आचरण नियमावली, 1956 के नियम-3(1) का उल्लंघन किये जाने का आरोप प्रमाणित होता है।

उपरोक्तानुसार किये गये विश्लेषण एवं वर्णित तथ्यों के आधार पर अपचारी अधिकारी श्री रामेश्वर दयाल के विरुद्ध आरोप संख्या-4 प्रमाणित होता है।

विश्लेषण-

अपचारी अधिकारी श्री रामेश्वर दयाल पर लगाये गये आरोप, उसके पठनीय साक्ष्य तथा अपचारी अधिकारी द्वारा प्रस्तुत उत्तर एवं उसके समर्थन में दिये गये साक्ष्य के आलोक में विश्लेषण किया गया।

आरोप संख्या-5 में अपचारी अधिकारी को मुख्यतः यह आरोपित किया गया है कि उनके द्वारा पत्रावली में दिनांक-23-12-2021 को उल्लिखित किया गया है कि प्रकरण में स्वयं निरीक्षण करने मौके पर जाऊँगा, अगली तिथि दिनांक-05-01-2022 नियत की जाती है। परन्तु स्थलीय निरीक्षण किये जाने का कोई उल्लेख नहीं है। साथ ही दिनांक-27-01-2022 को लिखा गया है कि आवेदन आपत्तिकर्ता अनुपस्थित है पत्रावली आदेश हेतु सुरक्षित की जाती है। बिना स्थलीय निरीक्षण के तथा पक्षों की अनुपस्थिति में वाद पत्रावली आदेश सुरक्षित किया जाना अपीलीय कार्यवाही में अनियमितता प्रदर्शित करता है।

उक्त आरोप के सम्बन्ध में अपचारी अधिकारी ने अपने स्पष्टीकरण में यह उल्लेख किया है कि चूँकि वह स्वयं प्रकरण की सुनवाई कर रहे थे, ऐसी स्थिति में अलग से निरीक्षण आख्या संलग्न करने का कोई औचित्य प्रतीत नहीं हुआ। उनके द्वारा स्वयं मौके का निरीक्षण किया गया जिसका पूर्णतया उल्लेख उनके द्वारा पारित आदेश दिनांक-16-02-2022 में दर्शित है। इस नामान्तरण के प्रकरण में जो भी आवेदन पत्र या आपत्ति पत्र प्राप्त हुये उसको दृष्टिगत रखते हुये सुनवाई का समुचित अवसर देते हुये विषय का निस्तारण किया गया है। अपचारी अधिकारी का उक्त कथन तर्क संगत न होने के कारण ग्राह्य किये जाने योग्य नहीं है। आरोप के पठनीय साक्ष्य के रूप में नगर आयुक्त नगर निगम, वाराणसी के पत्र दिनांक 06-08-2022 के प्रस्तर-7 में वर्णित तथ्यों से स्पष्ट होता है कि जोनल अधिकारी (अपचारी अधिकारी) ने दिनांक 23-12-2021 को लिखा कि प्रकरण में स्वयं निरीक्षण करने मौके पर जाऊँगा। अगली तिथि 05-01-2022 को नियत की जाती है। तत्पश्चात किसी भी दिन स्थलीय निरीक्षण किये जाने का कोई भी साक्ष्य नहीं है। दिनांक 27-01-2022 को लिखा गया कि आवेदक व आपत्तिकर्ता अनुपस्थित हैं, पत्रावली आदेश हेतु सुरक्षित की जाती है तथा दिनांक 16-02-2022 को अवैध अन्तरण के आधार पर नामान्तरण आदेश निर्गत कर देवोत्तर सम्पत्ति पर श्री मो० जावेद पुत्र हमीद अख्तर, आशा खातून पत्नी जावेद अख्तर, जमाल अख्तर पुत्र हमीद अख्तर व

इरन सबा पत्नी जमाल अख्तर का नाम अंकित किया गया। बिना स्थलीय निरीक्षण के तथा पक्षों की अनुपस्थिति में वाद पत्रावली आदेश में सुरक्षित करने का कोई औचित्य स्पष्ट नहीं होता है। वस्तुतः जोनल अधिकारी (अपचारी अधिकारी) से यह अपेक्षा थी कि वह प्रश्नगत सम्पत्ति का न केवल गहराई से स्थलीय निरीक्षण करते, अपितु निरीक्षण के सम्बन्ध में स्पॉट मेमो तैयार कर पत्रावली पर रखते, परन्तु उनके द्वारा ऐसा नहीं किया गया। जबकि, नगर आयुक्त, नगर निगम के पत्र दिनांक 06-08-2022 के प्रस्तर-5 में इस तथ्य का स्पष्ट उल्लेख है कि मौके पर अभी भी भवन में देवता स्थापित हैं तथा वहाँ पूजा-अर्चना होती है। इस प्रकार अपचारी अधिकारी द्वारा प्रक्रिया के अनुसरण में गंभीर अनियमितता बरती गयी है और पक्षकारों की अनुपस्थिति में, मनमाने तौर पर नामान्तरण आदेश पारित किया गया है। फलस्वरूप अपचारी अधिकारी के प्रति यह आरोप प्रमाणित होता है।

उपरोक्तानुसार किये गये विश्लेषण एवं वर्णित तथ्यों के आधार पर अपचारी अधिकारी श्री रामेश्वर दयाल के विरुद्ध आरोप संख्या-5 प्रमाणित होता है।

विश्लेषण-

अपचारी अधिकारी श्री रामेश्वर दयाल पर लगाये गये आरोप, उसके पठनीय साक्ष्य तथा अपचारी अधिकारी द्वारा प्रस्तुत उत्तर एवं उसके समर्थन में दिये गये साक्ष्य के आलोक में विश्लेषण किया गया।

आरोप संख्या-6 में अपचारी अधिकारी को मुख्यतः यह आरोपित किया गया है कि उनके द्वारा देवोत्तर सम्पत्ति को सक्षम स्तर से अनुमति के बिना एवं अनाधिकृत दस्तावेजों के आधार पर अपीलिय प्रक्रिया में अनियमितता करते हुए अविधिक नामान्तरण से मौके पर कानून व्यवस्था के भंग होने की आशंका है तथा इससे नगर निगम वाराणसी की छवि भी धूमिल हुई है।

उक्त आरोप के सम्बन्ध में अपचारी अधिकारी ने अपने स्पष्टीकरण में यह कथन किया है कि भवन सं० डी.28/105 कभी भी सार्वजनिक देवोत्तर सम्पत्ति नहीं रही है, बल्कि व्यक्तिगत देवोत्तर सम्पत्ति रही है। मकान मालिक स्वयं के पूजा पाठ के लिए उसमें शिवलिंग और नन्दी की मूर्ति स्थापित किये थे। भवन में मकान मालिक रहते थे और किरायेदार भी थे। भवन जर्जर हो जाने के कारण मकान मालिक जिलाधिकारी के आदेश दिनांक 12-02-2018 के अनुसार दोनों शिवलिंग और नन्दी की मूर्ति को लखनऊ अपने निवास स्थान पर ले गये। इस प्रकार उनके द्वारा पारित आदेश दिनांक-16-02-2022 विधिक सम्मत है, किसी सम्पत्ति को कोई क्षति नहीं पहुँचायी गई है। अपचारी अधिकारी का उक्त कथन तर्क संगत न होने के कारण ग्राह्य किये जाने योग्य नहीं है। आरोप के पठनीय साक्ष्य के रूप में नगर आयुक्त, नगर निगम, वाराणसी के पत्र दिनांक 06-08-2022 में वर्णित तथ्यों से यह स्पष्ट है कि जिलाधिकारी, वाराणसी के पत्र दिनांक 12-02-2018 द्वारा प्रश्नगत देवोत्तर सम्पत्ति में स्थापित दोनों शिवलिंग/नंदी महाराज की मूर्ति को प्रार्थी को लखनऊ अपने निवास स्थान पर ले जाने एवं विधि विधान से स्थापित कर पूजा-पाठ करने के सम्बन्ध में अनापत्ति व्यक्त करने के क्रम में उक्त मूर्तियों को स्थानान्तरित करने के बावजूद प्रश्नगत देवोत्तर सम्पत्ति का स्वरूप परिवर्तित नहीं हुआ है और अब भी उक्त देवोत्तर सम्पत्ति में देवता स्थापित हैं तथा वहाँ पूजा-अर्चना होती है।

जिलाधिकारी, वाराणसी के उक्त पत्र/आदेश में देवोत्तर सम्पत्ति के विक्रय/नामान्तरण के सम्बन्ध में कोई अनुमति नहीं दी गयी है। सेवायत या मुख्तारे आम को देवोत्तर सम्पत्ति को विक्रय करने अथवा अन्य प्रकार से किसी दूसरे व्यक्ति को अन्तरित करने का अधिकार प्राप्त नहीं था। परन्तु, उक्त तथ्यों पर विचार किये बिना अपचारी अधिकारी द्वारा अनाधिकृत दस्तावेज के आधार पर आदेश दिनांक-16-02-2022 पारित किया जाना नियमों के विपरीत है।

उक्त क्रम में यह भी उल्लेखनीय है कि विधिक राय दिनांक 21-06-2021 में वर्णित तथ्यों के अनुसार मु०स०-19/2016 प्रश्नगत देवोत्तर सम्पत्ति के विक्रय की पूर्व अनुमति लिये जाने के सम्बन्ध में मा० जिला जज के न्यायालय में दाखिल किया गया था, परन्तु बाद में वादीगणों ने उक्त मुकदमे को बिना अनुमति प्राप्त किये स्वयं निरस्त करने का प्रार्थना-पत्र मय शपथ-पत्र दिनांकित 27-07-2016 इस आधार पर प्रस्तुत किया कि उपरोक्त देवोत्तर सम्पत्ति वसीयतनामे के विधिक प्रावधानों के अनुसार किसी गैर ब्राह्मण को अन्तरित नहीं किया जा सकता है। वादीगण का उक्त प्रार्थना-पत्र निस्तारित है। उक्त मुकदमे के परिप्रेक्ष्य में वादीगणों ने प्रश्नगत देवोत्तर सम्पत्ति के विक्रय की अनुमति प्राप्त नहीं किया, अपितु देवोत्तर सम्पत्ति के वसीयतनामे के विधिक प्रावधानों के विरुद्ध उक्त सम्पत्ति को निजी सम्पत्ति बताते हुए जरिये पंजीकृत विक्रय विलेख विक्रय कर दिया गया है, जो कि प्रथम दृष्टया विधि सम्मत प्रतीत नहीं होता है, क्योंकि सेवायतों को प्रश्नगत देवोत्तर सम्पत्ति को विक्रय करने का कोई अधिकार नहीं था। इससे यह भी स्पष्ट है कि अपचारी अधिकारी द्वारा प्रकरण में दिनांक 16-02-2022 को आदेश पारित किये जाने के पूर्व न तो उक्त मुकदमे के सम्बन्ध में और न ही इस सम्बन्ध में प्राप्त विधिक राय पर कोई विचार किया गया। अपचारी अधिकारी द्वारा इस तथ्य पर भी विचार नहीं किया गया कि जब वादीगणों द्वारा प्रश्नगत देवोत्तर सम्पत्ति के विक्रय की अनुमति से सम्बन्धित वाद को बिना अनुमति प्राप्त किये स्वयं निरस्त करने का प्रार्थना-पत्र मय शपथ-पत्र इस आधार पर प्रस्तुत किया गया था कि उपरोक्त देवोत्तर सम्पत्ति वसीयतनामे के विधिक प्रावधानों के अनुसार किसी गैर ब्राह्मण को अन्तरित नहीं किया जा सकता है, तो पुनः उसी सम्पत्ति को गैर ब्राह्मण (दूसरे सम्प्रदाय के) श्री मो० जावेद को कैसे अन्तरित की जा सकती थी। प्रश्नगत देवोत्तर सम्पत्ति के सम्बन्ध में गैर ब्राह्मण (दूसरे सम्प्रदाय) को निष्पादित अनधिकृत दस्तावेज के आधार पर पारित अविधिक नामान्तरण आदेश से मौके पर कानून व्यवस्था के भंग होने की आशंका को बल मिलता है। फलस्वरूप अपचारी अधिकारी के प्रति उ०प्र० सरकारी कर्मचारी आचरण नियमावली, 1956 के नियम-3(1) का उल्लंघन किये जाने का आरोप प्रमाणित होता है।

उपरोक्तानुसार किये गये विश्लेषण एवं वर्णित तथ्यों के आधार पर अपचारी अधिकारी श्री रामेश्वर दयाल के विरुद्ध आरोप संख्या-6 प्रमाणित होता है।"

10. After inquiry report was served upon Disciplinary Authority, a show cause notice along with inquiry report was served upon the petitioner. The petitioner submitted reply on 02.06.2023 and finally, impugned order dated 16.11.2024/05.12.2024 was passed whereby on basis of proved

six charges, punishment of removal from service without any bar to subsequent employment was passed. Relevant part of order is quoted below :-

“6- विभाग का मत-

अपचारी अधिकारी के विरुद्ध विरचित आरोप, जांच अधिकारी की जांच आख्या, अपचारी अधिकारी के अभ्यावेदन के परीक्षण से यह स्पष्ट है कि जांच अधिकारी द्वारा प्रेषित जांच आख्या के प्रस्तर-2 में स्पष्ट रूप से यह कथन अंकित किया गया है कि अपचारी अधिकारी द्वारा साक्ष्यों सहित अपना लिखित स्पष्टीकरण दिनांक 16.01.2023 को प्रस्तुत किया गया है। उक्त स्पष्टीकरण में अपचारी अधिकारी द्वारा यह कथन किया गया है कि उन्हें इसके अतिरिक्त व्यक्तिगत रूप से और कुछ नहीं कहना है और न ही किसी साक्षी का बयान कराना है। उक्त से यह स्पष्ट है कि अपचारी अधिकारी को उनका पक्ष प्रस्तुत किये जाने हेतु जांच अधिकारी द्वारा पूर्ण अवसर दिया गया है। ऐसे में अपचारी अधिकारी के प्रत्यावेदन में उल्लिखित इस बिन्दु पर कि पुनः कोई जांच अधिकारी नामित किया जाय, का अवसर नहीं रह जाता है। चूँकि जांच अधिकारी द्वारा तथ्य सम्मत तथा समस्त बिन्दुओं पर गम्भीरतापूर्वक जांच की गयी है तथा अपचारी अधिकारी श्री रामेश्वर दयाल पर आरोप संख्या-1,2,3,4,5 तथा 6 सिद्ध पाये गये हैं।

7- अतएव अपचारी कार्मिक पर लगाये गये आरोपों, अपचारी कार्मिक द्वारा प्रस्तुत अभ्यावेदन तथा अपर आयुक्त (प्रशासन) वाराणसी मण्डल, वाराणसी की जांच आख्या दिनांक-10.04.2023 के परीक्षणोपरान्त श्री रामेश्वर दयाल, तत्कालीन कर निर्धारण अधिकारी/जोनल अधिकारी नगर निगम, वाराणसी सम्प्रति नगर निगम, मथुरा-वृन्दावन पर आरोप संख्या-1,2,3,4,5 तथा 6 जांच अधिकारी द्वारा सिद्ध पाया गया है तथा श्री दयाल अपने पदीय दायित्वों का सम्यक निर्वहन न करने के लिए दोषी हैं।

अतः श्री रामेश्वर दयाल, तत्कालीन कर निर्धारण अधिकारी/जोनल अधिकारी नगर निगम, वाराणसी सम्प्रति नगर निगम, मथुरा-वृन्दावन के विरुद्ध सम्यक विचारोपरान्त उ०प्र० सरकारी सेवक (अनुशासन एवं अपील) नियमावली, 1999 के नियम-3 में उल्लिखित दीर्घ शास्तियों के क्रम तीन के अनुसार सम्यक विचारोपरान्त निम्नवत दण्ड का विनिश्चय किया गया है:-

"(तीन) सेवा से हटाना जो भविष्य में नियोजन से निरहित नहीं करता हो"

8- उल्लेखनीय है कि श्री रामेश्वर दयाल, तत्कालीन कर निर्धारण अधिकारी/जोनल अधिकारी, नगर निगम, वाराणसी सम्प्रति नगर निगम, मथुरा-वृन्दावन के विरुद्ध शासन द्वारा अंतिम रूप से विनिश्चित किये गये दण्ड पर लोक सेवा आयोग, उ०प्र० की सहमति प्राप्त की गयी। आयोग द्वारा श्री रामेश्वर दयाल के विरुद्ध उ०प्र० सरकारी सेवक (अनुशासन एवं अपील) नियमावली 1999 के नियम-3 के अन्तर्गत की गयी कार्यवाही में शासन द्वारा प्रस्तावित दण्ड पर सहमति प्रदान की गयी है।

9- अतः उपर्युक्त वर्णित विस्तृत वस्तुस्थिति, अपचारी अधिकारी के विरुद्ध निर्गत आरोप पत्र, जाँच अधिकारी की जाँच आख्या, अपचारी अधिकारी के उत्तर/अभ्यावेदन, लोक सेवा आयोग की संस्तुति तथा

प्रकरण में उपलब्ध अन्य सुसंगत अभिलेखों पर सम्यक विचारोपरान्त श्री रामेश्वर दयाल, तत्कालीन कर निर्धारण अधिकारी/जोनल अधिकारी नगर निगम, वाराणसी सम्प्रति नगर निगम, मथुरा-वृन्दावन को उ०प्र० सरकारी सेवक (अनुशासन एवं अपील) नियमावली, 1999 के नियम-3 (तीन) के अन्तर्गत सेवा से पृथक करते हुए (जो भविष्य में नियोजन से निरहित नहीं करता हो) कार्यालय जाप संख्या-249536/2022 दिनांक 19.12.2022 के द्वारा संस्थित अनुशासनिक कार्यवाही एतद्वारा समाप्त की जाती है।"

11. Aforesaid order dated 05.12.2024 is under challenge before this Court.

12. Sri Ashok Khare, learned Senior Advocate assisted by Sri Arpit Agarwal, learned counsel for petitioner has vehemently challenged the impugned order, though, he has not denied that in certain circumstances, a disciplinary proceedings can be initiated against an officer on an order passed under capacity of quasi judicial proceedings, however, he further submitted that in order to initiate disciplinary proceedings, in such circumstances, it must be seen that order in question i.e. order passed on mutation application was passed in an irregular manner or any undue haste or apparently with a view to confer undue favour upon applicant.

13. Learned Senior Advocate also submitted that no oral hearing was provided during inquiry and as such inquiry report was an ex-parte report. The findings returned by Disciplinary Authority are perverse such as petitioner has conducted a spot inspection before order on application for mutation was passed and it was recorded in the impugned order also, still Disciplinary Authority proceeded on an assumption that petitioner has not sought any report during mutation proceedings.

14. Learned Senior Advocate further referred that District Magistrate vide its order dated 12.02.2018 has allowed to shift the deity situated to a house at Lucknow for better puja and as application for that was allowed. As such, it was a private endowment property and not a public endowment property.

15. Learned Senior Advocate has also referred a judgment passed by Division Bench of this Court in **Kaptan Singh vs. State of U.P. and another, 2014:AHC:95008-DB** that in case of disciplinary proceedings where major punishment can be awarded and if conducted without oral hearing, it could be held that due procedure was not followed.

16. Learned Senior Advocate lastly submitted that there was no charge or finding that petitioner has conferred any undue favour upon applicant by allowing the mutation application and that in a given set of circumstances and on basis of proved charge, major punishment i.e. dismissal from service is shockingly disproportionate.

17. Per contra, Sri M.C. Chaturvedi, learned Senior Advocate assisted by Sri A.K. Srivastava, learned counsel for respondents and Sri Saurabh, learned Standing Counsel have submitted that disciplinary proceedings were conducted in due process. The petitioner was granted ample opportunities to place his case. The petitioner was called for oral hearing, however, he has submitted his written reply as well as he has made an endorsement that he was satisfied with procedure adopted. The petitioner has allowed mutation application without adhering to due

process. He has not conducted any spot inspection as well as has not considered that in given circumstances, when property was of endowment, it could not be sold through power of attorney. The petitioner has failed to consider opinion given by the Government Advocate. No spot inspection was conducted. The punishment on proved charges were not shockingly disproportionate. The proceedings pending before Court was not taken note of.

18. I have considered above submissions and perused the records.

19. In given set of circumstances, petitioner has passed an order on mutation application wherein complainant was also a party as a quasi-judicial Authority. Law in regard to mutation proceedings is well settled that it is summary in nature. It does not declare any right, title of any property and during proceedings, in normal circumstances, registered sale deed can not be disputed specifically when no one has challenged the registered sale deed. An order passed under quasi-judicial proceedings could be challenged on a ground of illegality and only on a ground that an order is illegal would itself not become a ground to initiate disciplinary proceedings except when *Officer has acted in a manner as would reflect on his reputation of integrity or good faith or devotion to duty; if there is prima facie material to show recklessness or misconduct in the discharge of his duty; if acted in a manner which is unbecoming of a Government servant; if acted negligently or that he omitted the prescribed conditions which are essential for the exercise of the statutory powers; if acted in order to unduly favour a party; and if actuated by corrupt motive.*

20. So far as discussion of law in regard to summary proceedings of mutation, Court takes note of a judgment passed by Supreme Court in **Karam Singh vs. Amarjit Singh and others, 2025 INSC 1238** wherein it was reiterated that it is well settled that mutation entries do not confer title and they serve a fiscal purpose i.e. to realize tax from a person whose name is reflected in revenue records and for that Supreme Court has referred its earlier judgments passed in **Balwant Singh vs. Daulat Singh, (1997) 7 SCC 137** and **Suraj Bhan vs. Financial Commissioner, (2007) 6 SCC 186**. Relevant paragraphs of said order is quoted below :-

“16. In the instant case, the plaintiff instituted the suit by claiming title through succession to the estate of late Kartar Kaur. On the other hand, the defendants had set up a will alleged to have been executed by Kartar Kaur in their favour. Neither the plaint nor any document brought on record indicated that the will was probated or its validity was tested and upheld in regular civil proceedings inter-se parties. As far as mutation proceedings are concerned, it is well settled that mutation entries do not confer title. They serve a fiscal purpose, that is, to realize tax from the person whose name is recorded in the revenue records. Besides above, the plaint averments indicated that the mutation proceedings culminated in the year 2017 and the suit in question was instituted within three years thereafter.”

21. Now question remains whether petitioner while deciding application for mutation has committed misconduct so much as that disciplinary action be initiated which could culminate into a major punishment i.e. dismissal from service.

22. The respondents have not placed on record whether any statutory procedure is prescribed to decide an application for mutation so much as that it was blatantly disregarded by the petitioner,

while deciding an application for mutation. A reference that no spot inspection was conducted is denied specifically and there was a reference also in the order on mutation application though not very specific but refers that a spot inspection was conducted. Otherwise also, the provisions of law were placed before the Court that spot inspection was mandatory though it may be a case that spot inspection was conducted as a custom or as a precaution prior to a decision on a mutation application.

23. So far as a legal position whether the *Sevayat* can make a sale deed or not, there is not much quarrel to a legal position that it cannot be looked during mutation proceedings specifically when registered sale deed was not questioned by a complainant or by any other aggrieved person before competent Civil Court. A proceedings pending does not directly challenge the sale deed.

24. Another factor that whether property in question was a public endowment or private endowment, Court takes note that deity has already been shifted from Varanasi to Lucknow with the permission of District Magistrate, Varanasi, therefore, subsequent to said act, property in question might have lost a position of a public endowment, though Court is not entering much into this controversy since it was not an issue raised in this writ petition except referred in consideration of disciplinary proceedings and otherwise also, during mutation proceedings, such aspect might not look into when application was filed on a registered sale deed.

25. An order passed by quasi-judicial Authority can be challenged before appropriate forum and only on a ground that an order is illegal cannot itself become a ground for initiating disciplinary proceedings. There must be much more than and for that Court takes note of few paragraph of a recent judgment passed by Supreme Court in **Amresh Shrivastava vs. The State of Madhya Pradesh and others, 2025 INSC 417**, which are quoted below :-

“14. The facts as have been narrated above are not in dispute. Two aspects which need to be considered are:

(1) Whether the chargesheet issued to the Appellant by the Respondent-State would fall within the scope of observations that have been carved out by this Court in K.K. Dhawan case (supra)?

(2) Whether inordinate unexplained delay in issuance of the chargesheet (in this case 14 years) would in itself be a ground for quashing the chargesheet issued to the appellant?

15. As regards the first question in K.K. Dhawan case (supra), this Court carved out the following situations where the government is not precluded from taking disciplinary actions for violation of the Code of Conduct:-

“(i) Where the officer had acted in a manner as would reflect on his reputation for integrity or good faith or devotion to duty;

(ii) If there is prima facie material to show recklessness or misconduct in the discharge of his duty;

(iii) if he has acted in a manner which is unbecoming of a Government servant;

(iv) if he had acted negligently or that he omitted the prescribed conditions which are essential for the exercise of the statutory powers;

(v) if he had acted in order to unduly favour a party;

(vi) if he had been actuated by corrupt motive however, small the bribe may be because Lord Coke said long ago "though the bribe may be small, yet the fault is great."

After carving out the above exceptions, this Court proceeded to further observe that mere technical violations or the fact that an order is wrong, if not falling under the above enumerated instances, does not warrant disciplinary actions. It was further reiterated that each case depends on its facts, and absolute rules cannot be postulated. The above instances as referred and reproduced hereinabove, are thus only a guide and not meant to be mandatorily adhere to without exception.

16. In the present case, we are of the considered view that the charges alleged against the Appellant in the chargesheet fall under the category of a wrongful order, which does not appear to have been influenced by extraneous factors or any form of gratification. It appears that the order has been passed in good faith, without any indication of dishonesty. Furthermore, the facts outlined in the Show Cause Notice do not suggest any such impropriety. The power exercised by the Appellant in his capacity as a Tehsildar, while passing the order of Land Settlement Order, cannot be considered of a nature that would warrant disciplinary proceedings against him.

The decision relied upon by the Counsel for the Appellant as mentioned above, supports this view. Consequently, the first question is answered in favor of the Appellant."

26. In above background, Court takes note of charge sheet and order passed by Disciplinary Authority that there is no charge that order passed in mutation application was influenced by extraneous factor or with any form of corrupt motive and in case the order was passed in good faith without any indication of dishonesty, entire disciplinary proceedings can be quashed.

27. The disciplinary proceedings was proceeded on allegations that by allowing mutation application, the petitioner has caused loss to an endowment property and further petitioner has not followed prescribed procedure to make a spot inspection as it is being mentioned in inquiry proceedings that deity were still available at property in question and puja was going on.

28. Another factor is considered in disciplinary proceedings that Sevayat of deity cannot make a sale deed, however, an important legal aspect has been missed in disciplinary proceedings that during mutation proceedings, Authority concerned cannot go beyond the registered sale deed to question it so much as that whether vendor has power to execute the sale deed or not, since it would be a case where even without challenge to sale deed before a competent Court, sale deed was disputed which cannot be done in a mutation proceedings.

29. The petitioner has followed the due process and on basis of registered sale deed which has not been challenged anywhere has allowed application for mutation. There is no proof that order was suffered with extraneous consideration though it may be a case that some legal mistakes were committed and for that purpose, it can be challenged before higher Forum and that complainant has challenged the same, therefore, a legal error, if any, can be cured by higher forum. Therefore, Court also relies upon a judgment of Supreme Court in **Zunjarrao Bhikaji Nagarkar vs. Union of India, (1999) 7 SCC 409** that any error by quasi-judicial officer in a particular judgment/order

does not automatically imply misconduct or favoritism. The disciplinary action requires clear evidence of extraneous influence beyond legal mistake to avoid judicial independence and as referred above, in present case, in the entire disciplinary proceedings, there is no iota of evidence of extraneous influence. It may be a case that petitioner has not carefully passed order on a mutation application or committed any legal error, though at this stage, Court does not find that there was a legal error. Still Court leaves it upon Authority where order of mutation is under challenge.

30. In overall circumstances, Court finds that charges as levelled in charge sheet cannot be proved as there is no legal provision that petitioner being a Tax Officer is bound to follow a legal opinion of a Government Advocate or he was bound to conduct a spot inspection or to verify whether vendor was competent to execute a sale deed and also to verify any legal proceedings pending except sale deed rather Court finds that initiation of disciplinary proceedings was itself faulty, therefore, it is a case where even under a limited review jurisdiction, order passed by Disciplinary Authority can be interfered being a rare case.

31. In aforesaid circumstances, when in a case such as case in hand, where disciplinary proceedings were based on 'no evidence' and where a person of normal procedure cannot support outcome of proceedings, Court finds that there is no justification to record remand present matter for fresh consideration since very foundation of disciplinary proceedings and nature of changes are suffered with various legal infirmities and therefore a case of interference is also made out. It would be a futile exercise to remand the same. In regard, Court takes note of following two paragraphs of **Bhupinder Singh Gill vs. State of Punjab and others, 2025 INSC 83 :-**

“33. Certain generic principles governing interference with orders of punishment that are passed following inquiry proceedings have evolved over a period of time. Law is well settled that an administrative order punishing a delinquent employee is not ordinarily subject to correction in judicial review because the disciplinary authority is the sole judge of facts. If there is some legal evidence on which the findings can be based, then adequacy or even reliability of that evidence is not a matter for canvassing before the high court in a writ petition filed under Article 226 of the Constitution. However, should on consideration of the materials on record, the court be satisfied that there has been a violation of the principles of natural justice, or that the inquiry proceedings have been conducted contrary to statutory regulations prescribing the mode of such inquiry, or that the ultimate decision of the disciplinary authority is vitiated by considerations extraneous to the evidence and merits of the case, or that the conclusion of the disciplinary authority is ex facie arbitrary or capricious, so much so that no reasonable person could have arrived at such conclusion, or there is any other ground very similar to the above, the high court may in the exercise of its discretion interfere to set things right. After all, public servants to whom Article 311 of the Constitution apply do enjoy certain procedural safeguards, enforcement of which by the high court can legitimately be urged by such servants depending upon the extent of breach that is manifestly demonstrated.

35. It also needs to be emphasised that although the traditional concept of natural justice comprises of the two rules that prohibit anyone from being condemned unheard and anyone from being a judge of his own cause, jurisprudence on natural justice principles have seen a distinct shift ever since the decision in *Maneka Gandhi v. India*, (1978) 1 SCC 248 constitutionalised principles of natural justice, as held in *Madhayamam Broadcasting Ltd. v. Union of India* (2023) 13 SCC 401.

Drawing inspiration from such authorities, it would be apt to observe that in relation to disciplinary proceedings, subject to just exceptions, natural justice would envisage observance of procedural fairness before holding a public servant guilty of misconduct and imposing a punishment on him for such misconduct. While it is true that principles of natural justice supplement, and not supplant, the law, such principles have been declared by this Court to be a constituent feature of Article 14. Validity of any disciplinary action, whenever questioned, has to be tested on the touchstone of Articles 14, 16 and 21 as well as Article 311(2), wherever applicable. To test whether interference is warranted, this Court has laid down that the scrutiny ought to be confined to finding out whether the disciplinary proceedings have been conducted fairly; if not, an inference can be drawn that this has caused prejudice to the charged employee. Be that as it may, there can be no gainsaying that the consequences of violation of a fair procedure, which principles of natural justice embody, in a given situation has to be considered on a case-by-case basis bearing in mind that judicial review is not intended to be an appeal in disguise."

32. Accordingly, it is interfered and impugned order whereby petitioner was awarded major punishment is set aside and its legal consequence shall follow.

33. Writ petition is, accordingly, **allowed**.

(2026) 4 ILRA 711
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 13.04.2026

BEFORE

THE HON'BLE AMITABH KUMAR RAI, J.

Writ A No. 2497 of 2006

Kamla Kant Misra & Anr.

...Petitioners

Versus

C/M D.A.V. Inter College

...Respondent

Issue for Consideration

(1) Effect of non-compliance of the provisions of S. 18(8) of the Act, 1982 during the process of selection held for ad hoc appointment on the substantive vacancy.

(2) Permissibility to claim regularization under Section 33-G of the Act, 1982, when the initial appointment is itself illegal, being void ab initio.

Headnotes

(A) Service law – Regularization – Post of Lecturer – Ad hoc appointment on substantive vacancy – Claimed to be selected and appointed by the Committee of Management – Since no financial approval was granted, the petitioner filed writ petition, in which an interim order was granted – On the strength of interim order, the petitioners was working and drawing salary – During the course, regularization u/s 33-G of the Act, 1982 was claimed, which was rejected by the DIOS – Validity challenged – Neither the reference as required under S. 18(8) of the Act, 1982 was made nor sub-section (7) was complied with during the selection process – Effect: (E-1)

Held: The petitioners were appointed by the Committee of Management not following the provisions contained in Section 18 of the Act of 1982 as existing on the date of their appointment, inasmuch as they were not selected by the Selection Committee referred to in Sub-section (8) of Section 18, nor the vacancies were advertised following Sub-section (7). Thus, the ad-hoc appointment of the petitioners on the substantive vacancies was not as per the provisions contained in Section 18 of the Act of 1982. [Para 36]

Further held: When the initial appointment itself is void and bad in law, then no such direction can be given for regularization solely on the basis that the petitioners are continuously working on their posts since the date of their initial appointment – The petitioners cannot be extended the benefit of Section 33-G of the Act of 1982 as their initial appointment on ad-hoc basis was dehors the statutory provisions and illegal, being void ab initio. [Para 39 and 44(c)]

Case Law Cited

Radha Raizada vs. Committee of Management, V.D.G.I. College and others, 1994 (3) UPLBEC 1551 (FB); Daya Shankar Pandey vs. State of U.P. and Others, 2001 (1) UPLBEC 741; Jahaj Pal vs. District Inspector of Schools, 2019 SCC OnLine All 6998; Shesh Mani Shukla vs. District Inspector of Schools, Deoria, (2009) 15 SCC 436; Pramod Kumar vs. U P Secondary Education Services Commission, (2008) 7 SCC 153 – **referred to.**

List of Acts

U.P. Secondary Education Services Selection Board Act, 1982 – Ss. 16(1), 18, 33, 33-B, 33-G and 33-E; U.P. Secondary Education Act, 1921 – Section 16-E (11); UP Secondary Education Service Commission (Removal of Difficulties) Order, 1981; UP Secondary Education Service Commission (Removal of Difficulties) (Second) Order, 1981; U.P. Secondary Education Services Commission and Board Ordinance, 1981; U.P. Secondary Education Services Commission and Selection Boards (Amendment) Act, 1995.

List of Keywords

Sanctioned post, retirement, Intimation, Requisition, Process of selection, Interview, Approval, Ad hoc appointment, Interruption, Financial approval, Interim order, Payment of salary, Regularization, Absorption of surplus teachers, Contingencies, Recruitment, Substantive vacancy, Leave vacancy, Misconceived, Void, Bad in law, Cut-off dates, Illegal, Void ab initio, Continuously serving the institution.

Case Arising From

Impugned order dated 7.12.2005 passed by the opposite party no. 3 and the G.O. dated 3.11.1997 issued by the opposite party no. 2.

Appearances for Parties

Advs. for the Appellant: Anand Mani Tripathi (Sr. Adv.) Pandit Venktesh, Pankaj Bajpai, Pradeep Kumar Pandey, V.P. Pandey

Advs. for the Respondents: C.S.C.

(Delivered by Hon'ble Amitabh Kumar Rai, J.)

1. Heard Sri Anand Mani Tripathi, learned Senior Advocate, assisted by Sri Pandit Venktesh, learned counsel for the petitioners, and learned Standing Counsel for the State.

2. The instant writ petition has been filed seeking following reliefs :-

“(a) Issue a writ order or direction in the nature of certiorari quashing the impugned order dated 7.12.2005, contained in annexure no.31, passed by the opposite party no.3 and the G.O. dated 3.11.1997, issued by the opposite party no.2, contained in annexure no.33.

(b) Issue a writ, order or direction in the nature of mandamus commanding the opposite parties no.2 to 5 and specifically the opposite party no.3 to accord the approval to the posts and salaries of the petitioners w.e.f. 1.7.97 and to pay the petitioners their salaries along with their arrears of salaries from the aforesaid date till date along with all the admissible allowances and increments as and when they fall due for the posts of Lecturer (Geography) and Lecturer (Biology) in the college of the opposite party no.1.

(c) Issue a writ, order or direction in the nature of mandamus commanding the opposite party no.3 to give assent to the salaries of the petitioners deeming the appointments of the petitioners to be approved as per the provisions of clauses 2 (3)(iii) and 2(3)(iv) of the Removal of Difficulties (Second) Order, 1981 with an specific direction to the opposite parties no.2, 3, 4 and 5 to accord their approval to the salaries of the petitioners (specifically the opposite party no.3) and to release the same forthwith after treating the petitioners in continuous service w.e.f. 1.7.97 till date and to continue to pay the same to the petitioners in the form of their current salaries as and when it falls due along with all admissible allowances.

(d) Issue a writ, order or direction in the appropriate nature and manner declaring Section 18 and Section 33-E of the U.P. Secondary Education Services Selection Board Act, 1982 as ultra vires.

(e) Issue a writ, order or direction in the appropriate nature and manner declaring the provision regarding the validity of the appointments till the end of the academic session, envisaged under Section 16 E (11) of U.P. Secondary Education Act, 1921. "

3. The counsel for the petitioners, Sri Anand Mani Tripathi at the outset submits that he is not pressing the relief nos.(d) & (e) whereby vires of Section 18 and Section 33-E U.P. Secondary Education Services Selection Board Act, 1982 (hereinafter referred to as the "Act of 1982") as well as vires of Section 16 E (11) of the U.P. Secondary Education Act, 1921 (hereinafter referred to as "Act, 1921") have been challenged in the instant writ petition.

4. The brief facts, as per the narration in the memo of writ petition and as per the arguments advanced by learned counsel for the petitioners, are that two clear, vacant and sanctioned posts of Lecturer (Geography) and Lecturer (Biology) fell vacant in D.A.V. Inter College, Kanpur Nagar on the retirement of permanent incumbents on 30.06.1994. It is the case of the petitioners that after the retirement of permanent incumbents, namely, Sri Kripa Shanker Chowdhary and Sri Bisheshwar Prasad Srivastava, who were working on the posts of Lecturer (Geography) and Lecturer (Biology), respectively, the Committee of Management communicated the event of the vacancies to the District Inspector of Schools (in short, "D.I.O.S."), Kanpur Nagar through intimation/requisition dated 01.12.1994. A reminder was also sent by the Committee of Management of the College on 08.07.1996 and again on 15.03.1997, but no candidate was recommended by the D.I.O.S. for appointment on the aforesaid two vacant posts and as such, steps were taken by the Committee of Management of the College authorizing Manager to make selection for ad-hoc appointments. The Manager of the college, thereupon, initiate the process of selection through advertisement of the posts-in-question in two newspapers, namely, "Satya Samvad" and "Apna Abhiyan," in their issues dated 05.03.1997.

5. The petitioners, being duly qualified, having qualifications of M.A. Geography and M.Sc. Botany, respectively, applied in pursuance of the advertisement published in the newspapers on

05.03.1997 and they were called for interview along with other candidates, which was held on 21.06.1997. The petitioners were recommended on the basis of quality marks obtained in the interview for selection on the posts-in-question and thereupon the Committee of Management resolved in its meeting dated 26.06.1997 to appoint the petitioners on the posts of Lecturer (Geography) and Lecturer (Biology), respectively. Subsequently, the documents pertaining to the appointments were forwarded to the D.I.O.S., Kanpur Nagar for approval vide letter dated 26.06.1997 and the appointment letters dated 01.07.1997 were issued to the petitioners appointing them on the aforementioned posts. The appointment letters specifically provided that the appointment is an ad-hoc appointment which will continue till a regularly selected candidate joins.

6. It has been submitted that in furtherance of the appointment orders dated 01.07.1997, petitioners joined their respective posts on the same date i.e. 01.07.1997 and continued to work without any interruption, as no duly selected candidate for the aforesaid posts was sent by the U.P. Secondary Education Services Selection Board for appointment.

7. It is the case of the petitioners that despite repeated representations/reminders sent by the petitioners through Principal of the College, no financial approval was granted towards their salary for a long time. Lastly, the D.I.O.S., vide letter dated 07.12.2005, refused to grant financial approval for payment of salary to the petitioners on the ground that their appointments were in violation of the provisions contained in the Act of 1982, as the Committee of Management had no power to make such appointments. Feeling aggrieved, the petitioners filed the instant writ petition seeking the reliefs as indicated hereinabove.

8. Learned counsel for the petitioners has further contended that since the petitioners have been continuously working on their posts since 01.07.1997 and they are also getting salary in terms of the interim order dated 14.12.2005 passed by this Court in the instant writ petition, they are now entitled for regularization in terms of Section 33-G of the Act of 1982. It has further been submitted that the case of the petitioners for regularization under Section 33-G was rejected vide separate orders dated 15.02.2024 passed for petitioners nos. 1 and 2, rejecting their claim, against which both petitioners filed separate writ petitions, i.e., Writ A No. 7344 of 2024 (Kamla Kant Mishra vs. State of U.P. and 4 Others) and Writ A No. 7434 of 2024 (Shishir Krishna Sinha vs. State of U.P. and 4 Others) challenging their individual orders of rejection dated 15.02.2024.

9. During the pendency of aforesaid writ petitions, they also filed Writ A No. 19886 of 2024 (Kamla Kant Mishra vs. State of U.P. and 4 Others) and Writ A No. 19877 of 2024 (Shishir Krishna Sinha vs. State of U.P. and 4 Others) in which they prayed to reconsider their claim for regularization under Section 33-G of the Act of 1982 in terms of the judgment and order dated 30.09.2024 passed in Writ A No. 21492 of 2023 (Vinod Kumar Srivastava vs. State of U.P. and others).

10. It has been submitted by learned counsel for the petitioners that Writ A No. 7344 of 2024 and Writ A No. 19886 of 2024 filed by petitioner no.1 were connected and decided together vide judgment and order dated 19.12.2024, whereby Writ A No. 7344 of 2024 was allowed, quashing the rejection order dated 15.02.2024 and a direction was issued to reconsider the claim of petitioner no.1, i.e., Kamla Kant Mishra, for regularization in terms of the order dated 30.09.2024 passed in

the case of Vinod Kumar Srivastava (supra), whereas Writ A No.19886 of 2024 was dismissed as having rendered Infructuous.

11. Likewise, the Writ A No. 7434 of 2024 and Writ A No. 19877 of 2024 filed by petitioner no.2 were also connected and decided together vide judgment and order dated 19.12.2024, whereby Writ A No. 7434 of 2024 was allowed, quashing the rejection order dated 15.02.2024, and a direction was issued to reconsider the claim of petitioner no.2 for regularization in terms of the order dated 30.09.2024 passed in the case of Vinod Kumar Srivastava (supra), whereas Writ A No.19877 of 2024 was dismissed as having rendered Infructuous.

12. Subsequently, in compliance of the directions passed in the aforesaid writ petitions for petitioner nos.1 and 2, the case of the petitioners were considered for regularization and rejected vide separate orders dated 19.08.2025 on the ground that since the issue of validity of ad-hoc appointments of the petitioners is pending consideration in the instant writ petition, it is not possible at this stage to dwell into the question of regularization under Section 33-G of the Act of 1982.

13. On the other hand, a counter affidavit has been filed on behalf of respondent nos.2 to 5, in which it has been indicated that the communication regarding vacancies, as alleged by the petitioners, was not received in the office of the D.I.O.S. and the ad-hoc appointments of the petitioners were made against the statutory provisions, inasmuch as the procedure for notifying the vacancies, as laid down in the Full Bench judgment in *Radha Raizada case* [(1994) Vol. III U.P.LBEC 1551], was not followed by the Committee of Management, as the vacancies were not advertised in newspapers having adequate circulation in U.P.

14. It has further been alleged in the counter affidavit that the Secondary Education Service Commission (Removal of Difficulties) (Second) Order, 1981 (hereinafter referred to as "*Second Order*"), stood rescinded w.e.f. 25.01.1999 by U.P. Act No. 13 of 1999, by which Section 33-E was inserted. Thus, it has been argued that the claim of the petitioners cannot be sustained, as such rights were not saved upon repeal of the said Order. Reliance has been placed on the judgment passed in the case of *Daya Shankar Pandey vs. State of U.P. and Others* [(2001) Vol. I U.P.LBEC 741].

15. Thus, learned Standing Counsel has contended that since the initial appointment of the petitioners on ad-hoc basis is against the statutory provisions, the claim of the petitioners for regularization under Section 33-G of the Act of 1982 is misconceived and liable to be rejected.

16. It has been further submitted that the claim of the petitioners that they are working on the posts of Lecturer (Geography) and Lecturer (Biology), is also not correct in view of the fact that the Committee of Management of the College declared 37 teachers as surplus vide its letter dated 20.05.2006, in which the name of petitioner no. 1 finds place at serial no. 23 and the name of petitioner no. 2 finds place at serial no. 24. In furtherance of such declaration by the Committee of Management of the College; the Director of Education (Secondary), U.P., Lucknow, vide letter dated 24.02.2006, absorbed 15 teachers of the lecturer cadre and 22 teachers of L.T. Grade in other institutions. The petitioners, who were also declared surplus by the Committee of Management,

were not absorbed by the State Government in other colleges; hence, the claim of the petitioners that they are discharging the functions of their respective posts is factually incorrect. It has been further submitted that the aforesaid absorption of surplus teachers was carried out by the State Government in terms of the order dated 18.11.2005 passed in Civil Misc. Writ Petition No. 70709 of 2005 at Allahabad.

17. Be that as it may, the undisputed fact which emerges from the pleadings available on record of the instant writ petition as well as on the basis of arguments advanced by learned counsel for the parties, are that the petitioners were appointed on ad-hoc basis on the substantive vacancies which fell vacant on 30.06.1994 due to the retirement of Sri Kripa Shanker Chowdhary, who was working on the post of Lecturer (Geography) and Sri Bisheshwar Prasad Srivastava, who was working on the post of Lecturer (Biology).

18. The undisputed fact is also that the petitioners were appointed on ad-hoc basis by the Committee of Management and, as per their own version, the appointments were made under the provisions of the Second Order, under which the Committee of Management has the power to make such ad-hoc appointments.

19. In order to appreciate the arguments advanced by the parties, it is necessary to have a look at the statutory provisions regarding selection and appointment of teachers in Secondary Education Institutions, which were initially governed by the provisions contained in the Act, 1921. Subsequently, in order to bring uniformity and impartiality in the process of selection and appointment of teachers, the U.P. Secondary Education Services Commission and Board Ordinance, 1981 (hereinafter referred to as the "First Ordinance") was enacted, which was published in the U.P. Gazette (Extraordinary) dated 10.07.1981, which provided for the composition of a Commission, namely, the U.P. Secondary Education Services Commission, vide Section 3. It also provided for selection and recruitment of teachers for Secondary Education Institutions by the said Commission.

20. The term 'Institution' was defined in Section 2(e), which comprised all schools recognized under the Act, 1921, including institutions maintained by a local authority. Since the First Ordinance, which was given effect from 14.07.1981, could not be transformed into an Act, another Ordinance, i.e., U.P. Ordinance No. 23 of 1981 (*hereinafter referred to as the "Second Ordinance"*), was issued and it was also given effect from 14.07.1981 and the Second Ordinance also contained provisions similar to those in the First Ordinance. The Second Ordinance was published in the U.P. Gazette (Extraordinary) dated 27.10.1981.

21. The Second Ordinance was replaced by the Act of 1982, which received the assent of the President on 25.02.1982 and was published in the U.P. Gazette (Extraordinary) dated 26.02.1982 and it was given effect from 14.07.1981, except Section 21, which was left to be enforced on a date to be notified by the State Government.

22. Section 16(1) of the Act of 1982 provides that, subject to the provisions of Sections 18 and 33, every appointment of a teacher on or after 10.07.1981 shall be made on the recommendation of

the Commission/Board (as the case may be). Sub-section (2) of Section 16 declares that any appointment of a teacher made in contravention of Section 16(1) is void.

23. Section 18 permitted appointment of ad-hoc teachers. Section 18 was amended and substituted w.e.f. 14.07.1992, by U.P. Act No.24 of 1982 providing the contingencies of making ad-hoc appointment, the procedure for such ad-hoc appointments and the tenure of such ad-hoc appointments. The amended Section 18 provided for a Selection Committee for selection of candidates for ad-hoc appointments comprising of D.I.O.S. (Chairman), Basic Shiksha Adhikari, District Inspector of Girls' Schools and where there is no such Inspectors, the Principal of the Government Girls' Intermediate College and where there are more than one such college, the senior-most Principal of such colleges and where there is no such college, the Principal of the Government Girls' Intermediate College as nominated by the State Government.

24. Then, by the U.P. Secondary Education Services Commission and Selection Boards (Amendment) Act, 1995 (U.P. Act No. 15 of 1995), published in the U.P. Gazette (Extraordinary) dated 08.08.1995, which came into force on 28.12.1994, a number of amendments were made in the Act of 1982. Section 18 was substituted, which reads as under:

"18. Ad-hoc teachers. -(1) Where the Management has notified a vacancy to the Commission in accordance with sub-section (1) of section 10 and the post of a teacher actually remained vacant for more than two months, the Management may appoint by direct recruitment or promotion a teacher on purely ad-hoc basis, in the manner hereinafter provided in this section.

(2) A teacher other than a Principal or Headmaster, who is to be appointed by direct recruitment may be appointed on the recommendation of the Selection Committee referred to in sub-section (8).

(3) A teacher other than a Principal or Headmaster, who is to be appointed by promotion, may in the prescribed manner be appointed by promoting the seniormost teacher, possessing prescribed qualifications "

(a) in the trained graduate's grade, as a lecturer, in the case of a vacancy in the lecturer's grade;

(b) in the Certificate of Teaching grade, as teacher in the trained graduate's Grade, in the case of a vacancy in the Trained graduate's grade.

(4) A vacancy in the post of a Principal may be filled by promoting the senior most teacher in the lecturer's grade.

(5) A vacancy in the post of a Headmaster may be filled by promoting the senior most teacher in the trained graduate's grade.

(6) For the purposes of making appointments under sub-sections (2) and (3), the Management shall determine the number of vacancies, as also the number of vacancies to be reserved for the candidates belonging to the Scheduled Castes, the Scheduled Tribes and Other Backward Classes of citizen in accordance with the Uttar Pradesh Public Services (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1994 and, as soon as may be thereafter, intimate the vacancies to be filled by direct recruitment to the District Inspector of Schools and if the Management fails to intimate the vacancies and the post of a teacher has actually remained vacant for more than three months, the District Inspector of Schools may,

subject to such directions as may be issued by the Director and after verification from such institution or from his own record, determine such vacancies himself.

(7) The District Inspector of Schools shall, on receipt of intimation of vacancies or as the case may be, after determining the vacancies under sub-, section (6), forward the same to the Deputy Director of Education in charge of the Region, who shall invite applications from the persons possessing qualifications prescribed under the Intermediate Education Act, 1921 or the regulations made thereunder, for ad-hoc appointment to the post of teachers other than Principal or Head Master in such manner as may be prescribed.

(8) (a) For each region there shall be a Selection Committee for selection of candidates for ad-hoc appointment by direct recruitment comprising-

(i) Regional Deputy Director of Education;

(ii) Regional Deputy Director of Education (Secondary);

(iii) Regional Assistant Director of Education (Basic).

The Regional Deputy Director of Education who is senior shall be the Chairman.

(b) The Selection Committee constituted under Clause (a) shall make selection of the candidates, prepare a list of the selected candidates, allocate them to the Institutions and recommend their names to the Management for appointment under sub-section (2).

(c) The criteria and procedure for selection of candidates and the manner of preparation of list of selected candidates and their allocation to the Institution shall be such as may be prescribed.

(9) Every appointment of an ad-hoc teacher under sub-section (1) shall cease to have effect from the date when the candidate recommended by the Commission joins the post.

(10) The provisions of section 21-D shall mutatis mutandis apply to the teachers who are to be appointed under the provisions of this section.

(Emphasis supplied)

25. The Sub-section (1) of Section 18 as amended by U.P. Act No.15 of 1995 refers to Section 10 of Act of 1982 which provides procedure of selection by direct recruitment on vacancies existing or likely to fall vacant during the year of recruitment. Thus, the Section 18 as substituted by U.P. Act No.15 of 1995 only related to the ad-hoc appointments to be made on substantive vacancy. For short term vacancies, the Second Order continued to remain in force till it was rescinded w.e.f. 25.01.1999 by U.P. Secondary Education Services Selection Board (Amendment) Act, 1999 by which Section 33-E was inserted in Act of 1982.

26. Section 18 of the Act of 1982 was further amended vide U.P. Act No. 25 of 1998, published in the U.P. Gazette (Extraordinary) dated 27.07.1998.

27. For the sake of consideration with regard to the validity of appointment of the petitioners on ad-hoc basis, Section 18 as amended by U.P. Act No. 15 of 1995, which came into force w.e.f. 28.12.1994, is relevant, as it is the case of the petitioners that they were appointed by the Committee of Management on the substantive posts which fell vacant due to the retirement of two lecturers during the subsistence of the period when Section 18, as substituted by U.P. Act No. 15 of 1995, was in force w.e.f. 28.12.1994 till 20.04.1998, when U.P. Act No. 25 of 1998 came into force.

28. Section 18(2) of the Act of 1982, which stood at the time of appointment of the petitioners on ad-hoc basis, provides that a teacher, other than the Principal or Headmaster, who is to be appointed by direct recruitment, can be appointed only on the recommendation of the Selection Committee referred to in sub-section (8). The composition of the Selection Committee, as per sub-section (8), comprised of the Regional Deputy Director of Education, Regional Deputy Director of Education (Secondary) and Regional Assistant Director of Education (Basic).

29. It is not in dispute that the petitioners were appointed by the Committee of Management without any reference to the Selection Committee as referred to in sub-section (8) of Section 18 of the Act of 1982 nor the applications for ad-hoc appointment were invited as per provision contained in Sub-section (7) and hence, the ad-hoc appointment of the petitioners was in blatant violation of the statutory provisions.

30. The argument of learned counsel for the petitioners inasmuch as that the ad-hoc appointment of the petitioners was made under the Second Order is without any basis, as the ad-hoc appointment of the petitioners was made on the substantive vacancies arising due to retirement of the serving incumbents on the post of Lecturer (Geography) and Lecturer (Biology), and not on short-term vacancies.

31. In this regard it would be proper to examine the scope of Removal of Difficulties Orders issued by State Government from time to time under Section 33 of the Act of 1982. Section 33 of the Act of 1982 empowered the State Government to issue orders for removing difficulties, which reads as under:-

“33. Power to remove difficulties. - (1) The State Government may, for the purposes of removing any difficulty, by a notified order, direct that the provisions of this Ordinance shall during such period as may be specified in the order, have effect subject to such adaptations, whether by modification, addition or omission, as it may deem to be necessary or expedient:

Provided that no such order shall be made after two years from the date of promulgation of this Ordinance.

(2) Every order made under sub-section (1) shall be laid before both the Houses of State Legislature.

(3) No order under sub-section (1) shall be called in question in any Court on the ground that no difficulty as is referred to in sub-section (1) existed or required to be removed.”

32. After enactment of the First Ordinance, neither Commission nor Selection Board was constituted, nor did the Ordinance come to be replaced by an Act. Hence, the U.P. Secondary Education Services Commission (Removal of Difficulties) Order, 1981 (*hereinafter referred to as the "First Order"*) was notified vide notification dated 31.07.1981, exercising powers under Section 33 of the Act, 1982, which provided for making ad-hoc appointment by the management on the substantive vacancy as well as on leave vacancy. Subsequently, the State Government issued another Order, i.e. the Secondary Education Service Commission (Removal of Difficulties) (Second) Order, 1981, vide notification dated 11.09.1981, which is reproduced hereinbelow:-

“Whereas, the Uttar Pradesh Secondary Education Services Commission and Selection Boards Ordinance, 1981 (U.P. Ordinance No. 8 of 1981), was promulgated on July 10, 1981 with a view to establish a Secondary Education Services Commission and six or more Secondary Education Boards for selection of teachers in the institutions recognised under the Intermediate Education Act, 1921 (U.P. Act No. II of 1921);

And whereas, the establishment of the Commission and the Selection Boards is likely to take some time and even after the establishment of the said Commission and Boards, it may not be possible to make selection of the teachers for the first few months;

And whereas, a number of vacancies in the posts of teachers in various institutions recognised under the said Act exist and the failure or delay in filling up of such vacancies is likely to create difficulties;

And whereas, the filling up of certain short-term temporary vacancies caused by grant of leave to or on account of suspension of a teacher or otherwise, in accordance with the provisions of the Uttar Pradesh Secondary Education Services Commission (Removal of Difficulties) Order, 1981 is likely to delay the appointment of substitutes in such vacancies;

Now, therefore, in exercise of the powers under sub-section (1) of Section 33 of the Uttar Pradesh Secondary Education Services Commission and Selection Boards Ordinance, 1981 (U.P. Ordinance No. 8 of 1981), read with Section 21 of the U.P. General Clauses Act, 1904 (U.P. Act No. 1 of 1904), the Government is pleased to direct that the provisions of the said Ordinance shall have effect subject to the provisions of the following Order :

Short title and commencement. - (1) This Order may be called the Uttar Pradesh Secondary Education Services Commission (Removal of Difficulties) (Second) Order, 1981.

Procedure for filling up short term vacancies. - (1) If short term vacancy in the post of a teacher, caused by grant of leave to him or on account of his suspension duly approved by the District Inspector of Schools or otherwise, shall be filled by the Management of the institution, by promotion of the permanent senior most teacher of the institution, in the next lower grade. The Management shall immediately inform the District Inspector of Schools of such promotion along with the particulars of the teacher so promoted.

(2) Where any vacancy referred to in clause (1) cannot be filled by promotion, due to non-availability of a teacher in the next lower grade in the institution, possessing the prescribed minimum qualifications, it shall be filled by direct recruitment in the manner laid down in clause (3).

(3)(i) The management shall intimate the vacancies to the District Inspector of Schools and shall also immediately notify the same on the notice board of the institution, requiring the candidates to apply to the manager of the institution along with the particulars given in Appendix 'B' of this Order. The selection shall be made on the basis of quality point marks specified in the Appendix to the Uttar Pradesh Secondary Education Services Commission (Removal of Difficulties) Order, 1981, issued with Notification No. Ma-4993/XV - 7-1(79)-1981, dated July 31, 1982, hereinafter to be referred to as the First Removal of Difficulties Order 1981. The compilation of quality point marks shall be done under the personal supervision of the Head of Institution. ”

33. The inter-play and effect of provisions contained in the First and the Second Orders, in the context of provisions contained in Sections 16 and 18 of the Act of 1982, was considered by the Full Bench of this Court (Five Judges) in the case of **Jahaj Pal v. District Inspector of Schools, 2019 SCC OnLine All 6998**, and the relevant paragraphs 37 to 59 are as follows:-

"37. In order to bring uniformity, impartiality and objectivity in the process of selection and recruitment of teachers in Secondary Educational Institutions governed by Act, 1921, State Government issued a Radiogram on 07.04.1981 stopping all fresh selections and appointments of Principals etc. in all non-government aided schools. Validity of this Radiogram was considered by Supreme Court in Dr. Ramji Dwivedi vs. State of U.P. and others 1983 (3) SCC 52. Court held that power to issue such Radiogram had its source in Section 9(4) of Act, 1921. Once such direction was issued, Management had no power to make selection and appointment.

38. The aforesaid Radiogram followed by enactment of U.P. Secondary Education Services Commission and Selection Board Ordinance, 1981 (U.P. Ordinance No. 8 of 1981)(hereinafter referred to as "First Ordinance") published in U.P. Gazette (Extraordinary) dated 10.7.1981. It contemplated composition of a Commission, namely, U.P. Secondary Education Services Commission vide Section 3. It also provided for selection and recruitment of Teachers for Secondary Educational Institutions by the said Commission. The term 'Institution' was defined in Section 2(e) which comprised of all schools recognized under Act, 1921 including Institutions maintained by a local authority. It, however, excluded an 'Institution' maintained by State Government. Section 16 declares that any appointment made in violation of the provisions of First Ordinance would be void and reads as under:-

"16. Appointments to be made only on recommendations of the Commission or the Board. - (1) Notwithstanding anything to the contrary contained in the Intermediate Education Act, 1921 or the Regulations made thereunder –

(a) every appointment of a teacher specified in the scheduled shall, after the date of promulgation of this Ordinance, be made by the management only on the recommendation of the Commission;

(b) every appointment of a teacher (other than a teacher specified in the Schedule) shall, after the date of such promulgation, be made by the management only on the recommendation of the Board.

(2) Every appointment of a teacher, in contravention of the provisions of sub-section (1), shall be void." (emphasis added)

39. Section 3 contemplated establishment of a Commission while Section 12 contemplated establishment of Regional Selection Boards which may have jurisdiction over such local area as State Government may specify. It also permitted ad-hoc appointment of Teachers vide Section 18 where vacancy has been notified to Commission but no recommendation has been made within six months from the date of such notification. Sub-section (3) of Section 18, however, provided that every appointment of an ad-hoc Teacher under sub-section (1) or sub-section (2) of Section 18 shall cease to have effect from the earliest of the following dates:

(a) when the candidate recommended by Commission or the Board, as the case may be, joins the post;

(b) when the period of one month referred to in sub-section (4) of Section 11 expires;

(c) thirtieth day of June following the date of such ad-hoc appointment.

40. Section 32 provided that Act, 1921 and Regulations made thereunder, insofar as not consistent with First Ordinance or Rules or Regulations made thereunder, shall continue to be enforced for the purpose of selection, appointment, promotion, dismissal, removal, termination or reduction in rank of a Teacher.

41. Section 33 conferred power upon State Government to issue orders removing difficulties and read as under:-

"33. Power to remove difficulties. - (1) The State Government may, for the purposes of removing any difficulty, by a notified order, direct that the provisions of this Ordinance shall during such period as may be specified in the order, have effect subject to such adaptations, whether by modification, addition or omission, as it may deem to be necessary or expedient :

Provided that no such order shall be made after two years from the date of promulgation of this Ordinance.

(2) Every order made under sub-section (1) shall be laid before both the Houses of State Legislature.

(3) No order under sub-section (1) shall be called in question in any Court on the ground that no difficulty as is referred to in sub-section (1) existed or required to be removed." (emphasis added)

42. After enactment of First Ordinance, for more than six month, neither Commission or Selection Board was constituted nor Ordinance came to be replaced by Act. Since delay in selection and appointment of Teachers was causing grave loss to educational institutions and in particular, students in their studies, State Government intervened and issued a Removal of Difficulties Order i.e. U.P. Secondary Education Services Commission (Removal of Difficulties) Order, 1981 i.e. First Order, vide notification dated 31.07.1981. It clearly stated that there was likelihood to take some time in the establishment of Commission/ Selection Boards and even functioning thereof would take further time. Further, it is said that a number of vacancies of Teachers were existing and continuing in Educational Institutions and delay in filling all such vacancies may create difficulties, hence First Order is being issued.

43. Para 2 of First Order conferred power upon Management to make ad-hoc appointments and reads as under:-

"2. Vacancies in which ad-hoc appointment can be made. - The management of an institution may appoint by promotion or by direct recruitment a teacher on purely ad-hoc basis in accordance with the provisions of this Order in the following cases, namely :-

(a) in the case of a substantive vacancy existing on the date of commencement of this Order caused by death, retirement, resignation or otherwise;

(b) in the case of a leave vacancy, where the whole or unexpired portion of the leave is for a period exceeding two months on the date of such commencement;

(c) where a vacancy of the nature specified in clause (a) or clause (b) comes into existence within a period of two months subsequent to the date of such commencement." (emphasis added)

44. Para 3 talks of duration of ad-hoc appointments and reads as under:

"3. Duration of ad hoc appointments. - Every appointment of an ad-hoc teacher under Paragraph 2 shall cease to have effect from the earliest of the dates, namely:-

(a) when the candidate recommended by the Commission or the Board joins the post; or

(b) when the period of six months from the date of such ad- hoc appointment expires." (emphasis added)

45. Paras 4 and 5 lay down the procedure for ad-hoc appointments by promotion and direct recruitment and Para 6 deals with eligibility for such appointments. Paras 4 and 5, relevant for our purposes, are reproduced as under :

"4. Ad hoc appointment by promotion.-(1) Every vacancy in the post of the Head of an institution may be filled by promotion :

(a) in the case of an Intermediate College, by the senior most teacher of the institution in the lecturer's grade;

(b) in the case of a High School raised to the level of an Intermediate College, by the Headmaster of such High School;

(c) in the case of a Junior High School raised to the level of a High School, by the Headmaster of such junior High School.

(2) Every vacancy in the post of a teacher in Lecturer's grade may be filled by promotion by the senior most teacher of the Institution in the trained graduate (L.T.) grade.

(3) Every vacancy in the post of a teacher in the trained graduate (L.T.) grade shall be filled by promotion by the senior most teacher of the Institution in the trained undergraduate (C.T.) grade.

(4) Every vacancy in the post of teacher in the trained undergraduate (C.T.) grade shall be filled by promotion by the senior most teacher of the Institution in the J.T.C. grade or B.T.C. Grade.

Explanation.-For the purposes of clauses (1) to (4) of this paragraph the expression "senior most teacher" means the teacher having longest continuous service in the institution in the lecturer's grade or the trained graduate (L.T.) grade, or trained undergraduate (C.T.) grade or J.T.C. or B.T.C. Grade, as the case may be."

"5. Ad hoc appointment by direct recruitment. - (1) Where any vacancy cannot be filled by promotion under Paragraph 4, the same may be filled by direct recruitment in accordance with clauses (2) to (5).

(2) The management shall, as soon as may be, inform the District Inspector of Schools about the details of the vacancy and such Inspector shall invite applications from the local Employment Exchange and also through public advertisement in at least two newspapers having adequate circulation in Uttar Pradesh.

(3) Every application referred to in clause (2) shall be addressed to the District Inspector of Schools and shall be accompanied :

(a) by a crossed postal order worth ten rupees payable to such Inspector;

(b) by a self addressed envelope bearing postal stamp for purposes of registration.

(4) The District Inspector of Schools shall cause the best candidates selected on the basis of quality points specified in Appendix. The compilation of quality points may be done on remunerative basis by the retired Gazetted Government servants under the personal supervision of such Inspector.

(5) If more than one teacher of the same subject or category is to be recruited for more than one institution, the names of the selected teachers and the names of the institutions shall be arranged in Hindi alphabetical order. The candidate whose name appears on the top of the list shall be allotted to the institution the name whereof appears on the top of the list of the institution. This process shall be repeated till both the lists are exhausted.

Explanation.- In relation to an institution imparting instruction to women the expression "District Inspector of Schools" shall mean the "Regional Inspectors of Girls Schools". (emphasis added)

46. State Government issued another order i.e. U.P. Secondary Education Services Commission (Removal of Difficulties) Second Order, 1981 i.e. Second Order, vide notification dated 11.9.1981. Second Order firstly substituted para 2 of First Order and deleted Sub-clauses (b)

and (c), permitting ad-hoc appointment in leave vacancy. In fact, para 2 of First Order was substituted by virtue of para 5 of Second Order, as follows -:

"5. Substitution of Paragraph 2 of the (First) Removal of Difficulties Order, 1981. - In the First Removal of Difficulties Order, 1981, for Paragraph 2, the following paragraph shall be substituted, namely -

"2. The management of an institution may appoint by promotion or by direct recruitment, a teacher on purely ad-hoc basis in accordance with the provisions of this Order in case of a substantive vacancy caused by death, resignation or otherwise." (emphasis added)

47. Second Order separately deals with ad-hoc appointments to fill up short term vacancies. Para 2 of Second Order lays down procedure for filling up short term vacancies and reads as under:

"2. Procedure for filling up short term vacancies. - (1) If short term vacancy in the post of a teacher, caused by grant of leave to him or on account of his suspension duly approved by the District Inspector of Schools or otherwise, shall be filled by the Management of the institution, by promotion of the permanent senior most teacher of the institution, in the next lower grade. The Management shall immediately inform the District Inspector of Schools of such promotion along with the particulars of the teacher so promoted.

(2) Where any vacancy referred to in clause (1) cannot be filled by promotion, due to non-availability of a teacher in the next lower grade in the institution, possessing the prescribed minimum qualifications, it shall be filled by direct recruitment in the manner laid down in clause (3).

(3)(i) The management shall intimate the vacancies to the District Inspector of Schools and shall also immediately notify the same on the notice board of the institution, requiring the candidates to apply to the manager of the institution along with the particulars given in Appendix 'B' to this Order. The selection shall be made on the basis of quality point marks specified in the Appendix to the Uttar Pradesh Secondary Education Services Commission (Removal of Difficulties) Order, 1981, issued with Notification No. Ma-4993/XV-7-1(79)-1981, dated July 31, 1981, hereinafter to be referred to as the First Removal of Difficulties Order, 1981. The compilation of quality point marks shall be done under the personal supervision of the Head of Institution.

(ii) The names and particulars of the candidate selected and also of other candidates and the quality point marks allotted to them shall be forwarded by the manager to the District Inspector of Schools for his prior approval.

(iii) The District Inspector of Schools shall communicate his decision within seven days of the date of receipt of particulars by him failing which the Inspector will be deemed to have given his approval.

(iv) On receipt of the approval of the District Inspector of Schools or, as the case may be, on his failure to communicate his decision within seven days of the receipt of papers by him from the manager, the management shall appoint the selected candidate and an order of appointment shall be issued under the signature of the Manager.

Explanation.- For the purpose of this paragraph -

(i) the expression 'senior most' teacher means the teacher having longest continuous service in the institution in the Lecturer's grade or the Trained graduate (L.T.) grade, or Trained undergraduate (C.T.) grade or J.T.C. or B.T.C. grade, as the case may be;

(ii) in relation to institutions imparting instructions to women, the expression 'District Inspector of Schools' shall mean the 'Regional Inspectress of Girls Schools';

(iii) 'short term vacancy' means a vacancy which is not substantive and is of a limited duration." (emphasis added)

48. Para 3 of Second Order talks of duration of ad-hoc appointment made against short term vacancies and reads as under:-

"3. Duration of ad-hoc appointment. - Every appointment of a teacher under Paragraph 2 of this Order shall cease from the earliest of the following dates, namely :

(a) when the teacher, who was on leave or under suspension joins the post; or

(b) when the period of six months from the date of such ad-hoc appointment expires; or

(c) when the short-term vacancy otherwise ceases to exit."

(emphasis added)

49. Para 4 of Second Order provides that in respect of appointment of a Teacher in Para 2 of Second Order, it shall be subject to conditions laid down in Para 6 of First Order, which talks of "eligibility for appointment". In other words, even for ad-hoc appointment in a short term vacancy, same eligibility conditions were made applicable to ad-hoc appointment to be made in a substantive vacancy under First Order.

50. The Appendix of First Order providing process of quality point marks was also amended but for the purpose of issue in the present case, we are not concerned with the same, hence, escaping it.

51. Then comes U.P. Secondary Education Services Commission (Removal of Difficulties) (Third) Order, 1982 (hereinafter referred to as "Third Order") vide notification dated 30.1.1982. This Order made amendments in para 3 and 4 of First Order and para 3 of Second Order by para 2 and 3 which read as under:-

"2. Substitution of Paragraph 3 and amendment in Paragraph 4 of the U.P. Secondary Education Services Commission (Removal of Difficulties) Order, 1981. - In the Uttar Pradesh Secondary Education Services Commission (Removal of Difficulties) Order, 1981, issued vide Notification No. Ma-4993/XV-7 - 1(79)- 1981, Lucknow, dated July 31, 1981, -

(i) for paragraph 3, the following paragraph shall be substituted namely :

"3. Every appointment of an ad-hoc teacher under paragraph 2 shall cease to have effect when a candidate recommended by the Commission or the Board, as the case may be, joins the post."

(ii) in paragraph 4, for sub-clause (a) of clause (1), the following sub-clause shall be substituted, namely :

"(a) in the case of an Intermediate College, by the senior most teacher of the institution in the Lecturers' grade and in the case of a High School, by the senior most teacher of the institution in the Trained Graduate (L.T.) Grade;"

3. Amendment of Paragraph 3 of the U.P. Secondary Education Services Commission (Removal of Difficulties) (Second) Order, 1981. - In the Uttar Pradesh Secondary Education Services Commission (Removal of Difficulties) (Second) Order, 1981, in paragraph 3, clause (b) shall be omitted." (emphasis added)

52. Next is U.P. Secondary Education Services Commission (Removal of Difficulties) (Fourth) Order, 1982 (hereinafter referred to as "Fourth Order") vide notification dated 14.4.1982. This Order made amendment of paras 5 and 7 of First Order and not relevant for the

issues in question. However, Statement of Object and Reasons given in Fourth Order show that even till 14.4.1982, when Fourth Order was issued, Commission or Selection Boards were not established.

53. Then we move to U.P. Secondary Education Services Commission (Removal of Difficulties) (Fifth) Order 1982 (hereinafter referred to as "Fifth Order"), issued vide notification dated 13.7.1983. The aforesaid Order dealt with the appointments of Teachers in Schools/Colleges maintained by Zila Parishad through a Selection Committee to be constituted by Appointing Authority.

54. Last in chain is U.P. Secondary Education Service Commission (Removal of Difficulties) (Sixth) Order, 1983 (hereinafter referred to as "Sixth Order") vide notification dated 13.7.1983. It deals with the appointments in schools and colleges maintained by Nagar Maha Palika Parishad.

55. The provisions of First Ordinance except Section 21 were given effect from 14.7.1981. Since First Ordinance could not be transformed in an Act, hence, another Ordinance i.e. U.P. Ordinance No. 23 of 1981 (hereinafter referred to as "Second Ordinance") was issued. It was also given effect from 14.7.1981, except Section 21. The Second Ordinance also contained similar provisions as were in First Ordinance. Second Ordinance was published in U.P. Gazette (Extraordinary) dated 27.10.1981.

56. The Second Ordinance came to be replaced by Act, 1982 which received assent of President on 25.2.1982 published in U.P. Gazette (Extraordinary) dated 26.2.1982. It was given effect from 14.7.1981, except Section 21, which was left to be enforced on a date to be notified by State Government.

57. Section 16 of Act, 1982 provided that subject to the provisions of Section 18 and 33, every appointment of a Teacher, on or after 10.7.1981, shall be made on the recommendation of Commission/Board (as the case may be). Sub-section 2 of Section 16 declares appointment of a Teacher, made in contravention of Section 16(1), void. Section 18 permitted appointment of ad-hoc Teacher which is similar to Section 18 of First and Second Ordinance. Section 33 of Act, 1982 conferred power upon State Government to notify orders to remove difficulties for implementation of Act, 1982. Second Ordinance was repealed vide Section 36 of Act, 1982 but acts done or actions taken under both Ordinances, were preserved and it was declared that same shall be deemed to have been done or taken under Act, 1982. Relevant Sections 16, 18, 33, and 36 of Act, 1982 as initially existed are reproduced as under:

"16. Appointments to be made only on recommendations of the Commission or the Board.- (1) Notwithstanding anything to the contrary contained in the Intermediate Education Act, 1921 or the Regulations made thereunder but subject to the provisions of Sections 18 and 33-

(a) every appointment of a teacher specified in the Schedule shall, on or after July 10, 1981, be made by the management only on the recommendation of the Commission ;

(b) every appointment of a teacher (other than a teacher specified in the Schedule) shall, on or after July 10, 1981, be made by the management only on the recommendation of the Board:

Provided that in respect of retrenched employees, the provisions of Section 16-EE of the Intermediate Education Act, 1921, shall apply with the modification that in sub-section (2) of the aforesaid section, for the words 'six months' the words 'two years' shall be deemed to have been substituted.

(2) Every appointment of a teacher, in contravention of the provisions of sub-section (1), shall be void."

"18. *Ad hoc Teachers.*-(1) *Where the management has notified a vacancy to the Commission in accordance with the provisions of this Act, and-*

(a) *the Commission has failed to recommend the name of any suitable candidate for being appointed as a teacher specified in the Schedule within one year from the date of such notification; or*

(b) *the post of such teacher has actually remained vacant for more than two months, then, the management may appoint, by direct recruitment or promotion, a teacher on purely ad hoc basis from amongst the persons possessing qualifications prescribed under the Intermediate Education Act, 1921 or the regulations made thereunder*

(2) *The provision of sub-section (1) shall also apply to the appointment of a teacher (other than a teacher specified in the Schedule) on ad hoc basis with the substitution of the expression 'Board' for the expression "Commission".*

(3) *Every appointment of an ad hoc teacher under sub-section (1) or sub-section (2) shall cease to have effect from the earliest of the following dates, namely-*

(a) *when the candidate recommended by the Commission or the Board, as the case may be, joins the post;*

(b) *when the period of one month referred to in sub-section (4) of Section 11 expires;*

(c) *thirtieth day of June following the date of such ad hoc appointment.*

"33. *Power to remove difficulties.*-(1) *The State Government may, for the purposes of removing any difficulty, by a notified order, direct that the provisions of this Act shall, during such period as may be specified in the order, have effect subject to such adaptations, whether by way of modification, addition or omission, as it may deem to be necessary or expedient:*

Provided that no such order shall be made after two years from the date of commencement of this Act.

(2) *Every order made under sub-section (1) shall be laid before both the Houses of State Legislature.*

(3) *No order under sub-section (1) shall be called in question in any court on the ground that no difficulty as is referred to in sub-section (1) existed or required to be removed."*

"36. *Repeal and savings.*-- (1) *The Uttar Pradesh Secondary Education Services Commission and Selection Boards (Second) Ordinance, 1981 (U.P. Ordinance No. 23 of 1981, is hereby repealed.*

(2) *Notwithstanding such repeal, anything done or any action taken under the Ordinance referred to in sub-section (1) or the Uttar Pradesh Secondary Education Services Commission and Selection Boards Ordinance, 1981 (U.P. Ordinance No. 8 of 1981), shall be deemed to have been done or taken under this Act, as if this Act were in force at all material times."* (emphasis added)

58. *Section 18, a substantive provision permitting ad hoc appointments, in certain contingencies, also provided tenure of such ad hoc appointments. However, to some extent, the aforesaid tenure was not identical as that was provided in First and Second Order and difference in three may be summarized in the form of chart as under:*

<i>Tenure under section 18</i>	<i>Tenure under First Order</i>	<i>Tenure under Second Order</i>
<i>Upto 13.7.1992</i>	<i>(A) From 31.7.1981 to 10.9.1981</i>	<i>(A) From 11.9.1981 to 30.1.1982</i>
<i>(i) When candidate recommended by Commission/Board joins the post.</i>	<i>(i) When candidate recommended by Commission/Board Joins the post.</i>	<i>(i) When the teacher on leave or under suspension joins the post.</i>

(ii) One month period referred to in section 11(4) expires.	(ii) Six months period from the date of ad hoc appointment expires	(ii) When six months period from the date of ad hoc appointment expires.
(iii) 30th June following the date of ad hoc ap-ointment	(B) From 11.9.1981 to 29.1.1982	(iii) When short term va-cancy otherwise ceases to exist.
	(i) Above tenure was confined to ad hoc ap-ointment against sub-stantive vacancies.	(B) From 31.1.1982 to 24.1.1999
w.e.f. 14.7.1992 (i) When candidate rec-ommended by Commission/Board joins.	(C) From 30.1.1982 to 13.7.1992	(i) When the teacher who was on leave or under suspension joins the post.
	(i) Candidate recom-mended by Commission/Board joins the post.	(ii) When short term va-cancy otherwise ceases to exist.

59. The tenure of ad hoc appointment as provided under Section 18 enacted in Act, 1982 initially remained shadowed by the tenure provided in First and Second Order by virtue of Section 33 read with Section 36 but when Section 18 itself was amended and substituted w.e.f. 14.07.1992 providing the contingencies of making substantive appointment the procedure for such appointment and tenure as also the otherwise provisions of Removal of Difficulties Orders ceased. Therefore, after Section 18 as amended and substituted w.e.f. 14.07.1992, virtually the provisions of First Order got substituted and thereafter ad hoc appointment against substantive vacancies had to be made as per Section 18 of Act, 1982. Somewhat similar condition continued after substitution of Section 18 w.e.f. 28.12.1994. However, in respect of short term vacancies, Second Order continued to remain in force till it was rescinded w.e.f. 25.01.1999. "

(emphasis supplied)

34. The Full Bench in the case of **Jahaj Pal (supra)** after examining the provisions of Removal of Difficulties Order vis-a-vis Section 18 of the Act of 1982 concluded that after 14.07.1992, the ad-hoc appointment against substantive vacancies can only be made as per Section 18 of the Act of 1982.

35. Section 18 substituted w.e.f. 28.12.1994 vide U.P. Act No. 15 of 1995 remained in force till it was further substituted/amended by U.P. Act No. 25 of 1998, which came into effect on 20.04.1998.

36. The amendment made by U.P. Act No. 25 of 1998 w.e.f. 20.04.1998 is not relevant in the present case, inasmuch as the petitioners were appointed between the period 28.12.1984 and 20.04.1998. The admitted position is that ad-hoc appointment of the petitioners on the post of Lecturer (Geography) and Lecturer (Biology) was made on substantive vacancies and, as such, should be in conformity with the provisions contained in Section 18 of the Act of 1982 as existing on the date of their ad-hoc appointment. It is an undisputed case of the petitioners that they were appointed by the Committee of Management not following the provisions contained in Section 18 of the Act of 1982 as existing on the date of their appointment, inasmuch as they were not selected by the Selection Committee referred to in sub-section (8) of Section 18, nor the vacancies were advertised following Sub-section (7). Thus, the ad-hoc appointment of the petitioners on the

substantive vacancies was not as per the provisions contained in Section 18 of the Act of 1982 (as existing on the date of their appointment); hence, the ad-hoc appointment of the petitioners was illegal and void ab initio.

37. The Hon'ble Supreme Court, in the case of ***Shesh Mani Shukla Vs District Inspector of Schools, Deoria (2009 15 SCC 436)***, while dealing with the claim of a person whose appointment was not in accordance with the provisions of the First Order, held as hereunder:-

"19. It is true that the appellant has worked for a long time. His appointment, however, being in contravention of the statutory provision was illegal, and thus, void ab initio. If his appointment has not been granted approval by the statutory authority, no exception can be taken only because the appellant had worked for a long time. The same by itself, in our opinion, cannot form the basis for obtaining a writ of or in the nature of mandamus; as it is well known that for the said purpose, the writ petitioner must establish a legal right in himself and a corresponding legal duty in the State. (See Food Corpn. of India v. Ashish Kumar Ganguly, (2009) 7 SCC 734. Sympathy or sentiments alone, it is well settled, cannot form the basis for issuing a writ of or in the nature of mandamus. (See State of M.P. v. Sanjay Kumar Pathak, (2008) 1 SCC 456)I."

38. A similar view has been adopted by the Supreme Court in ***Pramod Kumar Vs U P Secondary Education Services Commission : (2008) 7 SCC 153***, where it has been held that:

"18. ...An appointment which is contrary to the statute/statutory rules would be void in law. An illegality cannot be regularized, particularly, when the statute in no unmistakable term says so. Only an irregularity can be. [See Secy., State of Karnataka v. Umadevi (3), (2006) 4 SCC 1, National Fertilizers Ltd. v. Somvir Singh (2006) 5 SCC 493 and Post Master General, Kolkata v. Tutu Das (Dutta), (2007) 5 SCC 317.]"

39. The argument of the counsel for the petitioners that the petitioners are working continuously since their appointment, i.e., on 01.07.1997, and they are also getting salary in terms of the interim order dated 14.12.2005 passed in the instant writ petition, and hence, they are entitled for regularization under Section 33-G of the Act of 1982, is also misconceived, inasmuch as when the initial appointment itself is void and bad in law, then no such direction can be given for regularization solely on the basis that the petitioners are continuously working on their posts since the date of their initial appointment (though the respondents have denied their continuous working in view of the fact that the Committee of Management has declared them as surplus and the State Government has not absorbed them).

40. Learned counsel for the petitioners has laid much emphasis on the fact that the petitioners fulfill the conditions mentioned in Section 33-G of the Act of 1982 for consideration of regularization and that they have been continuously serving the institution from the date of such appointment and, as such, deserve to be given substantive appointment. In this regard, it would be appropriate to refer to paragraphs 173 to 177 of the judgment passed by the Full Bench in the case of ***Jahaj Pal (supra)***, which read as under:-

"173. The argument in fact ask to ignore a blatant breach of law that the beneficiaries of such breach should be given benefit. The mere fact of continuing in service ignoring statutory provision is of no legal consequence. None can claim a benefit arising from an illegality which continued to be flouted by them. In the cases where continuance was on account of interim orders passed by Court, argument suggests that the principle of *Actus Curiae Neminem Gravabit* should be ignored and an interim order of Court should be read as if it has conferred different right upon the beneficiary though ultimately his continuance was found erroneous and illegal and contrary to statutory provision contained in Para 3 of Second Order. We have no hesitation in rejecting this submission.

174. We find that term "continuously serving the Institution from the date of such appointment up to the date of commencement" in Section 33-B(1)(c) cannot be read as an illegal continuance or continuance pursuant to a judicial order which subsequently merges with final order where termination from the initial date when it was stayed, is found to be valid. In fact, we find answer to this aspect in Supreme Court decision in *Committee of Management, Arya Nagar Inter College, Arya Nagar, Kanpur through its Manager and another Vs. Sree Kumar Tiwary and another* (1997) 4 SCC 388. Therein, in a short-term vacancy, Sree Kumar Tiwary was appointed as *ad hoc* teacher on 01.07.1986. Short-term vacancy caused due to promotion of incumbent concerned on *ad hoc* basis to the next higher post. The said teacher, who was promoted on *ad hoc* basis, retired on 30.06.1988, therefore, in view of Para 3 of Second Order, Sree Kumar Tiwari, who was appointed on *ad hoc* basis in a short term vacancy, ceased, and came to be terminated. He challenged termination in writ petition before this Court wherein an interim order was passed. Subsequently, writ petition was dismissed but, in the meantime, giving benefit of Section 33-B(1)(a)(i) of Act, 1982, Sree Kumar Tiwari, who was continuing on the basis of interim order, was regularized. The question arose before Apex Court whether, as contemplated in Section 33-B(1)(a)(i)(c), allowing condition that incumbent must have continued to serve the Institution from the date of *ad hoc* appointment till the date Section 33-B came into force i.e. 07.08.1998. Supreme Court held that Sree Kumar Tiwari had continued by virtue of stay order and not by virtue of his own right under an order of appointment. Court held that continuation on the basis of interim order will not help Sree Kumar Tiwari and in view of Para 3 of Second Order, since he stood terminated on 30.06.1988 when short-term vacancy was converted into substantive vacancy, he was not entitled to claim benefit of Section 33-B, which was not in existence on that day, but, came to be enforced on 07.08.1993. The above decision makes it clear that requirement of "continuously serving the Institution on the date of commencement of Section 33-B" does not refer to illegal continuance or founded on some judicial order but must be by virtue of own right of incumbent concerned and a valid continuation.

175. Even otherwise, no interpretation of statutory provision can be made, which may encourage blatant breach of statute. When a person is bound to cease to continue as *ad-hoc* appointee, if any condition under Para 3 of Second Order is attracted, he could not have validly continued thereafter, at all. His legal termination comes into effect by operation of law. A declaration has been made in statutory provision about cessation and that has to be given effect to if rule of law has to prevail.

176. Sometimes, in a litigation initiated by a person who faces cessation of *ad-hoc* appointment under such statutory provision, an interim order is passed, the test would be whether date on which the incumbent ceased, was valid or not. If cessation was valid and final relief of declaring such cessation to be illegal cannot be granted, then the mere fact that such incumbent

has continued on the basis of interim order will not amount to a new cause of action to such a person and such continuance cannot be read in order to give benefit under Section 33-B of Act, 1982.

177. The question, whether an interim order can confer a new right, which is not otherwise ultimately found in favour of such beneficiary and the case found liable for dismissal, has been considered time and again and issue has been answered against such beneficiaries. We do not propose to burden this judgment with all such authorities and we refer to a judgment of Apex Court dealing with this issue directly. In Raghvendra Rao etc. Vs. State of Karnataka and others, JT 2009 (2) SC 520 Court has observed:

"It is now a well-settled principle of law that merely because an employee had continued under cover of an order of Court, he would not be entitled to any right to be absorbed or made permanent in the service."

(Emphasis supplied)

41. Though the judgment in the case of Jahaj Pal (*supra*) is in reference to Section 33-B of the Act of 1982, it is equally applicable in the facts and circumstances of the present case in reference to Section 33-G of the Act of 1982, as the only substantive difference between Section 33-B and Section 33-G is in reference to the cut-off dates for consideration of regularization.

42. The reliance of the learned counsel for the petitioners on the judgment dated 30.09.2024 passed in the case of *Vinod Kumar Srivastava (supra)* is also misconceived, as the directions contained in the said case would have applied only if it had been the case that the initial appointment of the petitioners made against substantive vacancies was as per the statutory provisions contained in Section 18 of the Act of 1982, i.e., that their appointments were in accordance with the law as existing on the date of initial appointment on 01.07.1997.

43. Reliance placed by learned counsel for the petitioners upon Section 16(E)(11) of the Act, 1921 is also misconceived and without any basis, as Section 16(E)(11) is for short-term vacancies, whereas the appointment of the petitioners was made on substantive vacancies.

44. In view of the above discussion, it can be succinctly summarised as hereunder:

(a) The ad-hoc appointment of the petitioners was made on substantive vacancies falling vacant due to retirements of serving incumbents, which could have been filled up only after following the procedure prescribed in Section 18 of the Act of 1982, as amended by U.P. Act No. 15 of 1995.

(b) The ad-hoc appointment of the petitioners was in gross violation of sub-section (7) & (8) of Section 18 of the Act of 1982, as amended by U.P. Act No. 15 of 1995, inasmuch as neither the vacancies were advertised as per sub-section (7) nor the selections were made by the Selection Committee constituted as per sub-section (8). Thus, the ad-hoc appointments of the petitioners were illegal and void ab initio.

(c) The petitioners cannot be extended the benefit of Section 33-G of the Act of 1982 as their initial appointment on ad-hoc basis was dehors the statutory provisions and illegal, being void ab initio.

(d) The term "continuously serving the institution from the date of such appointment up to the date of commencement" in Section 33-G (1) (c) refers to continuous service based on a valid appointment on ad-hoc basis. It does not encompass within it a continuity in service based on an illegal appointment on ad-hoc basis, dehors the statutory provisions, even though such continuity is based on interim order passed in judicial proceedings, as held in para 174 of the judgment passed by the Full Bench (five judges) of this Court while interpreting a similar provision contained in Section 33-B (1) (c) of the Act of 1982.

45. The writ petition stands **dismissed**. No order as to costs.

(2026) 4 ILRA 732
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 02.04.2026

BEFORE

THE HON'BLE ARUN BHANSALI, C.J.
THE HON'BLE KSHITIJ SHAILENDRA, J.

Writ A No. 2923 of 2026

Sachin Kumar & Ors.

...Petitioners

Versus

Union of India & Ors.

...Respondents

Issue for Consideration

(1) Maintainability of writ petition filed before the Allahabad High Court against an order passed by the Armed Forces Tribunal at New Delhi.

Headnotes

(A) Practice and Procedure – Territorial Jurisdiction – Maintainability of writ – Order was passed by the Armed Forces Tribunal at New Delhi – However, writ petition was filed before the Allahabad High Court – Preliminary objection regarding maintainability of writ was raised by the respondent – Defense of residence was taken by the petitioner – Permissibility: (E-1)

Held: Hon'ble Supreme Court with reference to the Constitution Bench judgement in the case of L. Chandra Kumar came to a categorical conclusion that all decisions of Tribunals will be subject to the scrutiny before a Division Bench of the High Court 'within whose jurisdiction the Tribunal concerned falls – The law declared by the Constitution Bench cannot be revisited by the High Courts by looking into the bundle of facts to ascertain whether they would confer territorial jurisdiction to the High Court within the ambit of Article 226(2) of the Constitution of India – Writ petition filed by the petitioners for lack of territorial jurisdiction is not maintainable before this Court. [Para 12, 13 and 22]

Case Law Cited

Writ Petition No. 10385 of 2013, Punjab National Bank vs. Shri Sakhroo Ram and others decided on 08.12.2025 (Madhya Pradesh High Court at Jabalpur Bench) Union of India and others vs. Parashotam Dass, 2023 INSC 265; Paritosh Kumar vs. Union of India and others, 2013 (9) ADJ 1; U.P. Rashtriya Chini Mills Limited vs. State of U.P. and others, 1995(4) SCC 738; Nasiruddin vs. State Transport Appellate Authority, 1975(2) SCC 671; Rajendra Kumar Mishra vs. Union of India and others, (2005) 1 UPLBEC 108; Union of India vs. Alapan Bandyopadhyay, (2022) 3 SCC 133; L. Chandra Kumar vs. Union of India, (1997) 3 SCC 261. — **referred to.**

List of Acts

Constitution of India – Article 226 (2); Armed Forces Tribunal Act, 2007 – Section 14; Armed Forces Tribunal (Procedure) Rules, 2008 – Rule 6.

List of Keywords

Reinstatement, Preliminary objection, Territorial jurisdiction, Residence of petitioner, *res-integra*, Bundle of facts, Indefiniteness, Multiplicity.

Case Arising From

Order dated 19.09.2025 passed by the Armed Forces Tribunal, Principal Bench, New Delhi.

Appearances for Parties

Advs. for the Appellant: Bansh Raj Mishra, Indrajeet Kumar.

Advs. for the Respondents: A.S.G.I., Gopal Verma.

(Delivered by Hon'ble Arun Bhansali, C.J.

&

Hon'ble Kshitij Shailendra, J.)

1. This petition is directed against order 19.09.2025 passed by the Armed Forces Tribunal, Principal Bench, New Delhi.

2. The petitioners had filed Original Applications ('OAs') before the Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 whereby they were discharged from service locally on academic grounds and prayed for quashing of the impugned order, seeking reinstatement with all consequential benefits.

3. The OAs filed by the petitioners were heard along with few other OAs and the Tribunal by the order impugned came to the conclusion that the OAs were devoid of merit and consequently, dismissed the same. Aggrieved of the order passed by the Principal Bench of the Tribunal at New Delhi, the present petition has been filed.

4. Counsel for the respondents raised preliminary objection that as the order impugned has been passed by the Principal Bench of the Tribunal at New Delhi, this Court does not have the territorial jurisdiction to hear the matter.

5. Submissions have been made that the applicants in other OAs have already approached Delhi High Court, wherein counter affidavit has been called and to avoid conflicting decision qua the same common impugned order also, the petition be not entertained by this Court at Allahabad.

6. Counsel for the petitioners contested the submissions made. It has been submitted that in terms of Rule 6 of the Armed Forces Tribunal (Procedure) Rules, 2008 ('Rules, 2008'), the OA could have been filed with the Bench of the Tribunal within whose jurisdiction the petitioner was last posted or where the cause of action wholly or in part had arisen. However, sub-rule (2) of Rule 6 of the Rules, 2008 provides that a person who is ceased to be in service by reason of his retirement, dismissal, discharge at his option can file an application with the Bench of the Tribunal within whose jurisdiction such person is ordinarily residing at the time of filing of the application.

7. Submissions have been made that in fact the Original Application could only be filed before the Bench of the Tribunal at Visakhapatnam or based on the residence of the petitioner nos. 2, 3 & 4 with Bench at Lucknow and in view of the provisions of Rule 6 of the Rules, 2008 as the petition could have been filed at Lucknow, this Court would have jurisdiction to hear the matter.

8. Reliance has been placed on judgement in **Punjab National Bank v. Shri Sakhroo Ram and others** : Writ Petition No. 10385 of 2013 decided on 08.12.2025 by Madhya Pradesh High Court at Jabalpur Bench, **Union of India and others v. Parashotam Dass** : 2023 INSC 265, **Paritosh Kumar v. Union of India and others** : 2013 (9) ADJ 1, **U.P. Rashtriya Chini Mills Limited v. State of U.P. and others** : 1995(4) SCC 738 and **Nasiruddin v. State Transport Appellate Authority** : 1975(2) SCC 671.

9. Counsel for the respondents submitted that one of the petitioners Sachin Kumar son of Saheb Singh is not even the resident of Uttar Pradesh and that the issue would be governed by judgement in **Rajendra Kumar Mishra v. Union of India and others** : (2005) 1 UPLBEC 108.

10. We have considered the submissions made by counsel for the parties and perused the material available on record.

11. The issue, as raised in the present matter, is no more res-integra as Hon'ble Supreme Court in **Union of India v. Alapan Bandyopadhyay** : (2022) 3 SCC 133, while dealing with the said aspect with reference to Constitution Bench judgement in **L. Chandra Kumar v. Union of India** : (1997) 3 SCC 261 inter-alia came to the following conclusion :

"37. Further, it was held thus: (L. Chandra Kumar case)

"99. ...The jurisdiction conferred upon the High Courts under Articles 226/227 and upon the Supreme Court under Article 32 of the Constitution is part of the inviolable basic structure of our Constitution. While this jurisdiction cannot be ousted, other Courts and Tribunals may perform a supplemental role in discharging the powers conferred by Articles 226/227 and 32 of the Constitution. The Tribunals created under Article 323-A and Article 323-B of the Constitution are possessed of the competence to test the constitutional validity of statutory provisions and rules. All decisions of these Tribunals will, however, be subject to scrutiny before a Division Bench of the High Court within whose jurisdiction the Tribunal concerned falls."

(emphasis supplied)

38. *When once a Constitution Bench of this Court declared the law that “all decisions of Tribunals created under Article 323-A and Article 323-B of the Constitution will be subject to the scrutiny before a Division Bench of the High Court within whose jurisdiction the Tribunal concerned falls”, it is impermissible to make any further construction on the said issue. The expression “all decisions of these Tribunals” used by the Constitution Bench will cover and take within its sweep orders passed on applications or otherwise in the matter of transfer of Original Applications from one Bench of the Tribunal to another Bench of the Tribunal in exercise of the power under Section 25 of the Act.*

40. *The law thus declared by the Constitution Bench cannot be revisited by a Bench of lesser quorum or for that matter by the High Courts by looking into the bundle of facts to ascertain whether they would confer territorial jurisdiction to the High Court within the ambit of Article 226(2) of the Constitution. We are of the considered view that taking another view would undoubtedly result in indefiniteness and multiplicity in the matter of jurisdiction in situations when a decision passed under Section 25 of the Act is to be called in question especially in cases involving multiple parties residing within the jurisdiction of different High Courts albeit aggrieved by one common order passed by the Chairman at the Principal Bench at New Delhi.”*

(emphasis supplied)

12. It would be seen that Hon'ble Supreme Court with reference to the Constitution Bench judgement in the case of **L. Chandra Kumar (Supra)** came to a categorical conclusion that all decisions of Tribunals will be subject to the scrutiny before a Division Bench of the High Court 'within whose jurisdiction the Tribunal concerned falls'.

13. The Court further observed that the law declared by the Constitution Bench cannot be revisited by the High Courts by looking into the bundle of facts to ascertain whether they would confer territorial jurisdiction to the High Court within the ambit of Article 226(2) of the Constitution of India.

14. It was emphasized that if order passed by Principal Bench at New Delhi is to be called in question in cases involving multiple parties residing within the jurisdiction of different High Courts aggrieved by one common order, the same would result in indefiniteness and multiplicity. The said determination squarely applies to the present case.

15. In fact, in a case of present matter, Hon'ble Supreme Court indicated that the High Court should have confined its consideration to decide its own territorial jurisdiction without reference to the bundle of facts constituting the cause of action for filing Original Application in terms of Rule 6(2) of the Rules, 2008 involved therein, which is identical to the Rule cited by counsel for the petitioners.

16. The observations read as under :

“32. When once the High Court found the order impugned as one passed by the Principal Bench we have no hesitation to hold that the High Court should have confined its consideration firstly, to decide its own territorial jurisdiction for exercising the power of judicial review over the order dated 22.10.2021 passed by the Principal Bench in Personnel, Public Grievances and

Pensions v. Alapan Bandyopadhyay in the correct perspective, without reference to the bundle of facts constituting the cause of action for filing O.A. No. 1619 of 2021 before the Kolkata Bench of the Tribunal founded on the cause of action referred to in Rule 6(2) of the Procedure Rules that decides the place of filing of an O.A."

17. In view of the above categorical law laid down by Hon'ble Supreme Court, we have no hesitation in coming to the conclusion that as the order impugned has been passed by the Principal Bench of the Tribunal, New Delhi, this Court would lack territorial jurisdiction to hear challenge to the said order.

18. So far as the judgements cited by counsel for the petitioners are concerned, the same have no application to the subject matter of the present case as in the case of **Parashotam Dass (Supra)**, the only issue before the Hon'ble Supreme Court was maintainability of writ petition under Article 226 of the Constitution of India against orders passed by the Armed Forces Tribunal.

19. The judgement in the case of **Paritosh Kumar (Supra)** deals with the dispute pertaining to the maintainability of proceedings before the Principal Seat and Bench. The judgement in the case of **U.P. Rashtriya Chini Mills Limited (Supra)** pertains to Article 226(2) of the Constitution of India qua which in the case of **Alapan Bandyopadhyay (Supra)**, Hon'ble Supreme Court has clearly ruled that the said aspect need not be gone into.

20. Similarly, the judgement in the case of **Nasiruddin (Supra)**, also inter-alia deals with maintainability of matters between Principal Seat and the Bench.

21. Judgement in the case of **Sakhroo Ram (Supra)** of the Madhya Pradesh High Court deals with a case where appellate jurisdiction for several States is conferred on one authority situated at other State, which is not the case here.

22. In view of above discussion, following the judgement in the case of **Alapan Bandyopadhyay (Supra)**, it is held that the writ petition filed by the petitioners for lack of territorial jurisdiction is not maintainable before this Court. The same is, therefore, **dismissed**, leaving it open for the petitioners to approach appropriate forum in accordance with law.

(2026) 4 ILRA 736

ORIGINAL JURISDICTION

CIVIL SIDE

DATED: LUCKNOW 06.04.2026

BEFORE

THE HON'BLE IRSHAD ALI, J.

Writ A No. 2968 of 2010

Pramod Kumar

...Petitioner

Versus

Union Of India

...Respondent

Issue for Consideration

- (1) Applicability of doctrine of proportionality in the matter of removal order passed on the charges of absent from duty.
- (2) Effect of non supply of enquiry report and not issuing show cause notice before passing the removal order.
- (3) Permissibility of awarding dwell punishment under the service jurisprudence

Headnotes

(A) Service law – Removal from service – Constable in CISE – Disciplinary proceeding – Quantum of punishment – Doctrine of proportionality – Applicability – Due to serious illness of mother and due to dislocation of right elbow of himself, the petitioner sought leave –However during illness, the charge sheet was issued – Charge of absent from duty was leveled – Reply was submitted, but was not considered – Enquiry was conducted exparte – No opportunity to defend including cross examine the witnesses was given – Effect: (E-1)

Held: Fairness and reasonableness in the action of the State whether in a criminal proceeding or otherwise are the hallmark of Article 14 of the Constitution of India. The doctrine of proportionality is one of the grounds on the basis whereof the power of judicial review could be exercised – The punishment awarded to the petitioner is disproportionate to the charges levelled against him as well as the absence from duties was on the medical grounds, which was to be taken into consideration while passing the order of removal. [Para 26 and 29]

Further held: Non supply of enquiry report with the show cause notice is violation of principle of natural justice and the order based on non-supply enquiry report with the show cause suffers from illegality and is not sustainable in the eye of law. [Para 33]

(B) Service jurisprudence – Dwell punishment – Deduction of salary and removal from service for the same charges were awarded – Permissibility: (E-1)

Held: The punishment awarded to the petitioner is dwell in nature, one by deducting salary and another by initiating disciplinary proceeding and removal from service, both cannot be initiated against an employee, by the respondents. Once salary was deducted there was no justification to initiate disciplinary proceeding on the same charges – This action of the respondents are wholly illegal, arbitrary and per se illegal. [Para 34 and 37]

Case Law Cited

Sheel Kumar Roy vs. Secretary, Ministry of Defence & others, (2007) 12 SCC 462; Dr. Sunil Kumar Singh vs. Bihar Legislative Council and others, (2026) 2 SCC 364; Sheel Kumar Roy vs. Secretary, Ministry of Defence & Others, (2007) 12 SCC 462; Ex-Naik Sardar Singh vs. Union of India, (1991) 3 SCC 213; Ranjit Thakur vs. Union of India, (1987) 4 SCC 611; Modern Dental College & Research Centre vs. State of M.P., (2016) 7 SCC 353; Union of India and others vs. Mohd. Ramzan Khan, AIR 1991 SC 471; Writ A No. 4233 of 2014, Santosh Kumar vs. State of U.P. and others decided on 24.04.2019 – **referred to.**

List of Acts

Constitution of India – Article 14.

List of Keywords

Removal from service, Medical treatment, Leave, Illness, Charge sheet, Opportunity of hearing, Exarte order, Wilful, Misconduct, Inquiry proceeding, Fairness, Cross examination, genuineness of illness, Medical rebuttal, Non-speaking order, Principle of natural justice, Non application of mind,, Irrelevant consideration, Disregard of relevant material, Imposition of disproportionate punishment, Quantum of punishment, Doctrine of proportionality, Outrageous defiance of logic, Sentence, Immune from correction, Irrationality, Perversity, Judicial review, Error apparent on the face of the record, Punishment of rigorous imprisonment, Arbitrary, Vitiating in law, Dwell punishment, Deduction of salary in the absence from duties, Justification.

Case Arising From

Impugned removal order dated 28.05.2007 passed by the Disciplinary Authority and order dated 04.02.2008 passed by the appellate authority and order dated 12.01.2009 passed by the revisional authority.

Appearances for Parties

Advs. for the Appellant: Padmesh Jain, Ashok Kumar, Colonel Ashok Kumar, L K Pathak, Radhika Singh, Rohit Kumar, Yatish Gupta, Richa Mishra.

Advs. for the Respondents: A.S.G., I.H. Farooqui, Raj Kumar Singh

(Delivered by Hon'ble Irshad Ali, J.)

1. Mrs. Radhika Singh has filed her Vakalatnama on behalf of the petitioner, which is taken on record.

2. Heard Mrs. Radhika Singh along with Mrs. Richa Mishra, learned counsel for the petitioner and Shri Raj Kumar Singh, learned counsel for all the respondents.

3. Mrs. Radhika Singh has filed written submission in the matter.

4. The present writ petition has been filed under Article 226 of the Constitution of India challenging the impugned order dated 28.05.2007, Annexure No.1 to the writ petition, passed by the Disciplinary Authority, whereby the petitioner has been removed from service, an appeal was filed against the order of removal, which has also been dismissed, vide order dated 04.02.2008, Annexure No.2 to the writ petition. Against the order passed in appeal, revision was filed before the revisional authority i.e. opposite party no.3, which has also been rejected, vide order dated 12.01.2009, Annexure no.3 to the writ petition.

5. Factual matrix of the case is that the petitioner was appointed as a Constable in CISE (Central Industrial Security Force) on 18.06.1994 and had rendered about 13 years of long and satisfactory service. During the course of service in 1998, the petitioner's mother, aged about 65 years, fell seriously ill and remained under continuous treatment from time to time, including during the years 2003-2004. On compelling family circumstances, the petitioner sought transfer in the year 2001, however, the same was not considered. Instead, he was transferred from Hoshangabad to Anpara and thereafter to Varanasi Airport, vide order dated 30.11.2004. Despite the recommendation of Airport Commandant dated 14.0.8.2005 for immediate need of the petitioner, so that he could manage the treatment of his ailing and aged mother, ignored by the authorities, compelling the petitioner to avail leave during the period of 2001-2004, including leave without pay. The petitioner himself suffered serious ailments and remained on medical rest from 08.10.2005 to 12.10.2005 and thereafter continued to remain under medical treatment. Subsequently, due to the serious illness of his mother, the petitioner applied for leave w.e.f. 30.01.2006, which was also denied despite the opportunity of leave. In July, 2006, the petitioner again suffered a serious injury (dislocation of right elbow) and remained under continuous medical treatment from 14.07.2006 and advised rest on 25.07.2006 and further he was treated on 05.08.2006 and ultimately declared medically fit only on 25.01.2007.

6. During the period of illness a charge sheet was issued to the petitioner on 25.07.2006, which was served upon the petitioner on 21.01.2007. The petitioner submitted his reply on 23.02.2007 and further, vide representation dated 25.02.2007 and 27.02.2007 supplemented his reply. Inquiry was conducted with predetermination manner and effectively exparte order without giving opportunity

of hearing to the petitioner was passed. The entire disciplinary action arose from 8.10.2005 to 12.10.2005 (5 days), 13.10.2005 to 27.12.2005 (76 days) and 30.01.2006 to 27.04.2006 (88 days).

7. The aforesaid medical leave were neither wilful or deliberate, but were occasioned due to compelling circumstances of the petitioner and his mother. The petitioner submitted medical certificate in reply given by him.

8. Without taking into consideration the reply submitted by the petitioner, an order of removal dated 28.05.2007 (Annexure No.1 to the writ petition) has been passed, which reveals that why ignorance, the petitioner has taken medical leave and has submitted medical documents, it proceed to treat the entire period of absence as misconduct without properly appreciating the medical condition and without assigning cogent reasons for discarding the medical evidence. The order further indicates that notices were allegedly sent and even affixed, which itself casts serious doubt on proper and effective service and consequently on the fairness of the inquiry proceedings. Against the order of removal dated 28.05.2007 an appeal was filed, which has also been rejected, vide order dated 04. 02.2008 and revision filed against order, has also been dismissed, vide order dated 12.01.2009.

9. Submission of learned counsel for the petitioner is that copy of the inquiry report was not supplied to the petitioner along with show cause notice issued to him and this fact has been admitted in the impugned order of dismissal as well as in the order of appeal as well as in the revision. By stating that along with notice inquiry report was sent to the residential address of the petitioner, which could not be served upon him. The statement of fact in this regard has been made in paragraph 8 of the rejoinder affidavit, which has been replied in paragraphs 6 and 7 of the supplementary counter affidavit and there is no denial in regard to the statement of the fact made in rejoinder affidavit. Only statement of fact was made that in spite of best effort the notice could not be served due to nonavailability of the petitioner at the address given. However, the statement of fact made in the order of removal clearly indicate that notice was sent at the residential address of the petitioner at Lucknow, which was not served with the remark that it was incumbent upon the disciplinary authority to serve notice along with the inquiry report to the petitioner while he was on service.

10. It is further evident that inquiry was conducted exparte w.e.f. 17.01.2007 whereas the petitioner was served with relevant document only on 21.01.2007- 27.1.2007 clearly demonstrate denial of opportunity to the petitioner.

11. It is specifically stated that whenever the petitioner appeared before the Inquiry Officer, no effective opportunity to defend including cross examination of the witness was granted and the enquiry proceedings were conducted in predetermined mind. It is further submitted that the disclosure a serious procedural illegality in as much as the Inquiry Officer submitted a report on 26.2.2007 immediately after receiving the petitioner's reply dated 25.2.2007, which clearly indicate that the reply was not considered and inquiry report was pre decided, therefore the proceedings vitiated on coconut of non application of mind and colorable exercise of power.

12. Mrs. Radhika Singh, learned counsel for the petitioner next submitted that it is admitted position that copy of the enquiry report was not supplied to the petitioner and no show cause notice in regard to the proceeding of punishment was issued before passing the order of removal on 28.05.2007. Whereby mandatory requirement of reasonable opportunity was denied to the petitioner. She next submits that the impugned order further proceeds on presumptions rather than evidence that questions the genuineness of illness without any medical rebuttal or expert opinion which had already been separately punished by deducting salary for the leave granted to the petitioner.

13. She next submits that in the counter affidavit attempted to justify the impugned action by alleging that the petitioner is a habitual absentee. However, such reliance on past conduct is wholly impermissible in law when the same does not form part of the charge sheet. The petitioner in his rejoinder affidavit has categorically denied the proper service of notices and specifically stated that Hindi version of charge sheet and inquiry notice never effected upon the petitioner and the alleged service of his native place cannot be treated as valid service, when he was posted elsewhere.

14. The appellate authority in its order dated 04.02.2008 and the revisional authority vide order dated 12.01.2009 have also failed to consider the aforesaid material irregularities and have passed cryptic and non-speaking orders in a mechanical manner, whereby affirming the illegality committed by the disciplinary authority.

15. She next submits that punishment imposed upon the petitioner is shockingly disproportionate misconduct pertains only to absence under compelling medical and family circumstances, yet the petitioner has been inflicted with the extreme penalty of removal from service, which amounts to civil death. It is settled law that absence from duty does not amount to misconduct unless it is wilful and deliberate, and even otherwise, the punishment must be commensurate with the gravity of misconduct. In the present case, the penalty imposed is wholly excessive, arbitrary and violative of the doctrine of proportionality.

16. She next submits that the petitioner had rendered long and satisfactory service since 1994 and had earned rewards and appreciations during his service career, which have not been considered by the authorities while imposing the extreme punishment.

17. She next submits that from combined reading of the writ petition, counter affidavit and rejoinder affidavit, it is evident that the impugned orders suffer from violation of principles of natural justice, non application of mind, reliance on irrelevant considerations, disregard of relevant material and imposition of disproportionate punishment.

18. On the other hand in support of submissions rendered by Ms. Radhika Singh, she placed reliance in the case of Sheel Kumar Roy v. Secretary, Ministry of Defence & others (2007)12 SCC 462 and has placed reliance on paragraphs 4, 16, 17, 18, 19, and 22.

19. She further placed reliance in the case of Dr. Sunil Kumar Singh v. Bihar Legislative Council and others:(2026)2 SCC 364. She placed reliance on paragraphs no. 41, 42, 43, 44, 45, 46 and 47.

20. Shri Raj Kumar Singh, learned counsel for the respondents submits that the disciplinary authority has tried to serve enquiry report and show cause notice but due to non availability of the petitioner, the same could not be served. He further submits that the impugned order of removal, appellate order as well as revisional order do not suffer from any infirmity and just and valid order. He next submits that the reply to the averment made in paragraph 8 of the rejoinder affidavit, supplementary counter affidavit was filed and it was denied that the petitioner has not receive show cause notice along with enquiry report due to nonavailability of his address. Enquiry report was served in the impugned order of removal there is recital that the petitioner submitted representation against the show cause notice and enquiry report, therefore, the averment made in paragraph 8 of the rejoinder affidavit, are incorrect and not admissible in the eye of law.

21. I have heard learned counsel for the parties and perused the material on record as well as the judgement relied upon by learned counsel for the petitioner as well as by Shri Raj Kumar Singh, learned counsel for the respondents on the point of doctrine as of proportionality denial of paragraphs 39 and 40 of the writ petition.

22. I have heard learned counsel for the petitioner as well as Shri Raj Kumar Singh, learned counsel for the respondents and perused the judgment relied upon by learned counsel for the parties. For deciding controversy involved in the present writ petition relevant paragraph of the judgment are being quoted below:-

The relevant paragraphs 4, 16, 17, 18, 19, and 22 of Sheel Kumar Roy v. Secretary, Ministry of Defence & Others: (2007) 12 SCC 462 is reproduced herein below for the kind perusal of this Hon'ble Court:

"4. The medical recategorisation which was to take place on or about 21-10-1987 was delayed. He continued to be on medical leave and was categorised to be in CEE category for six months.

Thereafter he went on leave as a part of annual leave, but he allegedly overstayed for about 96 days. Some punishment was imposed on him by an order dated 5-12-1989. He prior to joining his present posting, was posted in another unit on 20-1-1990. ?? was allegedly found fit to join his duties. He was again summarily tried and awarded three days' pay fine despite the fact that his medical recategorisation had not been done timely. He was admitted to Medical Hospital, Ambala from 13-5-1990 to 7-6-1990 for medical recategorisation. He was granted casual leave for the period of 7-6-1990 to 18-6-1990 to visit his family, but he allegedly overstayed his leave again for 20 days, even though there is nothing to show as to whether he had been declared fit for joining his duties or not There is also nothing on record to show that any action was taken against him in respect thereof but admittedly he was admitted to Medical Hospital. Ambala for medical recategorisation. He was transferred to Command Hospital (Western Command) on 16-7-1990.

16. In any event, the respondents themselves should have explained in their counter-affidavit as to why the recommendations of the court of enquiry were not accepted. Once it is held that for the period of the purported absence in question or a part thereof he had not been absconding but was admitted in Military Hospital. Ambala Cantt, the matter deserved a deeper scrutiny at the hands of the competent authority. The movement orders in respect of the appellant who had been described as a patient clearly shows that he was admitted in Ambala Cantt Hospital

on 11-7-1990. The movement order furthermore shows that he was also transferred to Chandigarh Hospital.

17. Fairness and reasonableness in the action of the State whether in a criminal proceeding or otherwise are the hallmark of Article 14 of the Constitution of India. The doctrine of proportionality is one of the grounds on the basis whereof the power of judicial review could be exercised. It was so held in *Ex-Naik Sardar Singh v. Union of India* [(1991) 3 SCC 213].

18. We may also notice that in *Ranjit Thakur v. Union of India* [(1987) 4 SCC 611] this Court held: (SCC p. 620, para 25)

"25 The question of the choice and quantum of punishment is within the jurisdiction and discretion of the court martial. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the court martial, if the decision of the court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognised grounds of judicial review."

19. We although agree with the learned Additional Solicitor General that it is legally permissible to award more than one punishment in terms of Section 71 of the Act but we may notice that Section 39(a) specifically deals with the misconduct in respect of absence without leave. It is one thing to say that legally it is permissible to impose more than one punishments but then also it is another thing that in exercising the said power all attending situations which fell for consideration by the punishing authority in regard to the quantum thereof would not be taken into consideration. It is clear that the Commanding Officer in the summary court-martial proceedings failed to take into consideration the relevant fact and, thus, committed an error apparent on the face of the record. We are also of the opinion that in a case of this nature, imposition of both punishment of rigorous imprisonment for six years as also dismissal from service was wholly arbitrary in nature. It is also vitiated in law as all relevant facts were not taken into consideration.

22. Once it is held that arbitrariness of the Commanding Officer in the matter of holding the appellant and awarding punishment upon him is apparent on the face of the record, the impugned order must be held to be wholly unsustainable."

The relevant paragraphs 41, 42, 43, 44, 45, 46 and 47 of *Dr Sunil Kumar Singh v. Bihar Legislative Council and Others*: (2026) 2 SCC 364 is reproduced herein below for the kind perusal of this Hon'ble Court:

"(i) Service and Labour Laws

41. This Court has time and again highlighted the importance of proportionality when dealing with the question of punishment or disciplinary action for misconduct at the workplace, whether it be in public service or private organisations. The nature of the misconduct, the circumstances of the occurrence, the history and effect of the incident are all factors which ought to be taken into consideration.

42. For example, in *Dev Singh v. Punjab Tourism Dev Corpn. Ltd* [*Dev Singh v. Punjab Tourism Dev Corpn. Ltd.* (2003) 8 SCC 9 2003 SCC (L&S) 1198]. a public servant was penalised with dismissal from service for the offence of misplacing and losing an official file. This Court, in appeal, considered the facts that the employee was serving the Corporation for twenty years with a

previously unblemished record, the misconduct was not deliberate or motivated, and the file was not shown to be of grave importance or sensitivity, reduced the punishment to withholding of increment of the employee. On the other hand, in a case involving a delinquent employee who did not join duty upon transfer, the Court considered his extended absence of over 233 days and his refusal to visit the appointed doctor to substantiate his claim for medical absence, and concluded that the punishment of removal from service was proportionate to the misdemeanour [LIC v. R Dhandapani, (2006) 13 SCC 613 (2008) 2 SCC (L&S) 150]

43. *Thus, service laws in India are riddled with such like precedents, mandating employers, including the Government, to take all circumstances into account and undertake proportionate action against such offences.*

(ii) Administrative law

44. *also places great importance on approaching decision-making with proportionality. For instance, blacklisting from government tender auctions, which is a harsh punishment is considered proportionate in dire cases, such as where the contractor has embezzled funds in collusion with government employees. [Kulja Industries Ltd. v. Western Telecom Project BSNL, (2014) 14 SCC 731] However, this Court has also protected contract awardees from withdrawal of the contract on mere hypertechnical grounds [City & Industrial Development Corpn of Maharashtra Ltd. v. Shishir Realty (P) Ltd., (2022) 16 SCC 527]*

45. *Even beyond government auction, proportionality ought to go to the root of decision-making by the Government The litmus test that needs to be administered is whether the harshest or strongest measure is necessarily required to be implemented in a given case In a situation where a lessee was in default of lease premium, rent, and interest due to underdeveloped surroundings, this Court held that the harsh step of resumption of the land as well as forfeiture of the already paid sum would be too harsh, when recovery proceedings are available. [Teri Oat Estates (P) Ltd. v. State (UT of Chandigarh), (2004) 2 SCC 130] On the other hand, this Court has also upheld the stronger step taken by the Railway Recruitment Board for re-test of limited candidates, when there was evidence of paper leaking and mass-cheating [All India Railway Recruitment Board v. K Shyam Kumar, (2010) 6 SCC 614 (2010) 2 SCC (L&S) 293]*

(iii) Constitutional law

46. *Constitutional law is perhaps the area of law where the term "proportionality" is used most commonly. This is so because the proportionality test, initially identified in Modern Dental College & Research Centre v. State of M.P [Modern Dental College & Research Centre v. State of M.P. (2016) 7 SCC 353 7 SCEC 1]? is widely used to consider the vires of legislative as well as executive actions.*

47. *The test of proportionality, thus, applies to cases where action is brought to protect the right guaranteed by the Constitution or other laws It largely seeks to identify whether the restriction sought to be placed on the right is proportionate to the objective sought to be achieved by the restriction. It often belies a comparison between the importance of the public purpose of the restriction on one hand and the public right on the other hand."*

23. On perusal of the judgement referred herein above, it is apparent on record that the supply of enquiry report along with show cause notice is relevant material to be considered in deciding the controversy involved in the case.

24. The medical re-categorization which was to take place on or about 21.10.1987 was delayed. He continued to be on medical leave and was categorized to be in CEE category for six months. Thereafter he went on leave as a part of annual leave, but he allegedly overstayed for about 96 days. Some punishment was imposed on him by an order dated 5.12.1989. He prior to joining his present posting, was posted in another unit on 20.1.1990. He was alleged found fit to join his duties. He was again summarily tried and awarded three days' pay fine despite the fact that his medical re-categorization had not been done timely. He was admitted to Medical Hospital, Ambala from 13.5.1990 to 7.6.1990 for medical re-categorization. He was granted casual leave for the period of 7.6.1990 to 18.6.1990 to visit his family, but he allegedly overstayed his leave again for 20 days, even though there is nothing to show as to whether he had been declared fit for joining his duties or not. There is also nothing on record to show that any action was taken against him in respect thereof but admittedly he was admitted to Medical Hospital, Ambala for medical re-categorization. He was transferred to Command Hospital (Western Command) on 16.7.1990.

25. In any event, the respondents themselves should have explained in their counter affidavit as to why the recommendations of the court of enquiry were not accepted. Once it is held that for the period of the purported absence in question or a part thereof he had not been absconding but was admitted in Military Hospital, Ambala Cantt., the matter deserved a deeper scrutiny at the hands of the competent authority. The movement orders in respect of the appellant who had been described as a patient clearly shows that he was admitted in Ambala Cantt. Hospital on 11.7.1990. The movement order further more shows that he was also transferred to Caudigarh Hospital.

26. Fairness and reasonableness in the action of the State whether in a criminal proceeding or otherwise are the hallmark of Article 14 of the Constitution of India. The doctrine of proportionality is one of the grounds on the basis whereof the power of judicial review could be exercised. It was so held in **Ex-Naik Sardar Singh v. Union of India** [(1991)3 SCC 213].

27. It may also be noticed that in the case of **Ranjit Thakur V. Union of India** [(1987) 4 SCC 611] this Court held on Supreme Court Cases para 25, the question of the choice and quantum of punishment is within the jurisdiction and discretion of the court martial. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the court martial, if the decision of the court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognized grounds of judicial review.

28. It is one thing to say that legally it is permissible to impose more than one punishments but then also it is another thing that in exercising the said power all attending situations which fell for consideration by the punishing authority in regard to the quantum thereof would not be taken into consideration. It is clear that the Commanding Officer in the summary court-martial proceedings failed to take into consideration the relevant fact and, thus, committed an error apparent on the face of the record. We are also of the opinion that in a case of this nature, imposition of both punishment

of rigorous imprisonment for six years as also dismissal from service was wholly arbitrary in nature. It is also vitiated in law as all relevant facts were not taken into consideration.

29. In the present case also the punishment awarded to the petitioner is disproportionate to the charges levelled against him as well as the absence from duties was on the medical grounds, which was to be taken into consideration while passing the order of removal. Due to non consideration of this aspect of the matter the order vitiates in law, are taken into consideration while passing the impugned order.

30. In another judgment Sunil Kumar Singh (supra) the Hon'ble Supreme Court has considered the case of Dev Singh v. Punjab Tourism Dev Corpn. Ltd., wherein a public servant was penalised with dismissal from service for the offence of misplacing and losing an official file. This Court, in appeal, considered the facts that the employee was serving the Corporation for twenty years with a previously unblemished record, the misconduct was not deliberate or motivated, and the file was not shown to be of grave importance or sensitivity, reduced the punishment to withholding of increment of the employee. The Court further considers that in case involving a delinquent employee who did not join duty upon transfer, the Court considered his extended absence of over 233 days and his refusal to visit the appointed doctor to substantiate his claim for medical absence, and concluded that the punishment of removal from service was proportionate to the misdemeanor. The service laws in India are riddled with such like precedents, mandating employers, including the Government, to take all circumstances into account and undertake proportionate action against such offences.

31. Even beyond government auction, proportionality ought to go to the root of decision making by the Government. The litmus test that needs to be administered is whether the harshest or strongest measure is necessarily required to be implemented in a given case. In a situation where a lessee was in default of lease premium, rent, and interest due to underdeveloped surroundings, this Court held that the harsh step of resumption of the land as well as forfeiture of the already paid sum would be too harsh, when recovery proceedings are available. On the other hand the Court has also upheld the stronger step taken by the Railway Recruitment Board for re-test of limited candidates, when there was evidence of paper leaking and mass-cheating.

32. The Constitutional law is perhaps the area of law where the term "proportionality" is used most commonly. This is so because the proportionality test, initially identified in ***Modern Dental College & Research Centre v. State of M.P.*** (2016) 7 SCC 353. The test of proportionality, thus, applies to cases where action is brought to protect the right guaranteed by the Constitution or other law. It largely seeks to identify whether the restriction sought to be placed on the right is proportionate to the objective sought to be achieved by the restriction. It often belies a comparison between the importance of the public purpose of the restriction on one hand and the public right on the other hand.

33. This judgment fully considers the proportionality of the charges and its punishment. The punishment should not be disproportionate to the charges. In the case of ***Union of India and others Vs. Mohd. Ramzan Khan*** reported in AIR 1991 Supreme Court 471. The Hon'ble Supreme Court has held that non supply of enquiry report with the show cause notice is violation of principle of

natural justice and the order based on non-supply enquiry report with the show cause suffers from illegality and is not sustainable in the eye of law.

34. In the present case dwell punishment has been awarded one by deduction of salary in the absence from duties and removal from service cannot be awarded to the petitioner. Once also punishment was awarded by deducting salary from the petitioner, therefore disciplinary proceedings would not have been initiated against the petitioner. This action of the respondents are wholly illegal, arbitrary and per se illegal.

35. The argument advanced by Shri Raj Kumar Singh by producing a judgment of this Court in Writ A No. 4233 of 2-14, Constable 339/381 C.P. Santosh Kumar Vs. State of U.P. and others, decided on 24.04.2019. Submission advanced by Shri Raj Kumar Singh is that the charges are not disproportionate to the matter involved, therefore on the proportionality of the charges is commensurate to the charges levelled. The judgement relied upon is distinguishable in nature as already considered in the judgment rendered by the Hon'ble Supreme Court of India which are reproduced herein above of the judgement which are liable to be considered in regard to the disproportionality of charges. Therefore the judgment placed reliance upon is distinguishable in nature and not applicable to the facts and circumstances of the present case.

36. In view of punishment awarded to the petitioner is disproportionate to the charges levelled against him.

37. The punishment awarded to the petitioner is dwell in nature, one by deducting salary and another by initiating disciplinary proceeding and removal from service, both cannot be initiated against an employee, by the respondents. Once salary was deducted there was no justification to initiate disciplinary proceeding on the same charges.

38. It is the admitted case of the party that enquiry report as well as show cause notice was not served upon the petitioner nor was given opportunity to file reply to the show cause notice, issued to the petitioner, therefore, the impugned orders dated 28.05.2007, 04.02.2008 and 12.01.2009 suffer from violation of principle of natural justice and are liable to be set aside by this Court.

39. In view of the reasons recorded above, the appellate court as well as the revisional court have also not considered the aforesaid aspect of the matter, and have passed the orders without considering the relevant material on record.

40. In view of the reasons recorded above, and facts and circumstances of the case, the impugned orders dated 28.05.2007, 04.02.2008 and 12.01.2009 are hereby set aside. The writ petition succeeds and is *allowed*.

41. However, the petitioner shall be permitted to join the post in as much as the arrears of salary with effect from 28.05.2007 till date and shall be paid regular salary month by month after reinstatement in service.

(2026) 4 ILRA 747
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 09.04.2026

BEFORE

THE HON'BLE IRSHAD ALI, J.

Writ A No. 7914 of 2009

Suresh Bahadur Singh Kaushik

...Petitioner

Versus

The State of U.P. & Ors.

...Respondents

Issue for Consideration

- (1) Validity of punishment order passed without fixing date, time and place for oral inquiry and cross examination of witnesses.
- (2) Applicability of U.P. Government Servant (Conduct) Rules, 1956 to the teachers of U.P. Basic Education.
- (3) Entitlement of the delinquent employee to be restored on his post on declaration of punishment order illegal, though he was retired during the pendency of writ petition filed against punishment order.

Headnotes

(A) Service law – Punishment – Reversion from the post of Assistant Teacher, Junior Basic School to the same post in Primary School – Inquiry proceeding – Charge of working as Journalist in news paper was leveled – Reply to show cause notice was submitted – However, no date, time or place was fixed for oral inquiry and cross examination of witnesses – Effect – Applicability of the Rules, 1956 also felt into consideration: (E-1)

Held: After submission of reply to the show cause notice, no date, time or place was fixed for oral inquiry and cross examination of witnesses relied upon, therefore, the inquiry proceeding vitiates in law and is not sustainable in the eyes of law. [Para 14]

Held further: Entire order is based upon premise that the Rules, 1956 as applicable to U.P. Government Servants would apply to the teachers under U.P. Basic Education also. The same prohibits involvement in Journalism as involvement of the petitioner in journalism was guilty of misconduct – Rules of 1956 are not applicable to the teachers of U.P. Basic Education. In addition there to the Rule 12 of the Rules, 1981 does not prohibit the grant of employment to the person who is involved in journalism. Even otherwise, on the said basis, the impugned order was quashed by the Court. [15 and 16]

(B) Service law – The delinquent employee was retired during the pendency of writ petition filed against the punishment order – Subsequently, the punishment order was declared illegal – Entitlement of employee to be restored on his original post: (E-1)

Held: The petitioner cannot be restored as Assistant Teacher in Junior Basic School. The only remedy available to him is to provide consequential benefits of the post in case he was to be retained as Assistant Teacher, Junior Basic School . [Para 19]

Case Law Cited

Tufail Ahmad vs. State of U.P. and others, 2023:AHC-LKO:33572; Qaji Jamil Ahemad vs. U.P.S.R.T.C., Lucknow and others, 2008 (26) LCD 1176 – **referred to.**

List of Acts

U.P. Government Servant (Conduct) Rules, 1956; Uttar Pradesh Basic Education (Teachers) Services Rules, 1981.

List of Keywords

Reversion, Complaint, Journalist, Suspension, Charge sheet, Principle of natural justice, Oral hearing, Disciplinary authority, Infirmary, Illegality, Inquiry Committee, Oral enquiry, Cross examination, Show cause notice, Misconduct, Guilty of misconduct, Examination of witness, Age of superannuation, Consequential benefits.

Case Arising From

Impugned order dated 30.10.2009 passed by respondent No. 2

Appearances for Parties

Advs. for the Appellant: N.K. Seth (Sr. Adv.), Anveksha Shukla, Ravindra Pratap Singh, Ashish Chaturvedi.

Advs. for the Respondents: D. R. Misra, Rahul Shukla, Dr. Uday Veer Singh, Anil Kumar Chaubey (SC).

(Delivered by Hon'ble Irshad Ali, J.)

1. Heard Sri N.K. Seth, learned Senior Counsel assisted by Ms. Anveksha Shukla, learned counsel for the petitioner, Dr. Uday Veer Singh, learned counsel for Basic Education Officer - respondent No.3 and Sri Anil Kumar Chaubey, learned Standing Counsel for respondent - State.

2. By means of present writ petition, the petitioner is seeking writ of certiorari quashing the impugned order dated 30.10.2009 passed by respondent No.2 contained as Annexure-1 to the writ petition by which the petitioner has been reverted from the post of Assistant Teacher, Junior Basic School to the post of Assistant Teacher, Primary School.

3. Factual matrix of the case is that the petitioner was granted appointment as Assistant Teacher in Junior Basic School on 18.02.1987. An alleged complaint was lodged against him by Sri Rakesh Kumar Awasthi in regard to working of the petitioner as Journalist in the news paper. On the basis of complaint, the petitioner was suspended vide order dated 28.03.2009.

4. The inquiry committee issued a letter to the petitioner and the petitioner submitted reply to the same on 02.04.2009. The petitioner was issued show cause notice on 11.05.2009 and he submitted reply in pursuance thereof. In reply, he stated that provisions of U.P. Government Servant (Conduct) Rules, 1956 are not applicable to the employees of Basic Education Department. An order was passed on 30.10.2009, whereby the petitioner has been reverted from the post of Assistant Teacher, Junior Basic School to the post of Assistant Teacher, Primary School.

5. Submission of learned Senior Counsel for the petitioner is that no charge sheet was served upon the petitioner in regard to charges levelled against him. He submitted that no date, time and place has been fixed for conducting oral hearing and to examine the complainant in the matter, therefore, his submission is that the entire proceeding vitiated with the vices of principles of natural justice.

6. He further submitted that the person who lodged the alleged complaint against the petitioner has given application supported by affidavit that the application does not bear his own signature and is a forged one. In case the complainant would have called for oral hearing, he would have submitted application along with affidavit denying the complaint lodged against the petitioner.

7. He next submitted that in pursuance to Government Order issued, which is annexed as Annexure RA1 & RA2, it has been provided that the compliant lodged against an employee should be verified by calling the person who has lodged the complaint and an affidavit should also be taken from him. He submitted that in the present case no such exercise was done by the disciplinary authority and in a very cursory manner the order was passed. He also submitted that the provisions of U.P. Government Servant (Conduct) Rules, 1956 are not applicable to the employees of Basic Education Department, therefore, the order impugned is illegal and is liable to be quashed. In support of his submissions, he placed reliance upon following judgments:

A) Tufail Ahmad Vs. State of U.P. and others; Neutral Citation No.2023:AHC-LKO:33572

B) Qaji Jamil Ahemad Vs. U.P.S.R.T.C., Lucknow and others; 2008 (26) LCD 1176.

8. On the other hand, learned counsel for respondent No.3 submitted that the Government Order referred in Annexure 1 & 2 pertains to Grade A Employees, therefore, the same is not applicable. He further submitted that proper opportunity of hearing was provided to the petitioner while passing the impugned order.

9. He next submitted that the impugned order does not suffer from any infirmity or illegality and is just and valid. He submitted that the petitioner is discharging duty as whole time Journalist, therefore, the teaching work in the institution has affected, therefore, proceeding was initiated against him for taking disciplinary action.

10. Learned Additional CSC for respondent - State also adopted the same arguments, as advanced by learned counsel for respondent No.3.

11. I have considered the submissions advanced by learned counsel for the parties and perused the material on record as well as law reports cited by learned Senior Counsel for the petitioner.

12. To resolve the controversy involved in the matter, relevant portion of the judgments relied upon are being quoted below:

A) Tufail Ahmad (Supra):

"5. The said order has been passed merely on the ground that in the suit filed by Merajunnisan certain admissions were made as such the action of the respondent was contrary to the Government Services Conduct Rules which prohibits bigamy and after considering the material on record, the order of termination came to be passed.

6. Learned counsel for the petitioner argues that the services of the petitioner are governed under Uttar Pradesh Basic Education (Teachers) Services Rules, 1981 (hereinafter referred to as "The Rules, 1981"). He argues that in terms of the said Rules, 1981, the appointment to be granted to the aspirant mandates the clarification of marital status, in fact the discretion is conferred upon the Board to grant the appointment to a person irrespective of his second marriage.

7. He thus argues that under the Rules, 1981, there is no bar on bigamy, he further argues that reliance on the U.P. Government Servant's Conduct Rules, 1956 (hereinafter referred

to as "The Rules, 1956") is wholly unwarranted inasmuch as the said Rules, 1956 have never been adopted to the teachers employed under the U.P. Basic Education and are solely governed by Rules, 1981. He further argues that even the factum of marriage of the petitioner was not established in view of the fact that the suit filed was dismissed in default.

8. On the other hand, learned counsel for the respondent no. 3 has tried to justify the order, however, he could not produce any material to demonstrate as to how the Rules, 1956 applicable to the U.P. Government Servants are applied to the teachers working with the U.P. Basic Education under the Rules, 1981.

9. The entire order is based upon the premise that the Rules, 1956 as applicable to U.P. Government Servants would apply to the teachers under U.P. Basic Education also and as the same prohibits bigamy, the petitioner was guilty of misconduct is faulty as the Rules, 1956 are not applicable to the teachers of U.P. Basic Education. In addition there to the Rule 12 of the Rules, 1981 does not prohibit the grant of employment to the person who has married twice, the order is clearly based upon misapplication of rules. Even otherwise, the factum of second marriage was disputed and not established in any Court of law as such the order dated 25.7.2019, which is Annexure -1 to the petition is clearly unsustainable and is quashed."

B) Qaji Jamil Ahemad (Supra):

"9. The learned counsel for the opposite parties has placed before us the record pertaining to the enquiry proceedings. The record reveals that after submission of the charge-sheet, a reply was submitted by the petitioner and no witnesses were examined by the department to prove the charges mentioned in the charge-sheet. In the absence of any evidence being led by the department, the charges cannot be said to be proved or established. It also cannot be said that the delinquent officer associated in the enquiry proceedings. The enquiry was conducted by the enquiry officer in violation of the principle of natural justice. It is settled law that after a charge-sheet is given to a delinquent employee, an oral enquiry is a must-whether the employee requests for it or not.

10. In the instant case, no witnesses were examined by the department to prove the charges mentioned in the charge-sheet. We are of the view that it is no enquiry in the eyes of law as no date, time and place of enquiry was fixed by the enquiry officer. The impugned removal order and the order passed by the appellate authority are legally not sustainable. In the result, the writ petition succeeds and is hereby allowed. The impugned judgment and order dated 22.9.1995, passed by the State Public Services Tribunal, Lucknow is hereby set aside and the impugned removal order dated 3.11.1989 and the order passed by the appellate authority dated 15.10.1990 are hereby quashed with all consequential benefits. A liberty is granted to the opposite parties to hold a fresh enquiry in accordance with law from the stage the reply was submitted by the petitioner to the charge-sheet. The consequential benefits will be subject to the outcome of fresh enquiry. Since the petitioner has already attained the age of superannuation, the opposite parties shall conclude the disciplinary proceedings expeditiously."

13. The first question to be taken into consideration is that whether Rakesh Kumar Awasthi made a complaint to the Chief Election Commission of India against some officer of District including District Magistrate, District Forest Officer and Station House Officer of Police Station Safderganj, District Barabanki and in the said complaint allegation was also made against the petitioner to the effect that he has set up some teachers in certain news paper in order to favour a particular political party. Name of the petitioner was also mentioned in one of the teachers working for news papers Swatantra Bharat and Janmorch and in pursuance thereof, respondent No.3 constituted an inquiry committee consisting of Deputy Basic Education Officer and the petitioner was suspended pending inquiry against him.

14. After submission of reply to the show cause notice, no date, time or place was fixed for oral inquiry and cross examination of witnesses relied upon, therefore, the inquiry proceeding vitiates in law and is not sustainable in the eyes of law.

15. In regard to applicability of Rules of 1956, reliance has been placed in the case of **Tufail Ahmad (Supra)**. On its perusal, it is transpired that entire order is based upon premise that the Rules, 1956 as applicable to U.P. Government Servants would apply to the teachers under U.P. Basic Education also. The same prohibits involvement in Journalism as involvement of the petitioner in journalism was guilty of misconduct.

16. In the said judgment, it has been held that Rules of 1956 are not applicable to the teachers of U.P. Basic Education. In addition there to the Rule 12 of the Rules, 1981 does not prohibit the grant of employment to the person who is involved in journalism. Even otherwise, on the said basis, the impugned order was quashed by the Court.

17. In the case of **Qaji Jamil Ahemad (Supra)**, it has been held that due to non examination of witnesses to prove charges the Court was of the opinion that it is no inquiry in the eyes of law as no date, time and place of inquiry was fixed by the inquiry officer, therefore, the impugned order of removal was set aside holding that it is violation of principles of natural justice.

18. While dictating the judgment, learned Senior Counsel for the petitioner pointed out that on attaining the age of superannuation, the petitioner has retired from service on 31.03.2020.

19. In view of fact came while dictation of judgment, the petitioner cannot be restored as Assistant Teacher in Junior Basic School. The only remedy available to him is to provide consequential benefits of the post in case he was to be retained as Assistant Teacher, Junior Basic School, therefore, on the facts and circumstances and reasons recorded above, the impugned order dated 30.10.2009 is hereby quashed.

20. The writ petition succeeds and is **allowed**.

21. However, direction is issued to the respondent - District Basic Education Officer to treat the petitioner as Assistant Teacher, Junior Basic School w.e.f. 28.03.2009 till date of retirement with a further direction to ensure payment of salary and arrears of the post till 31.03.2020, forthwith.

(2026) 4 ILRA 752
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 03.04.2026

BEFORE

THE HON'BLE MRS. MANJU RANI CHAUHAN, J.

Writ A No. 15328 of 2025

Veena Menon

...Petitioner

Versus

State of U.P. & Ors.

...Respondents

Issue for Consideration

(1) Effect of not providing opportunity of hearing before passing the orders of withholding the salary of the petitioner, who obtained the appointment relying upon a forged and fabricated document.

Headnotes

(A) Service law – Withholding of salary – Assistant Teacher – Petitioner got appointment in the year 1989 – On asking to upload the documents of educational qualification on the Portal, it came into light that the petitioner's result of High School was showing as 'withheld' on the ground of non-submission of Transfer Certificate of Class IX – Petitioner's application for issuance of Class X marksheet and certificate was rejected on the ground of alleged non-submission of documents – Consequently, the salary was also withheld subject to production of original High School Marksheet and Certificate – Validity challenged – In enquiry, it came into light that the petitioner had produced a handwritten High School marksheet and a fabricated Transfer Certificate, on the strength of which, she secured admission in Class XII – Effect – Plea of violation of principle of natural justice was taken – Permissibility: (E-1)

Held: The petitioner has sought to rely upon a forged and fabricated document, thereby rendering her claim wholly untenable – Upon a comprehensive inquiry into the matter, it was conclusively found that the petitioner had indulged in acts of forgery in securing appointment to the post of Assistant Teacher – The conclusions drawn in the inquiry report leave no manner of doubt that the petitioner had systematically relied upon forged and fictitious documents to secure academic progression and consequential benefits, thereby vitiating the very foundation of her claim. [Para 55, 63 and 72]

Further held: Fraud vitiates all solemn acts. In cases where an action is founded upon fraud, the requirement of affording an opportunity of hearing is considerably diluted, and in appropriate cases, even dispensed with – Rejection of the petitioner's claim for issuance of the High School certificate and marksheet cannot be faulted. Consequential actions, including the withholding of salary, have also been initiated by the competent authority in accordance with law – The impugned orders cannot be faulted on the ground urged by the petitioner, and the challenge so raised is devoid of merit. [Para 74, 77 and 113]

Case Law Cited

State of Punjab vs. Rafiq Masih, (2015) 4 SCC 334; Writ C No. 19955 of 2017, Markandey Kumar Yadav vs. State of U.P. & Ors.; W. A. No. 3075 of 2021, All India Private Schools Legal Protection Society vs. State of Tamil Nadu; Writ A No. 13670 of 2020, Manjul Kumar vs. State of U.P. & others decided on 24.08.2021; Jainendra Singh vs. State of U.P., (2012) 8 SCC 748; Writ A No. 19634 of 2025, Garima Singh vs. State of U.P. & Others; Writ A No. 11846 of 2025, Virendra Kumar Mishra vs. State of U.P. & Others decided on 19.08.2025; Writ A No. 20140 of 2023, Kamlesh Kumar Nirankari vs. State of U.P. & Others decided on

25.08.2025; Ram Chandra Singh vs. Savitri Devi and others, (2003) 8 SCC 319: JT 2005(11) SC 439 – **referred to.**

List of Acts

U.P. Recognized Basic Schools Recruitment (Junior High Schools) (Recruitment of Conditions of Services of Teachers) Rules, 1978; UP Board of Secondary Education Rules, 1983-88 – Chapter XII, Regulation 10.1; Gazette Notification of 1984.

List of Keywords

Appointment, Withheld, Appointment, High School marksheet and certificate, Handwritten marksheet, Transfer application, Enquiry, Opportunity of hearing, Non-submission of documents, Principle of natural justice, Arbitrary, Recruitment, Withholding of salary, Irregularity, Discrepancy, Successful, Presumption of success, Illegality, Objection, Defects, Procedural lapse, Documentation issue, Substantive right, Fraud, Deliberate misrepresentation, Verification, Communication, Punitive action, Premature, Squarely impermissible, Hardship, Retirement, No fault, Pension, Monetary benefits, Forged/false affidavit, Sympathy, Void ab initio, Technical impediments, Verification report, Veracity, Credibility, Reconsideration, Substantiation of the finding, Finding of fact, Untenable, Adjudication, Unjustified, Eligibility condition, Unsustainable, Fraud, Solemn act, Misconceived, Removal of procedural impediments, Precedents, Legitimacy, Formal order, Cancellation.

Case Arising From

Impugned orders dated 26.07.2025 and 13.08.2025 passed by the Additional Secretary, Madhyamik Shiksha Parishad, Meerut Region, and the consequential orders dated 19.08.2025 and 20.08.2025 passed by the District Basic Education Officer, Meerut.

Appearances for Parties

Advs. for the Appellant: Himanshu Bansal, Shivam Yadav.

Advs. for the Respondents: Shailendra Singh (SC).

(Delivered by Hon'ble Mrs. Manju Rani Chauhan, J.)

1. Mr. Himanshu Bansal, learned Advocate has appeared on behalf of the petitioner and Mr. Shailendra Singh, learned Standing Counsel appeared for the State.

2. The petitioner has preferred instant writ petition challenging orders dated 26.07.2025, 13.08.2025 passed by the Additional Secretary, Madhyamik Shiksha Parishad, Meerut Region and the consequential orders dated 19.08.2025 and 20.08.2025 passed by the District Basic Education Officer, Meerut. The petitioner has further prayed for the direction upon the respondents to forthwith release the withheld salary of the petitioner along with all consequential benefits including arrears and continuity of service. It has further been prayed that the respondents may be directed to issue High School Marksheet and Passing Certificate of the petitioner in terms of the Gazette Notification of 1984 wherein the petitioner's name is recorded at Serial No. 725.

3. Placing brief facts of the case, learned counsel for the petitioner submits that the petitioner was appointed way back in the year 1989 as an Assistant Teacher in Churh City Junior High School, Thatherwada, District Meerut and served up to the satisfaction of her superiors and there has been no complaint against her. At the time of appointment the educational documents submitted by her including High School Marksheet of the year 1984 (Roll no. 1233725) issued by St. Thomas Girls Inter College, Meerut were duly verified. Till date mark sheets of class 10th and

class 12th as well as TET of the petitioner were not disputed and they still hold good ground in the eyes of law.

4. The controversy arose when the petitioner had to upload all details of her employment along with the documents of educational qualifications on Manav Sampada Portal as per requirements of the respondents. While doing so, the petitioner realized that Passing Certificate of High School was also required to be uploaded. The aforesaid certificate was withheld by Madhyamik Shiksha Board in the year 1984 due to non-submission of some papers and there was no requirement of any such certificate, therefore, the petitioner did not apply for Class-X passing certificate, however the handwritten marksheet of class 10th duly certified by the Principal of the School from where she had completed her Class-X was made available to her. Thus for uploading Class-X certificate as required by the respondent authorities, the petitioner approached Madhyamik Shiksha Parishad, Regional Office, Meerut requesting for issuance of marksheet and passing certificate of High School bearing roll no. 1233725 from St. Thomas Girls Inter College, Meerut, by means of moving an application dated 20.03.2024. On 30.08.2024 the Regional Secretary, Madhyamik Shiksha Parishad, Meerut Region, informed the petitioner that as the result of High School Examination 1984 (Roll No. 1233725) was shown as 'withheld' on the ground that entry of her name in the admission register and Transfer Certificate of Class-IX had not been submitted by the institution. It was further mentioned that in terms of resolution of the Examination Committee dated 23.10.2019, the results of such candidates would remain withheld unless the requisite documents were furnished within two years and thereafter will be released on the orders of Secretary, Madhyamik Shiksha Parishad. The petitioner had completed Class-X education in the year 1984 bearing Roll No. 1233725 and due to non deposit of her transfer certificate of Class-IX, the mark sheet/ passing certificate was not released. However on the basis of Class-X marksheet issued by the Principal which was duly certified, the petitioner passed her Class-XI and XII examinations. The petitioner on the advice of Regional Secretary, furnished all details by filing an affidavit dated 13.05.2024 along with notarized affidavit mentioning therein that her maiden name was Veena Breo and her name is Smt. Veena Menon, both are one and the same person.

5. The petitioner also deposited her Transfer Certificate and the Gazette issued by the Madhyamik Shiksha Parishad, wherein name of the petitioner is surfaced at serial no. 725 indicating she has been declared passed with third division.

6. On the aforesaid, instead of issuing High School Certificate and marksheet, the Parishad started enquiring into the marksheet issued by the Principal of the School which was in accordance with the gazette notification as issued by the Parishad, wherein petitioner's name is surfaced at serial no. 725 and also started enquiry of Class-VIII Transfer Certificate which was produced by the petitioner and the same relates to District Etah.

7. Relying upon the aforesaid enquiry, without affording any opportunity of hearing or giving any notice to the petitioner, the Additional Secretary, Madhyamik Shiksha Parishad, Meerut Region vide order dated 26.07.2025 rejected petitioner's application requesting for issuance of Class-X marksheet and certificate, solely on the ground of alleged non-submission of documents treating the petitioner's case not to be genuine.

8. The petitioner who has submitted her explanation on 28.07.2025 before the Madhyamik Shiksha Parishad in response to the allegations mentioned in the order dated 26.07.2025, the same has not been considered. Thereafter an order dated 13.08.2025 was passed by the Additional Secretary, Madhyamik Shiksha Parishad, Meerut Region, without considering the fact that the Transfer Certificate which has been alleged by the respondents to be submitted by the petitioner, in fact has not been submitted by her. The petitioner has never attended the alleged school situated in District Etah. The aforesaid order dated 13.08.2025 was not given to the petitioner and also to the Department of the Basic Education, however, the said order was communicated to the petitioner on 25.08.2025.

9. The aforesaid order speaks about three documents produced before the Madhyamik Shiksha Parishad on 24.05.2025; (i) Affidavit dated 13.05.2025; (ii) Transfer Certificate of Class-VIII issued by Junior High School, Rustamgarh, District Etah; (iii) Handwritten marksheet issued by the Principal, St. Thomas Girls Inter College, Meerut.

10. On the aforesaid documents, an enquiry has been conducted by Madhyamik Shiksha Board. Aforesaid order though mentions the handwritten marksheet as produced by the petitioner, has not been issued by the Principal of the School as he has denied issuance of the same. However, it does not mention about the Gazette notification which clearly details the name of the petitioner which is shown at Sl. No. 725. In the aforesaid order the Transfer Certificate of Class-VIII as produced before the authorities relates to District Etah and the same has not been found to be forged during the enquiry.

11. Learned Counsel for the petitioner further submits that there was no occasion for the petitioner to go to District Etah for attending school as she is born and brought up in District Meerut. She has been educated in District Meerut up to Class-XII and has also got her TET certificate from Bihar.

12. Subsequent to the order dated 26.07.2025 the District Basic Education officer has passed order dated 19.08.2025 and 20.08.2025. By order dated 19.08.2025 the District Basic Education Officer has withheld the due salary of the petitioner granting three month's time to produce original High School Marksheet and Certificate. By order dated 20.08.2025 the District Basic Education Officer has modified the order dated 19.08.2025 reducing three month's time to fifteen days for production of the original High School Marksheet and Certificate. Thus, the impugned orders dated 26.07.2025, 13.08.2025, 19.08.2025 and 20.08.2025 are under challenge in this writ petition.

13. Learned Counsel for the petitioner contends that the impugned order dated 26.07.2025 passed by respondent no. 2 rejecting application of the petitioner requesting for issuance of Class-X Marksheet and Certificate is arbitrary as instead of issuing the certificate on the basis of Gazette notification wherein the petitioner's name finds place at Sl. No. 725 on the basis of which the Principal of St. Thomas Girls Inter College, Meerut has issued a handwritten marksheet and the enquiry has been conducted without any notice or opportunity of hearing to the petitioner.

14. The aforesaid has been done, after the petitioner has put in nearly 35 years of service as Assistant Teacher ignoring the fact that the said handwritten marksheet as issued by the Principal of

the said institution on the basis of gazette notification as issued by the board was placed before the authorities at the time of appointment as Assistant Teacher and same has been duly verified.

15. Learned Counsel for the petitioner further contends that another illegality has been committed by the respondents while getting Class-VIII transfer certificate issued from District Etah inquired, which infact has never been produced by the petitioner. He further submits that even otherwise the Class-VIII certificate does not have any bearing on Class-X educational certificate which the petitioner has duly passed. Relying upon the order dated 26.07.2025, the District Basic Education Officer has passed orders dated 19.08.2025 and 20.08.2025 without further enquiring upon the reality about Class-VIII certificate and the fact that the petitioner had already passed Class-X from the school, Principal of which had issued a handwritten marksheet on the basis of Gazette notification, that too, without giving any notice or opportunity of hearing to the petitioner.

16. Learned Counsel for the petitioner next submits that impugned orders have been passed by completely opening new front when the petitioner was required to upload educational documents including High School marksheet on Manav Sampada Portal by reopening the case of the petitioner after 35 years of service about High School marksheet and enquiring such Class-VIII Transfer Certificate from District Etah which has never been produced by the petitioner.

17. The orders impugned have been passed in gross violation of principles of natural justice as no opportunity of hearing has ever been afforded to the petitioner. The authorities have passed the impugned orders arbitrarily ignoring the gazette notification of the year 1984 wherein petitioner's name finds place at Sl. No. 725 declaring her to have passed, instead emphasizing upon an alleged Class-VIII Transfer Certificate which has no bearing upon the petitioner's Class-X result.

18. While passing the orders impugned, the authorities have not considered the fact that as per settled position of law, Class-X gazette and marksheet are the only determinative records and the Transfer Certificate of Class-VIII issued from District Etah cannot have any bearing over Class-X marksheet and the said marksheet cannot be doubted or disputed on the basis of such alleged Transfer Certificate of Class-VIII.

19. Learned Counsel for the petitioner, further contends that the orders passed by the District Basic Education Officer are totally based upon the order as passed by the Additional Secretary, Madhyamik Shiksha Parishad, without independent application of mind. Proper disciplinary proceedings have not been initiated prior to passing of the orders impugned, therefore, the same is arbitrary and bad in the eyes of law. The respondents have also ignored the fact that Writ-A No. 9228 of 2013 was filed challenging the order passed by the Director of Education, whereby the representation for payment of salary was rejected on the ground that they did not fulfill minimum eligibility qualification as per U.P. Recognized Basic Schools Recruitment (Junior High Schools) (Recruitment of Conditions of Services of Teachers) Rules, 1978, which was disposed of by order dated 17.09.2019, wherein also High School marksheet of the petitioner was not disputed.

20. Learned counsel for the petitioner submits that withholding the due salary of the petitioner and modification of the order dated 19.08.2025 reducing three month's time to fifteen days for

production of the original High School Marksheet and Certificate clearly demonstrates the malafide intention and colourable exercise of powers by the authorities concerned.

21. In the written submissions as submitted on 09.03.2026, learned counsel for the petitioner has placed the facts of the case, which are thus:

a) The petitioner passed the High School Examination in the year 1984, conducted by the Madhyamik Shiksha Parishad, U.P., bearing Roll No. 1233725, and her name is duly published in the official Gazette Notification at Serial No. 725.

b) Petitioner's result has been recorded as "withheld (CP category)", therefore, she approached the concerned institution, namely St. Thomas Girls Inter College, Meerut, from where she had appeared in the High School Examination. Upon verification of the Gazette Notification and the school records, the Principal In-Charge of the institution issued marksheet/certificate to the petitioner, certifying that she had appeared in the High School Examination in the year 1984 and had been declared successful therein. Such handwritten certificates were issued by the institution at the relevant point of time on the basis of the Gazette publication to enable students to pursue further studies when the formal marksheet had not been issued by the Board due to procedural reasons. On the strength of the said certificate, the petitioner thereafter pursued her further education, including Intermediate (Class XII) and other requisite qualifications, and after appointment as Assistant Teacher in the year 1989 all documents were duly verified by the authorities concerned.

c) Surprisingly, after 35 years of service, when education documents were to be uploaded on Manav Sampada Portal, a story has been built up regarding submission of forged Class-VIII certificate and the fact that the original marksheet and passing certificate has not been uploaded.

22. Learned counsel for the petitioner has raised two main issues for consideration while challenging the orders impugned:

i. Whether the respondents were justified in refusing to issue the High School marksheet and passing certificate to the petitioner despite the fact that her name finds place in the official Gazette Notification of the year 1984 issued by the Board, declaring her to have passed the High School Examination?

ii. Whether an alleged irregularity or discrepancy in a Class-VIII Transfer Certificate can legally invalidate or be used as a ground to deny issuance of a High School (Class-X) marksheet and certificate by the Board, particularly when the petitioner had duly appeared in the examination, was declared successful in the official Gazette, and the said qualification was accepted by the authorities at the time of appointment decades earlier?

23. While justifying his case, learned counsel for the petitioner submits that petitioner's name appears in the official Gazette Notification of the Board at Serial No. 725, declaring her to have passed the High School Examination, however, the respondents have ignored this official record and instead relied upon extraneous considerations such as an alleged Class-8 transfer certificate. It is well settled that entries in official records maintained by statutory authorities carry presumption

of correctness. Therefore, the refusal to issue the marksheet despite the Gazette publication is arbitrary and perverse.

24. Learned counsel for the petitioner further submits that the petitioner has not only passed the High School Examination but has also successfully completed the Intermediate (Class XII) Examination (Annexure no. 3 to the writ petition), and both the said certificates have been duly issued by the Madhyamik Shiksha Parishad, Uttar Pradesh. The petitioner thereafter pursued further studies and obtained the Basic Training Certificate (BTC), which is the prescribed training qualification for appointment to the post of Assistant Teacher in the Basic Education Department. It is pertinent to submit that all these educational qualifications were acquired on the strength of the petitioner's High School and Intermediate certificates issued by the said Board. The petitioner's eligibility for appointment as Assistant Teacher was duly assessed and accepted by the competent authorities on the basis of these qualifications at the time of appointment in the year 1989. Thus, the petitioner's entire educational progression, including completion of Intermediate and the BTC training course, stands recognized by the competent authorities, and the same clearly demonstrates that the petitioner's qualifications have consistently been accepted by the respondents throughout her service career.

25. It has further been argued by learned counsel for the petitioner that even assuming, without admitting, that there existed any discrepancy relating to Class 8th Transfer Certificate the petitioner's educational record, the same could at best be construed as a procedural irregularity and not an illegality so as to justify the drastic action taken by the respondents. The petitioner's result in the High School Examination of the year 1984 stands duly published in the official Gazette issued by the Board, which constitutes an authentic public record maintained in the ordinary course of official business.

26. He next contends that the petitioner was appointed as an Assistant Teacher in the year 1989 and her educational qualification was duly accepted and verified by the competent authorities at the time of her appointment. The petitioner has thereafter rendered more than three decades of continuous and satisfactory service without any complaint or adverse remark. At no point during this long period did the respondents raise any objection regarding the petitioner's educational qualification. In such circumstances, the respondents cannot now be permitted to question the same at the fag end of the petitioner's career.

27. Learned counsel for the petitioner further contends that it is a settled principle of service jurisprudence that where an employee has served the department for long years and the alleged defect pertains merely to a procedural lapse or documentation issue, the same cannot be treated as an illegality so as to invalidate the employee's service or deprive her of salary and other service benefits. Courts have consistently held that minor procedural irregularities cannot defeat substantive rights, particularly when the employee has not obtained the benefit by practicing fraud or deliberate misrepresentation.

28. He further submits that the petitioner was appointed to the post of Assistant Teacher only after due verification of her educational qualifications by the competent authorities of the department. At the time of appointment, the petitioner had produced all the requisite certificates

and documents, which were duly scrutinized and accepted by the concerned authorities. Thereafter, on the basis of the said qualifications, the petitioner continued in service for several decades and also pursued further studies required for her professional eligibility. In such circumstances, it is a settled principle of law that once the competent authorities themselves have verified and accepted the qualifications of an employee and allowed her to continue in service for a long period of time, the clock cannot now be rewound to reopen and question the very basis of such verification after the lapse of several decades. The respondents, having themselves undertaken the process of verification and having permitted the petitioner to serve the department for more than three decades, are now estopped from reopening the issue at this belated stage to the prejudice of the petitioner.

29. Learned counsel for the petitioner further submits that it is an undisputed and admitted position on record that the petitioner had appeared in the High School (Class X) Examination conducted by the Board in the year 1984. It is further not in dispute that on the strength of the said examination, the petitioner was permitted to pursue her further studies and thereafter appeared in the Intermediate (Class XII) Examination conducted by the competent Board. The petitioner successfully completed and passed the said Intermediate Examination as well. The fact that the petitioner was allowed to continue her academic course and was permitted to appear in the Intermediate Examination itself clearly establishes that the petitioner's High School qualification was duly recognized and accepted by the authorities at the relevant time. The subsequent educational progression of the petitioner, culminating in passing both the High School and Intermediate examinations, therefore stands as a consistent and undisputed factual position on record, which further demonstrates that the petitioner's educational credentials were never questioned by the authorities for several years.

30. He further argues that the present writ petition cannot be said to be premature in any manner whatsoever. The requirement of submission of the High School (Class-10) marksheet has been specifically insisted upon by the office of the District Basic Education Officer, Meerut, and the failure to produce the said marksheet has already resulted in adverse and coercive consequences against the petitioner. In fact, acting upon the communication issued by the Madhyamik Shiksha Parishad refusing issuance of the marksheet, the District Basic Education Officer has proceeded to pass consequential orders whereby the salary of the petitioner has been withheld and directions have been issued requiring the petitioner to produce the said certificate within a stipulated period. Thus, the impugned actions have already culminated in civil consequences affecting the petitioner's service and livelihood. In such circumstances, the cause of action has clearly arisen and the petitioner cannot be compelled to wait for further punitive action to be taken. The present writ petition has therefore been filed to challenge the impugned orders and the consequential action of withholding the petitioner's salary, and the same is fully maintainable in law and cannot be termed as premature.

31. To strengthen his submissions, learned counsel for the petitioner contended that the action of the respondents in withholding the petitioner's salary is squarely impermissible in law in view of the authoritative pronouncement of the Supreme Court in **State of Punjab v. Rafiq Masih (White Washer)**, (2015) 4 SCC 334, wherein the Court has held that recovery of excess payments is not sustainable where the employee is not guilty of fraud or misrepresentation and where recovery

would cause undue hardship and the recovery is impermissible when excess payments have continued for long periods, and when the employee has retired or is nearing retirement. The petitioner, having rendered more than three decades of unblemished service and being close to retirement, cannot be subjected to the harsh consequence of salary deprivation for no fault of her own.

32. He has also submitted that in an identical matter relating to non-issuance of a High School certificate, this Court in the case of **Markandey Kumar Yadav vs. State of U.P. & Ors.**, has held that once a candidate had been issued a marksheet, permitted to pursue higher studies, and had qualified subsequent examinations, the Board was required to examine its own records and rectify the anomaly rather than deny certification. The Court specifically directed the Board to conduct an enquiry to ascertain how the candidate was allowed to appear in subsequent examinations despite alleged discrepancies (Order dated 18.07.2017), and ultimately the certificate was directed to be issued, rendering the petition infructuous (Order dated 11.10.2017). The present case stands on a stronger footing as the petitioner's educational progression and long service have been consistently recognized by the authorities.

33. It has been further argued on behalf of the petitioner that the insistence on production of a Transfer Certificate and consequential denial of educational benefits is legally unsustainable. The Madras High Court in the case of **All India Private Schools Legal Protection Society vs. State of Tamil Nadu**, has categorically held that Transfer Certificate is not a mandatory document for admission and cannot be used as a tool to obstruct a child's educational rights. The Court further held that procedural requirements cannot override the child's right to education and schools cannot impose conditions that defeat the object of the Right to Education Act. The ratio squarely applies in the present case where technical objections relating to records are being used to deprive the petitioner of lawful service and salary benefits.

34. It has been further argued by learned counsel for the petitioner that technical or procedural objections relating to educational records cannot be used to defeat substantive rights. The Madras High Court in **All India Private Schools Legal Protection Society (supra)**, has held that procedural requirements such as insistence on Transfer Certificate cannot override the fundamental right to education and cannot be used as a ground to deny educational benefits. The Court has further ruled that additional procedural conditions which defeat statutory rights are impermissible. The same principle squarely applies here, where alleged discrepancies in historical records are being used to deny issuance of marksheet and to withhold salary, despite the petitioner's qualifications having been accepted and recognized throughout her long service.

35. Placing the aforementioned submissions, learned counsel for the petitioner contends that the impugned orders are unsustainable, thus the same may be quashed by this Court.

36. Learned Counsel for the State has placed his submissions in the following manner:

a. The petitioner first time submitted application on 20.03.2024 more than after 40 years for issuing the mark sheet and certificate of High School Examination Year 1984, Roll No. 1233725 along with affidavit, certified photocopy of handwritten mark sheet of High School Personal

Examination Year 1984, Dainik Jagran Meerut edition of 21.02.2024, mentioning that her mark sheet/certificate of High School Year 1984 Roll No.-1233725 is actually lost.

b. The High School Examination Tabulation Chart of the 1984, petitioner was found at Serial No.1233725 result was withheld from the CP list due to non-submitting the relevant documents in the office of Respondent No. 2 by the petitioner.

c. Respondent No. 2 directed the petitioner through office letter dated 30.03.2024 to provide evidence regarding the process and eligibility related to declaration of the result of High School Examination year-1984, Serial No.1233725 from the CP list.

d. The petitioner submitted an affidavit on 20.03.2024 annexed the Class 8th forged and fabricated transfer certificate before the office of Respondent No. 2 regarding issuing fresh mark sheet (Annexed as Annexure CA-4 & 4(1) of the counter affidavit).

e. The respondent no. 2 wrote a letter on 24.08.2024 to the Principal, St. Thomas Girls Inter College, Meerut asking to send a report whether the High School hand written mark sheet was issued or not. Thereafter the Principal of the concerned Institution informed through his letter dated 29.08.2024 that the student's result (CP) is not complete in the school gazette and no handwritten mark sheet has been issued to the student by the school.

f. From the above, the enquiry officer submitted a report on 03.07.2025, therefore, on the basis of the enquiry report, letter dated 01.04.2025 of the District Basic Education Officer and report dated 29.08.2024 of the Principal St. Thomas Girls Inter College Meerut, the TC and High School handwritten mark sheet of examination year 1984, serial number-1233725 submitted by petitioner were found to be forged/fabricated and therefore, rejecting the representation of the petitioner.

g. The petitioner appeared in the high school personal examination in the year 1984, serial number 1233725, from the registered school St. Thomas Girls Inter College, whose result list has been withheld in the CP category. Despite the list being withheld in the CP category due to the petitioner's result being ineligible, she fraudulently prepared a handwritten High School mark sheet and a fake Class 11th TC from the school i.e. St. Thomas Girls Inter College, Meerut, and took admission in Class 12th in another school, namely, Bhagirathi Arya Inter College, Meerut, and succeeded in appearing in the Intermediate Institutional Examination in the year 1987, serial number 061944. The petitioner presented TC SR No. 12010 of her previous school, i.e., St. Thomas Girls Inter College Meerut, which was submitted at the time of admission in class 12, for confirmation of which the office's enquiry officer, Shri Sanjeev Kumar Sharma, has mentioned in his on-site enquiry report that:-

"परीक्षार्थिनी वीना मेनन द्वारा इण्टरमीडिएट परीक्षा वर्ष-1987, विद्यालय भागीरथी आर्य कन्य इण्टर कालेज मेरठ के प्रवेश के समय जो कक्षा-11 उत्तीर्ण स्थानान्तरण प्रमाणपत्र क्रमांक-12010 विद्यालय सेन्ट थॉमर्स गर्ल्स इण्टर कालेज मेरठ से निर्गत, प्रस्तुत किया था। उक्त कक्षा-11 उत्तीर्ण स्थानान्तरण प्रमाणपत्र क्रमांक-12010 का सम्बन्धित विद्यालय सेन्ट थॉमर्स गर्ल्स इण्टर कालेज मेरठ से सत्यापन /

परीक्षण किया गया। परीक्षण में पाया गया कि उक्त स्थानान्तरण प्रमाणपत्र विद्यालय सेन्ट थॉमर्स गर्ल्स इण्टर कालेज मेरठ से नहीं किया गया है। जिसकी पुष्टि सेन्ट थॉमर्स गर्ल्स इण्टर कालेज मेरठ के प्रधानाचार्य ने अपने पत्र दिनांक 25.10.2025 के द्वारा से भी की है। स्पष्ट है कि परीक्षार्थिनी द्वारा कक्षा-12 में प्रवेश हेतु कूटरचित/फर्जी स्थानान्तरण प्रमाणपत्र के आधार पर प्रवेश लिया गया है। तदनुसार परीक्षार्थिनी वीना मेनन का इण्टरमीडिएट परीक्षा वर्ष-1987, अनुक्रमांक- 061944 का परीक्षाफल निरस्त किया जाना समीचीन होगा।"

h. As a result of the said enquiry report and the Principal's letter dated 25.10.2025 confirming the petitioner's Class-11 Transfer Certificate as forged/fake, the result of the petitioner's Intermediate Institutional Examination 1987, Roll No. 061944 is pending consideration before the competent examination committee for cancellation. (Annexure No.CA-14).

i. In Chapter-XII, Regulation-10(1) of the Uttar Pradesh Board of Secondary Education Rules 1983-88, regarding the eligibility of individual candidates, it is mentioned that only individual candidates belonging to one of the following categories will be able to appear in the High School Examination:

“(एक) वे परीक्षार्थी, जिन्होंने निम्नलिखित में से कोई परीक्षा उत्तीर्ण की हो इस प्रतिबन्ध के साथ कि कथित परीक्षा उत्तीर्ण करने के पश्चात दो शैक्षिक वर्ष बीत चुके हैं:-

(क) जूनियर हाईस्कूल परीक्षा अथवा उत्तर प्रदेश में संचालित वह परीक्षा जो पहले हिन्दुस्तानी मिडिल परीक्षा कहलाती थी अथवा उत्तर प्रदेश के अतिरिक्त अन्य राज्यों के शिक्षा विभाग द्वारा संचालित अथवा मान्यता प्राप्त कोई समकक्ष परीक्षा।

(ख) परिषद अथवा शिक्षा विभाग उत्तर प्रदेश द्वारा मान्यता प्राप्त उच्चतर विद्यालय को कक्षा-8 की परीक्षा अथवा उत्तर प्रदेश या उसके बाहर स्थित सामान्य विद्यालय का अनुरूप परीक्षा इस प्रतिबन्ध के साथ कि यह स्कूल किसी ऐसी परीक्षा निकाय से सम्बद्ध या मान्यता प्राप्त है, जिसको परीक्षाएं परिषद द्वारा मान्यता प्राप्त है।”

In light of the above rule, it is confirmed that to appear in the High School Individual Examination, a candidate must have passed Class 9 or two academic years have passed since passing Class 8. Therefore, requesting a transfer certificate from the candidate/applicant is in accordance with the Board's regulations.

j. In the light of the aforesaid order of the Hon'ble Court, it is most respectfully submitted that in the matter in question, the petitioner concealing the facts on the basis of forged/fake records, sent the file to the competent Examination Committee of the Board of Secondary Education, Uttar Pradesh Prayagraj vide office letter dated 14.11.2025 for cancellation of the result of appearing/passing in the High School and Intermediate examination. The order of the Examination Committee on the matter on 18.11.2025 is as follows:

"समिति ने निश्चय किया कि परीक्षार्थिनी श्रीमती वीना मेनन द्वारा कक्षा 8 की कूटरचित एवं फर्जी टी०सी० के आधार पर कक्षा 9 में प्रवेश लेकर हाईस्कूल व्यक्तिगत परीक्षा वर्ष 1984 अनु०-1233725 से परीक्षा में सम्मिलित होने तथा अर्हता के अभाव में परीक्षाफल के सूची सी०पी० में रुके होने के बाद भी परिषदीय विनियमों के विपरीत पुनः कूटरचित एवं फर्जी अभिलेखों के आधार पर तथ्यगोपन करते हुए कक्षा 11 में प्रवेश लेकर इण्टरमीडिएट संस्थागत परीक्षा वर्ष 1987 अनु०-061944 से उत्तीर्ण किया गया है। अतः परीक्षार्थिनी श्रीमती वीना मेनन का हाईस्कूल व्यक्तिगत परीक्षा वर्ष 1984 अनु०-1233725 एवं इण्टरमीडिएट संस्थागत परीक्षा वर्ष 1987 अनु०-061944 का परीक्षाफल निरस्त किया जाय। परीक्षार्थिनी को निर्गत अंकपत्र एवं प्रमाण पत्र वापस प्राप्त किया जाय एवं जिला विद्यालय निरीक्षक द्वारा निरस्तीकरण की सूचना दैनिक समाचार पत्र में प्रकाशित करायी जाय।"

k. It is necessary to pass Class 8th examination for appearing in the High School examination and the petitioner was not found to be qualified in Class 8th and appeared in Examination of Class 10th against the provisions of Chapter-XII, Regulation-10 (1) of the Uttar Pradesh Board of Secondary Education Rules 1983-88.

l. The petitioner submitted an affidavit along with forged and fabricated transfer certificate of Class 8th before the respondent no. 2, due to which the petitioner was not entitled to appear in High School Examination, therefore, the entire certificates of the petitioner are found to be forged and fabricated.

m. One Manjul Kumar obtained the appointment on the basis forged mark sheet. The respondent-authority stopped his salary without passing any written order, thereafter, Manjul Kumar filed **Writ-A No. 13670 of 20204**, before this Hon'ble Court, and this Hon'ble Court vide order dated 24.08.2021 dismissed the writ petition filed by him, the operative portion of the order is being quoted herein below:

"...It is not disputed by the petitioner that the documents were duly verified by the competent authorities and the authorities conferring the certificates have certified that the documents relied upon by the petitioner are forged and manufactured documents. Petitioner in the circumstances would have no right to continue on the post and receive salary. The very foundation on which the appointment rests is non-est -- void abinitio. Nothing further has to be done by the authorities but to discontinue the appointment. In permitting the petitioner to continue in service and pay salary would perpetuate fraud and misrepresentation that would be negation of rule of law. Petitioner, his father (clerk) and the then Basic Education Officer were throughout aware that petitioner had obtained the appointment by fraud..."

n. That the petitioner's appointment as Assistant Teacher in the year 1989, after completion of 35 years of service, petitioner submitted application for issuing fresh mark sheet, after enquiry, petitioner's Class 8th Transfer Certificate as well as 11th mark sheet found forged and fabricated, due to the said reason petitioner's salary was stopped.

37. To strengthen his submissions, learned Standing Counsel has relied upon numerous judgments of this Court as well as Apex Court, which are thus:

a. Hon'ble Apex Court in the case of **Jainendra Singh Vs. State of U.P.**, in Paragraph No.29.1 has observed as follows:

"29.1 Fraudulently obtained orders of appointment could be legitimately treated as voidable at the option of the employer or could be recalled by the employer and in such cases merely because the respondent employee has continued in service for a number of years, on the basis of such fraudulently obtained employment, cannot get any equity in his favour or any estoppels against the employer."

b. This Court in **Writ (A) No.19634 of 2025**, in Paragraph No. 5 observed as follows:-

"5. Learned counsel for the respondent-BSA further submits that it is a settled position of law that no opportunity of hearing or detailed inquiry is warranted in cases where an appointment has been secured by practicing fraud. This issue has already been discussed in several judgments passed by this Court in the cases of Virendra Kumar Mishra vs. State of UP and 4 Others, in Writ A No. 11846 of 2025, Shiv Kumar vs. State of U.P. and 8 Others, in Writ A No. 12839 of 2023, Pankaj Mathur vs. State of U.P. and 3 Others, in Writ A No. 12336 of 2025 and Deepa Magleena vs. State of U.P. And 4 Others, in Writ-A No. 10843 of 2025. The same has been held in the case of Kamlesh Kumar Nirankari vs. State of U.P. and 20 Others, in Writ A No.20140 of 2023, wherein this Court has observed that in case the employment has been obtained based on fraudulent documents on concealing facts, the beneficiary of such fraud cannot seek any inquiry in terms of Uttar Pradesh Government Servant (Discipline and Appeal) Rules, 1999. Similar issue has also been settled in the case of Krishna Kant vs. State of U.P. and 2 Others, in Writ A No. 10029 of 2025."

c. One Virendra Kumar Mishra filed **Writ-A No.11846 of 2025** before this Court, and this Court vide its judgment and order dated 19.08.2025, in Paragraph No. 24 & 25 has observed as follows:

"24. Thus, the law in case of appointment obtained fraudulently is well settled. Fraudulently obtained order of appointment or approval can be recalled by the authority concerned. In such cases merely because the employee continued in service for a number of years, on the basis of fraudulently obtained orders, cannot create any equity in his favour or any estoppel against the employer/authority. When an appointment or approval has been obtained by a person on the basis of forged documents, it would amount to misrepresentation and fraud on the employer. It would create no equity in his favour or any estoppel against the employer to cancel such appointment or approval since "Fraud and justice never dwell together.

25. In view of the foregoing analysis and observations, now, it is clear that when any selection/recruitment or appointment to some post was made illegally and it is noticed on the complaint or at subsequent stage that illegalities, irregularities, improprieties, procedural infirmities and deficiencies and defects have occurred, forgery or foul-play adopted or non observance of Act, rules, norms were made in process then the beneficiary candidate, who has become output and

product of such defective and bad selection or outcome of spoiled system process, shall have no right or claim to the post or salary or any consequential benefits in the service."

d. One Kamlesh Kumar Nirankari filed **Writ - A No. - 20140 of 2023** before this Hon'ble Court, and this Hon'ble Court vide its judgment and order dated 25.08.2025, in Paragraph No. 32, 33, 34, 35 & 36 has observed as follows:

"32. In the present case, the verification report categorically records that the documents submitted by the petitioner were forged. The petitioner was issued a show-cause notice and was called upon to produce the original certificates, but he failed to do so. In these circumstances, the respondents were justified in concluding that the appointment had been procured by fraudulent means.

33. The contention that a full departmental enquiry ought to have been held is without merit. Once it is established that the very entry into service was vitiated by fraud, there is no "termination" in the strict sense, but only a declaration that no valid appointment ever existed. The requirement of an elaborate enquiry, as mandated for proven misconduct of a regular employee, has no application to such cases.

34. In this view of the matter, when the petitioner had produced forged documents for getting appointment and nothing has been pointed out to controvert the findings recorded in the impugned order, the petitioner is not entitled to grant any relief as prayed.

35. Thus, where a person secures appointment on the basis of a forged marksheet or certificate or appointment letter and on that basis he or she has been inducted in Government service then he/she becomes beneficiary of illegal and fraudulent appointment. Such an appointment is illegal and void ab initio. Therefore, holding disciplinary proceedings envisaged by Article 311 of the Constitution of India or under any disciplinary rules including the Uttar Pradesh Basic Education Staff Rules, 1973 or the Uttar Pradesh Government Servant (Discipline and Appeal) Rules 1999, shall not arise.

36. The forgery committed by the petitioner, for obtaining public employment on the basis of forged educational documents is the basic eligibility condition for appointment on the post of Assistant Teacher. Therefore, it vitiates the process of his appointment. Thus, the appointment of the petitioner is void ab initio and he cannot be said to be a government servant. Therefore, his appointment has been lawfully cancelled by the impugned order."

e. The Apex Court in the case of **Ram Chandra Singh Vs. Savitri Devi and others**, has elaborately considered the meaning of the word fraud and its effects and held in paragraph nos. 15 to 34 as under:

"15. Commission of fraud on court and suppression of material facts are the core issues involved in these matters. Fraud as is well-known vitiates every solemn act. Fraud and justice never dwells together.

16. Fraud is a conduct either by letter or words, which induces the other person, or authority to take a definite determinative stand as a response to the conduct of former either by word or letter.

17. It is also well settled that misrepresentation itself amounts to fraud. Indeed, innocent misrepresentation may also give reason to claim relief against fraud.

18. A fraudulent misrepresentation is called deceit and consists in leading a man into damage by willfully or recklessly causing him to believe and act on falsehood. It is a fraud in law if a party makes representations which he knows to be false, and injury ensues therefrom although the motive from which the representations proceeded may not have been bad.

19. In *Derry v. Peek*, (1889) 14 AC 337, it was held: In an 'action of deceit the plaintiff must prove actual fraud. Fraud is proved when it is shown that a false representation has been made knowingly, or without belief in its truth, or recklessly, without caring whether it be true or false. A false statement, made through carelessness and without reasonable ground for believing it to be true, may be evidence of fraud but does not necessarily amount to fraud. Such a statement, if made in the honest belief that it is true, is not fraudulent and does not render the person making it liable to an action of deceit.

20. In *Kerr on Fraud and Mistake* at page 23, it is stated:

"The true and only sound principle to be derived from the cases represented by *Slim v. Croucher* is this that a representation is fraudulent not only when the person making it knows it to be false, but also when, as *Jessel, M.R.*, pointed out, he ought to have known, or must be taken to have known, that it was false. This is a sound and intelligible principle, and is, moreover, not inconsistent with *Derry v. Peek*, A false statement which a person ought to have known was false, and which he must therefore be taken to have known was false, cannot be said to be honestly believed in.

A consideration of the grounds of belief, said Lord Herschell, "is no doubt an important aid in ascertaining whether the belief was really entertained. A man's mere assertion that he believed the statement he made to be true is not accepted as conclusive proof that he did so."

21. In *Bigelow on Fraudulent Conveyances* at page 1, it is stated:

"If on the facts the average man would have intended wrong, that is enough. "

It was further opined:

"This conception of fraud and since it is not the writer's, he may speak of it without diffidence), steadily kept in view, will render the administration of the law less difficult, or rather will make its administration more effective.

Further, not to enlarge upon the last matter, it will do away with much of the prevalent confusion in regard to 'moral' fraud, a confusion which, in addition to other things, often causes lawyers to take refuge behind such convenient and indeed useful but often obscure language as 'fraud upon the law. What is fraud upon the law? Fraud can be committed only against a being capable of rights, and fraud, upon the law' darkens counsel. What is really aimed at in most cases by this obscure contrast between moral fraud and fraud upon the law, is a contrast between fraud in the individual's intention to commit the wrong and fraud as seen in the obvious tendency of the act in question."

22. Recently this Court by an order dated 3rd September, 2003 in *Ram Preeti Yadav v. UP. Board of High School & Intermediate Education and Ors.* reported in JT 2003 (Supp. 1) SC 25 held:

"Fraud is a conduct either by letter or words, which induces the other person, or authority to take a definite determinative stand as a response to the conduct of former either by words or letter. Although negligence is not fraud but it can be evidence on fraud. (See *Derry v. Peek* (1889) 14 AC

337). In *Lazarus Estate v. Berly* [1956] 1 All ER 341] the Court of Appeal stated the law thus:

"I cannot accede to this argument for a moment "no Court in this land will allow a person to keep an advantage which he has obtained by fraud. No judgment of a Court, no order of a Minister, can be allowed to stand if it has been obtained by fraud. Fraud unravels everything". The Court is careful not to find fraud unless it is distinctly pleaded and proved; but once it is proved it vitiates judgments, contracts and all transactions whatsoever."

In *S.P. Chengalvaraya Naidu v. Jagannath* [(1994) 1 SCC 1] this Court stated that fraud avoids all judicial acts, ecclesiastical or temporal."

23. An act of fraud on court is always viewed seriously. A collusion or conspiracy with a view to deprive the rights of the others in relation to a property would, render the transaction void ab initio. Fraud and deception are synonymous.

24. In *Arlidge & Parry on Fraud*, it is stated at page 21:

"Indeed, the word sometimes appears to be virtually synonymous with

"deception", as in the offence (now 16 repealed.) of obtaining credit by fraud. It is true that in this context "fraud" included certain kinds of conduct which did not amount to false pretences, since the definition referred to an obtaining of credit "under false pretences, or by means of any other fraud".

In *Jones*, for example, a man who ordered a meal without pointing out that he had no money was held to be guilty of obtaining credit by fraud but not of obtaining the meal by false pretences: his conduct, though fraudulent, did not amount to a false pretence. Similarly it has been suggested that a charge of conspiracy to defraud may be used where a "false front" has been presented to the public (e.g. a business appears to be reputable and creditworthy when in fact it is neither but there has been nothing so concrete as a false pretence. However, the concept of deception (as that (inter alia) it includes a misrepresentation as to the defendant's defined in the Theft Act 1968) is broader than that of a false pretence in intentions; both *Jones* and the "false front" could now be treated as cases of obtaining property by deception."

25. Although in a given case a deception may not amount to fraud, fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine including *res-judicata*.

26. In *Smt. Shrisht Dhawan v. Shaw Brothers*, it has been held that:

"Fraud and collusion vitiate even the most solemn proceedings in any civilized system of jurisprudence. It is a concept descriptive of human conduct, "

27. In *S.P. Chengalvaraya Naidu v. Jagannath* (1994) 1 SCC 1] this Court in no uncertain terms observed:

"...The principle of "finality of litigation" cannot be passed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. The Courts of law are meant for imparting justice between the parties. One who comes to the 17 Court, must come with clean hands. We are constrained to say that more often than not process of the Court is being abused. Property-grabbers, taxevaders, bank-loan dodgers and other unscrupulous persons from all walks of life find the court-process a convenient lever to retain the illegal gains indefinitely. We have no hesitation to say that a person whose case is based on falsehood, has no right to approach the Court. He can be summarily thrown out at any stage of the litigation... A fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage... A litigant, who approaches the Court, is bound to produce all the documents executed by him, which

are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the Court as well as on the opposite party. "

28. In *Indian Bank v. Satyam Fibres (India) Pvt. Ltd.*, this Court after referring to *Lazarus Estates* (supra) and other cases observed that 'since fraud affects the solemnity, regularity and orderliness of the proceedings of the Court it also amounts to an abuse of the process of the Court, that the Courts have inherent power to set aside an order obtained, by practising fraud upon the Court, and that where the Court is misled by a party or the Court itself commits a mistake which prejudices a party, the Court has the inherent power to recall its order.

It was further held:

"The judiciary in India also possesses inherent power, specially under Section 151 CPC, to recall its judgment or order if it is obtained by fraud" on Court, In the case of fraud on a party to the suit or proceedings, the Court may direct the affected party to file a separate suit for setting aside the decree obtained by fraud. Inherent powers are powers, which are resident in all Courts, especially of superior jurisdiction. These powers spring not from legislation but from the nature and the constitution of the tribunals or Courts themselves so as to enable them to maintain their dignity, secure obedience to its process and rules, protect its officers from indignity and wrong and to punish unseemly behavior. This power is necessary for the orderly administration of the Court's business."

29. In *Chittaranjan Das v. Durgapore Project Limited and Ors.*, It has been held:

"Suppression of a material document which affects the condition of service of the petitioner, would amount to fraud in such matters. Even the principles of natural justice are not required to be complied within such a situation.

It is now well known that a fraud vitiates all solemn acts. Thus, even if the date of birth of the petitioner had been recorded in the service returns on the basis of the certificate produced by the petitioner, the same is not sacrosanct nor the respondent company would be bound thereby."

30. Keeping in view the aforementioned principles, the questions raised in these appeals are required to be considered. The High Court observed that the application of intervention filed by the appellant purported to be under Order XXVI, Rules 13 and 14(2) and Order XX, Rule 18 was not maintainable as they do not confer any power to court for setting aside a preliminary decree on the ground that it was obtained by practising fraud.

But once the principles aforementioned are to be given effect to, indisputably the court must be held to have inherent jurisdiction in relation thereto.

31. In *Manohar Lal Chopra v. Raj Bahadur Rao Raja Seth Hiralal*, the law is stated in the following terms:

"The Code of Civil Procedure is undoubtedly not exhaustive: it does not lay down rules for guidance in respect of all situations nor does it seek to provide rules for decision of all conceivable cases which may arise. The civil courts are authorized" to pass such orders as may be necessary for the ends of justice, or to prevent abuse of the process of court, but where an express provision is made to meet a particular situation the Code must be observed, and departure therefrom is not permissible."

32. In *Sharda v. Dharmpal*, a three-Judge Bench, of which both of us are parties, held that directing a person to undergo a medical test by a matrimonial court is implicit stating:"

38. Learned counsel for the State contends that the right to salary or pension after retirement flows from a valid and legal appointment. The consequential right of pension and monetary

benefits can be given only if the appointment was valid and legal. Such benefits cannot be given in a case where the appointment was found to have been obtained fraudulently and rested on false affidavit and succession certificate.

39. He further submits that a person such as the petitioner, who has procured appointment as teacher on basis of forged/false affidavit and certificate, cannot be entitled for any sympathy and she is required to be dealt with strictly. The petitioner secured appointment on the basis of forged certificate or mark sheet, such appointment is illegal and void ab initio. Therefore, passed the impugned order dated 26.07.2025, 13.08.2025 passed by Additional Secretary, Secondary Education Board, Meerut and order dated 19.08.2025 & 20.08.2025 passed by District Basic Education Officer, Meerut withholding the salary of the petitioner are totally in accordance with law.

40. Learned counsel for the State next contends that the petitioner has also played fraud with the Court annexing aforesaid false documents with this writ petition as such in the interest of justice that this Hon'ble Court may graciously be pleased to dismiss the present writ petition as misconceived and also punish the petitioner of her conduct and direct the competent authority to recover the entire salary. She has secured appointment on the basis of forged certificate or mark sheet, such appointment is illegal and void ab initio, therefore, only disciplinary proceedings envisaged by Article 311 of the Constitution of India or under any disciplinary rules including the Uttar Pradesh Basic Staff Rules, 1973 or the Uttar Pradesh Government Servant (Discipline and Appeal) Rules, 1999, shall not arise.

41. Heard learned counsel for the petitioner, learned Standing Counsel for the State and perused the record.

42. The present writ petition has been instituted impugning the orders dated 26.07.2025 and 13.08.2025 passed by the Additional Secretary, Madhyamik Shiksha Parishad, Meerut Region, as well as the consequential orders dated 19.08.2025 and 20.08.2025 issued by the District Basic Education Officer, Meerut. By virtue of the aforesaid orders, the petitioner's claim for issuance of the High School Certificate and mark sheet has been declined, and the petitioner's salary has also been withheld.

43. The petitioner has asserted that she successfully passed the High School Examination in the year 1984 and was thereafter duly appointed as an Assistant Teacher in the year 1989. It is further averred that subsequent to such appointment, the petitioner has rendered prolonged and continuous service spanning several years.

44. The controversy appears to have arisen when the petitioner was called upon to upload their educational credentials on Manav Sampada Portal for official purposes. In pursuance thereof, the petitioner sought issuance of the High School mark sheet and certificate after an inordinate lapse of nearly four decades. Upon due enquiry by the competent authority, it was revealed that the petitioner's result had been categorized under the "withheld C.P." category, on account of non-submission of the requisite foundational documents at the relevant point of time.

45. It is an admitted position on record that the petitioner submitted an application dated 20.03.2024, accompanied by a Transfer Certificate pertaining to Class VIII and a handwritten High School mark sheet purportedly issued by St. Thomas Girls School, Meerut. However, the petitioner has erroneously denied the material fact that the Transfer Certificate evidencing her having passed Class VIII from the institution concerned at Etah was not submitted by her.

46. On the contrary, the record reveals that the petitioner furnished a Transfer Certificate of Class VIII from an institution at Meerut, which does not correspond to the requisite foundational document expected to substantiate her academic credentials. Such inconsistency in the documents placed on record casts a serious doubt upon the veracity of the petitioner's claim.

47. The aforesaid fact pertaining to the submission of the Class VIII mark sheet stands duly established from the material available on record.

48. A detailed order dated 26.07.2025 has been passed by the Additional Secretary, Madhyamik Shiksha Parishad, Meerut Region, wherein a comprehensive account of the inquiry conducted into the documents submitted by the petitioner along with her application dated 20.03.2024 seeking issuance of the High School marksheet and certificate, has been set forth.

49. Upon being apprised by the Parishad of certain technical impediments in processing a request for issuance of certificates made after an inordinate lapse of time, the petitioner proceeded to submit a fresh application. The same was accompanied by a duly sworn affidavit bearing her photograph, along with a Transfer Certificate evidencing her having passed Class VIII from Junior High School, Rustamgarh, Etah, duly certified by the District Basic Education Officer concerned. The aforesaid documents were submitted before the Parishad on 13.05.2024, which were received on 24.05.2024.

50. Upon receipt of the aforesaid documents, the Parishad undertook verification of the High School certificate through the Principal, St. Thomas Girls' Inter College, Meerut. In response thereto, the Principal, vide communication dated 29.08.2024, furnished the following information:

"उपरोक्त विषयक आपके पत्रांक संख्या क्षे०का०मा०शि०प/ मे०/ समन्वय /69 / दिनांक 24.08.24 जो दिनांक 28.08.24 को डाक द्वारा प्राप्त हुआ। हाइस्कूल व्यावगत, परीक्षा वर्ष - 1984 अनुक्रमांक-1233725 का हस्तलिखित अंक पत्र छात्रा जो वीना मैनन 236 मिशन कम्पाउन्ड द्वारा आपको प्रस्तुत किया गया हैं। विद्यालय के गजट में छात्रा का परीक्षाफल (सी०पी०) पूर्ण नहीं हैं। विद्यालय द्वारा कोई भी हस्तलिखित अंक पत्र छात्रा को निर्गत नहीं कराया गया है। छात्रा का परीक्षाफल घोषित करने का विद्यालय को कोई भी आदेश अभी तक प्राप्त नहीं हुआ हैं। पत्र आपको अग्रिम कार्यवाही करने हेतु प्रेषित।"

51. A communication dated 24.08.2024 was issued by the Parishad for the purposes of verification of the Class VIII Transfer Certificate purportedly issued by Junior High School, Rustamgarh, Etah, as well as the certification accorded thereto by the District Basic Education Officer.

52. Pursuant thereto, two reports came to be received, one dated 27.12.2024 and the other dated 01.04.2025, which were found to be mutually contradictory. While the former affirmed that the Class VIII pass certificate stood duly verified and certified by the District Basic Education Officer, the latter categorically refuted the same.

53. In view of such inconsistency, the Parishad deemed it appropriate to cause an independent verification. Accordingly, Shri Munindra Kumar, In-charge Deputy Secretary, was deputed to conduct an on-site inspection. Upon undertaking the requisite inquiry, he submitted his report dated 02.05.2025, which reads as follows:

"मेरे द्वारा दिनांक-02.05.2025 को जूनियर हाईस्कूल रुस्तम गढ़ एटा में उपस्थित होकर स्थलीय जांच / भौतिक सत्यापन किये जाने पर प्रधानाचार्य द्वारा अवगत कराया गया कि परीक्षार्थिनी द्वारा प्रस्तुत कक्षा-08 की टी०सी० मेरे द्वारा निर्गत नहीं की गई है। उक्त टी०सी० में अंकित सुमन लता नाम की कोई भी प्रधानाध्यापक या अन्य पद विद्यालय की स्थापना से लेकर अब तक नियुक्ति ही नहीं हुई है। परीक्षार्थिनी श्रीमती वीना मैनन से सम्बन्धित कोई भी अभिलेख विद्यालय में उपलब्ध नहीं है। जिससे स्पष्ट है कि श्रीमती वीना मैनन (सहायक अध्यापक) द्वारा कक्षा-08 उत्तीर्ण की कूट रचित टी०सी० प्रस्तुत की है। जो अनुचित एवं व्यक्तिगत लाभ प्राप्त करने की चेष्टा की है।"

54. As a measure of abundant caution, the Parishad undertook further inquiry to ascertain the veracity of the two contradictory reports submitted with respect to the verification of the Class VIII Transfer Certificate. In this regard, a communication dated 23.06.2025, received via email on 03.07.2025 from the office of the District Basic Education Officer, categorically clarified that the verification report dated 01.04.2025, as relied upon by the petitioner, was genuine and had indeed been issued from the said office. It was further unequivocally stated that no verification report dated 27.12.2024 had ever been issued by the said authority.

55. In light of the aforesaid clarification, the inescapable conclusion that emerges from the record is that the petitioner has sought to rely upon a forged and fabricated document, thereby rendering her claim wholly untenable.

56. Notwithstanding the aforesaid, the Parishad, in adherence to the principles of natural justice, afforded the petitioner an opportunity to establish the genuineness of the handwritten High School mark sheet submitted by her, as well as the Class VIII Transfer Certificate purportedly issued from Etah. However, the petitioner failed to furnish any response or material in support of her claim.

57. In such circumstances, the order dated 26.07.2025 passed by the Additional Secretary, Madhyamik Shiksha Parishad, Regional Office, Meerut, is found to be in consonance with law and based upon due consideration of the material on record.

58. The matter was taken up by this Court, on 13.10.2025 and 28.10.2025 and the following orders were passed.

Order Dated: 13.10.2025:

1. Mr. S.C. Upadhyay, learned Standing Counsel, is directed to seek instructions from the U.P. Madhyamik Shiksha Parishad, Allahabad and all the respondents, in respect of the correctness of the petitioner's mark sheets of the 10th and 12th classes. The Secretary, U.P. Madhyamik Shiksha Parishad, Allahabad, is also directed to submit a photocopy of the record pertaining to the petitioner along with his clear comments.

2. Put up this case as fresh on 28.10.2025.

3. A copy of this writ petition shall also be handed over to the Secretary, U.P. Madhyamik Shiksha Parishad, Allahabad for going through the record pertaining to the educational qualification of the petitioner and submitting his report along with instructions in respect of correctness of her certificate.

4. In case any delinquency is found on the part of the Secretary, U.P. Madhyamik Shiksha Parishad, Allahabad for not giving clear instructions, action may be taken against him and the matter shall be handed over to the another senior authority for conducting the inquiry into the cause of action mentioned in the writ petition.

Order Dated 28.10.2025:

1. By means of the present petition, petitioner seeks the following reliefs:

"I. Issue a writ, order or direction in the nature of Certiorari calling upon the records quashing the impugned orders dated 26.07.2025, 13.08.2025 passed by the Additional Secretary, Madhyamik Shiksha Parishad, Meerut Region, and the consequential orders dated 19.08.2025 and 20.08.2025 passed by the District Basic Education Officer, Meerut.

II. Issue a writ, order or direction in the nature of Mandamus commanding the respondents to forthwith release the withheld salary of the petitioner along with all consequential benefits, including arrears and continuity of service.

III. Issue a writ, order or direction in the nature of Mandamus commanding the respondents to issue the High School marksheet and passing certificate of the petitioner in terms of the Gazette Notification of 1984 wherein the petitioner's name is recorded at Serial No. 725."

2. Respondent nos. 2 and 3 are directed to file counter affidavit disclosing the information whether the alleged certificate has been issued from the Board or not.

3. Put up this matter as fresh on 12.11.2025."

59. A detailed inquiry was conducted by the Secretary of the Parishad. Pursuant thereto, the application dated 20.03.2024, submitted by the petitioner for issuance of a duplicate mark sheet and certificate pertaining to the High School Examination, 1984 (Roll No. 1233725), along with the challan form, affidavit, certified copies, photocopy of the handwritten mark sheet, and other supporting documents including the publication in Dainik Jagran, Meerut Edition dated February 21, 2024, asserting that the original mark sheet and certificate had been lost were duly examined by the Parishad.

60. Upon scrutiny of the record, it transpires that multiple affidavits have been submitted by the petitioner. However, these affidavits are materially inconsistent and contradictory in nature. In certain affidavits, the petitioner has averred that she has been employed in a government, semi-government, or private organization, whereas in others, she has categorically denied any such engagement. These inconsistencies cast serious doubt upon the veracity and credibility of the petitioner's claims and the authenticity of the documents relied upon by her.

61. Upon perusal of the record, it transpires that the petitioner had submitted an application dated 13.05.2024, accompanied by a photocopy of an affidavit and a countersigned Transfer Certificate issued by the Junior High School, Rustamgarh, Etah, pertaining to her studies in Classes VI to VIII. Thereafter, another communication dated 24.05.2024 was forwarded by the Director of Secondary Education, recommending reconsideration of the petitioner's request for issuance of her Intermediate Marksheet and Certificate.

62. It is further borne out from the record that the petitioner submitted multiple affidavits at different points in time. Notably, an affidavit dated 19.07.2025, amongst others, categorically stated that she was not employed in any government, semi-government, or private organization. However, in stark contradiction thereto, the petitioner subsequently submitted another application dated 05.08.2024, wherein she admitted to having committed an error earlier and filed a fresh affidavit declaring that she was, in fact, employed in a government and semi-government organization.

63. All the aforesaid documents, applications, and affidavits were duly taken into consideration while adjudicating upon the petitioner's application dated 20.03.2024 for issuance of a High School Marksheet and Certificate. Upon a comprehensive inquiry into the matter, it was conclusively found that the petitioner had indulged in acts of forgery in securing appointment to the post of Assistant Teacher.

64. The entirety of these findings and the detailed inquiry conducted in this regard have been elaborately set forth in the order dated 26.07.2025, whereby the petitioner's application for issuance of the High School Marksheet and Certificate came to be rejected.

65. As already noted hereinabove, for the purpose of adjudicating the petitioner's application dated 20.03.2024, a report was requisitioned from the Principal, St. Thomas Girls' Inter College, Meerut, with regard to the authenticity of the petitioner's High School marksheet. In compliance thereof, the Principal submitted a report dated 29.08.2024, unequivocally stating that no handwritten marksheet had ever been issued to the petitioner. It was further clarified that the petitioner's result was not declared in the Gazette and had, in fact, been placed under the "withheld" category (C.P.), and that no order for declaration of the said result has been received by the institution till date.

66. Furthermore, the District Basic Education Officer was directed to conduct an independent inquiry in respect of the Transfer Certificate pertaining to Class VIII. Upon due verification, the said Transfer Certificate was also found to be not genuine.

67. This Court does not deem it necessary to reiterate the entirety of the aforesaid inquiries in extenso, which have already been comprehensively dealt with in the impugned order rejecting the petitioner's application for issuance of the High School marksheet. Suffice it to observe that the cumulative findings arising from the said inquiries unmistakably establish that the petitioner had secured appointment to the post of Assistant Teacher by relying upon forged and fabricated documents.

68. In compliance with the directions issued by this Court, a comprehensive inquiry was conducted. Pursuant thereto, Sanjeev Kumar Sharma, who was appointed as the Inquiry Officer and was then posted as Deputy Secretary, Madhyamik Shiksha Parishad, Region Meerut, submitted his report dated 25.10.2025.

69. As per the findings recorded in the aforesaid report, it has been conclusively established that the petitioner had produced a handwritten High School marksheet and a fabricated Transfer Certificate (T.C.) purportedly issued for Class XI from St. Thomas Girls Inter College, Meerut. On the strength of the said documents, the petitioner secured admission in Class XII at Bhagirathi Arya Inter College, Meerut and was consequently permitted to appear in the Intermediate Examination, 1987, under Roll No. 061944.

70. The record further reveals that, at the time of seeking admission in Class XII, the petitioner had submitted a Transfer Certificate bearing Serial No. 12010, allegedly issued by her previous institution, namely, St. Thomas Girls Inter School, Meerut. However, upon due verification, the Inquiry Officer categorically found the said Class XI Transfer Certificate to be forged and fabricated.

71. It has also been noted in the inquiry report that the result of the petitioner in the Intermediate Examination, 1987, remains under consideration before the competent Examination Committee for cancellation. In further substantiation of the findings, a communication dated 25.10.2025 issued by the Principal has been appended to the inquiry report.

72. The conclusions drawn in the inquiry report leave no manner of doubt that the petitioner had systematically relied upon forged and fictitious documents to secure academic progression and consequential benefits, thereby vitiating the very foundation of her claim.

73. It is evident from the record that due notices had been duly issued to the petitioner, affording her an opportunity to submit her reply prior to the proposed cancellation of her High School marksheet and certificate, as well as the Intermediate certificate, which prima facie appear to have been procured by practising fraud. Despite such opportunity having been extended, the petitioner failed to submit any response.

74. Instead of availing the said opportunity, the petitioner has chosen to invoke the writ jurisdiction of this Court by filing the present petition, seeking relief which, in the considered opinion of this Court, is wholly untenable in the eyes of law. It is a well-settled principle, consistently reiterated by the Hon'ble Supreme Court and various High Courts, that fraud vitiates

all solemn acts. In cases where an action is founded upon fraud, the requirement of affording an opportunity of hearing is considerably diluted, and in appropriate cases, even dispensed with.

75. In the present case, the material on record unmistakably points towards deliberate misrepresentation and fabrication of documents by the petitioner. Consequently, the petitioner cannot be permitted to take advantage of her own wrong by invoking the equitable jurisdiction of this Court under Article 226 of the Constitution of India.

76. From the foregoing discussion, it is manifestly clear that the petitioner had failed to satisfy the foundational eligibility conditions requisite for appearing in the High School Examination. The inquiry conducted in the matter further reveals that the petitioner's entire subsequent academic progression was predicated upon forged and fabricated documents.

77. In light of the aforesaid categorical findings, the rejection of the petitioner's claim for issuance of the High School certificate and marksheet cannot be faulted. Consequential actions, including the withholding of salary, have also been initiated by the competent authority in accordance with law.

78. The reliance sought to be placed upon the Gazette notification and other ancillary documents is wholly misconceived and devoid of merit. The material available on record unequivocally establishes that the petitioner's result had been recorded as "withheld", thereby dispelling any presumption of her having successfully completed the examination.

79. More importantly, the inquiry has categorically revealed that no direction or authorization was ever issued by the competent authority to the Principal of the concerned institution for issuance of any handwritten marksheet. In the absence of such authorization, the very foundation of the petitioner's claim stands vitiated, rendering her reliance upon such documents entirely untenable in the eyes of law.

80. Upon a meticulous and comprehensive inquiry, the competent authority has returned categorical findings to the effect that the documents relied upon by the petitioner are forged and fabricated. It is a settled principle of law that, in exercise of its writ jurisdiction, this Court does not act as an appellate forum to reappreciate or reassess findings of fact, unless such findings are demonstrated to be perverse, manifestly arbitrary, or wholly unsupported by the material on record.

81. In the present case, the findings impugned are firmly anchored in cogent and credible evidence, including official records, verification reports, and the unequivocal denial by the purported issuing institution regarding the authenticity of the documents in question. Significantly, the petitioner has failed to place any material on record to dislodge or controvert the said findings.

82. Consequently, the conclusions arrived at by the competent authority cannot be said to suffer from any illegality, arbitrariness, or perversity warranting interference by this Court. The decision-making process stands duly substantiated by evidence and is, therefore, immune from judicial review under Article 226 of the Constitution of India.

83. This Court further finds that Chapter XII, Regulation 10.1 of the Uttar Pradesh Board of Secondary Education Rules, 1983-88, delineates three distinct categories of candidates who are eligible to appear in the High School Examination. The requisite conditions governing such eligibility have already been extracted above in paragraph 35(i).

84. A perusal of the record unmistakably reveals that the petitioner does not fall within any of the aforesaid categories. The foundational educational documents, namely those pertaining to Classes VIII, IX, and XI, have, upon due inquiry, been found to be forged and fabricated. In the absence of genuine foundational qualifications, the very edifice of the petitioner's claim stands vitiated.

85. Consequently, the assertion of the petitioner that her High School certificate is genuine is wholly untenable and devoid of any legal foundation. Such a claim, resting as it does upon tainted and fabricated documents, is liable to be rejected outrightly.

86. As regards the submission advanced by learned counsel for the petitioner that in early entry no. 9228 of 2013 filed assailing the order whereby the petitioner's representation for payment of salary came to be rejected, the High School certificate of the petitioner was not put in issue, this Court finds the said contention to be misconceived.

87. A perusal of the record reveals that the controversy pertaining to the authenticity and validity of the petitioner's High School certificate did not fall for consideration in the aforesaid writ proceedings. Consequently, no adjudication, much less any conclusive finding, was rendered by this Court on the said aspect. It is, therefore, not open to the petitioner to contend that the absence of any adverse observation therein amounts to a tacit affirmation of the genuineness of the said certificate.

88. The petitioner is equally unjustified in contending that the refusal to issue the mark sheet is arbitrary or unsustainable merely on the strength of the official gazette notification, wherein the petitioner's name finds mention at Serial No. 725, indicating that although she had appeared in the examination, her result was withheld under the C.P. category.

89. This Court is of the considered opinion that such a gazette notification, by itself, cannot be construed as conclusive proof of the petitioner having duly passed the examination, particularly in the absence of compliance with the mandatory regulatory requirements. The applicable regulations unequivocally mandate that a candidate must have fulfilled the foundational eligibility conditions, namely, passing of Class VIII or IX, prior to being permitted to appear in the High School Examination.

90. In the present case, once it stands established that the petitioner had not satisfied the said prerequisite conditions, the mere publication of her name in the gazette notification, reflecting a withheld result, does not ipso facto confer any legal sanctity upon the claim of having passed the examination. Consequently, such notification cannot be relied upon to authenticate or validate the petitioner's handwritten mark sheet, which is alleged to have been issued dehors the official records

and in clear contravention of the prescribed procedure. Accordingly, the contention advanced by the petitioner in this regard is devoid of merit and is liable to be rejected.

91. Upon due consideration of the inquiries conducted, coupled with the admitted position that the petitioner did not possess the requisite eligibility to appear in the High School examination, this Court finds that even if, for the sake of argument, it is presumed that the High School mark sheet relied upon by the petitioner was procured by her, the same admittedly does not emanate from the competent authority, i.e., the Parishad.

92. In such circumstances, the impugned action cannot be characterised as a mere procedural irregularity or a lapse in documentation. Rather, it constitutes a patent illegality vitiated by fraud. The material on record unmistakably indicates that the petitioner has sought to secure appointment to the post of Assistant Teacher by placing reliance upon a mark sheet which lacks authenticity and has not been issued by the competent authority.

93. It is trite law that fraud vitiates all solemn acts. The petitioner, having consciously indulged in misrepresentation and having suppressed material facts, cannot be permitted to derive any advantage from such deceitful conduct. The very foundation of her appointment stands tainted, having been procured by practicing fraud upon the authorities.

94. In view thereof, no question arises of protecting or enforcing any purported substantive right in favour of the petitioner. Any benefit secured on the basis of fraud is non est in the eyes of law and liable to be annulled. Consequently, the contention of the petitioner, founded upon equitable considerations, is wholly untenable and deserves to be rejected.

95. Learned counsel for the petitioner has sought to place reliance upon certain judicial pronouncements in support of his submissions. However, upon a careful, contextual, and purposive analysis of the said judgments, this Court finds that the reliance so placed is wholly misconceived and devoid of merit. The cited judgments are clearly distinguishable on facts as well as on law, and do not support the case of the petitioner in any manner.

96. The reliance placed upon the decision in **Rafiq Masih (supra)** is wholly misplaced. The said judgment pertains to the issue of recovery of excess payments made to employees and is founded upon equitable considerations in situations where no element of fraud or misrepresentation is attributable to the employee. The ratio laid down therein has no application to the facts of the present case, where the very substratum of the petitioner's claim, i.e., her eligibility and foundational qualifications, is under serious cloud on account of established findings of fraud and fabrication. Consequently, the said decision does not come to the aid of the petitioner.

97. Similarly, the reliance placed upon the judgment in **Markandey Kumar Yadav (supra)** is equally misconceived. In the said case, the Court proceeded on the premise that the candidate's educational records were genuine and that the discrepancy arose on account of an administrative lapse on the part of the authorities. In contradistinction, the present case does not involve any mere procedural irregularity or administrative omission. Rather, it concerns substantive invalidity of the petitioner's claim, founded upon documents which, upon due inquiry, have been found to be forged

and fabricated. The very edifice of the petitioner's eligibility is thus rendered unsustainable. Therefore, the said judgment is clearly distinguishable on facts and does not strengthen the case of the petitioner in any manner.

98. Likewise, the reliance placed upon the decision in **All India Private Schools Legal Protection Society (supra)** is equally misconceived and inapposite to the controversy at hand. The said judgment operates in an entirely different domain, namely, the Right to Education and the removal of procedural impediments faced by students in accessing educational opportunities. The present case, however, pertains to the verification and genuineness of educational qualifications in the context of public employment, where the standards of scrutiny are necessarily stringent and any element of fraud or fabrication strikes at the very root of the claim. The ratio of the aforesaid decision, therefore, has no application to the facts of the present case and does not advance the petitioner's cause in any manner.

99. In contradistinction, the judgments relied upon by the respondents are directly on point and enunciate binding principles of law which squarely govern the controversy involved in the present case. The ratio laid down therein is fully applicable to the facts at hand and lends complete support to the action impugned, thereby fortifying the stand taken by the respondents.

100. In **Manjul Kumar (supra)**, it has been authoritatively held that where the very foundation of an appointment is tainted by forgery, the appointment itself stands vitiated and is liable to be treated as void ab initio. The principle enunciated therein applies with full force to the present case, where the petitioner's foundational educational qualifications themselves are shrouded in doubt and have, upon inquiry, been found to be forged and fabricated. Consequently, the petitioner cannot derive any legal sanctity from an appointment founded upon such tainted credentials.

101. The Apex Court in **Jainendra Singh (supra)** has unequivocally held that fraud vitiates every solemn act, including appointment to public service, and that mere length of service does not create any enforceable equity in favour of the employee.

102. In view of the aforesaid settled position of law, the contention advanced on behalf of the petitioner that she ought not to be disturbed after having rendered long years of service is wholly untenable. Such a plea cannot be countenanced when the very foundation of the appointment stands vitiated on account of fraud and the use of forged and fabricated documents. The equitable considerations sought to be invoked by the petitioner pale into insignificance in the face of established illegality.

103. In **Garima Singh (supra)**, it has been held that where fraud is writ large on the face of the record, the principles of natural justice cannot be invoked as a protective shield by the wrongdoer. In such circumstances, the requirement of affording an opportunity of hearing stands substantially diluted and, in appropriate cases, may even be dispensed with. Accordingly, in cases where an appointment has been secured by practising fraud, no vested right accrues in favour of the appointee so as to insist upon strict adherence to the principles of natural justice. The law does not

permit a person to take advantage of his own wrong, and any action founded upon fraud is liable to be nullified without being fettered by procedural technicalities.

104. Likewise, in **Virendra Kumar Mishra (supra)** and **Kamlesh Kumar Nirankari (supra)**, this Court has consistently reiterated the settled principle that no right can emanate from a fraudulent act, and that the Courts must refrain from lending their imprimatur to claims founded upon deceit or misrepresentation. It has further been held that once the foundational documents are found to be forged and fabricated, the resultant appointment is rendered a nullity in the eyes of law and does not warrant any elaborate adjudicatory exercise. The ratio of the said decisions squarely applies to the facts of the present case, where the petitioner's claim is demonstrably rooted in fraudulent documentation, thereby disentitling her from any relief under the equitable jurisdiction of this Court.

105. From the aforesaid discussion, this Court unequivocally finds that the petitioner has failed to establish the existence of a validly acquired High School qualification. The documents relied upon by her are not only unreliable but are also vitiated by serious and substantive doubts as to their authenticity.

106. The case of the petitioner is not one of a mere procedural irregularity or administrative lapse; rather, it is a case of foundational illegality, striking at the very root of her claim. The precedents relied upon by learned counsel for the petitioner are clearly distinguishable and inapplicable to the facts of the present case. On the contrary, the controversy is squarely covered by the judgments relied upon by learned counsel for the respondents, which fully support the impugned action.

107. The petitioner has failed to make out any case warranting interference by this Court in exercise of its extraordinary jurisdiction. She cannot be permitted to derive any advantage from the plea of long continuance in service or from any alleged lapse on the part of the authorities in not undertaking verification of documents at the time of appointment. The record clearly indicates that the petitioner was fully conscious of the fact that the handwritten marksheet, purportedly obtained from the institution, had never been issued by the competent authority.

108. Moreover, despite being aware that her result had been placed under the "withheld" (C.P.) category, as duly reflected in the Gazette notification, the petitioner proceeded to rely upon such fabricated documents. In such circumstances, the petitioner cannot be allowed to shift the burden onto the authorities or seek to take benefit of their omission, if any, when the very foundation of her claim is tainted by fraud and deliberate misrepresentation.

109. Once the very substratum and foundational basis of the petitioner's appearance in the High School examination is found to be non-genuine, the petitioner cannot be permitted to contend that, since the High School certificate and mark sheet have not yet been formally cancelled and continue to subsist on record, the impugned orders are rendered unsustainable in the eyes of law. Such a plea is wholly misconceived. A document, the origin whereof is tainted by fraud or fabrication, does not acquire legitimacy merely on account of the absence of a formal order of cancellation. Fraud vitiates all solemn acts, and no right can be founded upon a forged or fabricated document.

110. In a catena of decisions this Court as well as Apex Court have unequivocally held that no person can be allowed to take advantage of his own wrong and have also observed that fraud and justice can never

dwell together. The Courts have also held that an appointment obtained on the basis of a false or fabricated certificate is void ab initio and confers no enforceable right, even if such certificate has not been formally cancelled.

111. In the present case, the competent authority, upon due inquiry, has already recorded findings and recommended cancellation of the High School as well as Intermediate certificates and mark sheets obtained by the petitioner. Such recommendation further fortifies the conclusion that the very edifice of the petitioner's claim stands vitiated.

112. This Court finds that the petitioner approached the authorities after an inordinate and unexplained delay of nearly four decades, seeking issuance of foundational educational documents. Such an extraordinarily belated claim, by its very nature, warrants strict scrutiny and cannot be entertained lightly. There is no illegality, perversity, or infirmity in the impugned action so as to warrant interference in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India. The grounds raised by learned counsel for the petitioner are wholly devoid of merit and do not persuade this Court to take a view different from that arrived at by the authorities concerned.

113. In view above, the impugned orders cannot be faulted on the ground urged by the petitioner, and the challenge so raised is devoid of merit. The case set up by the petitioner does not merit acceptance, either in law or on equitable considerations. The claim is fundamentally vitiated by illegality, resting as it does upon forged and unreliable documents, and therefore fails to invoke the discretionary and equitable jurisdiction of this Court.

114. In view of the foregoing analysis and the settled principles of law governing the field, this Court finds no ground whatsoever to grant any relief to the petitioner. The writ petition, being devoid of merit, is accordingly dismissed.

115. No order as to costs.

116. This Court places on record its appreciation for the valuable assistance rendered by Ms. Anushka Gupta in extensive research of the judgments while preparing the present order. Her commendable efforts constrained me to note that she executes the entrusted task with due diligence.

(2026) 4 ILRA 780
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 01.04.2026

BEFORE

THE HON'BLE SAURABH SHYAM SHAMSHERY, J.

Writ B No. 3987 of 2025

Bachcha Lal & Ors.

...Petitioners

Versus

State of U.P. & Ors.

...Respondents

ISSUE FOR CONSIDERATION

Whether the Consolidation Authorities were justified in expunging long standing revenue entries existing in favour of the petitioners and their predecessors from 1309-F till the basic year on the ground that petitioners failed to show any legal basis or order on which their names could have been recorded.

HEADNOTE

U.P. Consolidation of Holdings Act, 1953, ss.9-A(2), 11, 48 – Objections filed by contesting respondents seeking expunction of names of petitioners from disputed holdings – Petitioners claimed co-tenancy rights on the basis of long standing revenue entries existing from 1309-F till the basic year and further pleaded that parties descended from common ancestors – Consolidation Officer allowed objections holding that entries in favour of predecessors of petitioners were made without any factual or legal basis – Settlement Officer of Consolidation dismissed appeal and affirmed findings – Deputy Director of Consolidation dismissed revision – Challenge in writ jurisdiction.

Held: *Court took note of the settled legal position that even long standing revenue entries may be challenged if they are shown to have been made surreptitiously or without legal basis.*

Consolidation Authorities recorded concurrent findings that in settlement records of 1291-F and subsequent years only Ganga was recorded and there was no explanation as to how names of predecessors of petitioners came to be recorded subsequently in 1309-F and 1334-F – Petitioners failed to establish any subsequent event, family arrangement, partition or other legal basis for recording of their names. Court further held that petitioners' plea of re-settlement was vague and unsupported by any material on record – Nature of entries in 1309-F showed predecessors of petitioners as 'sikmi cultivators' for a fixed period and such entries could not confer status of co-tenure holders – Writ petition dismissed. (E-5)
[Paras 13, 14, 15, 16, 17, 18, 19, 20]

CASE LAW CITED

Vishwa Vijay Bharati v. Fakhru Hassan, (1976) 3 SCC 642;
Dharam Singh (Dead) through Legal Representatives and others v. Prem Singh (Dead) through Legal Representatives, (2019) 3 SCC 530;
Krishnanand (D) through LRs and others v. Deputy Director of Consolidation, (2015) 1 SCC 553;
Ram Prasad Singh v. Deputy Director of Consolidation Camp Ballia and others, 1983 SCC OnLine All 643;
Sri Ram and others v. Deputy Director of Consolidation, Allahabad, 2011 (0) Supreme (All) 709;
Dharmraj and others v. Chhitan and others, 2006 (0) Supreme (SC) 1053.

List of Acts

U.P. Consolidation of Holdings Act, 1953.

List of Keywords

Long standing revenue entries; Co-tenancy rights; Expunction of entries; Common ancestor; Kursinama; Sikmi cultivator; Co-tenure holder; Settlement records; Basic year entry; Surreptitious entry; Presumption of correctness; Genuine revenue entry; Re-settlement.

CASE ARISING FROM

From the orders dated 01.05.2010 passed by the Consolidation Officer, Pindara, Varanasi, 23.04.2016 passed by the Settlement Officer of Consolidation, Varanasi and 18.07.2025/27.08.2025 passed by the Deputy Director of Consolidation, dismissing the claims of the petitioners.

Appearances for Parties

Advs. for the Petitioner: Rakesh Pande, Sr. Advocate, Vishakha Pande, Yashaswin Venugopal Bajpai

Advs. for the Respondents: C.S.C., Mahesh Kumar Dubey, Pradeep Kumar Rai, Prajyot Rai, Sanjay Kumar Singh, Surendra Prasad Singh

(Delivered by Hon'ble Saurabh Shyam Shamshery, J.)

1. This case is arising out of objections filed u/s 9A (2) of U.P. Consolidation of Holdings Act, 1953. The objections filed by contesting respondents were allowed by an order dated 01.05.2010 passed by Consolidation Officer to the extent that name of predecessors of present petitioners were expunged despite being having long standing revenue entries on a ground that entries were made without any factual or legal basis.

2. A challenge on behalf of predecessors of petitioners to above referred order dated 01.05.2010 passed by Consolidation Officer, Pindara, Varanasi before Settlement Officer of Consolidation (SOC) Varanasi was remained unsuccessful as well as subsequent challenge before Deputy Director of Consolidation (DDC) also remained unsuccessful. The appeal was rejected vide an order dated 23.04.2016 and revision was dismissed vide an order dated 18.07.2025/27.08.2025.

3. Aforesaid orders dated 01.05.2010, 23.04.2016 and 18.07.2025/27.08.2025 are challenged in this writ petition.

4. Learned counsel for rival parties are in agreement that present writ petition can be decided without exchange of pleadings as all relevant documents are on record of present writ petition as well as legal issues are involved.

5. Sri Rakesh Pande, learned Senior Advocate assisted by Sri Y.V. Bajpai, learned counsel for petitioners has referred averments made in this writ petition specifically that Ganga s/o Shiv Dayal was recorded as sole tenure holder in 1291-F relating to Mahal Jwala Prasad (plot nos. 252, 485, 495, 498) and Mahal Jasoda Bibi (plot nos. 236, 238, 242, 477). Ganga continued to be recorded on referred plots as sole tenure holder till 1307-F Khatauni and thereafter in 1309-F Khatauni. Ganga was recorded on 210, 478, 235 whereas petitioners predecessor (Shiv Baran) was recorded as 236/2, 247, 250, 471/1 while Sumer was recorded as 236/3, 242, 252, 492, 498/3. Subsequently, successors of Ganga, Shiv Baran and Sumer were recorded in 1334-F, 1356-F and 1378-F as well as basic year of Khatauni of 1388-F. Present petitioners represent the line of Shiv Baran.

6. By referring above details, learned Senior Advocate has submitted that name of petitioners predecessors and their successors including petitioners were recorded at least from 1309-F to 1388-F i.e. for a very long period and admittedly, during said period, the respondents have never taken any step to get expunged the name of predecessors of petitioners, therefore, there would be a

presumption that long revenue entries were genuine, however, without considering this aspect, all three Authorities under U.P.C.H. Act have passed orders against petitioners and allowed the objections filed by respondents' predecessors.

7. Learned Senior Advocate has also submitted that Ganga was common ancestor of rival parties, however, Kursinama submitted by petitioners' predecessors was wrongly rejected by the Consolidation Officer but substantially accepted by the Settlement Officer of Consolidation. He also submitted that a finding that name of Sumer was for the first time recorded in 1334-F was contrary to record, since he was recorded for the first time in 1309-F and for that he referred khatauni of relevant fasli year.

8. Per contra, Sri Pradeep Kumar Rai, learned counsel for contesting respondents has submitted that only on a ground that objections were raised for the first time when consolidation proceedings were commenced would not make the entries in favour of predecessors of petitioners genuine, if there was no legal or factual basis for such entries as well as claim of common predecessors was also disputed.

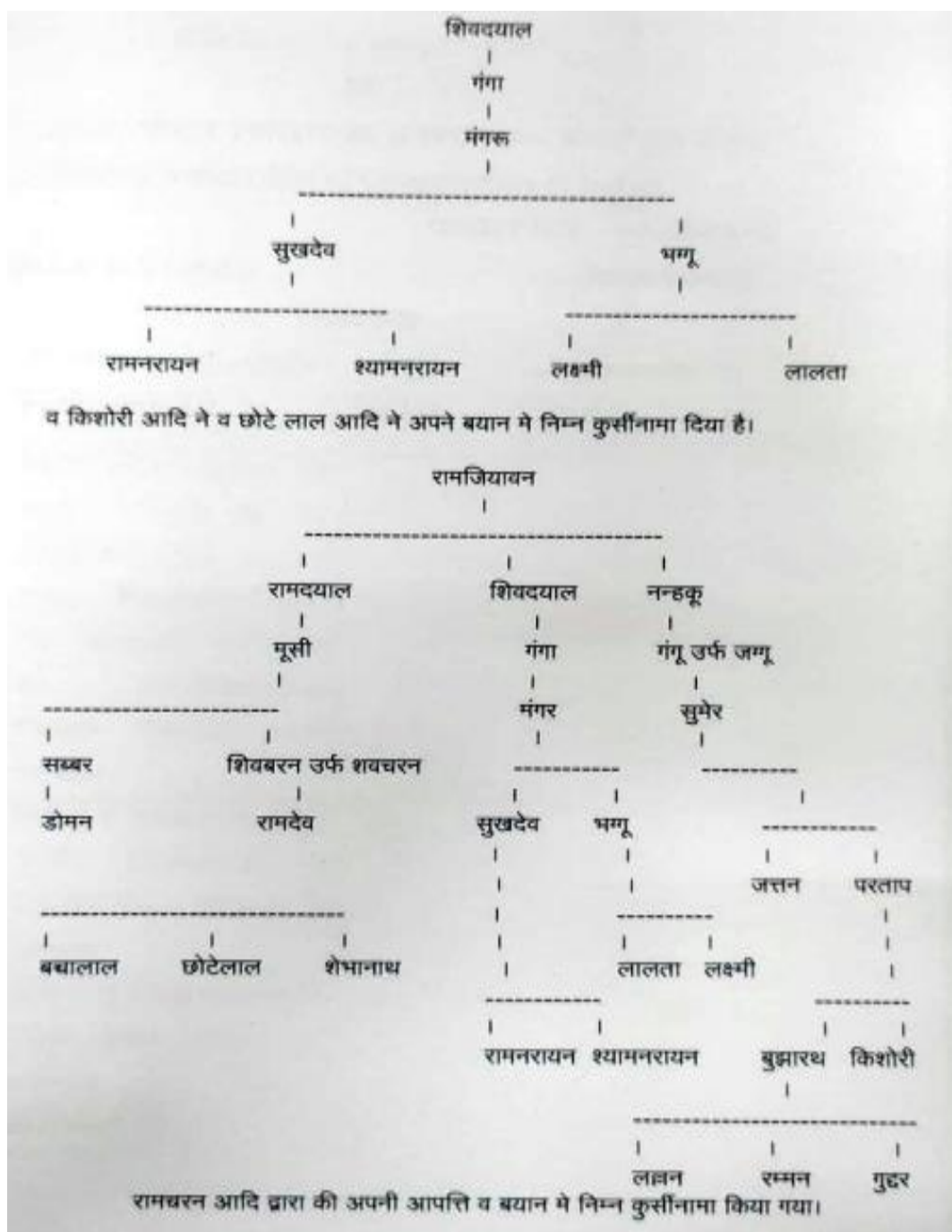
9. Learned counsel also referred various part of all three impugned orders that since concurrent findings were based on material and after considering rival submissions, therefore, except being perverse in nature, writ court may not interfere it and that petitioners have not able to show any perversity.

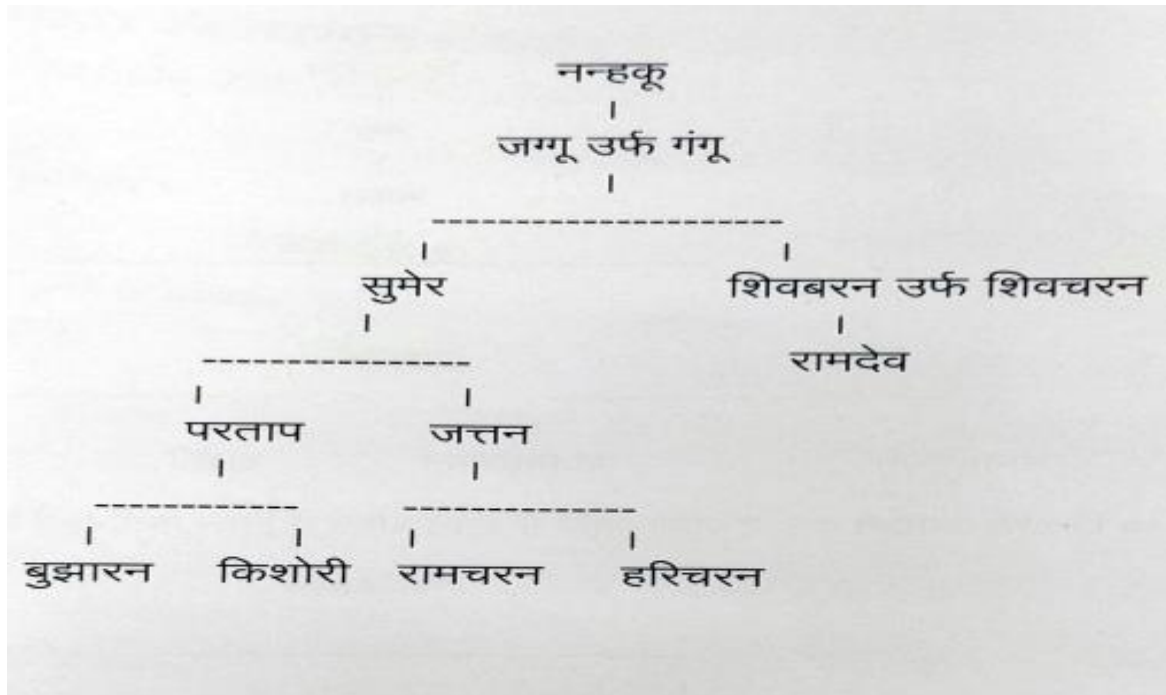
10. In support of his submissions, learned counsel for respondents has placed reliance on judgments of this Court in **Ram Prasad Singh vs. Deputy Director of Consolidation Camp Ballia and others, 1983 SCC Online All 643 ; Sri Ram and others vs. Deputy Director of Consolidation, Allahabad, 2011 0 Supreme (All) 709** as well as judgment of Supreme Court in **Dharmraj and others vs. Chhitani and others, 2006 0 Supreme (SC) 1053** that the land in suit was settled by original zamindar and in order to prove co-tenancy, there must be some more substantive evidence, above than referred revenue entries of co-tenancy, however, predecessors of petitioners as well as petitioners remained failed to bring on record any such evidence or documents.

11. Heard learned counsel for rival parties and perused the records.

12. Before advertng to rival submissions, it would be appropriate if relevant part of all three impugned orders be quoted below :-

Order Date :- 01.05.2010 passed by Consolidation Officer





सर्वप्रथम पक्षों द्वारा दिये कुर्सीनामे की विश्वसनीयता को देखा जाना है रामनरायन आपत्तिकर्तागण से जो कुर्सीनामा बताया है। उसे समस्त पक्षों से स्वीकार किया है, किन्तु छोटेलाल व किशोरी आदि द्वारा प्रस्तुत कुर्सीनामे को अपूर्ण कहा गया है। तथा रामनरायन आदि द्वारा दिये गये कुर्सीनामे में शिवदयाल के दो भाई रामदयाल व नन्हकू का भी उल्लेख किया है तथा शिवदयाल के वंशज रामनरायन व श्याम नरायन द्वारा दिये गये कुर्सीनामे को इन्कार किया गया है। खतौनी 1307फ0 मे का0 नेजाई गंगा मुन्नी के नाम दर्ज है। यही इन्द्राज 1308 फ0 मे भी है। और नकल खतौनी बन्दोबस्त मे खाता सं0-21 में गंगा वल्द शिवदयाल कौम कुल्ली सा0 बमरोपुर का नाम गाटा संख्या-236, 238, 242 व 477 पर दर्ज है। तथा खाता सं० 65 में भी गाटा संख्या 247, 246, 252, 485, 495, 498 गंगा वल्द शिवदयाल सा० वन्देपुर के नाम अंकित है। इससे यह प्रमाणित है कि बन्दोबस्त 1291फ0 व उसके बाद वर्षों मे रामनरायन आदि व आपत्तिकर्तागण का नाम ही तनहा दर्ज था प्रथम बार 1334फ0 मे गंगा के लड़के मंगरू बनाम गंगा के साथ रामदेव वल्द शिवचरन व परताप वल्द जल्लन पेसरान सुमेर का इन्द्राज हुआ है। 1334फ0 के इस इन्द्राज का आधार क्या है। यह स्पष्ट नहीं है। किशोरी ने अपने बयान मे जिरह मे दि० 20.8.97 इ० को यह कहा है कि रामनरायन, श्यामनरायन के खानदान का कुर्सीनामा बता सकता हूं रामनरायन, श्यामनरायन मे सबसे बड़े मुख्या गंगा थे। उसके आगे कटा है जो आराजी नेजाई शिवदयाल उर्फ रामदयाल के जमाने की है उसमे आगे यह भी कहा है कि रामनरायन आदि के पूर्वजों से हमारे पूर्वजों के सीरदारी लगी है। शिकमी/सीरदारी लगी चाहे शिकमी लगी हो चाहे सीरदारी लगी हो। गंगा सुमेर से शिकमी जोतने से दिया आगे यह भी कहा कि मेरा व

रामनरायन आदि का कोई हक पुरखा नहीं रहा। इस प्रकार किशोरी ने आ०वि० को रामनरायन आदि के पूर्वजों से शिकमी सीरदारी होना कहा है और उसने यह भी अपने बयान में जिरह में स्पष्ट कहा कि उनके व रामनरायन के खानदान का कोई एक पुरखा नहीं रहा। आखिर इन दोनों खानदान का कोई एक भी पूर्वज नहीं रहा है। किशोरी ने अपने बयान के जिरह दि० 30.10.98 में यह भी कहा है कि शिवदयाल को उपरोक्त भी उन्हें रामदयाल भी कहते हैं। किन्तु अपने जवाबदेही दि० 19.10.93 में उसके शिवदयाल व रामदयाल को अलग 2 व्यक्ति बताया है। इससे स्पष्ट है कि किशोरी आदि द्वारा अपने जवाबदेही में दिया गया कुर्सीनामे के विरुद्ध उसका स्वयं का बयान है किशोरी आदि व छोटे लाल आदि द्वारा कोई ऐसा सदस्य नहीं दिया गया है जिससे यह साबित हो कि रामदयाल व शिवदयाल व नन्हकूँ आपस में सगे भाई थे। और उनके पिता रामजियावन थे। बल्कि इसके विपरीत किशोरी के उपरोक्त बयानों से रामनरायन आदि व किशोरी आदि के परिवारों की असम्बद्धता साबित होती है। जहां तक किशोरी आदि द्वारा रामनरायन आदि के पूर्वजों मंगरू द्वारा सुमेर आदि जो किशमी पर जमीन दिये जाये का तथ्य किशोरी आदि द्वारा रखा गया। और इसके जरिये 1334फ0 से इन्द्राज का औचित्य का तर्क दिया गया है। वह स्वयं में विरोधाभासी व गलत है। यदि किशोरी आदि से पूर्वज सुमेर द्वारा मंगरू से कोई भूमि शिकमी पर ली गयी थी तो वह 1334 फ० में सहखातेदार कैसे दर्ज हो सकते हैं। इस प्रकार मेरी राय में किशोरी आदि द्वारा साक्ष्यों से 1334फ0 के इन्द्राज का औचित्य प्रमाणित करने में पूर्णतया विफल रहे। जहां तक छोटे लाल आदि द्वारा दिये जाने वाले साक्ष्यों का प्रश्न है। छोटे लाल ने अपने बयान में यह कहा है कि विवादित दोनों खातों की भूमि पैतृक है। किन्तु उसके द्वारा ऐसा कोई साक्ष्य प्रस्तुत किया गया है कि जिससे स्पष्ट हो कि उसके द्वारा दिये गये कुर्सीनामे में सबसे बड़े पूर्वज रामजियावन के जमाने की भूमि यह है। बन्दोबस्त 1291फ0 में भी यह भूमि गंगा वल्द शिवदयाल के नाम से दर्ज है। जो हरगिज पक्षों में सामान्य पूर्वज नहीं है। ऐसी सूरत में कोई भी साक्ष्य इस तथ्य का छोटे लाल आदि द्वारा दाखिल नहीं किया गया है। जिससे साबित हो कि आ०नि० पैतृक है। 1334फ0 में प्रथम बारी किस प्रकार उसके पूर्वजों के नाम दर्ज हुआ यह सवाल भी है। यद्यपि यह इन्द्राज पुराना है किन्तु कोई की इन्द्राज आधारहीन है तो वह जितना भी पुराना क्यों नहीं हो। उससे किसी भी व्यक्ति के पक्ष में स्वत्व का अधिकार प्राप्त नहीं हो सकता है। इस सम्बंध में मेरे समक्ष :

- (1) 1961 आर.डी. पेज नं.- 5
- (2) 1951 आर.डी. पेज नं.- 72
- (3) 1952 आर.डी. पेज नं.- 125
- (4) 1986 ए.एल.आर. पेज- 77 (आर)
- (5) 1986 ए.डब्ल्यू.सी. पेज- 709
- (6) 2008 आर.डी. पेज- 715

पर प्रकाशित न्याय निर्णयों का ध्यान आकृष्ट कराया गया। और ध्यान आकृष्ट कराया गया जो यह विधिक व्यवस्था दी हुयी है कि आधारहीन व गलत इन्द्राज कितना पुराना क्यों न हो किसी भी व्यक्ति को सम्पत्ति मे स्वत्व नही हो सकता है। और ऐसा इन्द्राज "स्टोपेल क्रियेट" नही करता है। बन्दोबस्त 1291फ0 व 1307फ0 के इन्द्राज से यह पूर्णतया प्रमाणित होता है कि सम्पत्ति तनहा राम नरायन आदि से पूर्वजों के नाम पाई गयी है तथा 1334 फसली का इन्द्राज आधारहीन है। इस प्रकार मेरी राय मे आपत्तिकर्तागण राम नरायन आदि अपने केस को पूर्णतया साक्ष्यों से साबित किये है। आपत्ति रामनरायन आदि बावत खाता सं० 78 व 79 स्वीकार किये जाने योग्य है।

आदेश

अतः आदेश हुआ कि आधार वर्ष खाता सं० 78 व 79 में लालता पुत्र भग्गू मृतक लावल्द के वारिस लक्ष्मी उर्फ लक्ष्मिन पुत्र भग्गू (सगे भाई) दर्ज हो। रामजियावन मृतक के वारिस छोटे लाल पुत्र रामजियावन व शान्ती देवी बेवा रामजियावन अंकित हो। रामचरन मृतक के वारिस राजेन्द्र, शम्भू पुत्रगण स्व० रामचरन व दुलरा बेवा स्व० रामचरन अंकित हो। हरिचरन मृतक के वारिस महेन्द्र, शैलेन्द्र, नान्हकू पुत्रगण स्व० हरीचरन व प्यारीदेवी बेवा स्व० हरीचरन अंकित हो। खाता संख्या 78 व 79 रामनरायन, श्यामनरायन पुत्रगण सुखदेव व लक्ष्मी, लालता पुत्रगण भग्गू के नाम अंकित है। शेष अन्य खातेदारान व उनके वारिसान का नाम खारिज हो।

खाता-78 व 79 में गाटा संख्या-238, 247, 250, 477, 252 व 498 का विभाजन रामनरायन 1/3, श्याम नरायन 1/3 व लक्ष्मी 1/3 शेष नम्बरान का विभाजन रामनरायन 1/7, श्यामनरायन ^{1/4}, लक्ष्मी ^{1/4} व लालता ^{1/4} अंश पर हो।

खाता-79 का विभाजन रामनरायन 1/3, श्याम नरायन 1/3, लक्ष्मी 1/6 व लालता 1/6 अंश दर्ज हो। शेष विवाद व आपत्ति खारिज हो। पत्रावली बाद अमलदरामद दाखिल दफ्तर हो।"

Order date :- 23.04.2016 passed by Settlement Officer of Consolidation

विपक्षी के विद्वान अधिवक्ता का कथन है कि 1291 फस्ली के खाता सं०-15 व 21 में गंगा पुत्र शिवदयाल का नाम कुल 06 गाटा पर शरहमुअइन काश्तकार के रूप में अंकित है। यह गाटे आधार वर्ष के खाता सं०-78 में अंकित है, जबकि 1291 फस्ली के खाता सं०-60 में शिवदयाल का नाम बतौर दखीलकार अंकित है। यह गाटे आधार वर्ष के खाता सं०-79 में अंकित है। विद्वान अधिवक्ता के अनुसार 1334 फस्ली में पहली बार अपीलांट का नाम अंकित हुआ। उसके अनुसार आगरा काश्तकारी अधिनियम 1926 के धारा-16 की उप धारा-5 के अनुसार पंजीकृत अभिलेख के द्वारा ही दखीलकारी अधिकार प्रदान किये जा सकते हैं। अपीलकर्ता द्वारा कोई पंजीकृत अभिलेख नहीं प्रदान किया गया है। किशोरी ने बयान में कहा है कि शिकमी

से हमारा नाम आया। उनके अनुसार 1309 फ० में शिवबरन कुर्मी का नाम खाता सं०-53/31 में तथा सुमेर कुर्मी का नाम खाता सं०-52/31 में अंकित है। विद्वान अधिवक्ता के अनुसार यदि उपर्युक्त व्यक्ति हैं तो क्या सहखातेदार सब-टेनेन्ट हो सकता है

उभयपक्षों के विद्वान अधिवक्ताओं की बहस, अवर न्यायालय की पत्रावली तथा विधि व्यवस्था का भली-भाँति अवलोकन किया गया। जिससे स्पष्ट है कि अपीलकर्ता ने अपने अपील में जो कुर्सीनामा दिया है वह पूर्णतया सही है। वस्तुतः प्रतिवादी के रामनरायन ने अपने बयान में भी वही कुर्सीनामा दिया है। अतएव कुर्सीनामे के सम्बन्ध में कोई विवेचन करने की आवश्यकता नहीं है। वस्तुतः रामनरायन आदि के आपत्ति का मूल आधार यह है कि आराजी नेजाई गंगा पुत्र शिवदयाल की पैदाकरदगी है। प्रतिवादीगणों यानी अपीलकर्तागण का विवादित आराजी पर त्रुटिपूर्ण ढंग से नाम अंकित हुआ है। अतएव निरस्त हो। रामनरायन ने अपने बयान व जिरह में बार-बार स्वीकार किया है कि रामजियावन के तीन लड़के- रामदयाल, शिवदयाल, नन्हकू हैं। अतएव इन्हीं तीनों के साथ के हैं। दूसरे महत्वपूर्ण बात यह है कि अपील में कहा गया है कि मौरूसी व संयुक्त परिवार की सम्पत्ति में किसी एक साख के व्यक्ति का नाम कर्ता-खानदान की हैसियत से दर्ज हो जाने से अन्य शाखा के लोगों का सहखातेदारी कतई समाप्त नहीं हो जाता है, जबकि किशोरी ने अन्य में बयान तहरीरी तथा अपने बयान में कहा है कि परिवार में बंटवारा लगभग सौ वर्ष पूर्व हो गया है। इस दृष्टि से विभाजन 1307 फस्ली व 1291 फस्ली के बीच ही हो गया है। यह बात कागजी इन्द्राज से भी साबित है। कदाचित इसीलिये 51/31 व 52/31 में आपत्तिकर्तागण के मूरिस का नाम भाग दो में अंकित है। यहाँ यह भी उल्लेख करना आवश्यक है कि किशोरी ने अपने बयान में कहा है कि हमारे पूर्वजों ने शिकमी/सीरदारी से आराजी प्राप्त की, परन्तु इस बाबत कोई अभिलेखीय साक्ष्य नहीं दिया है। प्रतिवादी के विद्वान अधिवक्ता का कथन सही है कि सह-काशतकार शिकमी नहीं हो सकता। तीसरे पत्रावली पर जो साक्ष्य कागजी उपलब्ध है उसमें 129 फस्ली का इन्द्राज खाता सं०-15 व 21 गंगा वल्द शिवदयाल का नाम शरहमुअइयन काशतकार के रूप में अंकित है, जो वर्तमान में आधार वर्ष के खाता सं०-78 में अंकित है, जबकि 1291 फस्ली के खाता सं०-60 में गंगा का नाम गाटा सं०-210 व 478 पर बतौर दखीलकार अंकित है। जो कि आधार वर्ष के खाता सं०-79 में अंकित है। अपीलकर्तागण के साथ का नाम पहली बार 1334 फस्ली में अंकित हुआ वह भी बकाशत के साथ जैसा कि अपील के पैरा-6 में प्रदर्शित किया गया है। इसी को आधार बनाकर कहा गया है कि आगरा काशतकारी अधिनियम 1926 लागू होने पर 1334 फस्ली के इन्द्राज सावधानी पूर्वक तैयार किये गये जो आधार वर्ष तक बदस्तूर हैं। अतएव इतनी लम्बी अवधि के इन्द्राज को निरस्त नहीं किया जा सकता। अपीलकर्ता द्वारा आर०डी० 2011 पृष्ठ-89 पर प्रदत्त व्यवस्था का उल्लेख किया गया है, जबकि प्रतिवादी के अधिवक्ता द्वारा 2015 आर०डी० 128 पृष्ठ-37 पर प्रदत्त व्यवस्था का हवाला दिया गया है। तदनुसार राजस्व प्रविष्टि उस व्यक्ति के वास्तविक भौमिक अधिकार का निर्णायक प्रमाण नहीं है, जिसका नाम उसमें दर्ज किया गया है। इसी प्रकार 1961 आर०डी० पृष्ठ-5 की व्यवस्था का उल्लेख करते हुये कहा गया है कि बन्दोबस्ती इन्द्राज को भी खण्डित किया जा सकता है, साथ ही 1986 ए०एल०आर० पेज-77 की

व्यवस्था दी गयी है। प्रतिवादी के विद्वान अधिवक्ता का कथन है कि शरहमुअइयन का रिसेटेलमेन्ट नहीं हो सकता, क्योंकि शरहमुअइयन की भूमि में जमींदार को कोई अधिकार नहीं था। यह सही भी है कि बनारस में 1975 में स्थायी बन्दोबस्त लागू करके लगान की दर स्थायी कर दी गयी। इस प्रकार से शरहमुअइयन काश्तकारी यानी फिक्स रेट टेनेन्ट का अभ्युदय हुआ। इससे स्पष्ट है कि शरहमुअइयन काश्तकारी यानी फिक्स रेट टेनेन्ट की जा सकती थी। जहाँ तक दखीलकारी भूमि का प्रश्न है इसमें आगरा काश्तकारी अधिनियम की धारा-17(5) के अनुसार पंजीकृत विलेख के जरिये ही कोई टेनेन्सी की जा सकती है। परन्तु अपीलान्ट ने ऐसा कोई साक्ष्य नहीं दिया है। उक्त से स्पष्ट है कि 1334 फस्ली में अपीलकर्तागण के साथ का नाम विधि विरुद्ध तरीके से आया जो आधार वर्ष तक कायम रहा। 1986 ए०एल०आर० पृष्ठ-77 की व्यवस्था इस बाद पर पूर्णतया लागू होती है। तदनुसार दीर्घकालीन इन्द्राज का यदि आधार गलत है तो उसको निरस्त किया जा सकता है।

संक्षेप में यह सही है कि आधार वर्ष का इन्द्राज लम्बे समय से कायम, परन्तु उसका आधार त्रुटिपूर्ण है। अपीलकर्तागण ने संयुक्त परिवार/कर्ता-खानदान को आधार बनाकर अपना प्रतिवाद नहीं किया, बल्कि शिकमी/सीरदारी को आधार बनाया व आपसी बंटवारा को 100 वर्ष पूर्व होना स्वीकार किया है। ऐसी दशा में यद्यपि कि च०अ० ने विवेचन में कुछ त्रुटि की है। तथापि निष्कर्ष सही निष्पादित किया है। उपरोक्तानुसार दोनों अपीलें निरस्त होने योग्य हैं।"

Order date :- 18.07.2025 passed by Deputy Director of Consolidation

मैंने उभय पक्षों के विद्वान अधिवक्तागण के तर्कों को सुना तथा अवर न्यायालयों की पत्रावली का अवलोकन किया। चकबन्दी अधिकारी ने अपने निर्णय दिनांक 01.05.2010 के द्वारा आधार वर्ष खाता सं० - 78 व 79 से लक्ष्मी, लालता पुत्रगण भगगू व रामनरायन, श्यामनरायान पुत्रगण सुखदेव को छोड़कर अन्य खातेदारों का नाम खाराजि कर दिया था, जिसके विरुद्ध दाखिल अपीलें राजेन्द्र प्रसाद आदि बनाम बच्चा लाल आदि व बच्चा लाल आदि बनाम ... आदि अन्तर्गत धारा-11(1) जो०च०अधि० में पारित निर्णय दिनांक 23.04.2016 के जरिये उपरोक्त दोनों अपीलें निरस्त कर दी गयी तथा सरकारी द्वारा पारित निर्णय दिनांक 01.05.2010 को पुष्ट कर दिया गया।

.... के निर्णय दिनांक 01.05.2010 के विरुद्ध अन्य प्रभावित पक्षकारों ने उपरोक्त दोनों अपीलें दाखिल की थी, मात्र किशोरी व बुझारत या बुझारत के लड़के लल्लन, रम्मन, गुदर द्वारा कोई अपील चकबन्दी अधिकारी के आदेश के विरुद्ध दाखिल नहीं की गयी थी। बन्दोबस्त ... चकबन्दी के द्वारा दिनांक 23.04.2016 को निर्णय पारित किये जाने के उपरान्त उक्त निर्णय के विरुद्ध कोशोरी, बुझारत पुत्रगण परताप द्वारा 25.04.2016 को तजवीजसानी प्रस्तुत किया गया, जो दोनों पक्षों की सुनवाई उपरान्त बन्दोबस्त अधिकारी चकबन्दी के निर्णय दिनांक 03.04.... द्वारा निरस्त कर दिया गया है। किशोरी व लल्लन, रम्मन, गुदर पुत्रगण बुझारात द्वारा दाखिल निगरानी, बन्दोबस्त अधिकारी चकबन्दी के निर्णय

दिनांक 23.04.2016 व तजवीजसानी प्रार्थना पत्र पर पारित निर्णय दिनांक 03.04.2017 व चकबन्दी अधिकारी द्वारा पारित निर्णय दिनांक 01.05...10 के विरुद्ध शपथ पत्र के साथ दाखिल किया गया है। इस प्रकार इस समय चकबन्दी अधिकारी द्वारा पारित निर्णय के विरुद्ध समस्त प्रभावित पक्षकारों द्वारा उपरोक्त चारों निगरानियां दाखिल की गयी है। बन्दीबस्त अधिकारी चकबन्दी द्वारा अपने निर्णय दिनांक 23.04.2016 में पक्षों के मध्य के कुर्सीनामा को अविवादित कहते हुए अंकित किया है, जिसमें पक्षकार के पूर्वजों में से रामदयाल, शिवदयाल व नन्हकू के पिता का नाम रामजियावन अंकित किया गया है। पत्रावली (चकबन्दी अधिकारी व बन्दोबस्त अधिकारी चकबन्दी) पर निगरानीकर्तागण द्वारा कोई ऐसा साक्ष्य नहीं प्रस्तुत किया गया है जिससे यह साबित हो कि वादग्रस्त आराजीजात रामजियावन, सामान्य पूर्वज के समय की है। पत्रावली में यद्यपि चकबन्दी अधिकारी ने गाटा सं०-3, 4, 5 शशि शेखर, ऋषिकान्त पटेल व परमदीप पुत्रगण स्व० छोटालाल के पिता-छोटालाल का बयान चकबन्दी अधिकारी के समक्ष हुआ है। छोटालाल ने अपने बयान में कुर्सीनामे की जानकारी कागजात के मुआयना कराने से कहा है तथा 1291 फ० में शिवदयाल का नाम अंकित होने व खतौनी 1247फ० का मुआयना कराने पर उसमें रामदयाल के पिता रामजियावन का नाम अंकित होने का तथ्य कहा है, किन्तु चकबन्दी अधिकारी की पत्रावली में ऐसा कोई बन्दोबस्त अधिकारी चकबन्दी की पत्रावली में 1247फ० का कोई अभिलेख उपलब्ध नहीं है। पत्रावली पर खतौनी बन्दोबस्त 1291फ० मुताबिक सन् 1883-84 फसली मौजा देलहना उपलब्ध है, जिसमें गंगा वल्द शिवदयाल कौम कुर्मी साकिन बमरोपुर का उल्लेख है। इसमें और कोई अभिलेख पत्रावली पर उपलब्ध नहीं है इसलिये निगरानीकर्तागण का यह कथन कि सम्बन्धित आराजीजात रामजियावन के जमाने की है और उस पर शिवदयाल का नाम 1291फ० में दर्ज था, यह तर्क पूर्णतया गलत है। 1291फ० में गंगा वल्द शिवदयाल का नाम अंकित है, न कि शिवदयाल व रामजियावन का। चकबन्दी अधिकारी व बन्दोबस्त अधिकारी ने अपने निर्णय में के जरिये अविवादित सम्पत्ति को 1291फ० के इन्द्राज के आधार पर गंगा वल्द शिवदयाल के वारिसान रामनरायन आदि का ही घोषित किया है तथा अन्य व्यक्तियों का नाम खाते से बिना किसी उचित कारण के व बिना किसी आधार के दर्ज किये जाने के कारण निगरानीकर्तागण के पूर्वज के नाम उनके अंश के मुताबिक अंकित है। 1309फ० की खतौनी की नकल की छायाप्रति पत्रावली पर उपलब्ध है, जिसमें शिकमी काश्तकार के कालम में खाता सं० 51/31 शिवबरन कुनवी व 52/31 सुमेर कुनवी के नाम दर्ज है, जिसमें शिकमी काश्तकार की अवधि दो साल व एक साल अंकित है। बन्दोबस्त अधिकारी चकबन्दी ने अपने निर्णय में इस विधिक व्यवस्था का उल्लेख किया है कि शिकमी काश्तकार कभी सह-खातेदार नहीं हो सकता है क्योंकि दोनों की अलग-अलग स्थितियाँ होती हैं। 1309फ० में हुए उपरोक्त अभिलेखीय इन्द्राज से दो तथ्य स्पष्ट हैं। जहाँ तक रामजियावन के वंशज संयुक्त हिन्दू परिवार के सदस्य नहीं थे क्योंकि यदि वे संयुक्त हिन्दू परिवार के सदस्य होते तो वे एक ही खाते में सह-खातेदार दर्ज होते न कि मौरूसी काश्तकार व शिकमी काश्तकार का सम्बन्ध होता। उपरोक्त इन्द्राज से यह तथ्य स्पष्ट हो जाता है कि रामदयाल, शिवदयाल व नन्हकू के मध्य काश्तकार व शिकमी काश्तकार का सम्बन्ध होता। उपरोक्त इन्द्राज से यह तथ्य स्पष्ट हो

जाता है कि गंगा का नाम कर्ता खानदान के रूप में अंकित था, यह तथ्य स्वीकार किये जाने योग्य नहीं है। विचारणीय प्रश्न यह है कि 1309फ० में शिकमी काशतकार के रूप में दर्ज व्यक्तियों के वंशजों को क्या मूल काशतकार के साथ सहखातेदारी प्राप्त हो सकती है, इसका स्पष्ट उत्तर नहीं है। बन्दोबस्त अधिकारी चकबन्दी ने जो अपने निर्णय दिन ता० 23-04-2016 में उक्त विधिक स्थिति को स्वीकार किया है। निगरानीकर्तागण के विद्वान अधिवक्तागण द्वारा यह भी तर्क दिया गया कि आगरा टेनेन्सी एक्ट 1926 के लागू होने के कुछ पूर्व खानदान में अलगौड़ी हो गयी थी और उस अलगौड़ी के परिणामस्वरूप रि-सेटेलमेन्ट के आधार पर खतौनी 1334फ० का इन्द्राज हुआ। इसका विरोध करते हुए विपक्षी के विद्वान अधिवक्ता द्वारा कहा गया कि बन्दोबस्त अधिकारी चकबन्दी ने इस सम्बन्ध में सही विवेचन किया है। वादग्रस्त आराजीजात में से ज्यादातर आराजीजात शरहमुअइयन आराजी हैं। ऐसी आराजीजात में जमींदार को रि-सेटेलमेन्ट करने का कोई अधिकार नहीं था। बनारस में 1795 ई० में (बन्दोबस्त अधिकारी चकबन्दी के निर्णय में 1975 टंकण की गलती से अंकित हो गया है) स्थायी बंदोबस्त लागू करके लगान की दर स्थायी कर दी गयी थी। ऐसी स्थिति में उक्त आराजीजात के बावत निगरानीकर्तागण का यह तर्क कि 1334फ० के पूर्व रि-सेटेलमेन्ट हुआ था, स्वीकार किये जाने योग्य नहीं है। एक निगरानीकर्ता किशोरी का बयान चकबन्दी अधिकारी न्यायालय में हुआ है, उसने अपने बयान में यह कहा है कि 1334 व 1309फ० में गंगा ने सुमेर को शिकमी दिया था तथा किशोरी ने अपने मुख्य बयान में यह भी कहा है कि इस परिवार में बटवारा लगभग 100 वर्ष पूर्व हो गया है। इस दृष्टि से विभाजन 1307फ० व 1291फ० के बीच हो गया है, यह तथ्य बन्दोबस्त अधिकारी चकबन्दी ने सही अंकित किया है। अब प्रश्न यह उठता है कि क्या विवादित आराजीजात सामान्य पूर्वज के जमाने की है अथवा सामान्य पूर्वज के लड़कों ने संयुक्त रूप से पैदा किया है, ऐसा होने की दशा में ही सहखातेदारी हो सकती है। किन्तु निगरानीकर्तागण द्वारा इस सम्बन्ध में कोई साक्ष्य नहीं दिया गया, जिससे उनके इस कथन को समर्थन मिल सके। निगरानीकर्तागण के विद्वान अधिवक्ता द्वारा यह भी तर्क दिया गया कि दीर्घकालीन प्रविष्टियों को महज कयास के आधार पर सुधारा नहीं जा सकता है। इसका विरोध करते हुए विपक्षी के विद्वान अधिवक्ता द्वारा तर्क दिया गया कि कितनी भी दीर्घकालीन प्रविष्टि अगर बिना किसी आधार के है तो उसे दुरुस्त किया जाना चाहिए। इस सम्बन्ध में पक्षी द्वारा दिये गये तर्क एवं उ०प्र० भू-राजस्व अधिनियम 1901 के प्रावधान के अनुसार खतौनी का इन्द्राज सही ढंग से किया गया है। निगरानीकर्तागण के विद्वान अधिवक्ता द्वारा यह तर्क दिया गया कि भू-राजस्व अधिनियम 1901 के प्रावधान के अनुसार खतौनी का इन्द्राज सिद्ध माना जाता है, जब तक उसे अन्य साक्ष्यों के तहत गलत साबित न कर दिया जाय। इस प्रकार आपत्तिकर्तागण के ऊपर यह सिद्धि भार था कि वे आधार वर्ष इन्द्राज को काफी लम्बे समय पूर्व (1334फ०) से चला आ रहा है, उसे गलत साबित करते। किन्तु उनके द्वारा ऐसा कोई साक्ष्य नहीं दिया गया। वर्ष की प्रविष्टि गलत साबित हो। इसके विपरीत विपक्षी के विद्वान अधिवक्ता द्वारा निम्न विधि व्यवस्थाओं का उल्लेख करते हुए 1986(12) पृष्ठ-77(रेवेन्यू) संतबख्श सिंह बनाम डी०डी०सी० फैजाबाद, 1986 ए०डब्लू०सी० पृष्ठ 709 चन्द्रपति बनाम गुन्नु आदि, 2008(104)

.....715 नरेन्द्र बनाम सरदार सरवन सिंह, 2009(108) आर०डी० पृष्ठ-543 मु० रमजान बनाम डी०डी०सी०, 2003(94) आर०डी० पृष्ठ-535..... बनाम ए०डी०सी० गोरखपुर, 1984 आर०डी० पृष्ठ 133 राम प्रसाद बनाम डी०डी०सी० बलिया, 1997(80) आर०डी० पृष्ठ-276 गुरमुख सिंह डी० सी० आदि तर्क आदि दिया गया कि, कोई भी इन्द्राज कितना भी पुराना क्यों न हो, यदि वह आधारहीन है तो ऐसी प्रविष्टि के बार बार अभिलेखों में जाने से कोई अधिकार सृजित नहीं हो जाता है। 1984 आर० डी० पृष्ठ 133 राम प्रसाद बनाम डी०डी०सी० बलिया में उल्लिखित तथ्य लगभग उसी है जैसा कि प्रस्तुत मामले में है। उक्त में भी 1334 फसली की इन्द्री को आधारहीन मानते हुए उसे दौरान चकबन्दी अमान्य किया गया था। मामले में भी चकबन्दी व बन्दोबस्त अधिकारी चकबन्दी द्वारा गहन परीक्षण के उपरान्त 1334 फसली के इन्द्राज को आधारहीन मानते हुए अपना निर्णय पारित किया गया है। इस न्यायालय की राय में भी कोई भी इन्द्राज यदि विधिक ढंग द्वारा अनुमन्य नहीं है तथा बिना किसी पर्याप्त आधार के खतौनी का कोई इन्द्राज है तो मात्र इन्द्राज से किसी को कोई हक सृजित नहीं हो जाता है। इस मुकदमें में रामनरायन आदि आपत्तिकर्तागण का विवादित सम्पत्ति पर तनहा कब्जा है, इस सम्बन्ध में कल्याण मित्र पुत्र रामआधार मित्र उम्र 70 साल निवासी दुग्गीपुर जो एक स्वतंत्र गवाह है, उसने अपने बयान व जिरह में स्पष्ट कहा है कि विवादित भूमि पर रामनरायन आदि का तनहा कब्जा दखल के तथ्य को कहा है। इसके विपरीत निगरानीकर्तागण की तरफ से राजदेव प्रसाद पुत्र स्व० कंधेया लाल को प्रस्तुत किया गया है, जिसकी उम्र मात्र 38 वर्ष है, उसने अपने जिरह में यह कहा है कि आराजी निजाई के किसी नम्बर के अगल-बगल मेरा नम्बर नहीं है। विवादित गाटों में से एक गाटा 477 के बावत उसने बयान में कहा है कि गाटा सं० 477 में रामनरायन आदि की पूर्व जोत है। उसका यह बयान निगरानीकर्तागण के केस के विरुद्ध है क्योंकि निगरानीकर्तागण ने खाते में अपना वैधानिक 1/3 अंश का तथ्य कहा है। इस प्रकार यह बयान भी उनके विरुद्ध जाता है। बन्दोबस्त अधिकारी चकबन्दी ने अपने निर्णय में मौजूदा निगरानीकर्तागण के रि-सेटेलमेन्ट के तर्क को अस्वीकार किया है, इस हेतु इस न्यायालय में आगरा टेनेन्सी एक्ट 1926 की धारा 17 का उल्लेख करते हुए उक्त अधिनियम की धारा 17 की उप धारा 5 के अनुसार बिना किसी रजिस्टर्ड दस्तावेज के किसी भी दखीलकारी भूमि में दखीलकारी अधिकार उत्पन्न नहीं हो सकते हैं, के विधिक प्राविधान को विवेचित किया है जिससे यह न्यायालय भी सहमत है। अतः उपरोक्त समग्र तथ्यों के आधार पर इस न्यायालय का यह निश्चित मत है कि चकबन्दी अधिकारी का निर्णय दिन ता० 01-05-2010 जिसे बन्दोबस्त अधिकारी चकबन्दी द्वारा पारित निर्णय दिन ता० 23-04-2016 के जरिये पुष्ट किया गया है, में किसी प्रकार का हस्तक्षेप व परिवर्तन अपेक्षित न होने के कारण प्रस्तुत सभी निगरानीयाँ निरस्त किये जाने योग्य हैं।

13. So far as law in regard to long standing revenue entries is concerned, Court takes note of a judgment of Supreme Court in **Vishwa Vijay Bharati v. Fakhrul Hassan**, 1976 (3) SCC 642 which was followed by Supreme Court in **Dharam Singh (Dead) Through Legal Representatives and others vs. Prem Singh (Dead) Through Legal Representatives**, (2019) 3 SCC 530 and its relevant paragraph no. 24 is quoted below :-

“24 The High Court has dealt with the above aspect of the matter and has held that continuation of entry after the order of deletion of the name of Amar Singh cannot confer any right. The judgment of this Court in Vishwa Vijay Bharati v. Fakhrul Hassan [Vishwa Vijay Bharati v. Fakhrul Hassan, (1976) 3 SCC 642] , has rightly been referred to and relied on by the High Court. This Court in para 14 of the judgment has laid down the following: (SCC p. 645)

“14. It is true that the entries in the revenue record ought, generally, to be accepted at their face value and courts should not embark upon an appellate inquiry into their correctness. But the presumption of correctness can apply only to genuine, not forged or fraudulent, entries. The distinction may be fine but it is real. **The distinction is that one cannot challenge the correctness of what the entry in the revenue record states but the entry is open to the attack that it was made fraudulently or surreptitiously.** Fraud and forgery rob a document of all its legal effect and cannot found a claim to possessory title...”

14. Above referred rival submissions and concurrent findings of three Authorities under U.P.C.H. Act has to be dealt with taking note of limited jurisdiction of writ to cause interference in concurrent findings of Authorities except being perverse. In this regard, Court takes note of a judgment passed by Supreme Court in **Krishnanand (D) through LRs and others Vs. Deputy Director of Consolidation reported in 2015 (1) SCC 553** and for reference, its paragraph 12 is quoted below :-

“12.The High Court has committed an error in reversing the findings of fact arrived at by the authorities below in coming to the conclusion that there was a partition. No doubt, the High Court did so in exercise of its jurisdiction under Article 226 of the Constitution. It is a settled law that such a jurisdiction cannot be exercised for reappreciating the evidence and arrival of findings of facts unless the authority which passed the impugned order does not have jurisdiction to render the finding or has acted in excess of its jurisdiction or the finding is patently perverse. In the present case, though the High Court reversed the concurrent findings of the authorities below and came to the opposite conclusion on matter of facts, the High Court did not do so on the ground that the authorities below acted in excess of their jurisdiction or without jurisdiction or that the finding is vitiated by perversity.”

15. Court takes note of above legal position that long revenue entries can be challenged if made surreptitiously though possibility of any fraud or forgery was neither pleaded nor mentioned in impugned orders. Reason for allowing objections filed by predecessors of respondents by all three Authorities that they failed to show any legal basis or order on which their names could be recorded suddenly after many years, though they claimed common ancestors as to respondents.

16. Court takes note that name of predecessors of petitioners were recorded including their successors for a very long period i.e. from 1309-F till objections were made as well as that name of Sumer was recorded for the first time in 1309-F not in 1334-F as observed in order of Settlement Officer of Consolidation.

17. The Kursinama filed by Ram Narayan was though accepted by all parties but it would not be sufficient to support entries since they have not based their case entirely on common ancestors as well as they are failed to explain why Ganga was recorded solely since 1291-F and after many

years, name of predecessors of petitioners were recorded in 1307/1309-F without any subsequent event such as family partition if they are from common ancestors.

18. From Kursinama, it is evident that when name of only Ganga was recorded in 1291-F, there was no reference of Ram Dayal or Nanku or their successor allegedly brother of Ganga, therefore, without any basis name of Sumer was recorded in 1309-F as well as in 1334-F, name of Ramdev and Partap of petitioner's side were recorded, however no reason was recorded for such entries i.e. were made without any basis, therefore, entries which were recorded suddenly and surreptitiously can not sustain and can be expunged.

19. In aforesaid circumstances, concurrent finding of three Authorities under U.P.C.H Act cannot be interfered being not shown as perverse. An argument of re-settlement being vague was also rightly rejected by Settlement Officer of Consolidation and upheld by Deputy Director of Consolidation. The statement of Kishor was found insufficient to prove the case of petitioners which was rejected after much deliberations by all three Authorities under U.P.C.H. Act. Nature of entries of petitioners in 1309-F was '*sikmi cultivator*' for fixed period, therefore, they can not be considered as co-tenure holder. All above factor goes against the petitioners and were the basis of all three Authorities to expunge the entries.

20. Accordingly, present writ petition is **dismissed**.

(2026) 4 ILRA 794
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 07.04.2026

BEFORE

THE HON'BLE CHANDRA KUMAR RAI, J.

Writ B No. 10859 of 1981

Chhutta & Ors.

...Petitioners

Versus

The Board of Revenue & Ors.

...Respondents

ISSUE FOR CONSIDERATION

Whether the Appellate Court was justified in allowing the appeal and decreeing the suit despite the fact that the plaintiffs failed to prove that the plots in dispute were ancestral property and failed to establish identity of the plots and continuity of entries, merely on the ground that there was a presumption of joint Hindu family and joint Hindu family nucleus in old times.

HEADNOTE

U.P. Zamindari Abolition and Land Reforms Act, 1950, s.229-B – Suit for declaration of co-tenancy rights – Plaintiffs instituted suit under Section 229-B claiming co-tenancy rights over

the land in dispute on the ground that Fattu and Nanha were common ancestors of the parties and the plots in dispute had come down from the time of ancestors having been acquired out of the nucleus of joint Hindu family fund – Defendants contested the suit and denied that the plots in dispute were ancestral property – Trial Court dismissed the suit holding that the plot in question was not proved to be ancestral and identity of plots as well as continuity of entries were not established – Additional Commissioner allowed the appeal and decreed the suit on the ground that there was presumption of joint Hindu family as well as joint Hindu family nucleus fund in old times – Board of Revenue dismissed second appeal – Challenge in writ jurisdiction :

Held : There would be a presumption of joint Hindu family but there can be no presumption that a property standing in the name of a member of the joint Hindu family is also a joint family property – Property cannot be presumed to be joint family property merely because of existence of a joint family.

In the instant matter, Court held that the plot in question was not proved to be ancestral and identity of plots as well as continuity of entries of the plot in question had not been established – As such, co-tenancy rights could not be allowed only on the ground that there was presumption of joint family in old times – Additional Commissioner allowed the appeal on the ground that there was presumption of joint Hindu family as well as joint Hindu family nucleus fund in old times, which was contrary to law – The impugned orders dated 19.08.1974 passed by the Additional Commissioner and 12.08.1981 passed by the Board of Revenue were set aside – Writ petition allowed. (E-5)

[Paras 11, 12, 13, 14, 15, 16]

CASE LAW CITED

Bala Charan and Others v. State of U.P. and Others, 1978 RD 51;
D.S. Lakshmaiah and Another v. L. Balasubramanyam and Another, (2003) 10 SCC 310;
Angadi Chandranna v. Shankar and Others, 2025 LiveLaw (SC) 494;

List of Acts

U.P. Zamindari Abolition and Land Reforms Act, 1950.

List of Keywords

Section 229-B; Co-tenancy rights; Joint Hindu family; Joint family property; Joint family nucleus; Ancestral property; Presumption of joint family; Burden of proof; Continuity of entries; Identity of plots; Revenue entries; Co-tenure holder; Self-acquired property; Blending of property; Nucleus of joint family fund.

CASE ARISING FROM

From the judgment dated 19.08.1974 passed by the Additional Commissioner in Appeal No. 64 of 1971 and judgment dated 12.08.1981 passed by the Board of Revenue in Second Appeal No. 9(Z) of 1974-75 arising out of a suit under Section 229-B of the U.P. Zamindari Abolition and Land Reforms Act, 1950.

Appearances for Parties

Advs. for the Petitioner: Anubhav Sinha, Chandra Shekhar Garg, Daya Shankar Prasad Singh, H.O. Tiwari, Mahesh Sharma, Manoj Kumar Singh, R.K. Ojha.

Advs. for the Respondents: D.N. Gupta, K.N. Saxena, Manvendra Nath Singh, Rajendra Gupta, Ram Kishore Pandey, S.B. Jauhari, Standing Counsel, S.S. Gupta, Santosh Kumar Gaur, Veer Bhagat Singh Kushwaha, Vijay Prakash Singh Kushwaha, Vinod Kumar Singh, Vinod Kumar Singh (Senior Advocate).

(Delivered by Hon'ble Chandra Kumar Rai, J.)

1. Heard Mr. R.K. Pandey, learned Counsel assisted by Mr. Chandra Shekhar Garg, learned Counsel for the petitioners, Mr. V.K. Singh, learned Senior Counsel assisted by Mr. Aman Srivastava, learned Counsel for private respondents and Mr. Om Anand, learned Standing Counsel for the State respondents.

2. Brief facts of the case are that dispute relates to total 146 plots area 55.84 acres situated in Village Bansi, Pargana Bansi, District Lalitpur (Jhansi) as mentioned in paragraph no. 1 of the writ petition. Respondent no.1-B/ Janki, respondent no.2/ Bhaiya Lal, respondent no.3/ Hardas filed a suit under Section 229-B of U.P. Zamindari Abolition and Land Reforms Act, 1950 hereinafter referred to as U.P.Z.A. and L.R. Act claiming co-tenancy right along with defendant nos. 3 to 29 on the ground that Fattu and Nanha were common ancestors of the parties and land in suit is coming down from time of ancestors which was acquired out of the nucleus of the Joint Hindu Family Fund and parties have been in possession over the same. Defendant nos. 4,5,6,7,8,9,10,14 & 29 jointly filed written statement denying the plaintiff's claim. It was also mentioned in the written statement that land in suit exclusively belongs to aforementioned defendants and plaintiffs have no right and title in the land in suit nor they have been in possession over the land in suit. It was also mentioned in the written statement that suit is time barred. In the aforementioned suit, parties adduced oral and documentary evidences in support of their cases. Trial Court vide judgement and decree dated 30.10.1971 dismissed the plaintiff's suit recording finding that land in suit has not been proved to have come down from the time of common ancestor. Against the judgement and decree of Trial Court dated 30.10.1971, an appeal was filed by plaintiffs Janki and others before Commissioner which was registered as appeal no. 64 of 1971. The aforementioned appeal was heard by Additional Commissioner and the same was allowed vide judgement dated 19.8.1974 decreeing the plaintiff suit setting aside the judgement and decree of Trial Court. Against the judgement and decree dated 19.8.1974 passed by Additional Commissioner, petitioners filed second appeal before Board of Revenue which was registered as second appeal No. 9 (z) of 1974-1975. The aforementioned second appeal was dismissed by Board of Revenue vide judgement dated 12.8.1981 hence this writ petition on behalf of the petitioners for the following relief:-

"To issue a writ, order or direction in the nature of certiorari quashing the order dated 12.8.1981 passed by opposite party no.1, and order dated 19.9.1974 passed by opposite party no. I-A."

3. This Court admitted the writ petition on 2.9.1981 and directed the parties to maintain status quo.

4. In pursuance of the order of this Court dated 2.9.1981, the parties have exchanged their pleadings.

5. Learned Counsel for the petitioners submitted that suit under Section 229-B of U.P.Z.A. and L.R. Act filed by respondent nos. 2 to 4, respondent no. 1-B, 2 and 3 was dismissed by Trial Court in proper manner after framing issues and giving parties to lead evidence in accordance with law. He submitted that Additional Commissioner has decreed the plaintiff's suit in appeal without

framing the point of determination as well as reversing the finding of fact recorded by Trial Court in proper manner. He submitted that second appeal filed by petitioners has been dismissed without considering the case as set up in second appeal. He submitted that in 1865 AD, there were only two plots and at present, there are 146 plots. He further submitted that Trial Court has recorded the finding of fact that acquisition were made at different time which is very much demonstrated from the different periods mentioned in respect to different plots in the khatauni ranging from 1303 fasli. He submitted that in case of plea of ancestral acquisition, identity as well as continuity should be same and Trial Court recording finding of fact that neither identity nor continuity remained same, as such, there was no scope for interference in appeal before Commissioner. He submitted that Board of Revenue and Additional Commissioner has erred in holding that acquisition were made out of the nucleus of joint Hindu family although there is no pleading that there was any nucleus in the family nor there is any finding to that effect. He submitted that no presumption attaches to the joint character of the property rather presumption attaches to the jointness of the family and any member of the joint family can acquire his separate property also. He submitted that no plea of amalgamation of khata was pleaded by the plaintiff in the plaint. He further submitted that admission of certain defendants has no binding effect on the contesting defendants. He further submitted that pedigree relied upon by the plaintiff has not been proved by them, as such, the suit cannot be decreed in any manner. He submitted that entries of 1865 fasli, 1303 fasli, 1309 fasli and 1359 fasli have been misread by Additional Commissioner as well as Board of Revenue. He submitted that Board of Revenue has decided the second appeal in illegal manner. He submitted that finding recorded by Additional Commissioner and Board of Revenue are based on surmises and conjectures, as such, the same cannot be sustained in the eye of law. He submitted that impugned judgement passed by Board of Revenue and Additional Commissioner should be set aside and judgement of Trial Court should be maintained.

6. On the other hand, learned Senior Counsel for private respondents submitted that Trial Court has not exercised the jurisdiction in proper manner accordingly Additional Commissioner has considered the entire aspect of the matter and decreed the plaintiff's suit under Section 229-B of U.P.Z.A. and L.R. Act considering the evidence on record. He submitted that Board of Revenue has rightly maintained the judgement and decree passed by Additional Commissioner by dismissing the second appeal filed by petitioners. He submitted that revenue entry was properly taken into consideration in order to decide the suit under Section 229-B of U.P.Z.A. and L.R. Act in proper manner. He submitted that there is a presumption of joint Hindu family as held by this Court from time to time and if any number of joint Hindu family is claiming exclusive right that he has to prove that how he has acquired right being member of joint Hindu family. He submitted that finding of fact recorded by Additional Commissioner as maintained in second appeal cannot be interfered with in exercise of jurisdiction under Article 226 of the Constitution of India.

7. I have considered the arguments advanced by learned Counsel for the parties and perused the records.

8. There is no dispute about the fact that suit under Section 229-B of U.P.Z.A. and L.R. Act filed by contesting respondents was dismissed by Trial Court but in appeal, Additional Commissioner has decreed the plaintiff's suit. There is also no dispute about the fact that second appeal filed by petitioners was dismissed by Board of Revenue.

9. In order to appreciate the controversy involved in the matter, the perusal of the issues framed by the Trial Court in the aforementioned suit will be relevant for perusal which are as under:-

"प्रश्न नं० : 1:- क्या प्रतिवादी, नं० 3 अभी भी राम दास को बेवा है और इस भूमि में सह काश्तकार है ?

प्रश्न नं० : 2: क्या वादीगण प्रतिवादी गण: 3 ता 29 के साथ, सीरदार है जिस प्रकार कहा है ?

प्रश्न नं० : 3: क्या वाद में पराव जस्ता न बनाने का दोष है ?

प्रश्न नं० : 4 वादी गण को क्या सहायता मिल सकती है ?

प्रश्न नं० : 5: क्या वाद में धारा 34 (5) एल० आर० एक्ट बाधक है ?

प्रश्न नं०: 6: क्या श्रौमतो झुनरी रामदास की कानूनी वारिस है ?"

10. The Trial Court dismissed the plaintiff's suit considering the issues framed in the proceeding as well as the evidences adduced by the parties holding that plot in question are not ancestral plot and identity of plot as well as continuity of entry is not established. Perusal of finding of fact recorded by Trial Court on issue no. 2 will be relevant which is as under:-

"प्रश्न नं० :2:- वादीगण ने अर्जी दावा के साथ बहुत सजरा दिया है और कहा है कि वह भूमि पूर्वजों में चली आ रही है और फरीकैन की मौरूसी काश्तकारी है। अपना बयान में हरदास वादी ने वंशावली बयान की है, मगर जिरह में उसने कहा है कि उसने नने व फतू को नहीं देखा है हटारे उसी के वह सजरा उसकी मां व कब्जे ने बताया है उसकी मां मर चुकी है वाको गौरा वह है, मगर उसे पेश नहीं किया है बादी ने कहा है कि भूमि फतू व नने के समय से चली आती है वादीगण ने खसरा व खतौनी की नकल अवश्य दाखिल की है उनको यह साबित करना होगा कि विवादित खाता इसी रूप से फतू व नने है अपने एकनानियत के साथ चला आता है मौरूसी भूमि साबित करने के लिए यह अति आवश्यक है कि वादीगण ने कोई ऐसी नकल दाखिल नहीं की है, जिससे विवादित खाता फतू और नने के नाम लिखा हो। खसरा 1865 ई० में दो नंबर फतू नाम लिखा है खतौनी 1303 पर आंशिक बल दिया गया है, मगर उसमें भी हम देखते हैं कि कुछ नंबरान खाता नंबर 17 में केवल दूरजू के नाम लिखी है और कुछ नंबरान खाता नंबर 26 में अमान, जवाहर पुत्रगण नन्हे दुर्गु पुत्र खगू व परिक्रत पुत्र रामवेद के नाम लिखे हैं। खसरा 1303 फ० में इंद्राज इसी प्रकार के अलग-अलग हैं एक नंबर 1186 पर अकेले पिरक्का का नाम, अन्य नंबरान पर अंकित दूरमु का नाम है, कुछ पर अमान का नाम है उसके अलावा एक बात और ध्यान में रखने की है कि खतौनी 1303 फसली में खाता नंबर 17 पर दुर्ग के नाम लिखे हैं, उन पर कोई कृषिकाल नहीं पड़ा है और जो नंबर खाता नंबर 26 पर अमान माद ने नाम लिखे है उन पर विभिन्न कृषि काल पड़े हैं इससे साबित होता है कि विवादित भूमि एक ही खाता हो और एक ही समय से नहीं आई है अगर कुल विवादित भूमि का खाता पहले फतू व नने का होता तो कृषि काल एक होता वादी की

ओर से कहा गया है कि खाता नंबर 26 को लगान पर लिखा है कि शामिल खाता नंबर 17 इसलिए दोनों खतौनी को एक समझना चाहिए अगर ऐसा होता तो दोनों खाते शामिल किए जाते और सबका कृषि काल एक ही होता खाता नंबर 26 के ऊपर लिखा है जिसमें उसको हक दखील कार हासिल नहीं है। इसका मतलब है कि वह भूमि गैर दखीलकारी खाता न० 17 पर दरजू अकेला लिखा है और वह भी भू आराजी सीर लिखा है। 1303 फसली में दरजू दखील कार लिखा है वादीगण की ओर से यह भी कहा गया है कि खतौनी 1366-68 फसली में भैयालाल वादी नत्थू, धान सिंह, अजुध्दा व अन्य प्रतिवादीगण अलग अलग नंबरान पर वर्ग 7 में लिखे हैं इसका मतलब है कि उन लोगों का कब्जा रहा है नकल देखने से प्रतीत होता है कि बहुत सी जमीन उसमें से परती निकल गई अगर यह लोग सहकाशतकार होते तो वर्ग 7 में नहीं लिखे जाते। 1366 फसली के इस इंद्राज से उस समय उन लोगों का कब्जा साबित नहीं हो सकता है। इसीलिए यह नहीं कहा जा सकता है कि वादीगण या अन्य प्रतिवादीगण का कब्जा है।

हरी, गुल्ले और भुज्जे प्रतिवादीगण ने पहले जवाब दावा दिया मगर बाद में दरखास्त दी कि वह वादी के कथन को स्वीकार करते हैं इन लोगों के नाम भी मौजूदा खतौनी में लिखे हैं इसलिए वादीगण की ओर से कहा गया है कि वह लोग वादीगण का भाग स्वीकार करके अपवा भाग कम करते हैं इसलिए उनका कथन और स्वीकृतता को बहुत महत्व मिलना चाहिए और उसके आधार पर वादीगण का कथन स्वीकार होना चाहिए। हरी, गुल्ले व भुज्जे ने पहले जवाब दावा दिया और वादीगण के अधिकारों से इंकार किया है बाद में वह बदल गए और अब वादीगण का कथन स्वीकार कर लिया है। मेरी राय में यह किसी भी समय दावा स्वीकार कर सकते हैं, मगर उनके इस स्वीकार करने को कोई ठोस महत्व नहीं दिया जा सकता है और केवल उसी के आधार पर वादीगण का दावा पर कोई विशेष बल नहीं पड़ सकता। मैं वादीगण एवं अन्य प्रतिवादीगण के नाम इस भूमि पर नहीं है। पिछले इंद्राज में जो 1303 फसली में थे उनसे भी यह साबित नहीं होता है कि विवादित भूमि इसी दशा में फरीकैन के पूर्वजों के नाम रही है। मेरी राय में यह साबित नहीं है कि विवादित भूमि अपनी एकालियत के साथ इसी रूप में फरीकैन के पूर्वजों से चली आई है इसलिए उसको सब फरीकैन को मुश्तरका काशत नहीं कहा जा सकता है। 1359 फसली में यह भूमि गुंदे गयासी, बहारे, रामदास के नाम लिखी है। खतौनी 1377 फसली में वह भूमि गुंदे हल्का कुटे प्यारेलाल, हरी, परिक्त, गोरेलाल, भुज्जा, बहारे और बड़ी बहू के नाम लिखी है अब बड़ी बहू के स्थान पर श्रीमती झुनरी होना चाहिए जैसा कि ऊपर कहा गया है कि शहादत से यह साबित नहीं होता है कि विवादित भूमि सब फरीकैन की मौस्सी हो और एक ही पूर्वजों से अरसे से मूल रूप में चली आ रही हो इसलिए यह भी नहीं कहा जा सकता कि वादी का प्रतिवादीगण 3 ता 29 या 4 ता 30 के साथ सह सीरदार है। अतः प्रश्न का उत्तर वादी के खिलाफ दिया जाता है।"

11. In view of categorial finding of fact recorded by Trial Court considering the entry of 1303 fasli, 1359 fasli, 1366-68 fasli, 1377 fasli to the effect that plot in dispute is not proved to be ancestral as well as identity of plots and continuity of entry of the plot in question are not established, the first appellate Court cannot allow the appeal of plaintiff's on the ground that there was presumption of joint Hindu family as well as joint Hindu nucleous fund in the old time, as

such, and judgement and decree of first Appellate Court which has been maintained in second appeal by Board of Revenue in arbitrary manner cannot be sustained in the eye of law.

12. This Court in the case reported in **1978 RD Page 51 Bala Charan and Others Vs. State of U.P. and Others** has held that there would be a presumption of joint Hindu family but there can be no presumption of that a property standing in the name of a member of the joint Hindu family is also a joint family property. Paragraph no.5 of the judgement rendered by this Court in **Bala Charan and Others (Supra)** will be relevant for perusal which is as under:-

"5. In the case in hand no evidence was adduced on behalf of the opposite parties that there was nucleus from which the plots in question were acquired. It was not proved that the Patta was acquired out of the joint family funds, nor was it established that the income raised out of the plots in question was utilised by the other members of the joint Hindu family, nor any effort was made to show that the plots in question were blended with the joint family property and the opposite parties had thus acquired co-tenancy rights therein. The fact that the plots standing in the name of Mitthoo were held to be joint family property would not go to prove that the plots in question which stood in the name of Thakur were also joint family property. The Deputy Director of Consolidation had thus erred in holding that the opposite parties had acquired co-tenancy rights in the said plots. The Consolidation Officer had also erred likewise. In my view the Settlement Officer (Consolidation) had applied the correct principles of law to the facts of the case. The orders passed by the Deputy Director as also the Consolidation Officer cannot, therefore, be maintained."

13. Apex Court in the case reported in **(2003) 10 Supreme Court Cases 310 D.S. Lakshmaiah and another vs. L. Balasubramanyam and another** has held that property cannot be presumed to be joint family property merely because of existence of a joint family. Paragraph nos.17 to 21 of the judgment of Apex Court rendered in **D.S. Lakshmaiah (Supra)** will be relevant for perusal which are as under "-

"17. In view of the aforesaid discussion, the respondents having failed to discharge the initial burden of establishing that there was any nucleus in the form of any income whatsoever from Item No.2 property and no other nucleus was claimed, the burden remained on the respondents to establish that Item No.1 property was joint family property. In this view, the fact that the first appellant has not led any evidence to establish his separate income is of no consequence insofar as the claim of the respondents is concerned. Under these circumstances, for failure to lead evidence, the respondents' claim of Item No.1 to be joint family property would fail as rightly held by the first appellate court.

18. The legal principle, therefore, is that there is no presumption of a property being joint family property only on account of existence of a joint Hindu family. The one who asserts has to prove that the property is a joint family property. If, however, the person so asserting proves that there was nucleus with which the joint family property could be acquired, there would be presumption of the property being joint and the onus would shift on the person who claims it to be self-acquired property to prove that he purchased the property with his own funds and not out of joint family nucleus that was available.

19. Another contention urged for the respondents was that assuming Item No.1 property to be self-acquired property of appellant No.1, he blended the said property with the joint family property and, therefore, it has become the joint family property. Assuming the respondents can be permitted to raise such a plea without evidence in support thereof, the law on the aspect of blending is well settled that property separate or self-acquired of a member of joint Hindu family may be impressed with the character of joint family property if it is voluntarily thrown by the owner into the common stock with the intention of abandoning his separate claim therein but to establish such abandonment a clear intention to waive separate rights must be established. From the mere fact that other members of the family were allowed to use the property jointly with himself, or that the income of the separate property was utilized out of generosity to support persons whom the holder was not bound to support, or from the failure to maintain separate accounts, abandonment cannot be inferred, for an act of generosity or kindness will not ordinarily be regarded as an admission of a legal obligation {see Lakkireddi Chinna Venkata Reddy v. Lakkireddi Lakshamama [1964 (2) SCR 172] and K.V. Narayanan v. K.V. Ranganadhan & Ors. [(1977) 1 SCC 244]}.

20. In the present case, respondents have not led any evidence on the aforesaid aspects and, therefore, it cannot be held that the first appellant blended Item No.1 property into the joint family account.

21. In view of aforesaid discussion, Item No.1 property cannot be held to be joint family property. The impugned judgment of the High Court is, therefore, set aside and the appeal allowed and the judgment and decree of the first appellate court is restored. In the circumstances of the case, parties are left to bear their own costs."

14. Apex Court in the recent judgment reported in **2025 LiveLaw (SC) 494 Angadi Chandranna vs. Shankar & others** reiterated the same view. Paragraph No.13 of the judgment of Apex Court rendered in **Angadi Chandranna (Supra)** will be relevant for perusal which is as under :-

"13. Further, it is a settled principle of law that there is no presumption of a property being joint family property only on account of existence of a joint Hindu family. The one who asserts has to prove that the property is a joint family property. If, however, the person so asserting proves that there was nucleus with which the joint family property could be acquired, then there would be presumption of the property being joint and the onus would shift on the person who claims it to be self-acquired property to prove that he purchased the property with his own funds and not out of joint family nucleus that was available. That apart, while considering the term ?nucleus? it should always be borne in mind that such nucleus has to be established as a matter of fact and the existence of such nucleus cannot normally be presumed or assumed on probabilities. This Court in R.Deivanai Ammal (Died) v. G. Meenakshi Ammal¹², dealt with the concept of Hindu Law, ancestral property and the nucleus existing therein. The relevant paragraphs are extracted below for ready reference:

"13. First let us consider the nature of the suit properties, namely, self-acquired properties of late Ganapathy Moopanar or ancestral properties and whether any nucleus was available to purchase the properties. Under the Hindu Law it is only when a person alleging that the property is ancestral property proves that there was a nucleus by means of which other property may have been acquired, that the burden is shifted on the party alleging self-acquisitions to prove that the property was acquired without any aid from the family estate. In other words the

mere existence of a nucleus however small or insignificant is not enough. It should be shown to be of such a character as could reasonably be expected to lead to the acquisition of the property alleged to be part of the joint family property. Where the doctrine of blending is invoked against a person having income at his disposal and acquiring property, the reasonable presumption to make is that he had the income at his absolute disposal unless there is evidence to the contrary. If a coparcener desires to establish that a property in the name of a female member of the family or in the name of the manager himself has to be accepted and treated as property acquired from the joint family nucleus, it is absolutely essential that such a coparcener should not only barely plead the same, but also establish the existence of such a joint family fund or nucleus. Even if the joint family nucleus is so established, the prescription that the accretions made by the manager or the purchases made by him should be deemed to be from and out of such a nucleus does not arise, if there is no proof that such nucleus of the joint family is not an income-yielding apparatus. The proof required is very strict and the burden is on the person who sets up a case that the property in the name of a female member of the family or in the name of the manager or any other coparcener is to be treated as joint family property. There should be proof of the availability of such surplus income or joint family nucleus on the date of such acquisitions or purchases. The same is the principle even in the cases where moneys were advanced on mortgages over immoveable properties. The onus is not on the acquirer to prove that the property standing in his name was purchased from joint family funds. That may be so, in the case of a manager of a joint family, but not so in the case of all coparceners. For a greater reason it is not so in the case of female members.

14. The doctrine of blending of self-acquired property with joint family has to be carefully applied with reference to the facts of each case. No doubt it is settled that when members of a joint family by their joint labour or in their joint business acquired property, that property, in the absence of a clear indication of a contrary intention, would be owned by them as joint family property and their male issues would necessarily acquire a right by birth in such property. But the essential sine qua non is the absence of a contrary intention. If there is satisfactory evidence of an intention on the part of the acquirer such property to treat it as his own, but not as joint family property, the presumption which ordinarily arises, according to the personal law of Hindus that such property would be regarded as joint family property, will not arise.

15. It is a well-established principle of law that where a party claims that any particular item of property is joint family property, the burden of proving that it is so rests on the party asserting it. Where it is established or admitted that the family possessed some joint property which from its nature and relative value may have formed the nucleus from which the property in question may have been acquired, the presumption arises that it was joint property and the burden shifts to the party alleging self-acquisition to establish affirmatively that the property was acquired without the aid of the joint family. But no such presumption would arise if the nucleus is such that with its help the property claimed to be joint could not have been acquired. In order to give rise to the presumption, the nucleus should be such that with its help the property claimed to be joint could have been acquired. A family house in the occupation of the members and yielding no income could not be nucleus out of which acquisitions could be made even though it might be of considerable value.

16. In a Hindu joint family, if one member sues for partition on the foot that the properties claimed by him are joint family properties then three circumstances ordinarily arise. The first is an admitted case when there is no dispute about the existence of the joint family properties at all. The second is a case where certain properties are admitted to the joint family properties and the other properties in which a share is claimed are alleged to be the accretions or acquisitions from the income available from joint family properties or in the alternative have been acquired by a sale or conversion of such available properties. The third head is that the properties standing in the names of female members of the family are benami and that such a state of affairs has been deliberately created by the manager or the head of the family and that really the properties or the amounts standing in the names of female members are properties of the joint family. While considering the term 'nucleus' it should always be borne in mind that such nucleus has to be established as a matter of fact and the existence of such nucleus cannot normally be presumed or assumed on probabilities. The extent of the property, the income from the property, the normal liability with which such income would be charged and the net available surplus of such joint family property do all enter into computation for the purpose of assessing the content of the reservoir of such a nucleus from which alone it could, with reasonable certainty, be said that the other joint family properties have been purchased unless a strong link or nexus is established between the available surplus income and the alleged joint family properties. The person who comes to Court with such bare allegations without any substantial proof to back it up should fail.

17. It is also a well-established doctrine of Hindu Law that property which was originally self-acquired may become joint property if it has been voluntarily thrown by the coparcener into the joint stock with the intention of abandoning all separate claims upto it. But the question whether the coparcener has done so or not is entirely a question of fact to be decided in the light of all the circumstances of the case. It must be established that there was a clear intention on the part of the coparcener to waive his separate rights and such an intention will not be inferred from acts which may have been done from kindness or affection. The important point to keep in mind is that the separate property of a Hindu coparcener ceases to be his separate property and acquires the characteristics of his joint family or ancestral property, not by mere act of physical mixing with his joint family or ancestral property, but by his own volition and intention by his waiving or surrendering his special right in it as separate property. Such intention can be discovered only from his words or from his acts and conduct."

15. In the instant matter, plot in question was not proved to be ancestral as well as identity of plots and continuity of entry of the plot in question has not been established, as such, co-tenancy cannot be allowed only on the ground that there was presumption of joint family in the old time.

16. Considering the entire facts and circumstances of the case as well as ratio of law laid down by this Court as well as Apex Court, the impugned orders dated 12.8.1981 passed by Board of Revenue and 19.9.1974 passed by Additional Commissioner are liable to be set aside and the same are hereby set aside.

17. The writ petition stands **allowed** and the judgement of Trial Court dated 30.10.1971 is maintained. 18. No order as to costs.

(2026) 4 ILRA 804
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 02.04.2026

BEFORE

THE HON'BLE SAURABH SHYAM SHAMSHERY, J.

Writ B No. 12565 of 1982

D.B. Upadhyaya

...Petitioner

Versus

D.D.C. & Ors.

...Respondents

ISSUE FOR CONSIDERATION

Whether the Deputy Director of Consolidation was justified in holding the contesting respondent to be an adhvasi and subsequently a sirdar merely on the basis of entries in his favour in 1356-F, 1359-F and 1362-F, without considering the nature and manner of such entries, whether they were recorded in accordance with the provisions of the Land Revenue Act, the fact that his name was subsequently struck off in 1365 Fasli, and the concurrent finding that his name had not been recorded for more than ten years prior to commencement of consolidation proceedings.

HEADNOTE

U.P. Consolidation of Holdings Act, 1953 – ss.9-A(2), 48 – U.P. Zamindari Abolition and Land Reforms Act, 1950 – s.20(b) – Disputed plots were recorded in the basic year in the names of predecessors-in-interest of the petitioners – Contesting respondent filed objections claiming adhvasi and consequential sirdari rights over the disputed plots on the basis of entries in 1356-F, 1359-F and 1362-F – Consolidation Officer rejected the objections holding that continuity of possession was not proved and that the entries relied upon were not genuine – Settlement Officer of Consolidation affirmed the findings and further held that possession recorded as 'Batai Nisfi' did not establish adverse possession – Deputy Director of Consolidation, in revision, reversed the concurrent findings and declared the contesting respondent to be adhvasi and sirdar in respect of certain plots – Challenge in writ jurisdiction.

Held: Consolidation Officer and Settlement Officer of Consolidation recorded concurrent findings that the name of the contesting respondent was recorded on the disputed plots in certain Fasli years as *sikmi* with a note of *Batai Nisfi*, however, there was no entry in his favour in subsequent Fasli years and his name was not recorded for more than ten years before commencement of consolidation proceedings – Findings returned by the Revisional Authority that the contesting respondent had become an adhvasi and subsequently a sirdar on the basis of entries of 1356-F, 1359-F and 1362-F were erroneous since continuous possession of the contesting respondent was not proved – Entry of a *sikmi* tenant with a note of *Batai Nisfi* indicated permissive possession and not adverse possession.

Court further held that entries which are not genuine cannot confer adhvasi rights and an entry under Section 20(b) of the U.P. Zamindari Abolition and Land Reforms Act must be an entry made in accordance with law –

Consolidation Officer had recorded detailed reasons that there was no document to show possession of the contesting respondent after 1365-F and that the entries relied upon were not sufficient to establish adhivasi or sirdari rights – Deputy Director of Consolidation lightly interfered with the concurrent findings without considering the nature and manner of entries and without setting aside the findings recorded by the authorities below – Impugned orders passed by the Deputy Director of Consolidation set aside – Judgments of the Consolidation Officer and Settlement Officer of Consolidation restored – Writ petition allowed. (E-5)
[Paras 17, 18, 19, 20, 21, 23, 24, 25, 27, 28]

CASE LAW CITED

Mata Din Singh v. D.D.C. and others, 2023:AHC:158629;
Bachan and another v. Kankar and others, (1972) 2 SCC 555;
Chandrika Prasad v. Pullo (D) by LRs and others, (2000) 4 SCC 227;

List of Acts

U.P. Consolidation of Holdings Act, 1953;
U.P. Zamindari Abolition and Land Reforms Act, 1950.

List of Keywords

Adhivasi rights; Sirdari rights; Adverse possession; Nec vi nec clam nec precario; Sikmi tenant; Batai Nisfi; Revenue entries; Continuity of possession; Hostile possession; Genuine entries; Section 20(b); Concurrent findings; Revisional jurisdiction; Consolidation proceedings; Permissive possession; Basic year entry.

CASE ARISING FROM

From the order dated 17.09.1982 passed by the Deputy Director of Consolidation, Azamgarh in revision proceedings arising out of objections under Section 9-A(2) of the U.P. Consolidation of Holdings Act, 1953.

Appearances for Parties

Advs. for the Petitioner: A.K. Rai, R.N. Singh, S.N. Singh, Vishnu Singh

Advs. for the Respondents: Chandrajeet Yadav, S.C., S.L. Yadav, Upendra Nath Yadav

(Delivered by Hon'ble Saurabh Shyam Shamshery, J.)

1. Present writ petition, pending before this Court for last four decades, is arising out of objections filed in consolidation proceedings u/s 9A(2) of U.P. Consolidation of Holdings Act, 1953 (for short "U.P.C.H. Act").

2. Contesting respondents have filed objections in regard to plot nos. 1100, 4643, 1072, 3275, 883 in village Haraiya, District Azamgarh. Undisputedly, said plots were recorded in basic year in the name of Radhey Kishun Upadhyay and Shridhar Upadhyay (predecessors of present petitioner).

3. Basis of objections filed by contesting respondent-4 were that he was recorded over land in suit for substantial long time and therefore by virtue of law, he become adhivasi and sirdar being

recorded in 1956-F and 1959-F, whereas petitioner has opposed said objections on substantial grounds that he is successor of Radhey Kishun Upadhyay and Shridhar Upadhyay, the original tenure holder and name of contesting respondents was recorded only as a '*sikmi tenant*' with a note Batai Nisfi as well as that said entries were later on discontinued also and accordingly, entries were disputed being not genuine.

4. The Consolidation Officer vide a judgment dated 23.01.1971 rejected the objections filed by contesting respondent-4 and basis year entries which were in favour of Radhey Kishun Upadhyay and Shridhar Upadhyay were directed to be continued. For reference, relevant part of judgment of Consolidation Officer is quoted below :-

"In the Khata no. 188 and 73 Kharbhan has stated that he has been in possession of the five disputed plots for before the abolition of zamindari and that he filed a suit u/s 229B ZA Act which was decreed in his favour of copy of the judgment of the learned J.O. is on file, the case was decided after the village was brought under consolidation scheme as the judgment is dated 20.1.69 whereas notification u/s 41 was made in Aug.68. This judgment and the decree therefore is of no. **This case is to be decided on merits. Plot no. 3275/-360 is recorded in the name of Kharbhan s/o Ram Gulam as Shikmi tenant with a note 'Batai Nisfi' plot no. 3643/- 288 is recorded in his name in class 19 but the disputed plot is 4643/-288. There is a mistake. An uncertified copy of Khasra 1364F is on file. These are remarks column entry in favour of Kharbhan but the plots are not clear, In the Consolidated Khasra 1353 to 1364 F main column entry continued in favour of Radha Krishna etc. In 1356F over plot no. 1072/ 316 Kabiz Kharbhan son of Ramgulam has been noted. This entry in 1357 F, 1358F, 1361F, 1362F, 1363F, and 1364F.**

In 1365 F plot no. 1072/316 is in favour Kharbhan. On plot no. 1100/-174 possession of Kharbhan is noted in 1357 F, 1359F, 1361, 1362, 1363, 1364F. There is no such entry in 1365F against this plot on plot no. 3275, possession stands from 1358 F as noted in the consolidated khasra, there is no such entry in 1363F. There is ag. Remarks col. Entry against this plot in 1364 F and 65 F.I. have perused the statement of ARK who appeared before me with the khasra of 1365F. He stated that entry of remarks column in 1365F. Khasra is made but it has been struck off (plot no. 1072/-316 similarly in case of plot no. 3275/360 Remark Col. Entry has been made in red ink but it has been struck of, extract of khasra 1365F filed by the defdt. Radha Krishna shows that remarks col. Entry made there in was struck off. However, there are no papers on file to show the possession of Kharbhan over the suit and after 1365F since there are no such entry in favour of Kharbhan for the last more than ten years(before the start of consolidation) he can hardly before his claim of sirdary rights over the same the remarks column entry in possession of Kharbhan in 1359F after do not seem to be genuine because be unfit to have became adhivasi cum sirdar 1363. On the basis continuity of possession over the suit land is not proved from the records on file. The objectors Kharbhan has not been able to establish his claim of sirdari rights. Radha Krishna etc. are the kabiz tenure holders of the suit land, the issues are accordingly decided."

4. Aforesaid judgment was thereafter challenged by way of three Appeals filed by contesting respondents, however, all appeals were dismissed vide a judgment dated 07.05.1971 and findings returned by the Consolidation Officer were confirmed with further observation that it was not a

case of adverse possession rather appellants had cultivated land in suit as Batai Nisfi. Relevant part of said judgment is quoted below :-

“I have heard the parties and gone through the evidence on file. The appellant has claimed possession on the disputed land since before the enforcement of ZA Act and have filed extract of khasra for 12 years to prove his possession. The entry of possession before 1365F to 1359F in favour of appellant are in the remarks col. Of the Khasra. As held in RD 1966 page 132 such entries are against law and cannot be recognised for going sirdari rights. As the peirod of possession upto 1359F is of no avail to the appellant. The entries of possession for 1361 F and do not show adverse possession of the appellant but show that he cultivated all land on batai. This conclusion is on the basis of the extract of khasra for 12 years filed by the applicant. Thus it is not proved that the applicant has enttered in adverse possession after the enforcement of ZA Act the and the lower court is justified in not giving him sirdari right I have no reason to interfere with the finding of the lower court.

The appeal has no force and is therefore dismissed. This will govern case no. 1025 and 1029 also.”

5. Contesting respondents being aggrieved by aforesaid two judgments have filed three Revision Petitions u/s 48 of 'U.P.C.H. Act' before the Deputy Director of Consolidation, Azamgarh who vide an order dated 26.10.1971 has partly allowed the revision petitions and interfered with concurrent findings returned by the Consolidation Officer and the Settlement Officer of Consolidation.

6. The Deputy Director of Consolidation has held that revisionist/contesting respondent-2 has able to prove to an extent that he was in possession of Gata No. 1072, 1100 and 3275 in 1358-F, 1359-F, 1361-F and 1362-F and accordingly, held that he became firstly adhivasi and later on sirdar of said plots and accordingly, allowed the revision petition partly to the extent of said three plots i.e. 1072, 1100 and 3275.

7. Thereafter, petitioners have filed a restoration/recall application before D.D.C. concerned which was allowed vide an order dated 03.10.1972 by D.D.C. itself. Thereafter, contesting respondents have challenged said order before this Court in Writ Petition No. 7615/1972. and this Court vide its order dated 25.08.1978 remanded the matter back to concerned D.D.C. to pass a fresh order. Accordingly, D.D.C. concerned had reconsidered and rejected the restoration/recall application vide an order dated 17.09.1982. Relevant part of Order dated 26.10.1971 passed by D.D.C. is mentioned hereinafter:-

उपरोक्त से यह प्रकट होता है कि प्रार्थी का कब्जा 1072 नम्बर पर केवल 56 फसली में दर्ज था तथा 1072, 1100 और 3275 नम्बर पर 59 फसली में दर्ज है। जमीन्दारी उन्मूलन अधिनियम के अन्तर्गत अधिवासी अधिकार 56 तथा 59 फसली के इन्द्राज के आधार पर ही हासिल होते हैं। अन्तर केवल यह है कि 56 फसली का इन्द्राज यदि नियमानुकूल है तो वह अधिवासी बनने के लिये पर्याप्त है। 59 फसली के इन्द्राज के लिये यह आवश्यक है कि काबिज व्यक्ति पूरे फसली साल में काबिज रहा हो। विपक्षी की ओर से यह तर्क

किया गया है कि 56 और 59 फसली में किये गये इन्द्राज नियमानुसार नहीं हैं। प्रार्थी का कब्जा खाना कैफियत में लिया है जबकि उसे शिकमी के खाने में दर्ज होना चाहिए। विपक्षी की ओर से इस सम्बन्ध में लैण्ड रिकार्ड मैनुअल के पैरा 87 पर बहुत बल दिया गया है किन्तु उक्त पैरे के प्रोवाइजो में यह भी उल्लेख है कि शिकमी के खाने में तभी इन्द्राज किया जायेगा जबकि बटवारा को यह इत्तममिनान हो जाये कि सम्बन्धित काश्तकारों के बीच में कोई मोआहिदा (कान्ट्रैक्ट) हो गया है। यदि काबिज व्यक्ति और असल काश्तकार के बीच में कोई मोआहिदा (कान्ट्रैक्ट) नहीं हुआ है तो कब्जे का इन्द्राज खाना कैफियत में किया जायेगा। इसलिये 1356 तथा 59 फसली में किये गये इन्द्राज अनियमित नहीं कहे जा सकते।

दाखिल सबूत से यह भलीभाँति साबित है कि प्रार्थी गाटा सं० 1072, 1100, और 3275 नम्बर पर 58, 59, 61, 62 फसली में काबिज रहा है। 1360 फसली में कागजात नहीं बने। अतः प्रार्थी नियुक्त तिथि पर इन तीनों नम्बरों का सीरदार हो जाता है। इन नम्बरों पर विपक्षीगण को मुखालिफाना कब्जे के आधार पर सीरदारी हक हासिल करने की अवधि समाप्त नहीं हुई है अतः बन्दोबस्त अधिकारी, चकबन्दी तथा चकबन्दी अधिकारी का आदेश आंशिक रूप से निरस्त कर यह आदेश दिया जाता है कि प्रार्थी गाटा सं० 1072, 1100, और 3275 का सीरदार दर्ज हो। मालगुजारी रास्टर रेट से लगाई जायेगी। यह आदेश उपरोक्त तीनों निगरानीयों पर लागू होगा।”

8. Aforesaid both orders dated 26.10.1971 and 17.09.1982 are challenged before this Court in present writ petition.

9. This Court has passed an interim order on 09.11.1982 that :-

“Issue notice returnable on the early date.

Meanwhile, petitioners may not be dispossessed from the land if they have not already been dispossessed.”

10. Sri Durgesh Kumar Singh, learned Senior Advocate assisted by Sri Vishnu Singh, learned counsel for petitioner has submitted that concurrent findings on facts as well as on law returned by two Authorities viz. C.O. and S.O.C. were lightly interfered by D.D.C. in revisional jurisdiction.

11. Learned Senior Advocate has further submitted that objections filed by contesting respondents so far as Gata No. 1072, 1100 and 3275 were accepted that he was recorded in 1356-F, 1358-F, 1359-F, 1361-F and 1362-F, however, a fact which was effectively considered by C.O. and S.O.C. that subsequently, in 1365-F, there was no entry in favour of contesting respondents on plot no. 3275. So far as plot no. 1072 is concerned, entry of respondent in 1365-F was made but it was struck off. Similarly was the case of plot no. 3275. The initial entries were recorded in remark column and subsequent entries were with remark 'batai nisfi'.

12. On plot no. 1100 also, there is no entry in 1365-F in favour of contesting respondents, therefore, nature of entries for 1356-F, 1358-F, 1359-F, 1361-F and 1362-F becomes important that

entries were of '*sikmi tenant*' with a note of Batai Nisfi. To declare respondents *adhivasi* and *sirdar*, on basis of revenue records of 1356-F and 1359-F, ignoring above referred facts, would not be a correct approach.

13. Learned Senior Advocate for petitioner has further submitted that in order to prove adverse possession, there must be a clear and inequivable evidence that possession was hostile to real owner. There must be animus of person doing those act which must be ascertained from facts and circumstances of the case, however, D.D.C. in a very cursory manner has interfered with concurrent findings of two authorities. Even there is no specific finding that concerned respondent was in hostile possession for more than 12 years.

14. Per contra, S/Sri ChandraJeet Yadav and Upendra Nath Yadav have vehemently opposed above submissions and placed heavy reliance upon the judgment of Deputy Director of Consolidation that once name of contesting respondents was recorded for many years, obviously, it would become hostile. Two Authorities i.e. C.O. and S.O.C. have misread revenue records so much as that they have ignored possession of contesting respondents on three plots referred above for a very long period as well as that petitioners have never taken steps for eviction. Respondents have become *adhivasi* and *sirdar* on basis of revenue entry of 1356-F and 1359-F and it were rightly considered by the D.D.C.

15. Heard learned counsel for parties and perused the records.

16. It is a case where concurrent findings of two Authorities i.e. C.O. and S.O.C. were disturbed by Revisional Authority i.e. D.D.C. and Revisions were partly allowed qua to plot nos. 1072, 1100 and 3275 and that contesting respondent-2 has possession over said plots in nature of adverse possession as well as they become *adhivasi* and *sirdar*.

17. In order to consider rival submissions, Court proceeded to consider concurrent finding returned by the Consolidation Officer and Settlement Officer Consolidation that name of contesting respondent was recorded on the above referred three plots in 1356-F, 1358-F, 1359-F, 1361-F and 1362-F as '*sikmi*' with a note of *Batai Nisfi*, however, their name were not recorded in subsequent fasli years i.e. there was no entry in favour of contesting respondent (*kharban*) for last more than 10 years before consolidation commenced and that findings was not considered by Revisional Court, therefore, it was not set aside, despite it has legal consequence.

18. In view of above, one of basic ingredients to prove adverse possession is that hostile possession be continued for more than 12 years before it was raised but on basis of undisputed revenue record, it was absolutely missing.

19. In above circumstances, a findings returned by the Revisional Court on basis of revenue records of 1356-F, 1359-F, 1362-F and 1365-F were erroneous since it would fall short of requirement to prove adverse possession, when continuous possession of contesting respondent was not proved on basis of subsequent revenue entries as admittedly said respondents' name were not recorded thereafter.

20. In view of above, entry of '*sikmi tenant*' with a note of Batai Nisfi would also become relevant that it was a permissive possession and not an adverse possession.

21. Otherwise also, Court finds that basic ingredient to prove adverse possession i.e. nec vi nec clam and nec precario are absolutely missing.

22. In this regard, Court takes note of a judgment of this Court in **Mata Din Singh vs. DDC and others, 2023:AHC:158629** and for reference, relevant paragraph is quoted below :-

“28. Recently the Supreme Court in Uttam Chand (Dead) through LRs vs. Nath Ram (Dead) through LRs and others, 2020 (11) SCC 263 has reiterated earlier judgments and observed that -:

“15. The matter has been examined by a Constitution Bench in M. Siddiq (Ram Janmabhumi Temple-5 J.) v Suresh Das [M. Siddiq (Ram Janmabhumi Temple-5 J.) v. Suresh Das, (2020) 1 SCC 1] wherein, it has been held that a plea of adverse possession is founded on the acceptance that ownership of the property vests in another, against whom the claimant asserts possession adverse to the title of the other. The Court held as under: (SCC pp. 703-706, paras 1142-1143 & 1147-1150)

1142. A plea of adverse possession is founded on the acceptance that ownership of the property vests in another against whom the claimant asserts a possession adverse to the title of the other. Possession is adverse in the sense that it is contrary to the acknowledged title in the other person against whom it is claimed.

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1143. A person who sets up a plea of adverse possession must establish both possession which is peaceful, open and continuous possession which meets the requirement of being nec vi nec clam and nec precario. To substantiate a plea of adverse possession, the character of the possession must be adequate in continuity and in the public because the possession has to be to the knowledge of the true owner in order for it to be adverse. These requirements have to be duly established first by adequate pleadings and second by leading sufficient evidence. Evidence, it is well settled, can only be adduced with reference to matters which are pleaded in a civil suit and in the absence of an adequate pleading, evidence by itself cannot supply the deficiency of a pleaded case. Reading Para 11(a), it becomes evident that beyond stating that the Muslims have been in long, exclusive and continuous possession beginning from the time when the Mosque was built and until it was desecrated, no factual basis has been furnished. This is not merely a matter of details or evidence. A plea of adverse possession seeks to defeat the rights of the true owner and the law is not readily accepting of such a case unless a clear and cogent basis has been made out in the pleadings and established in the evidence.

1147. In Supt. & Remembrancer of Legal Affairs v. Anil Kumar Bhunja [Supt. & Remembrancer of Legal Affairs v. Anil Kumar Bhunja, (1979) 4 SCC 274 : 1979 SCC (Cri) 1038], R.S. Sarkaria, J. speaking for a three-Judge Bench of this Court noted that the concept of

possession is polymorphous embodying both a right (the right to enjoy) and a fact (the real intention). The learned Judge held: (SCC p. 278, para 13)

13. It is impossible to work out a completely logical and precise definition of possession uniformly applicable to all situations in the contexts of all statutes. Dias and Hughes in their book on Jurisprudence say that if a topic ever suffered from too much theorising it is that of possession. Much of this difficulty and confusion is (as pointed out in Salmond's Jurisprudence, 12th Edn., 1966) caused by the fact that possession is not purely a legal concept. Possession, implies a right and a fact; the right to enjoy annexed to the right of property and the fact of the real intention. It involves power of control and intent to control. (See Dias and Hughes, *ibid.*) These observations were made in the context of possession in Section 29(b) of the Arms Act, 1959.

1148. In *P. Lakshmi Reddy v. L. Lakshmi Reddy* [*P. Lakshmi Reddy v. L. Lakshmi Reddy*, 1957 SCR 195 : AIR 1957 SC 314], Jagannadhadas, J. speaking for a three-Judge Bench of this Court dwelt on the classical requirement of adverse possession: (AIR pp. 317-18, para 4)

4. Now, the ordinary classical requirement of adverse possession is that it should be *nec vi nec clam nec precario*. (See *Secy. of State for India in Council v. Debendra Lal Khan* [*Secy. of State for India in Council v. Debendra Lal Khan*, 1933 SCC OnLine PC 65 : (1933-34) 61 IA 78] IA at p. 82.) The possession required must be adequate in continuity, in publicity and in extent to show that it is possession adverse to the competitor.

The Court cited the following extract from U.N. Mitra's Tagore Law Lectures on the Law of Limitation and Prescription: (AIR p. 319, para 7)

7. An adverse holding is an actual and exclusive appropriation of land commenced and continued under a claim of right, either under an openly avowed claim, or under a constructive claim (arising from the acts and circumstances attending the appropriation), to hold the land against him (*sic*) who was in possession. (Angell, Sections 390 and 398). It is the intention to claim adversely accompanied by such an invasion of the rights of the opposite party as gives him a cause of action which constitutes adverse possession. [6th Edn., Vol. I, Lecture VI, at p. 159]

This Court held: (AIR p. 319, para 7)

Consonant with this principle the commencement of adverse possession, in favour of a person implies that the person is in actual possession, at the time, with a notorious hostile claim of exclusive title, to repel which, the true owner would then be in a position to maintain an action. It would follow that whatever may be the animus or intention of a person wanting to acquire title by adverse possession his adverse possession cannot commence until he obtains actual possession with the requisite animus.

1149. In *Karnataka Board of Wakf v. Union of India* [*Karnataka Board of Wakf v. Union of India*, (2004) 10 SCC 779], S. Rajendra Babu, J. speaking for a two-Judge Bench held that: (SCC p. 785, para 11)

11. Physical fact of exclusive possession and the animus possidendi to hold as owner in exclusion to the actual owner are the most important factors that are to be accounted in cases of this nature. Plea of adverse possession is not a pure question of law but a blended one of fact and law. Therefore, a person who claims adverse possession should show: (a) on what date he came into possession, (b) what was the nature of his possession, (c) whether the factum of possession was known to the other party, (d) how long his possession has continued, and (e) his possession was open and undisturbed.

The ingredients must be set up in the pleadings and proved in evidence. There can be no proof sans pleadings and pleadings without evidence will not establish a case in law.

1150. In *Annakili v. A. Vedanayagam* [*Annakili v. A. Vedanayagam*, (2007) 14 SCC 308], this Court emphasised that mere possession of land would not ripen into a possessory title. The possessor must have animus possidendi and hold the land adverse to the title of the true owner. Moreover, he must continue in that capacity for the period prescribed under the Limitation Act."

23. The D.D.C has not considered claim of the respondent on basis of 'adverse possession' but on nature revenue entries that the respondent was recorded on plot no. 1072 in 1356-F as well as recorded on plot no. 1072, 1100 and 3275 in 1359-F, therefore, respondent became 'Adhivasi' and in regard to entry of 'sikmis' is concerned, the D.D.C. held that such entries would be made only after 'partition or any contract', therefore, 'sikmi' was a legal entry and further held that respondent became Sirdar on basis year i.e. in 1362-F so far as above referred three plots. The findings in regard to 'partition' or 'contract' were based on assumption and not on records, therefore, are unsustainable.

24. The Deputy Director of Consolidation has returned a finding that Respondent-2 become *firstly adhivasi* and later on *sirdar* in a very cursory manner only on basis that he was recorded in 1356-F, 1359-F and 1362-F on three plots without taking note nature and manner of entry, i.e., whether it was recorded in accordance with the provisions of Land Revenue Act as well as that subsequently, i.e., in 1365 Fasli his name was cut off. The Deputy Director of Consolidation has also ignored the findings of two authorities on basis of record that 10 years prior to consolidation proceedings commenced, name of Respondent-2 was not recorded. It would become more important when Deputy Director of Consolidation has not even considered plea of adverse possession.

25. I have already discussed in earlier paragraphs that plea of adverse possession raised by Respondent-2 in objection, was not legally made out. So far as entries of 1356-F, 1359-F and 1362-F are concerned, in this regard the Court takes note of judgments passed by Supreme Court in **Bachan and another vs. Kankar and others, (1972) 2 SCC 555** that if entries are not genuine, it would not confer any Adivasi right and for that the Court takes note of detail reasons assigned by Consolidation Officer on basis of record that there was no document to show possession of respondent over suit land after 1365-F since there was no such entry in his favour for last more than 10 years before start of consolidation proceedings as well as that on basis of entries in remark column in 1356-F, 1359-F it cannot be a genuine entry, therefore, he cannot be declared Adivasi or Sirdar on basis of such nature of entry of 1362-F. The DDC without much deliberation on manner of entries of 1356-F, 1359-F and 1362-F has wrongly proceeded to declare that respondents became adhivasi and sirdar. Relevant paragraphs of above referred judgment are quoted below :-

"15. This Court in *Sonawati v. Sri Ram* [AIR 1968 SC 466(1968) 1 SCR 617 :] said that Section 20 of the U.P. Zamindari Abolition and Land Reforms Act, 1951 conferred certain rights upon persons whose names were recorded in the revenue records in respect of agricultural land. In *Sonawati* case this Court found that there was strong evidence which was relied on by the Revenue Court that the name of Pritam Singh predecessor-in-interest of the appellants was surreptitiously entered in the Khasra. The first appellate court there did not at all consider that evidence. **The surreptitious entry in Sonawati case was held by this Court to disentitle the appellants to any adhivasi right under Section 20 of the U.P. Zamindari Abolition and Land Reforms Act.**

16. This Court recently in *Ram Das v. Deputy Director of Consolidation, Ballia*, [(1971) 1 SCC 460 : AIR 1971 SC 673] dealt with the contention of the appellants on the one hand who were recorded as Sir Khudkasht-holders of the plots in dispute and the contention of the respondents on the other who were entered as sub-tenants in respect of those plots in the year 1356 Fasli. Suits were filed between the parties. A compromise was entered into the suits. It was admitted by the respondents that the appellants were Bhoomidars and that the respondents had no interest. The further admission in the compromise was that the entry in the revenue records in favour of the respondents was fictitious. The respondents subsequently applied for setting aside the compromise decrees on the ground that they had been obtained fraudulently. During the pendency of the suits consolidation proceedings under the U.P. Consolidation of Holdings Act, 1953 commenced. The Consolidation Authorities held that the suits were not maintainable because on the date on which the suits were filed the respondents had become sirdars. The appellants filed a writ petition under Article 226 challenging the order of the Consolidation Authorities. The High Court held in that case relying on the earlier decisions of that Court that even if the entry was fictitious the respondents who were recorded as occupants would, under Section 20(b) of the U.P. Zamindari Abolition and Land Reforms Act, 1951 become adhvasi of the disputed land. **This Court relying on the earlier decision in Sonawati case held that there was evidence to show that the entry was fictitious and the person whose name was entered on the record on the material date could not claim the right of an adhvasi.**

26. The above referred case was followed in *Chandrika Prasad vs. Pullo (D) by LR's and others*, (2000) 4 SCC 227 and for reference, relevant paragraph is quoted below :-

“22. XXXXX
XXXXX
XXXXX
XXXXX
XXXXX

5. It was submitted by learned counsel for the appellants that if the entry was not correct, it could not be regarded as an entry made according to law at all and the right to take or retain possession of the land could not be determined on the basis of an incorrect entry. He placed reliance on the decision of this Court in *Bachan v. Kankar* [(1972) 2 SCC 555 : (1973) 1 SCR 727 : AIR 1972 SC 2157] . In that judgment the nature of the entries in khasra or khatauni is discussed and it is also discussed as to how this entry should be made. This Court held that entries which are not genuine cannot confer adhvasi rights. It has been observed that an entry under Section 20(b) of the said Act, in order to enable a person to obtain adhvasi rights, must be an entry under the provisions of law and entries which are not genuine cannot confer adhvasi rights. In that judgment it has been stated that the High Court was wrong when it held that though the entry was incorrect, it could not be said to be fictitious. That observation, however, has to be understood in the context of what follows, namely, that an entry which is incorrectly introduced into the records by reason of ill-will or hostility is not only shorn of authenticity but also becomes utterly useless without any lawful basis. This judgment, in our view, does not lay down that all incorrect entries are fictitious but only lays down that a wrong entry or incorrect entry which has been made by reason of ill-will or hostility cannot confer any right under Section 20(b) of the said Act. **This decision is clarified**

by a subsequent judgment of this Court in Vishwa Vijay Bharati v. Fakhrul Hassan [(1976) 3 SCC 642 : 1976 Supp SCR 519 : AIR 1976 SC 1485] where it has been held as follows (at p. 1488 of AIR): (SCC p. 645, para 14)

“It is true that the entries in the revenue record ought, generally, to be accepted at their face value and courts should not embark upon an appellate inquiry into their correctness. But the presumption of correctness can apply only to genuine, not forged or fraudulent, entries. The distinction may be fine but it is real. The distinction is that one cannot challenge the correctness of what the entry in the revenue record states but the entry is open to the attack that it was made fraudulently or surreptitiously. Fraud and forgery rob a document of all its legal effect and cannot found a claim to possessory title.”

(emphasis supplied)”

27. Above referred findings of Consolidation Officer were upheld by Settlement Officer of Consolidation, however, it was very lightly interfered by Deputy Director of Consolidation, therefore, interference is legally unsustainable as well as above discussed legal position is also against the contesting respondents.

28. Therefore, impugned judgment passed by Deputy Director of Consolidation is accordingly set aside and judgments passed by Consolidation Officer and Settlement Officer of Consolidation are upheld.

29. Writ petition is, accordingly, **allowed**.

(2026) 4 ILRA 814
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 08.04.2026

BEFORE

THE HON'BLE AJIT KUMAR, J.
THE HON'BLE MRS. SWARUPAMA CHATURVEDI, J.

Writ C No. 1489 of 2026 alongwith connected cases

Ashish Rawat

...Petitioner

Versus

Union of India & Ors.

...Respondents

ISSUE FOR CONSIDERATION

Matter pertains to:

(i) Whether the term “property” under Section 106 of the Bharatiya Nagarik Suraksha Sanhita, 2023 extends to the entire bank account or only to a particular amount therein alleged to be stolen or suspected to be involved in an offence;

- (ii) Whether a bank account can be frozen at the instance of the police without prior intimation to the account holder or the competent Magistrate in the light of the procedure prescribed under Section 106 BNSS;**
- (iii) Whether Sections 106 and 107 BNSS operate independently and distinctly, with Section 106 governing seizure or temporary freezing of accounts and Section 107 governing attachment of accounts, and whether their applicability differs at different stages of investigation; and**
- (iv) Whether any jurisdictional issue arises where bank accounts are maintained at one place but the transactions giving rise to the alleged suspicious amounts occur elsewhere, and consequently where jurisdiction of the Magistrate would vest.**

HEADNOTE

Bharatiya Nagarik Suraksha Sanhita, 2023 – ss.106, 107 – Constitution of India – Art.226 – Writ petitions challenging freezing of bank accounts by banks on instructions of police/cyber crime authorities in connection with cyber fraud complaints – Petitioners contended that accounts were frozen without notice, without compliance of Section 106 BNSS and without orders of Magistrate – Some petitioners further contended that entire accounts were frozen though alleged suspicious transactions involved only limited amounts – Questions arose regarding power of police to freeze accounts, distinction between seizure and attachment, and territorial jurisdiction of Magistrate.

Held: Bank account is "property" within the meaning of Section 106 BNSS and can be seized if found under circumstances creating suspicion of commission of an offence. The term "property" under Section 106 BNSS would extend only to that amount which is alleged or suspected to have been stolen or which is suspected to be involved in the commission of an offence and not to the entire amount lying in the bank account. Where only a particular amount lying in a bank account is alleged or suspected to be connected with an offence, power of seizure is limited to the extent of the alleged or suspicious amount and cannot be construed to permit freezing of the entire operation of the bank account. Banks can place a lien only to the extent of the amount alleged or suspected to be involved in the offence and operation of the account cannot be restricted beyond such amount.

Court held that freezing of a bank account at the instance of the police without prior intimation to the account holder or prior order of the Magistrate is permissible under Section 106 BNSS, provided the police officer forthwith reports the seizure to the Magistrate having jurisdiction as contemplated under Section 106(3) BNSS. Prior notice to the account holder is not required before or simultaneously attaching a bank account but a post facto report is mandatorily required to be submitted to the jurisdictional magistrate. However, neither Section 106 and Section 107 of the BNSS, nor any other law, prohibits bank authorities from informing account holders about the operational status of their accounts. While such intimation may not be required prior to seizure, banks shall inform the account holders after the seizure of the account, upon instructions from the investigating agencies. Bank account holders, being consumers of the banks, are at least entitled to be informed of the seizure of their accounts, which renders them non-operational, so as to protect themselves from hardships and to take appropriate legal recourse.

Court further held that Sections 106 and 107 BNSS operate independently and distinctly. Section 106 governs seizure or temporary freezing of property during investigation and Section 107 governs attachment of property. Seizure under Section 106 is a temporary measure available to the investigating agency, whereas attachment under Section 107 can be ordered only by the Magistrate in accordance with law.

Court also held that for the purposes of Section 106(3), jurisdiction would vest in the Magistrate having territorial jurisdiction over the place where the bank account is seized or frozen and not where the transaction giving rise to the suspicious amount occurred. (E-5)

[Paras 36, 37, 39, 40, 50, 51, 53]

CASE LAW CITED

State of West Bengal v. Anil Kumar Dey, 2025 SCC OnLine SC 2753;
State of Maharashtra v. Tapas D. Neogy, (1999) 7 SCC 685;
Teesta Atul Setalvad v. State of Gujarat, (2018) 2 SCC 372;
Nevada Properties Private Limited v. State of Maharashtra, (2019) 20 SCC 119;
Headstar Global Pvt. Ltd. v. State of Kerala, 2025 SCC OnLine Ker 3546;
Mr. Kartik Yogeshwar Chatur v. Union of India, 2025 SCC OnLine Bom 4778;
Malabar Gold and Diamond Limited v. Union of India, 2026 SCC OnLine Del 297.

List of Acts

Bharatiya Nagarik Suraksha Sanhita, 2023;
Constitution of India.

List of Keywords

Freezing of bank account; Cyber fraud; Cyber crime complaints; Seizure of bank account; Property under Section 106 BNSS; Suspicious transactions; Lien on bank account; Distinction between seizure and attachment; Sections 106 and 107 BNSS; Prior notice to account holder; Reporting to Magistrate; Jurisdictional Magistrate; Cyber Crime Portal; Partial freezing; Restoration of banking operations; Investigatory seizure; Attachment of proceeds of crime.

CASE ARISING FROM

Petitioners were aggrieved by the action of the bank authorities in freezing their bank accounts on the instructions of the Cyber Crime/Crime Branch authorities. Writ petitions were filed seeking a direction to the respondents to de-freeze their bank accounts.

Appearances for Parties

Advs. for the Petitioner: Akash Kumar Sharma, Ashwani Kumar, Shamasul Eslam

Advs. for the Respondents: **A.S.G.I., C.S.C., Sanjai Singh, Tushar Kant**

(Delivered by Hon'ble Mrs. Swarupama Chaturvedi, J.)

1. Heard Shri Shamasul Eslam, learned counsel for the petitioner in leading petition, Shri Ashutosh Kumar Pandey, learned counsel for the petitioner in Writ-C No. 648 of 2026, Shri Santosh Kumar Dubey, learned counsel for the petitioner in Writ-C No. 665 of 2026, Shri Vikrant Pratap Singh, learned counsel for the petitioner in Writ-C No. 889 of 2026 & Writ -C No. 1118 of 2026, Shri Sanjay Kumar Verma, learned counsel for the petitioner in Writ-C No. 1768 of 2026, Shri Malik Juned Ahmad, learned counsel for the petitioner in Writ -C No. 2577 of 2026, Shri Vidya Kant Rai, learned counsel for the petitioner in Writ-C No. 2691 of 2026, Shri S.F.A. Naqvi, learned Senior Advocate assisted by Shri Malik Juned Ahmad, learned counsel for the petitioner in Writ-C No. 2711 of 2026, Shri Aditya Kumar Rai, learned counsel for the petitioner in Writ-C No. 2989 of 2026, Shri Arun Yadav, learned counsel for the petitioner in Writ -C No. 4227 of 2026, and Shri Tushar Kant, learned Senior Panel Counsel appearing in all the cases for Union of India, Shri Shrey Singh, learned counsel appearing for respondent no. 3 and Shri Ramesh Kumar Shukla,

learned counsel for the respondent no. 4 in connected Writ-C no. 1768 of 2026, Ms. Swati Agrawal Srivastava, learned counsel for the respondent no. 2 (SBI) and Shri Abhishek Ahuja, learned counsel for the respondent no. 3 in connected Writ-C No. 2711 of 2026, Shri Sanji Singh, learned counsel for the respondent no. 5 in connected Writ-C No. 1489 of 2026 and for respondent nos. 4 to 6 in connected Writ-C No. 2989 of 2026, Shri Amrish Sahai, learned counsel for the respondent no. 5 in connected Writ-C No. 1489 of 2026 and Shri Anubhav Chandra, learned Standing Counsel for the State respondents in all the petitions.

2. All the present petitions have been filed by the respective petitioners being aggrieved by the action of the bank authorities in freezing their bank accounts. The grievance, in essence, pertains to the restrictions placed on the operation of bank accounts due to investigation of cyber offences where their account had alleged financial transaction. In the light of above-mentioned facts and circumstances petitioners have filed their respective petitions under Article 226 of the Constitution of India, praying for issuance of writ order or direction in the nature of mandamus to respondents for de-freezing of their bank accounts. Since the reliefs sought in all the petitions are substantially alike, and the matters arise out of similar set of facts involving identical questions of law, all the petitions were connected and taken up together for hearing. However, necessary facts pleaded in each writ petitions and submissions advanced on behalf of the parties in the respective petitions are being noticed separately.

3. In **Writ-C No. 1489 of 2026** the fact in brief is that the petitioner has got a savings account no. (hereinafter referred as ?A/c No.?) 2340000109223949 in Punjab National Bank, Gwal Toli Branch, Kanpur Nagar. On 12.12.2025, the petitioner discovered his online transactions were stopped, thereafter he visited the branch manager the following day, where he was informed that his account had been freezed on instructions of the crime branch without specifying the reason for the freezing.

4. In **Writ-C No. 889 of 2026**, the factual matrix is that petitioner?s A/c No. 20348241556, maintained at the State Bank of India, Branch Suhag Nagar, Firozabad, was freezed by the respondent authorities without any prior notice, duration or reasons for the seizure. The petitioner alleges that this action was taken mechanically and without statutory authority, and despite submission of representation for de-freezing, no action was taken by the respondents.

5. The factual foundation of **Writ-C No. 1768 of 2026** is account freezing of the petitioner?s A/c No. 520291001842711 in Union Bank of India, Ashok Nagar Branch District Kanpur and A/c No. 1969100100013506 in Punjab National Bank, Govind Nagar Branch District Kanpur. In this case, the investigating officer requested the respondent bank to put the disputed account on hold, which was under dispute in a private dispute in between parties. Following the seizure, the petitioner moved an application before the court of the Chief Judicial Magistrate, Kanpur Nagar, but the accounts are still not de-freezed as pleaded by the petitioner.

6. The facts giving rise to **Writ-C No. 2691 of 2026** is freezing of petitioner?s bank account maintained with the Bank of Baroda, Barkhera Branch, Pilibhit. The bank stopped transactions in the petitioner's account due to two specific transfers, i.e., Rs.60 received on 19.09.2023, for which

there is Cyber Crime Acknowledgement No. 23109230080435, and transaction of Rs.1 transferred on 27.09.2023, for which there is Cyber Crime Acknowledgement No. 31109230128980.

7. In the case of the petitioner in **Writ-C No. 648 of 2026**, the facts are that petitioner's A/c No. 50100801261478 maintained at HDFC Bank, Phulpur Branch, District Prayagraj was arbitrarily freezed by the bank on the basis of instructions received from the Station House Officer (SHO), Cyber Station, Prayagraj, citing Cyber Police Portal Acknowledgement No. 21511250032616 dated 23.02.2025. The petitioner contends that his entire account has been blocked indefinitely, which is severely affecting his livelihood and family obligations, without the authorities supplying him any FIR, complaint, or judicial order in that regard. Furthermore, the petitioner asserts he is neither named as an accused nor has he been informed of any specific offence or investigation, and that the freezing action was carried out without providing any prior notice, opportunity of hearing, or recording of legal reasons under statutory provisions like Section 106 Bharatiya Nagarik Suraksha Sanhita, 2023 (herein after referred to as 'BNSS') (earlier Section 102 CrPC).

8. The fact in **Writ-C No. 2711 of 2026** is that various accounts of the petitioner were freezed by the banks on the instructions of the Cyber Crime Police Station, District Ballia, on the basis of certain alleged illegal amounts were deposited into the petitioner's accounts from unknown sources. It is pleaded that the petitioner is a retired government employee who is currently engaged in a small agricultural business. He also pleads that he has not received any FIR, summons, or legal notice regarding any investigation, and that the freezing of his accounts, which include his pension and agricultural income, without any order from the Magistrate under Section 107 of the BNSS (earlier Section 102 CrPC) is arbitrary and illegal action of respondents. Details of total amount, i.e. Rs.9,31,759/- that has been freezed by different banks are given below.

Bank	A/c No.	Amount
State Bank of India, Branch-Agarsanda, Ballia (IFSC: SBIN0017598)	30380446638	Rs. 3,15,000/-
Axis Bank, Branch-Ballia (IFSC: UTIB0000897)	924010054535613 92402007180658	Rs. 9,759/- Rs. 26,000/-
HDFC Bank, Branch-Ballia (IFSC: HDFC0001885)	924020071806580	Rs. 4,50,000/-
Post Payment Bank (IPPB), Branch-Ballia (IFSC: IPOS0000001)	055110085655	Rs. 76,000/-
Airtel Payment Bank, Branch-Ballia (IFSC: AIRP0000001)	8334884806	Rs. 55,000/-

9. The relevant factual backdrop in **Writ-C No. 1118 of 2026** is that the petitioner, maintains Indusind Bank A/c No. 158218574927 at the Firozabad branch, having balance of Rs. 9,46,898.39/- was freezed by the bank without prior notice, show-cause, or communication. Upon inquiry, the

bank informed the petitioner that the account was freezed at the request of the Bengaluru Police. The petitioner contends that this action is arbitrary and illegal, as he has no involvement with any offence or criminal case.

10. The brief facts leading to **Writ-C No. 2577 of 2026** are that the petitioner's A/c No. 50100572517727 maintained with HDFC Bank at Ballia, A/c No. 05511018380 in Post Payment Bank at Ballia, and A/c No. 92402007180664 in Axis Bank at Ballia are freezed on directions received from the Station House Officer, Cyber Crime Police Station at Ballia, with liens marked in the amounts of Rs. 50,000/- in HDFC Bank, Rs. 1,00,000/- in Post Payment Bank, and Rs. 90,000/- in Axis Bank. The Cyber Crime Branch verbally informed the petitioner that the accounts were freezed due to an inquiry into deposits from illegal sources. The petitioner pleaded that the investigating agency acted without the required magisterial permission or legal authority under sections 106 or 107 of the BNSS.

11. In **Writ-C No. 2989 of 2026**, the factual background is that the petitioner has A/c No. 0862000100303087 at the Punjab National Bank, Samthar Branch, District Jhansi. The petitioner is engaged in online trading activities from which he has received an amount of Rs. 2000/- into his bank account. Upon visiting his home branch, he was informed that a lien has been imposed on his account on the basis of several complaints initiated from two police stations in Bangalore City (Karnataka) and one from Rachakonda (Telangana). Despite submitting a detailed representation via email on 16.12.2025, and a follow-up mail on 20.12.2025, to the aforementioned cyber police units, the blanket freeze remains in place, which the petitioner contends is arbitrary and prevents him from meeting essential financial obligations.

12. So far as **Writ-C No. 4227 of 2026** is concerned, the fact is that the petitioner has maintained his A/c No. 10208002044 with IDFC First Bank Maunath Bhanjan Branch, District Mau, regarding which he has got information on 31.12.2025 that his A/c was freezed in pursuance of directives issued by the Ministry of Home Affairs (MHA) due to multiple cybercrime complaints across several states. The freezing is linked to complaint made in various parts of the country with details provided in following table.

State	Amount	Complaint No.
Gujrat	Rs. 29,505 Rs. 10,495	910162582728 31106250119690
Karnataka	Rs. 41,694/-	31602250016485
Kerala	Rs. 41,694/-	31502250003378
Haryana	Rs. 5,000/- Rs. 40,000/-	181241168592 31301250006471; 910162582728
West Bengal	Rs. 41,250	23201250005445

13. Insofar as the petitioner in **Writ-C No. 665 of 2026** is concerned, the fact is that the account holder is a government teacher who holds a bank A/c No. 30926051202 with State Bank of India, Branch Barsathi, District Jaunpur, which has been freezed since November 2024. The A/c

was freezed due to the credit of Rs. 10,000/- from Bangalore City, District Karnataka. Due to freezing of the account, petitioner is facing hardship including not being able to make payment towards his home loan, which were previously debited as EMI from the same account. The petitioner contends that the bank's action is unjustified as the credit is a single transaction, which appears to be clerical error rather than any cybercrime.

14. Having set out the facts pleaded in the respective petitions, the submissions advanced by learned counsel appearing for the respective parties are recorded hereunder.

15. At the outset, Shri Shamasul Eslam, learned counsel appearing on behalf of the petitioner in the leading petition ***Writ-C No. 1489 of 2026, Ashish Rawat vs. Union of India and 6 others***, submitted that the account in question has already been de-freezed. Shri Sanjay Singh, learned counsel appearing for respondents in the matter, did not dispute the same.

16. Shri S.F.A. Naqvi, learned Senior Advocate appearing for the petitioner in connected ***Writ-C No. 2711 of 2026, Tarkeswar Tiwari vs. State of Uttar Pradesh and 6 others***, argued that the petitioner's bank accounts got freezed in different banks on the basis of instructions received from cyber-crime branch Ballia. He contended that neither the petitioner was informed by the bank, nor was any intimation sent to the concerned magistrate by the investigating agency, and therefore the freezing of the accounts was therefore carried out in a manner de hors the procedure prescribed under Section 106 of the BNSS.

17. Shri Naqvi further contended that even assuming that provisions of Section 106 BNSS were applicable, a debit bank account could not have been completely freezed and the same should be only up to the extent of suspected amount, that too after complying the procedure under Section 106 BNSS. He relies on the judgment of the High Court of Kerala in ***Headstar Global Pvt. Ltd. vs. State of Kerala & others, 2025 SCC OnLine Ker 3546***, which was subsequently followed by the High Court of Bombay in ***Mr. Kartik Yogeshwar Chatur vs. Union of India & Ors., 2025 SCC OnLine Bom 4778*** and the same was also discussed by High Court of Delhi in ***Malabar Gold and Diamond Limited and Others vs. Union of India and Others, 2026 SCC OnLine Del 297***. On the basis of these judgments, he submitted that the act and conduct of respondent bank in freezing the account at the instance of investigating agency is liable to be held invalid and the bank should be directed to de-freeze the bank accounts of the petitioners forthwith.

18. Shri Naqvi further submitted that, insofar as the account with India Post Payments Bank bearing IFSC Code IPOS0000001 is concerned, the same has already been de-freezed and to that extent, the issue is resolved with India Post Payments Bank. However, he had further submitted that there are five more freezed bank accounts regarding which the petition is still required to be pressed.

19. Shri Ashutosh Kumar Pandey, learned counsel appearing for the petitioner in connected ***Writ-C No. 648 of 2026, Mohammad Alqaish vs. State of U.P. and 2 others***, and Shri Malik Juned Ahmed, learned counsel appearing for the petitioner in connected ***Writ-C No. 2577 of 2026, Priyanka Tiwari vs. State of U.P. and 4 others***, had adopted submissions made by Shri S.F.A. Naqvi, learned Senior Advocate in ***Writ-C No. 2711 of 2026***. However, Shri Ahmed, submitted that

in *Writ-C No. 2577 of 2026*, three bank accounts are freezed for which the writ petition is being pursued.

20. Shri Sanjay Verma learned counsel appearing for petitioner in *Writ-C No. 1768 of 2026, Mohammad Irfan vs. State of U. P. and 3 others*, submitted that this court vide its order dated 30.01.2026 in above mentioned writ petition, has directed regional managers of respondent banks to file personal affidavit in this matter. Responding this, Shri Shrey Singh, learned counsel appearing for Union Bank submitted that the bank account of the petitioner had already been de-freezed and, in view of this development, he has filed an affidavit in the registry on 27.02.2026. Similarly, Shri Ramesh Kumar Shukla, appearing for Punjab National Bank submits that he has also filed affidavit stating that petitioner's account in question is de-freezed. After perusal of the above mentioned affidavits issues raised in the petition appears to be resolved.

21. Shri Vidya Kant Rai, learned counsel appearing for petitioner in connected *Writ-C No. 2691 of 2026, Sarfaraj vs. State of U.P. and 2 others, and Shri Vijay Prakash Mishra*, learned counsel appearing for the respondent bank in connected, submits that under the interim order of this Court, the account of the petitioner has been de-freezed while holding back the disputed amount in the bank account. In view of the above since the disputed amount has only been held back by the bank, otherwise the bank account has been made operational.

22. Shri Aditya Kumar Rai, learned counsel appearing for the petitioner in connected, *Writ-C No. 2989 of 2026, Chandra Narayan Singh vs. Union of India and 5 others*, in addition to the submissions made by other counsels as mentioned above, had submitted that the bank account of the petitioner, in which the suspicious amount was reported to have been transacted, is from different web links operating from different parts of the Country and therefore, there may be jurisdictional issue as to the power of the Magistrate in the above regard, insofar as the provisions contained under section 106 of the BNSS are concerned.

23. Shri Santosh Kumar Dubey, learned counsel appearing for the petitioner in the connected *Writ-C No. 665 of 2026, Mayank Pratap Singh vs. Reserve Bank of India, New Delhi, and 2 others*, submitted that the petitioner is a teacher in a Junior Basic School and his salary account has been freezed which is also the account for paying dues towards the advance given by the bank, and since the account has been freezed, the petitioner is getting the status of a defaulter, inasmuch as the bank as well as the Cyber Crime Department has failed to intimate the Magistrate concerned about the freezing of the account of the petitioner, which therefore, invalidates the act and conduct of the respondent bank in freezing the account.

24. Shri Vikrant Pratap Singh, learned counsel appearing for the petitioner in the connected *Writ-C No. 889 of 2026, Yogesh Yadav vs. State of U.P. and another*, has adopted the argument of Shri Santosh Kumar Debey, as, according to him, the alleged transaction took place through an account of a bank at Patna, Bihar, into the account of the petitioner at the Firozabad branch of the bank and hence has a jurisdictional issue.

25. Shri Vikrant Pratap Singh, learned counsel appearing for the petitioner in the connected *Writ-C No. 1118 of 2026, Vishwadeep vs. State of U.P. and two others*, had adopted the

submissions advanced by Shri Santosh Kumar Dubey in the connected Writ-C No. 665 of 2026. Similarly, Shri Arun Yadav, learned counsel for the petitioner appearing in connected ***Writ-C No. 4227 of 2026, Pawan Kumar vs. Union of India and 4 others***, had also adopted submissions made by Shri Santosh Kumar Debey in Writ-C No. 665 of 2026.

26. Meeting the submissions made by the counsel appearing for petitioners in their respective petitions, Shri Tushar Kant, learned advocate appearing for the Union of India, has submitted that at present there is clarity in procedure at every step as the Standard Operating Procedure/ Guidelines (hereinafter referred to as the “SoP”) published by the Ministry of Home Affairs is in effect, which provides detail procedure for seizing and de-freezing of the bank account, although details of the complainant or victim shall not be provided to the suspect account holder even as per SoP. Hence, according to him, non-furnishing of the detail information to the bank account holder, does not invalidate freezing of the bank account. He has also submitted that the freezing of the account is an action to protect the account holder and to ensure that the account is not misused any further for the same crime, freezing without delay is necessary but it is to be freezed as per provisions of BNSS, which permits police to act in case of suspicion of crime.

27. Shri Anubhav Chandra, learned Standing counsel representing the State respondents submitted that provisions of the BNSS are very clear that the police is empowered under Section 106 BNSS to direct for seizure of the account and for that prior intimation to the account holder is not necessary and only the information is required to be given to the magistrate that too after seizure unlike the matter of attachment under Section 107 where the order of the magistrate is pre-requisite to the attachment.

28. Learned counsel appearing for the Union of India as well as the counsel for the Bank in connected Writ -C No. 2989 of 2026 submitted that since the account of the petitioner is in bank situated in a particular city where it is freezed, then having the cause of action there, the Magistrate of the concerned District where the Bank situates shall have jurisdiction under section 106 of BNSS and there is no issue about it, especially when there is no such incident referred by the petitioners where any magistrate has refused to entertain any such case.

29. After hearing learned counsel and careful perusal of records, we consider it appropriate, to present status of the bank accounts in each petition in a tabulated form for the sake of clarity and convenience. The table below present status thereof, as emerging from the records and submissions made during hearing.

Case title	Bank	Account No.	A/c status
WRIT-C No. 1489 OF 2026	PNB	2340000109223949	de-freezed
WRIT-C No. 648 of 2026	HDFC	50100801261478	Freezed
WRIT-C No. 665	SBI	30926051202	Freezed

of 2026			
WRIT-C No. 889 of 2026	SBI	20348241556	Freezed
WRIT-C No. 1118 of 2026	Indusind bank	158218574927	Freezed
WRIT-C No. 1768 of 2026	Union bank of india	UBI - 520291001842711	de-freezed
	Punjab National Bank	PNB- 1969100100013506	de-freezed
WRIT-C No. 2577 of 2026	HDFC	HDFC- 50100572517727	Freezed
	post payment bank Ballia	BALLIA- 055110118380	Freezed
	Axis bank	AXIS- 924020071806645	Freezed
WRIT-C No. 2691 of 2026	Bank of baroda	BOB- 08300100019613	de-freezed except Rs.61/-
WRIT-C No. 2711 of 2026	SBI	SBI-30380446638	Freezed
	AXIS	AXIS- 924010054535613	Freezed
	AXIS	AXIS- 924020071806580	Freezed
	HDFC	HDFC- 50100792924805	Freezed
	Post payment bank, Ballia	Post payment bank, ballia- 055110085655	de-freezed
	Airtel payment bank	Airtel payment bank-8334884806	Freezed

WRIT-C No. 2989 of 2026	PNB	PNB- 0862000100303087	Freezed
WRIT-C No. 4227 of 2026	IDFC	IDFC-10208002044	freezed

30. Having considered the submissions of learned counsel for the petitioners, following questions emerge for the determination:

(i) Whether the term “property” under Section 106 BNSS extends to entire bank account or only to a particular amount therein alleged to be stolen or suspected to be involved in an offence.

(ii) Whether the bank can freeze accounts at the instance of the police without prior intimation to the account holder or the competent magistrate in the light of procedure prescribed under Section 106 of the Bharatiya Nagarik Suraksha Sanhita, 2023.

(iii) Whether Sections 106 and 107 of BNSS operate independently and distinctly, with Section 106 BNSS governing seizure or temporary freezing of accounts and Section 107 BNSS governing attachment of the account, and whether their applicability differs at different stages of investigation.

(iv) Whether there arises any jurisdictional issue in the event bank accounts are maintained in one place, but the transactions giving rise to the alleged suspicious amounts occur elsewhere, and hence where the jurisdiction of a magistrate would vest.

31. At this stage, we proceed to examine the scope and ambit of Sections 106 and 107 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), which is necessary for the determination of first, second and third issue, which fall for consideration in the present batch of petitions. Section 106 BNSS reads as under:

“106. Power of police officer to seize certain property.-(1) Any police officer may seize any property which may be alleged or suspected to have been stolen, or which may be found under circumstances which create suspicion of the commission of any offence.

(2) Such police officer, if subordinate to the officer in charge of a police station, shall forthwith report the seizure to that officer.

(3) Every police officer acting under sub-section (1) shall forthwith report the seizure to the Magistrate having jurisdiction and where the property seized is such that it cannot be conveniently transported to the Court, or where there is difficulty in securing proper accommodation for the custody of such property, or where the continued retention of the property in police custody may not be considered necessary for the purpose of investigation, he may give custody thereof to any person on his executing a bond undertaking to produce the property before the Court as and when required and to give effect to the further orders of the Court as to the disposal of the same:

Provided that where the property seized under sub-section (1) is subject to speedy and natural decay and if the person entitled to the possession of such property is unknown or absent and

the value of such property is less than five hundred rupees, it may forthwith be sold by auction under the orders of the Superintendent of Police and the provisions of Sections 503 and 504 shall, as nearly as may be practicable, apply to the net proceeds of such sale.”

32. Section 107 BNSS is also related and same is reproduced below for easy reference:

“107. Attachment, forfeiture or restoration of property.-(1) Where a police officer making an investigation has reason to believe that any property is derived or obtained, directly or indirectly, as a result of a criminal activity or from the commission of any offence, he may, with the approval of the Superintendent of Police or Commissioner of Police, make an application to the Court or the Magistrate exercising jurisdiction to take cognizance of the offence or commit for trial or try the case, for the attachment of such property.

(2) If the Court or the Magistrate has reasons to believe, whether before or after taking evidence, that all or any of such properties are proceeds of crime, the Court or the Magistrate may issue a notice upon such person calling upon him to show cause within a period of fourteen days as to why an order of attachment shall not be made.

(3) Where the notice issued to any person under sub-section (2) specifies any property as being held by any other person on behalf of such person, a copy of the notice shall also be served upon such other person.

(4) The Court or the Magistrate may, after considering the explanation, if any, to the show-cause notice issued under sub-section (2) and the material fact available before such Court or Magistrate and after giving a reasonable opportunity of being heard to such person or persons, may pass an order of attachment, in respect of those properties which are found to be the proceeds of crime:

Provided that if such person does not appear before the Court or the Magistrate or represent his case before the Court or Magistrate within a period of fourteen days specified in the show-cause notice, the Court or the Magistrate may proceed to pass the ex parte order.

(5) Notwithstanding anything contained in sub-section (2), if the Court or the Magistrate is of the opinion that issuance of notice under the said sub-section would defeat the object of attachment or seizure, the Court or Magistrate may by an interim order passed ex parte direct attachment or seizure of such property, and such order shall remain in force till an order under sub-section (6) is passed.

(6) If the Court or the Magistrate finds the attached or seized properties to be the proceeds of crime, the Court or the Magistrate shall by order direct the District Magistrate to rateably distribute such proceeds of crime to the persons who are affected by such crime.

(7) On receipt of an order passed under sub-section (6), the District Magistrate shall, within a period of sixty days distribute the proceeds of crime either by himself or authorise any officer subordinate to him to effect such distribution.

(8) If there are no claimants to receive such proceeds or no claimant is ascertainable or there is any surplus after satisfying the claimants, such proceeds of crime shall stand forfeited to the Government.”

33. Bare reading of the aforementioned provisions indicate that it empowers the investigating agency, to take necessary steps for seizure or securing of property suspected to be connected with the commission of any offence during the course of the investigation. The object underlying the

provision is to enable immediate and effective action so as to preserve the subject matter of the offence and to prevent its dissipation, particularly in cases of cyber-crime, where delay may defeat the ends of justice.

34. The Supreme Court, in *State of West Bengal v. Anil Kumar Dey*, 2025 SCC OnLine SC 2753, examined the powers of the police under Section 102 CrPC (now Section 106 BNSS) while addressing the following questions, and held that:

“2. The short but significant question that arises in this appeal is whether, when proceedings initiated against a person are only under the provisions of the Prevention of Corruption Act 1988, would it be open for the investigating authorities (police) to freeze the accounts of the accused persons under Section 102 of the Code of Criminal Procedure 1973. In other words, are the powers under Section 18A of the PC Act, which prescribes the application of the Criminal Law Amendment Ordinance, 19442 insofar as the proceedings of attachment are concerned, and the power under Section 102 Cr. P.C., i.e., the power of a police officer to seize certain property, co-existent or mutually exclusive.

....

9. The text of Section 102, Cr. P.C., has already been reproduced supra. From a studied analysis of the judgments of this Court involving this provision, the following principles/aspects can be highlighted:

9.1 Under this Section, property that is alleged/suspected to be stolen; is the object of crime; has a direct link to the commission of the offence, can be seized. [See: M.T. Enrica Lexie v. Doramma]

9.2 The police have the power to seize passports and bank accounts under this Section. [See: Tapas D. Neogy (supra), Suresh Nanda v. CBI, Teesta Atul Setalvad v. State of Gujarat]

9.3 Orders of freezing issued under this Section, can only be in effect to aid investigation. [See: Jermyn Capital LLC v. CBI] Once the investigation is complete, that ipso facto, does not entitle the person whose bank accounts have been frozen, to have them released. It shall, however, be open to them to apply to the concerned authority for the same, and the authority shall consider the same in accordance with law. [See: Teesta Atul Setalvad (supra)]

9.4 The police do not have the power to seize any immovable property. It cannot dispossess someone who is in possession of the immovable property. [See: Nevada Properties (P) Ltd. v. State of Maharashtra]

9.5 It is not an enabling provision under which the police may, to do justice, seize the property and hand it over to whom they believe to be the rightful owner thereof. [See: Nevada Properties (P) Ltd. (supra)]”

35. The issue regarding bank account being a property, is already settled by the Supreme Court in *State of Maharashtra v. Tapas D. Neogy*, (1999) 7 SCC 685 where the Apex Court has recognized that a bank account is “property” within the meaning of Section 102 CrPC, which is verbatim Section 106 BNSS after arrival of new criminal laws. Since the bank account is recognised as a property by the Supreme Court, it can undoubtedly be capable of being freed on instructions of the police or investigating authority during investigation. Relevant paragraph of the judgement of the Supreme Court in the matter of Tapas D. Neogy, (supra) observes that:

“12. Having considered the divergent views taken by different High Courts with regard to the power of seizure under Section 102 of the Code of Criminal Procedure, and whether the bank account can be held to be ?property? within the meaning of the said Section 102(1), we see no justification to give any narrow interpretation to the provisions of the Criminal Procedure Code. It is well known that corruption in public offices has become so rampant that it has become difficult to cope up with the same. Then again the time consumed by the courts in concluding the trials is another factor which should be borne in mind in interpreting the provisions of Section 102 of the Criminal Procedure Code and the underlying object engrafted therein, inasmuch as if there can be no order of seizure of the bank account of the accused then the entire money deposited in a bank which is ultimately held in the trial to be the outcome of the illegal gratification, could be withdrawn by the accused and the courts would be powerless to get the said money which has any direct link with the commission of the offence committed by the accused as a public officer. We are, therefore, persuaded to take the view that the bank account of the accused or any of his relations is ?property? within the meaning of Section 102 of the Criminal Procedure Code and a police officer in course of investigation can seize or prohibit the operation of the said account if such assets have direct links with the commission of the offence for which the police officer is investigating into. The contrary view expressed by the Karnataka, Gauhati and Allahabad High Courts, does not represent the correct law. It may also be seen that under the Prevention of Corruption Act, 1988, in the matter of imposition of fine under sub-section (2) of Section 13, the legislatures have provided that the courts in fixing the amount of fine shall take into consideration the amount or the value of the property which the accused person has obtained by committing the offence or where the conviction is for an offence referred to in clause (e) of sub-section (1) of Section 13, the pecuniary resources or property for which the accused person is unable to account satisfactorily. The interpretation given by us in respect of the power of seizure under Section 102 of the Criminal Procedure Code is in accordance with the intention of the legislature engrafted in Section 16 of the Prevention of Corruption Act referred to above. In the aforesaid premises, we have no hesitation to come to the conclusion that the High Court of Bombay committed error in holding that the police officer could not have seized the bank account or could not have issued any direction to the bank officer, prohibiting the account of the accused from being operated upon. Though we have laid down the law, but so far as the present case is concerned, the order impugned has already been given effect to and the accused has been operating his account, and so, we do not interfere with the same.”

(Emphasis added)

36. In view of a settled legal position on the issue that a bank account is “property”, we proceed to consider first issue, whether the entire amount lying in a bank account is to be treated as ?property? for the purposes of Section 106 BNSS, or only such portion thereof, which is alleged or suspected to have been stolen, or having a suspicion of it being connected with the commission of any offence. Section 106(1) BNSS empowers a police officer to seize any property, which in the present context includes a bank account, that may be alleged or suspected to have been stolen, or which is found under the circumstances giving rise to suspicion of the commission of any offence. The provision makes it clear, without any ambiguity that only such property, which is suspected to be stolen or is linked to suspicious circumstances is liable to be seized. Consequently, we hold that the power of seizure is limited to the extent of the alleged or suspicious amount and cannot be construed to permit freezing of the entire operation of the bank account in absence of twin

conditions prescribed in Section 106 BNSS, which empowers the police officer to seize. Property being a specific amount, the entire amount lying in a bank account cannot be frozen and operation of bank account cannot be denied.

37. Having addressed the first issue, we now proceed to consider the second issue, whether the bank can freeze accounts at the instance of the police. A bare reading of the provision of Section 106 quoted above makes it explicit that the police officer can instruct for the seizure of any account or put a lien on a certain amount of any account if any of two conditions is being fulfilled: (i) the allegation or suspicion of the amount being stolen; (ii) there is suspicion that the amount is related to the commission of any offence. But compliance with Section 106(1) is sufficient only to instruct the bank for freezing and thereafter the police officer is required to take further steps for the continuation of such freezing of the account or part of the amount in any account. Section 106(2) provides that if the seizure was instructed by an officer who is subordinate to the officer in charge of a police station, then he shall forthwith report the seizure to that officer, and Section 106(3) provides that every police officer acting under Section 106(1) shall forthwith report the seizure to the Magistrate having jurisdiction where the property was seized. Considering this, we hold that the police officer can instruct the freezing of the bank account, as we hold it being “property” in case of bank account to be frozen under Section 106 BNSS, with full compliance of Section 106 BNSS and not de hors the same.

38. The next aspect of the second issue is, whether the account holder is required to be given prior intimation, and whether an order of a competent court is necessary before the seizure of a bank account or the property under Section 106 BNSS. Plain reading of Section 106 clearly indicates that the provision empowers police officer to seize property alleged or suspected to have been stolen or found under circumstances giving rise to suspicion of the commission of any offence. Nowhere in the statutory scheme there is any requirement that prior notice must be given to the owner of the property, or that a court order must be obtained before seizure like it is made for the attachment under Section 107 BNSS. The language of the provision is clear, unambiguous, and self-contained that the power to seize vests directly with the police officer, subject to the procedural safeguards envisaged in the statute itself. To interpret Section 106 BNSS as requiring prior intimation or a judicial order would affect the purpose behind the provision, which is protecting the property or getting it misused further for the similar offence.

39. The Supreme Court in *Teesta Atul Setalvad v. State of Gujarat*, (2018) 2 SCC 372 has already clarified that prior notice to the account holder is not required before or simultaneously attaching a bank account but a post facto report is mandatorily required to be submitted to the jurisdictional magistrate. The relevant paragraph of the judgment is quoted hereinbelow:

“20. As regards the procedure for issuing instructions to freeze the bank accounts, it is noticed that the same has been followed by giving intimation to the Magistrate concerned on 21-11-2014 as required in terms of Section 102 of the Code. **There is nothing in Section 102 which mandates giving of prior notice to the account-holder before the seizure of his bank account.** The Magistrate after noticing that the principle stated by the Division Bench of the Bombay High Court in *Shashikant D. Karnik v. State of Maharashtra* [*Shashikant D. Karnik v. State of Maharashtra*, 2007 SCC OnLine Bom 1191 : 2008 Cri LJ 148 (Bom)] has been overruled in terms of the Full

Bench judgment of the Bombay High Court in Vinodkumar Ramachandran Valluvar [Vinodkumar Ramachandran Valluvar v. State of Maharashtra, 2011 SCC OnLine Bom 402 : 2011 Cri LJ 2522], rightly negated that contention. The Full Bench of the Bombay High Court has expounded that Section 102 does not require issuance of notice to a person before or simultaneously with the action attaching his bank account. In Adarsh Coop. Housing Society Ltd. v. Union of India [Adarsh Coop. Housing Society Ltd. v. Union of India, 2011 SCC OnLine Bom 974 : 2012 Cri LJ 520], the Division Bench of the Bombay High Court once again considered the issue and rejected the argument that prior notice to the account- holder was required to be given before seizure of his bank account. It also noted that the bank account need not be only of the accused but it can be any account creating suspicion about the commission of an offence. The view so taken commends us.”

40. Any interpretation that prior notice is mandatorily to be given by police officer, will unnecessarily curtail the power expressly granted under the statute and will frustrate the very object of enabling prompt action to preserve property connected with suspected offences. Therefore, we are of considered view that neither prior intimation to the account holder by the police nor taking the court order is a precondition to the exercise of the power of seizure under Section 106 BNSS although giving the information as per provision of Section 106(2) and 106 (3) is mandatory. However, neither Section 106 and Section 107 of the BNSS, nor any other law, prohibits bank authorities from informing account holders about the operational status of their accounts. While such intimation may not be required prior to seizure, banks shall inform the account holders after the seizure of the account, upon instructions from the investigating agencies. Bank account holders, being consumers of the banks, are at least entitled to be informed of the seizure of their accounts, which renders them non-operational, so as to protect themselves from hardships and to take appropriate legal recourse.

41. Having dealt with the aforementioned issues, the Court now proceeds to examine the next issue arising in the present petitions, i.e., whether Sections 106 and 107 BNSS operate independently and distinctly. In this regard, the Constitution Bench judgment of the Supreme Court in ***Nevada Properties Private Limited v. State of Maharashtra, (2019) 20 SCC 119***, has distinguished power to seize and attach in following words:

“34... the reference is answered by holding that the power of a police officer under Section 102 of the Code to seize any property, which may be found under circumstances that create suspicion of the commission of any offence, would not include the power to attach, seize and seal an immovable property.”

42. Petitioners have relied upon various judgements passed by different High Courts on the issue of freezing of bank accounts. We now proceed to peruse those judgments while determining rest of the issues arise for consideration in these petitions.

43. In ***Headstar Global Pvt. Ltd., (supra)***, the dispute arose out of certain international business transactions, pursuant to which an FIR came to be registered, leading to the freezing of the bank account in that case. The Court, therein, examined the scope of the powers of the police to seize and attach property, particularly under Section 107 BNSS, in the course of investigation. Paragraph Nos. 12 and 13 of the said judgment are reproduced hereinbelow for ready reference:

“12. Going by Section 107 of BNSS, a police officer investigating a crime has to approach the jurisdictional Magistrate seeking attachment of any property believed to be derived directly or indirectly from criminal activity or the commission of an offence. The Magistrate may thereupon order attachment after hearing all parties concerned or issue an interim order for attachment, if issuing notice to the owner will defeat the purpose of attachment and seizure. After confirming that the attached property is the proceeds of crime, the Magistrate can direct the District Magistrate to distribute the property among those affected by the crime. Thus Section 107 confers the jurisdictional Magistrates with explicit authority to act swiftly in cases involving proceeds of crime.

13. Another aspect of importance is that, while Section 106 speaks of seizure, Section 107 deals with attachment, forfeiture and restoration. Seizure under Section 106 can be carried out by a police officer and an ex post facto report submitted to the Magistrate. On the other hand, attachment under Section 107 can be effected only upon the orders of the Magistrate. The logic behind this distinction being that the purpose of seizure is more to secure the evidence during an investigation, whereas attachment is intended to secure the proceeds of crime by preventing its disposal and thus ensuring its availability for legal procedure such as forfeiture and distribution to the victim/s.”

44. The judgment of the Kerala High Court in *Headstar Global Pvt. Limited* (supra) arises from facts and circumstances distinguishable from those in the present petitions. In fact, before the High Court of Kerala, the consideration of Section 106 BNSS was confined to the limited aspect of determining whether the property, which was amount in the bank account in that case, was stolen or not, and the outcome was that the amount in that bank account was not stolen and therefore the observation was made therein, that the police did not have power to direct for freezing under Section 106 BNSS. However, in the present batch of petitions, the bank accounts are freezed under circumstances giving rise to suspicion of the commission of an offence, mostly based on complaints of cybercrime. Observations in *Headstar Global Pvt. Limited* (supra), was in a fact of attachment, where Section 107 was applicable, however, in present batch of petitions, Section 107 BNSS is not attracted. Infact, the Kerala High Court, in *Headstar Global Pvt. Ltd.* (supra) has also observed that Sections 106 and 107 operate distinctly. Paragraph 13 of the judgment analyses and delineates the distinction between seizure under Section 106 BNSS and attachment under Section 107 BNSS, as is evident from the paragraph reproduced hereinabove.

45. In *Kartik Yogeshwar Chatur* (supra) before the High Court of Bombay, the High Court has observed that the investigating agency had issued communication to the Bank to freeze the bank accounts of the respective petitioners, however, in many cases, even such communication is not issued to the Bank, at least, the communication is not placed before the Court by the concerned Bank. In those circumstances, the Bombay High Court analysed the matter and, while agreeing with the findings of the High Court of Kerala in *Headstar Global Pvt. Limited* (supra), concluded that freezing of the account is not permissible under Section 106 BNSS. However, in our understanding and considered view, the aforesaid judgment ought not to be understood as laying down an absolute proposition that Section 106 BNSS does not empower the police to seize a bank account in any circumstance. Rather, it appears to contemplate that a complete freezing of a bank account would be impermissible under Section 106 BNSS where the amount in question is neither shown to be stolen, nor the entire balance is suspected to be connected with an offence. The

observations, it seems, are directed towards situations involving a disputed or identifiable portion of funds, particularly where only a limited sum is under suspicion, in which case such amount may more appropriately be subjected to a lien or partial restraint instead of restricting the operation of the entire account. Accordingly, without departing from the settled legal principle, it could be understood as that the police is empowered to seize bank account or a specific amount therein, as the case may be, subject to the scope of the term “property” under Section 106(1), as discussed above, and further subject to the fulfilment of the twin preconditions noted hereinbefore, along with due compliance with Sections 106(2) and 106(3) BNSS.

46. In ***Malabar Gold and Diamond Limited and Others (supra)***, the High Court of Delhi has examined the powers under Sections 106 and 107 of BNSS, where the account of the petitioner was frozen due to a complaint of fraud during a business transaction. The Court framed questions for examination in the order, namely, whether the freezing of the petitioner’s bank account, without any allegation of complicity, was lawful, and whether the police authorities could debit-freeze the bank accounts under Section 106 of BNSS, particularly where such freezing allegedly violated the petitioner’s fundamental rights under Articles 19(1)(g) and 21 of the Constitution of India. The judgement refers to ***Headstar Global Pvt. Limited (supra)***, ***Kartik Yogeshwar Chatur (supra)***, and many other decisions of various High Courts, and thereafter proceeded to examine the powers of the investigating agency under Sections 106 and 107 of BNSS. The relevant paragraph of the judgment is reproduced as below:-

“17. The Court further observed that innocent and unwary account holders cannot be made to suffer merely because proceeds of crime may have temporarily passed through their accounts, unless investigation reveals their complicity or conscious receipt of such funds. More importantly, taking note of the recurring nature of such cases across various High Courts, the Court urged the Ministry of Home Affairs, Government of India, to frame uniform policies, standard operating procedures and guidelines, in consultation with all stakeholders, to strike a balance between effective investigation of cybercrime and protection of the rights and livelihoods of innocent account holders.

18. Thus, it is fairly trite now that Section 106 of the BNSS empowers the police only to seize property for evidentiary purposes and does not confer any authority to attach or debit-freeze bank accounts. Attachment or freezing of bank accounts, being measures directed at securing alleged proceeds of crime, can be undertaken only under Section 107 of the BNSS and strictly upon orders of a competent Magistrate, after following the prescribed procedural safeguards.”

47. The Delhi High Court also records in the judgment that Standard Operating Procedure (hereinafter referred to as ‘SOP’) has been framed by the Ministry of Home Affairs to deal with cases of cyber fraud/crime. The SOP has got issued on 02.01.2026, however, the Court has not gone into the details of the SOP because the action taken in that case, pre-date the issuance of the SOP and same is also the fact in present batch of petitions although same can be seen for deriving the outcome that the legislative intent is always there for the police to comply with the provisions of Section 106 BNSS.

48. The scope of the Standard Operating Procedure covers putting on hold, suspension and restoration of digital banking services for the bank accounts that were suspended due to any alleged

involvement in cybercrime as identified on the basis of Citizen Financial Cyber Fraud Reporting and Management System (hereinafter referred to as “CFCFRMS”). It also covers seizure and release of the bank accounts or other instruments holding money or assets suspected to be involved in cybercrime. The SOP provides the guiding principles which are explained as follows:-

“Guiding Principles for the Standard Operating Procedure (SOP)

i) Putting on Hold of suspicious transactions and beneficiary account identification reported on CFCFRMS is done to prevent reported amount from being laundered and irretrievably lost in the exercise of powers under S. 168 read with S. 94 BNSS and under S. 106 BNSS. All such requests escalated through CFCFRMS shall be accompanied by notices delivered electronically under the afore mentioned provisions.

iv) Orders for Seizure of accounts or any property issued by a Police agency shall be done in the exercise of powers under Section 106 BNSS, Section 31 of the Banning of Unregulated Deposit Schemes Act, 2019 (BUDS Act) wherever applicable, or other extant law and should be done only with respect to an FIR, including an e-FIR and a copy of such FIR/e-FIR shall accompany such orders.”

49. The SoP also suggest that before issuing an order under section 106(3) BNSS, the Investigating Officers may conduct the verifications with the account holder and their bank and give a reasonable opportunity to submit an explanation for the disputed transaction. Point 9 of the SoP deals the process for holding the amount, suspension of digital banking services and seizure with respect to a bank account or any property. Point 9.1 explain the measures to be taken by bank and it provides all necessary precautions to ensure that the account of any person is not further misused as he has been already victim of cybercrime for which the complaint is already filed.

50. Considering above, we are of the view that Sections 106 and 107 BNSS operate at distinct stages and serve different purposes in the course of an investigation. Section 106 empowers the police to seize property that is alleged or suspected to have been stolen, or which is found under circumstances creating a suspicion of an offence, thereby preserving evidence or relevant property for investigative purposes and is a temporary measure. Section 107, on the other hand, contemplates attachment of property, which is not a temporary measure but till the conclusion of the trial, which is for longer term than initial investigation for which the prompt action is foreseen under Section 106 BNSS. Seizure under Section 106 is therefore immediate and investigatory in nature, while attachment under Section 107 is precautionary and may be invoked independently at both stages. It follows that the applicability of one provision does not automatically trigger the other, and each must be exercised in accordance with the specific object and scope envisaged as per provisions made under respective Sections.

51. The legislative framework of the BNSS deliberately segregates the powers over property into two distinct stages of investigation: "seizure" under Section 106 and "attachment" under Section 107. Attachment is a significantly more severe step than seizure, while seizure is a preliminary, emergent action taken by police to secure physical evidence requiring only post-facto intimation. Attachment constitutes a substantive deprivation of property rights, and strictly demands judicial application of mind followed by an order attachment. So while power under section 106 lies at the discretion at police, section 107 vests power with a Judicial Magistrate only.

52. While the factual matrices in such cases may vary, the consistent principle that emerges is that procedural requirements must be applied in a manner that advances the cause of justice and facilitates an effective investigation. In the light of these guiding principles, and upon an independent consideration of the statutory scheme, this Court will proceed to examine other issues at hand.

53. We now proceed to examine the last issue raised by some petitioners in the present batch of petitions, i.e., whether there is any jurisdictional issue to approach the magistrate under Section 106 BNSS if the financial transaction is being done from different parts of the Country or from anywhere beyond the jurisdiction of the magistrate court where the bank account is being frozen. To answer this issue, one should read Section 106, which clearly specifies that in sub-section (3) that every police officer acting under sub-section (1) shall forthwith report the seizure to the Magistrate having jurisdiction. Having this provision under Section 106(3), there is no iota of doubt that the jurisdiction is of the place where the account is being seized irrespective of the place from where the transfer or deposit is being made.

54. Upon consideration of the pleadings in the respective petitions and the submissions advanced by learned counsel appearing for the parties, it emerges that, except in WRIT-C No. 2691 of 2026, which was already before the learned jurisdictional Magistrate, there has been non-compliance with the requirements of Section 106 BNSS in the remaining matters. In view thereof, the petitioners in all other writ petitions have legal remedies, available to them for the non-compliance of Section 106 BNSS.

55. In view of the discussion and findings recorded hereinabove, we deem it necessary to issue the following directions to ensure that the rights of the account holders are protected while the ongoing investigation under Sections 106 and 107 BNSS proceeds:

55.1 Within week of production of a certified copy of this order, the concerned respondent bank shall place under lien only the amount specified by the investigating officer with respect to all bank accounts, which are subject matter of these petitions and restore the operation of the bank accounts forthwith, thereby making the accounts fully operational.

55.2 The petitioners are at the liberty to approach jurisdictional magistrate wherever the bank account is frozen in non-compliance of the Section 106 of BNSS or even in the event of compliance if they believe that the complete account is required to be defrozen as the allegation leading to the freezing is incorrect or unjustified.

55.3 The concerned police or investigating agency shall, while issuing any direction to a bank under Section 106 BNSS, clearly specify the amount suspected to be involved in the commission of an offence or alleged to be stolen, which is required to be held or restricted in the concerned account.

55.4 The concerned bank shall, upon effecting any seizure, freezing, or marking of lien on an account pursuant to such directions, promptly inform the account holder of the same, including the reason of such action and the resultant operational status of the account.

56. These *WRIT-C No. 648 of 2026*, *WRIT-C No. 665 of 2026*, *WRIT-C No. 889 of 2026*, *WRIT-C No. 1118 of 2026*, *WRIT-C No. 2577 of 2026*, *WRIT-C No. 2711 of 2026*, *WRIT-C No. 2989 of 2026* and *WRIT-C No. 4227 of 2026* are allowed in terms of the directions given above.

57. Petitions in *WRIT-C No. 1489 of 2026* and *WRIT-C No. 1768 of 2026* have rendered infructuous and accordingly are consigned to records.

58. In the light of submissions made by learned counsel in *WRIT-C No. 2691 of 2026*, we dispose of this petition with a direction that the amount that has been withheld by the bank shall abide by the final outcome of the order of jurisdictional magistrate.

59. No order as to cost.

(2026) 4 ILRA 834
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 09.04.2026

BEFORE

THE HON'BLE SHEKHAR B. SARAF, J.
THE HON'BLE ABDHESH KUMAR CHAUDHARY, J.

Writ C No. 1898 of 2026

Udasa & Ors.

...Petitioners

Versus

Union of India & Ors.

...Respondents

ISSUE FOR CONSIDERATION

Whether the District Level Committee was justified in rejecting the petitioners' claim for community forest rights under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 by relying upon an interim order of the Supreme Court without examining whether the said interim order was applicable to the petitioners in the facts and circumstances of the present case?

HEADNOTE

Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 – ss.3, 4 and 6 – Community forest rights – Forest dwelling Scheduled Tribes – Recognition and vesting of forest rights – Rejection of claim by District Level Committee – Committee relying solely upon interim order passed by Supreme Court in proceedings under Forest (Conservation) Act, 1980 – Legality –

Held: The object and reasons of the Act show that the same is for furtherance of the forest rights of the forest dwellers – The primary objective to be achieved by the Act is not only limited to recognizing and vesting the forest and occupation in forest land to these forest dwelling Scheduled Tribes but also to ensure their livelihood and food security – Section 3 provides for specific forest rights available to forest dwelling Scheduled Tribes and other traditional forest dwellers, including the right of ownership, access to collect, use and dispose of minor forest produce which has been traditionally collected within or outside village boundaries – Section 4 begins with a non-obstante clause and provides that notwithstanding anything contained in any other law for the time being in force, the Central Government recognizes and vests forest rights in the forest dwelling Scheduled Tribes in respect of all forest rights mentioned in Section 3 – The legislature has not

created any new rights for these forest dwellers, rather has recognized the existing rights and occupation of these people who had been traditionally restricted to this place of dwelling in forest – District Level Committee ought to have made an assessment of the forest rights of the forest dwellers taking into account the object and scope behind the Act – Authority concerned neither discussed nor appreciated the specific intent of the Act and has presumably short-circuited the existing rights of the petitioners by relying on an interim order of the Supreme Court without even discussing as to whether the said interim order is applicable to the petitioners in the present facts and circumstances or not – Impugned order has not taken into account the relevant provisions of the Act and has only dealt with the Supreme Court interim order passed in the year 2000, previous to enactment of the Act – Impugned order quashed – Authorities directed to grant opportunity of hearing to the petitioners and thereafter pass a reasoned order in accordance with law – Till such time the order is passed by the District Level Committee, the forest dwellers shall be vested with all their existing rights as enumerated in the Act, in accordance with law. [Paras 6 to 16][Paras 12, 13, 15, 19, 20, 22, 23, 24] (E-5)

CASE LAW CITED

NIL

List of Acts

Constitution of India, 1950;
Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006;
Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Rules, 2007;
Forest (Conservation) Act, 1980.

List of Keywords

Forest dwelling Scheduled Tribes; Other traditional forest dwellers; Community forest rights; Forest rights; Recognition and vesting of forest rights; Community rights; Minor forest produce; Ownership, access to collect, use and dispose of minor forest produce; Livelihood and food security; Forest land; Historical injustice; Existing rights and occupation; Object and scope of the Act; Non-obstante clause; District Level Committee; Final and binding decision; Relevant provisions of the Act; Interim order of the Supreme Court; Applicability of interim order; Opportunity of hearing; Reasoned order; Fresh consideration; Existing rights enumerated in the Act; Forest dwellers; Statutory rights.

CASE ARISING FROM

Impugned order dated 15.03.2021 passed by the District Level Committee rejecting the petitioners' claim for community forest rights.

Appearances for Parties

Advs. for the Petitioner: Nandini Verma, Desh Deepak Singh, Rajat Srivastava.
Advs. for the Respondents: A.S.G.I., C.S.C.

(Delivered by Hon'ble Shekhar B. Saraf, J.
&
Hon'ble Abdhesh Kumar Chaudhary, J.)

1. Heard learned counsel appearing on behalf of the parties.
2. This is a writ petition under Article 226 of the Constitution of India wherein the writ petitioner has prayed for the following substantial relief(s):

"i. Issue a writ, order or direction in the nature of writ or certiorari quashing the order dated 15.03.2021 passed by the District Level Committee annexed as Annexure No.1 to this writ petition.

ii. Issue a writ, order or direction in the nature of writ of mandamus commanding the District Level Committee, District Lakhimpur Kheri, to reconsider and decide the claim for community forest rights of the petitioners afresh, in a time bound manner and in accordance with the provisions of the Schedule Tribe and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 and Schedule Tribe and Other Traditional Forest Dwellers (Recognition of Forest Rights) Rules, 2007 (as amended by the Rules of 2012).

iii. Issue a writ, order or direction in the nature of writ of mandamus commanding the State Level Monitoring Committee to perform its functions in accordance with the provisions of the Schedule Tribe and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 and Schedule Tribe and Other Traditional Forest Dwellers (Recognition of Forest Rights) Rules, 2007 (as amended by the Rules of 2012) in the process of recognition, verification, and vesting of the rights to community forest resources."

3. Learned counsel appearing on behalf of the petitioners has placed reliance on Sections 3(a), 3(b), 3(c), 4 and 6 of the Schedule Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (hereinafter referred to as "the Act") to buttress her arguments that the Act is for the benefit of the Schedule Tribes and other traditional forest dwellers, who are dwelling in the forest areas. She submits that these rights as per Section 3 of the Act include the community rights relating to rights of ownership, access to collect, use and dispose of minor forest produce including the jalauni lakadi and reeds, which have been traditionally collected within or outside of the village boundary. She submits that the Hon'ble Supreme Court judgement that has been relied in the impugned order was passed in the year 2000 and was in reference to the Forest (Conservation) Act, 1980. She submits that the impugned order does not take into account the factum of the Act overriding the interim order passed by the Hon'ble Supreme Court in W.P. No.337 of 1995.

4. Furthermore, she relies on a Circular No.23011/33/2010-FRA dated 08.11.2013, wherein certain clarifications have been issued to all the State Governments/UT Administrations. The relevant part of the Circular is delineated herein-below:

Sl.No.	Issue	Clarification
1.	Whether the provisions of the Forest Rights Act, 2006 supersede the provisions of Forest (Conservation) Act, 1980 and the Hon'ble Supreme Court judgment dated 13.11.2000 in I.A.No.2 in WP NO.337/1995	It is a well settled principle of statutory interpretation that a subsequent statute supersedes all preceding court judgments or orders of prior date. Section 4(1) of the Forest Rights Act, 2006, which recognizes and vests forest rights in the forest dwelling Scheduled Tribes in the States or areas in States where they are declared as Scheduled Tribes and the other traditional forest dwellers, lays down that the forest rights under Section 3(1) of the Act, including the right under Section 3(1)(h), are recognized and vested in the forest dwelling Scheduled Tribes and other traditional forest dwellers "notwithstanding anything contained in any other law for the time being in force". This non-obstante clause, therefore, recognizes and vests the forest rights under Section 3(1) in accordance with the provisions of the FRA regardless of whether such forest rights might be contrary to other laws, which includes statutory law as well as judicial precedent, if any. Further, Section 4(7) of the Act provides that the forest rights under the said Act shall be conferred free of all encumbrances and procedural requirements, Including clearance under the Forest (Conservation) Act, 1980, requirement of paying the 'net present value' and 'compensatory afforestation' for diversion of forest land, except those specified In the said Act. The plain meaning of this provision Is that recognition and vesting of all forest

		rights, including the settlement and conversion of forest villages and other such villages into revenue villages under Section 3(1)(h), has been exempted from the requirements of Section 2 of the Forest (Conservation) Act, 1980, as well as the requirement of compensatory afforestation as well as payment of net present value. After operationalization of the Forest Rights Act, 2006 with effect from 31.12.2007, the interim order dated 13.11.2000 of the Apex Court in I.A.No.2 in WP NO.337/1995, which was passed in the context of the widespread violation of the provisions of the Forest (Conservation) Act, 1980 would, therefore, be guided by the provisions of Section 3(1)(h) of the FRA, 2006 and that the forest right relating to conversion of forest villages and other such villages into revenue villages under this Section has also to be vested and recognised as per the laid down procedure, like any other forest right specified in Section 3 (1) of the Act.

5. Per contra, learned counsel appearing on behalf of the respondent has supported the impugned order stating that the Hon'ble Supreme Court judgement has been referred to in the said order, and accordingly, the claim of the petitioners has been rejected.

6. We have given a patient hearing to counsel for both the sides. Upon a perusal of the objects and reasons of the Act, one would see that the same is for furtherance of the forest rights of the forest dwellers. The preamble of the Act is set out herein:-

"An Act to recognise and vest the forest and occupation in forest land in forest dwelling Scheduled Tribes and other traditional forest dwellers who have been residing in such forests for generations but whose rights could not be recorded: to provide for a framework for recording the forest rights so vested and the nature of evidence required for such recognition and vesting in respect of forest land.

Whereas the recognised rights of the forest dwelling Scheduled Tribes and other traditional forest dwellers include the responsibilities and authority for sustainable use, conservation of biodiversity and maintenance of ecological balance and thereby strengthening the conservation regime of the forests while ensuring livelihood and food security of the forest dwelling Scheduled Tribes and other traditional forest dwellers;

And whereas the forest rights on ancestral lands and their habitat were not adequately recognised in the consolidation of State forests during the colonial period as well as in independent India resulting in historical injustice to the forest dwelling Scheduled Tribes and other traditional forest dwellers who are integral to the very survival and sustainability of the forest ecosystem;

And whereas it has become necessary to address the long standing insecurity of tenurial and access rights of forest dwelling Scheduled Tribes and other traditional forest dwellers including those who were forced to relocate their dwelling due to State development interventions."

7. Section 2(c) of the Act defines "forest dwelling Scheduled Tribes" to mean members or community of the Scheduled Tribes who primarily reside in and who depend on the forests or forest lands for bona fide livelihood needs and includes the Scheduled Tribe pastoralist communities. Admittedly, the petitioners are residents of village- Sariyapara, Tehsil- Palia Kalan, District- Lakhimpur and belong to the "Tharu" community, which has been notified as Scheduled Tribes by notification dated 24.06.1967, issued under Article 342 of the Constitution of India and are "forest dwelling Scheduled Tribes" within the meaning of the said provision.

8. Further, we see that the primary objective to be achieved by the Act is not only limited to recognizing and vesting the forest and occupation in forest land to these forest dwelling Scheduled Tribes but also to ensure their livelihood and food security.

9. It is in furtherance to the aforesaid objective that Section 3 of the Act provides for specific forest rights, which are available to such forest dwelling Scheduled Tribes and other traditional forest dwellers. Section 3 bestows on these forest dwellers various rights enumerated from Section 3(a) to 3(m) of the Act and a facial reading of these sections would show that these provisions also includes a right to collect and use of minor forest produce for their livelihood. Section 3(a), 3(b) and 3(c) of the Act relied by the petitioners requires specific mention and are being extracted as herein-below:-

“3. Forest rights of Forest dwelling Scheduled Tribes and other traditional forest dwellers.-(1) For the purposes of this Act, the following rights, which secure individual or community tenure or both, shall be the forest rights of forest dwelling Scheduled Tribes and other traditional forest dwellers on all forest lands, namely:-

(a) right to hold and live in the forest land under the individual or common occupation for habitation or for self-cultivation for livelihood by a member or members of a forest dwelling Scheduled Tribe or other traditional forest dwellers;

(b) community rights such as nistar, by whatever name called, including those used in erstwhile Princely States, Zamindari or such intermediary regimes;

(c) right of ownership, access to collect, use, and dispose of minor forest produce which has been traditionally collected within or outside village boundaries;”

10. It is to be further noted that Section 4 of the Act specifically deals with recognition and vesting of the forest rights as defined under Section 3 of the Act upon the forest dwellers. This Section begins with a non-obstante clause, wherein it states that notwithstanding anything contained in any other law for the time being in force and subject to the provisions of this Act, the Central Government recognizes and vests forest rights in the forest dwelling Scheduled Tribes in States in respect of all forest rights mentioned in Section 3 of the Act.

11. Thus, keeping in mind the above provisions, it is patently clearly that the forest dwellers, who have been living for centuries in these forests, have been specifically provided the forest rights as mentioned in Section 3 of the Act and such rights have been vested upon them by virtue of Section 4 of the Act. Apparently, it seems that with the enactment of the Act, the legislature in its wisdom has not created any new rights for these forest dwellers, rather has recognized the existing rights and occupation of these people, who had been traditionally restricted to this place of dwelling in forest owing to various reasons. The said fact is further fortified from the use of the language in the objects appended to this Act, which starts with the words *"An Act to recognize and vest....."*

12. According to this Court, the object clearly demonstrates the scope and specific purpose behind its enactment. Time and again, it has been held by this Court that the true character of a law must be ascertained by its object, purpose and context. The District Level Committee has been given sweeping powers under the Act, inasmuch as Section 6(6) of the Act provides that a decision

of the said Committee shall be final and binding on the records of the forest right. We do not find any plausible reason as to why the Committee ought not to have made an assessment of the forest rights of the forest dwellers, without taking into account the object and scope behind the Act..

13. Having, discussed the object and scope behind the enactment of the ‘Schedule Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006’, we find ourselves in total disagreement with the impugned order. Although the impugned order has been passed on 15.03.2021, however we find that the Authority concerned has neither discussed nor appreciated the specific intent of the Act and has presumably short-circuited the existing rights of the petitioners by relying on an interim order of the Hon’ble Supreme Court, without even discussing as to whether the said interim order is applicable to the petitioners in the present facts and circumstances or not.

14. Thus, we hold that the impugned order, in our view, has not taken into account the relevant provisions of the Act and has only dealt with the Hon’ble Supreme Court interim order that was passed in the year 2000, previous to enactment of the Act.

15. In light of the same, the impugned order dated 15.03.2021 is quashed and set aside with a direction upon the authorities to grant an opportunity of hearing to the petitioners and/or their representatives, and thereafter, pass a reasoned order in accordance with law. The authority concerned shall be at liberty for requisition of all such records, which may be necessary for adjudication of the rights of the petitioners, including the latest judgement/order passed by the Hon’ble Supreme Court, if any, for arriving at a fair, legal and proper decision, keeping in mind the object to be achieved under the Act.

16. Keeping in view the peculiar facts and circumstances of the present case, wherein livelihood of the forest dwelling Scheduled Tribes has been adversely effected, we provide that till such time the order is passed by the District Level Committee, the forest dwellers shall be vested with all their existing rights as enumerated in the Act, in accordance with law.

17. With the above directions, the writ petition is disposed of.

(2026) 4 ILRA 839
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 15.04.2026

BEFORE

THE HON’BLE BRIJ RAJ SINGH, J.

Application U/S 482. No. 22 of 2023
Alongwith
Application U/S 482. No. 9058 of 2023

Rajiv Mundhra

State of U.P. & Anr.

**...Applicant
Versus**

...Opposite Parties

Issue for consideration

The matter pertains to a criminal prosecution launched by the U.P. Pollution Control Board against M/s Simplex Infrastructures Limited and its Directors under section 37 of the Air (Prevention and Control of Pollution) Act, 1981.

Headnotes

A. Criminal Procedure Code,1973-Section 482- Air (Prevention and Control of Pollution) Act,1981-Section 37,40-Offences by companies-Vicarious liability of Directors-Summoning order-Quashing of-Complaint filed against contractor company and its directors for operating an industrial project without mandatory environmental clearances and consent-Directors sought quashing of the summoning order on the ground that they had resigned from the company long before the commencement of project, relying on Form 32 and Form DIR-12-Conversely, the Pollution Control Board produced records from the Ministry of Corporate affairs portal for the year of the offence showing the applicants as active Directors-The defence of resignation and lack of active participation in the day-to-day business of the company involves highly disputed questions of fact-Such evidentiary disputes cannot be scanned, weighed, or adjudicated by the High Court under its inherent jurisdiction-Environmental statutes impose a collective responsibility upon the Board of Directors for compliance-Since a prima facie case exists based on official corporate registry records at the time of offence, the summoning order suffers from no illegality.(Para 13 to 21)

Held

The court found the trial court's order was perfectly legal as it rested on sufficient initial record from the year of the offense. Conflicting live data on the MCA (Ministry of Corporate affairs) online registry makes the date of resignation a disputed question of fact that must be adjudicated by the trial court. Environmental compliance u/s 40 of the Act, 1981 binds the entire board of directors collectively; individual directors cannot escape threshold prosecution by claiming a lack of specific knowledge. (E-6)

Case law Cited

U.P. Pollution Control Board Vs Dr. Bhupendra Kumar Modi & Anr. (2009) 2 SCC 147, Para 36 and 37, Application u/s 482 No. 67 of 2023, Nagarajan Krishna Murthy Dire. Geo/Pvt. Ltd Vs State of U.P. & Anr decided on 27.01.2023, Criminal Misc. Case No. 1295 of 2006, S.P. Rastogi Vs State of U.P. & Anr, decided on 09.07.2009.-referred to.

List of Acts

Criminal Procedure Code, 1973, Air (Prevention and Control of Pollution) Act,1981

List of Keywords

Form No. 32/Form DIR-12, Section 40, AIR Act 1981, Vicarious liability of directors, Collective responsibility, Disputed question of fact, Mini-trial, Prima facie case, Alternative statutory remedy, MCA (Ministry of Corporate affairs), Environmental clearance, Sub-Contractor liability, Resignation of Directors. UPPCB.

Case Arising from

CRIMINAL JURISDICITON: APPLICATION U/S 482 No.- 22 OF 2023

Rajive Mundhra Vs. The State of U.P. Thru. Prin. Secy. Govt. Deptt Home,Lko And Anr.

From the judgment and order dated 15.04.2026 of the High Court of judicature at Allahabad.

Appearances for Parties**Advs. for Applicant(s)**

Asim Kumar Singh, Ghandra Bhushan Pandey

Advs. for Opposite Party(s)

G.A., Ashok Kumar Verma

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

1. Since the common question of facts and law are involved in both the cases, therefore, they are being heard and decided by a common judgement.

2. Both the applications have been filed seeking quashing of the entire proceedings of Complaint Case No.101 of 2021, Uttar Pradesh Pollution Control Board Vs. M/s Simplex Infrastructures Limited, under Section 37 of the Air (Prevention and Control of Pollution) Act, 1981 (for short ?Air Act?) and the summoning order dated 14.03.2022 passed by the Special Judicial Magistrate, Pollution/CBI, Lucknow.

3. The facts, in nut shell, are that applicants are completely innocent and have been falsely implicated in the instant case by opposite party no.2 without ascertaining any fact regarding the functions of the company. It is said that on the basis of a written complaint filed by opposite party no.2 on 06.01.2021, a complaint case was registered before the Magistrate. However, the applicants denied the allegations made in the complaint as being false and misconceived.

4. The U.P. Rajya Vidyut Utpadan Nigam Limited in order to expand the Panki Thermal Power Station Plant started to establish 1 x 660 Megawatt capacity of Thermal Power Plant and the contract to construct the said power plant was given to the Bharat Heavy Electrical Limited on 31.03.2018. For the aforesaid project, the Ministry of Environment, Forest and Climates Change, Government of India has approved the clearance and provided ?No Objection Certificate? on 29.06.2017. Thereafter, U.P. Pollution Control Board has also approved the clearance to the said project vide order dated 25.06.2018. Thereafter, Bharat Heavy Electricals Limited started to construct the expansion of Thermal Power Plant in the Panki, Kanpur. Bharat Heavy Electrical Limited in order to construct and complete the said project, hire some companies to do civil work for the project, thus, sublet its contract to those companies, in which M/s Simplex Infrastructure Limited is one of the companies, working and doing civil work through the sub-contract by the Bharat Heavy Electricals Limited from 19.12.2018. it is aid that since the entire project has got environmental clearance from the Central Government and the State Board, therefore, small companies working under the Bharat Heavy Electricals Limited do not require to take further consent from the State Board under Section 21 of the Act.

5. It is further said that the complainant did not conduct any such exercise, which is indicative of the fact that applicants have ceased to be Directors of the company w.e.f. 15.03.2014 and 20.09.2016 respectively, i.e. much before the establishment of the aforesaid project at Panki, Kanpur, but they have been implicated as co-accused because only being Directors of the company. From the aforesaid fact, it is clear that opposite party no.2 without verifying the fact pertaining to the role and responsibility of the Directors of the company and without any preliminary investigation to the fact that who is In-charge and responsible on behalf of the company in the ongoing project, falsely implicated the applicants in the case. Further, opposite party no.2 in its Annexure-3 submitted along with the complaint, has admitted that he did not ascertain the fact that whether applicants were In-charge of and were responsible to the company for the conduct of the business of the company. However, the Magistrate without taking into consideration the aforesaid facts, summoned the applicants.

6. Sri Chandra Bhushan Pandey, assisted by Sri Mohit Ashok and Ms. Tripti, learned counsel for the applicants has submitted that applicants no.1 and 2 in Application U/s 482 No.9058 of 2022 had ceased to be Directors of the Company w.e.f. 15.3.2014 and 20.9.2016 respectively and in fact, much before establishment of the said project at Panki, Kanpur. Form No.32 and Form No.DIR 12 issued in pursuance of Sections 303(2), 264(2) or 266(1)(a) and 266(1)(b)(i) of the Companies Act, 1956 would clearly indicate and verify the said fact. He has also invited attention of the Court towards the rejoinder affidavit, particularly Annexure-RA-1. It has been further submitted that in the complaint, there is no allegation to the effect that applicants were having day-to-day control over the company at the relevant time or they discharged their duty in the official capacity. It has been submitted that in such scenario, the entire complaint against the applicants is vitiated.

7. Learned counsel for the applicants has invited attention of the Court towards the complaint filed by the Board, wherein it is mentioned that applicants are the Directors of opposite party no.3 and in-charge as well as responsible for the conduct of the day-to-day business of opposite party no.3, who willfully operates its plant and conduct its business. The Board has not exercised due diligence as to what is the duty of the applicants and in what manner they committed the offence. Learned counsel for the applicants by placing reliance upon paragraphs 41 and 45 of the judgment of the Supreme Court rendered in the case of ***Sunita Palita and others Vs. Panchami Stone Quarry*** (2022) 10 SCC 152 has submitted that merely on the basis of holding a designation or office in a company would be a travesty of justice to drag Directors.

8. In rebuttal, Sri Ahok Kumar Verma, learned counsel appearing for the U.P. Pollution Control Board (opposite party no.2) has submitted that in the complaint, the applicants have been arrayed as Directors of the company, M/s Simplex Infrastructure Limited and as the offence is being committed by the aforesaid company and no consent as provided under the Water (Prevention and Control of Pollution) Act (Hereinafter referred as "Water Act") and The Air (Prevention and Control of Pollution) Act (Hereinafter referred as "Air Act") has been obtained, as such the environmental norms being not followed, the applicants being vicariously liable for the offence, are liable to be prosecuted. It is further submitted that in view of the provisions of Section 25 of the Water Act, M/s Simplex Infrastructure Limited is covered under the word used "Person" and further under Section 21 of the Air Act also the same word has been used and admittedly the construction work is being performed by M/s Simplex Infrastructure Limited, it hardly matters that it is operating under any agreement. In fact, it is operating the Industrial Plant as defined under Section 2(k) of the Air Act.

9. Counsel for opposite party no.2 has further submitted that the complainant has fully ascertained before filing the complaint by making inquiry online on the website of Ministry of Corporate Affairs, Government of India in respect of the industry of the applicants and further the applicants are in-charge of the company, the consent being policy of the concerned industry. He has further submitted that the offence is pertaining to the year 2020 and at the time of filing of the complaint through the website of the Ministry of Corporate Affairs, relevant papers were obtained, which indicate that applicants were Directors of the Company at the relevant time. He has submitted that the inspection report is also pertaining to the same year and if the website indicates that applicants were Directors, then the Board has rightly impleaded them. It has been further

submitted that if it is a disputed question of fact, the same can be decided by the trial court and it cannot be scanned here.

10. Counsel for opposite party no.2 by relying upon the judgments of the Supreme Court rendered in the cases of *U.P. Pollution Control Board vs. Dr. Bhupendra Kumar Modi and another* (2009) 2 SCC 147 (Paras 36 and 37), Application U/s 482 No.67 of 2023, *Nagarajan Krishna Murthy Dire. Geo/Pvt. Ltd. vs. State of U.P. and another*, decided on 27.1.2023, and Criminal Misc. Case No.1295 of 2006, *S.P. Rastogi vs. State of U.P. and another*, decided on 9.7.2009, has submitted that in the case of S.P. Rastogi (supra), it is held that in case individual action of any person is not involved and is not in question, but in fact it is the Board of Directors, who are responsible for running of the Mill, they must be held responsible for running the Mill without any treatment plant. It cannot be said that one or two of the Board of Directors were not having any knowledge of the aforesaid fact or that they have nothing to do with the treatment plant but in fact they were duty bound as contemplated under the Act to setup a treatment plant, which they did not do and proceeded with the manufacturing deliberately and intentionally violating the provisions of Sections 25 and 26 of the Act. On the strength of the judgment passed in the case of S.P. Rastogi (supra), learned counsel for opposite party no.2 has submitted that the entire Board is responsible and all these questions can be decided by the trial court as in Applications filed under Section 482 Cr.P.C., evidences cannot be weighed here, and this Court cannot do mini trial.

11. Counsel for opposite party no.2 has further submitted that the case of *Sunita Palita* (supra) is pertaining to the Negotiable Instrument Act, therefore, the said judgement is not applicable to the present case and reliance placed by the counsel for the applicants is misconceived. He has further submitted that present case is pertaining to pollution and air and there is specific violation of the Act, therefore, the offence is made out against the applicants and there is no illegality or infirmity in the summons issued by the trial court.

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

13. Hon'ble Supreme Court in the case of *Sunita Palita* (supra) has observed that Director of a company, who was in-charge or responsible for conduct of the business of the company at the relevant time, will be liable. The subject matter of the said judgement is pertaining to Sections 141 and 138 of Negotiable Instrument Act, whereas in the present case, there is violation of the Air Act and each and every Director is responsible in case of violation of the Act. Therefore, the case of *Sunita Palita* (supra) is not applicable to the present case.

14. The matter pertaining to water pollution has been discussed by the Hon'ble Supreme Court in the case of *Dr. Bhupendra Kumar Modi* (supra), in which it has been held that in the case of Moham Meakins's case there is observation that where an offence under the Act has been committed by a company every person who was in charge of and was responsible to the company for the conduct of the business of the company is also made guilty of the offence by the statutory creation. Any director, manager or other officer of the company, who has consented to or connived in the commission of the said offence, is made liable for the punishment of the offence. Paragraphs 36 and 37 of the aforesaid judgement are quoted below:-

“36. It is useful to refer the facts and other details stated in the complaint as noted by this Court. Thomas, J. (as he then was) speaking for the Bench in paras 10 and 11 observed thus:-

“10. In the complaint filed by the appellant before the Chief Judicial Magistrate, the Company (M/s Mohan Meakins Ltd.) has been arrayed as the first accused and the other persons who were arrayed as Accused 2 to 10 were described as the Directors of the said Company. The 11th person arrayed in the complaint as accused is described as the Manager of the Company. The averments in the complaint show that the Distillery Unit of the Company at Daliganj, Lucknow, has been discharging noxious trade effluents into River Gomti and causing continuous pollution of the river. It was further averred in the complaint that on 19-9-1982, samples of trade effluents were collected by the officers empowered in this behalf, from the drain "just outside the plant inside the factory", and from the irrigation plant out of which the effluents were pumped into the river.

When the samples were analysed in the Industrial Toxicology Research Centre, Lucknow, it was revealed that the quality of effluents was beyond the standard laid down for the purpose. Therefore, it is alleged that the Company has violated Section 24 of the Act and thereby the Company is guilty of the offence under Section 43 of the Act.*

11. Where an offence under the Act has been committed by a company every person who was in charge of and was responsible to the company for the conduct of the business of the company is also made guilty of the offence by the statutory creation. Any director, manager or other officer of the company, who has consented to or connived in the commission of the said offence, is made liable for the punishment of the offence."

This Court has also noted further allegations in the complaint against Managers or Directors of the Company which are as under:-

“12. In the above context what is to be looked at during the stage of issuing process is whether there are allegations in the complaint by which the Managers or Directors of the Company can also be proceeded against, when the Company is alleged to be guilty of the offence. Para 12 of the complaint reads thus:

“That the accused persons from 2 to 11 are Directors/ Managers/ Partners of M/s Mohan Meakins Distillery, Daliganj, Lucknow, as mentioned in this complaint are responsible for constructing the proper works and plant for the treatment of their highly polluting trade effluent so as to conform to the standard laid down by the Board. Aforesaid accused persons are deliberately avoiding to abide by the provisions of Sections 24 and 26 of the aforesaid Act which are punishable respectively under Sections 43 and 44 of the aforesaid Act, for which not only the Company but its Directors, Managers, Secretary and all other responsible officers of the accused Company, responsible for the conduct of its business are also liable in accordance with the provision of Section 47 of the Act."

The appellant has further stated in para 23 of the complaint that "the Chairman, Managing Directors and Directors of the Company are the persons responsible for the act and therefore, they are liable to be proceeded against according to the law".

Taking note of the averments in the complaint against the Directors, Managers and the ingredients of Section 47 of the Act, this Court declined to accept the reasoning of the High Court and Sessions Court for quashing the complaint thereby set aside both the orders and directed the trial Court to proceed with the case in accordance with law"

15. In the case of R.P. Rastogi (supra), this Court has observed that it cannot be said that one or two of the Board of Directors were not having any knowledge of the aforesaid fact or that they have nothing to do with the treatment plant but in fact they were duty bound as contemplated under the Act to set up a treatment plant, which they did not do. Relevant portion of the judgement is extracted herein below:-

"The question which falls for consideration is as to whether the petitioner and others who constitute the Board of Directors of the company, which is apparent from the minutes of the meeting of the Board of Directors appended along with the petition as contained in annexure no.9, in which Shri Sudhir Seth, Shri R.S. Sharma, Shri S.P. Rastogi and Smt. Krishna Seth have been shown as Directors of the company. The Mill was set up through the company. The company operates and functions through the Board of Directors and which function is to be discharged by an Individual Director and which function is to be discharged by all the Directors collectively is to be taken into consideration. The obtaining of consent is not individual action and the Board of Directors were duty bound to take action in this regard. The Mill was set up and was run without any consent order and the Board of Directors persistently knew that they are running the Mill without any consent order and without setting up any treatment plant. It was also in their knowledge that they have applied for grant of consent and that their application has also been rejected. Whether the running of the Mill without any consent order can-be termed to be liability of any one individual or the liability of the entire Board of Directors is a question to be considered in this case. The Mill being run without treatment plant cannot be allowed to run is in the knowledge of the Board of Directors. The Board of Directors is supposed to close the industry □t once as and when the consent has been refused or they should apply afresh in the changed circumstances for grant of consent. The Inspection report dated 01.01.1986 goes to indicate that they were running the Mill without; any consent order and without any treatment plant being set up.

For convenience provisions of Section 47 of the Act are quoted below:

"Section 47-Offence by Companies.

(1) Where the offence under this Act has been committed by a Company, every person who at the time the offence was committed, was in-charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded and punished accordingly:

Provided that nothing contained in this sub section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in Sub Section 1 where an offence under this Act has been committed by a Company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any Director, Manager, Secretary or other officer of the company, such Director, Manager, Secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly."

In Sub-Section (1) of Section 47 of the Act the words 'every person who at the time the offence was committed, was In-charge' relates to the functions of the Board of Directors collectively. The Parliament has used the words with certain caution and the harmonious construction has to be adopted for interpreting the aforesaid Section. This Section deals with two situations, one is where any person was in-charge of a particular act and was also responsible to the company for the conduct of the business he would be responsible but in case the function has to be performed by the entire Board of Directors, then the Board of Directors are to be presumed to be the persons who were in-charge and were responsible to the company at the time when the offence was committed.

In this case the individual action of any person is not involved and is not in question but in fact it is the Board of Directors, who are responsible for the running of the Mill. They must be held responsible for running the Mill without any treatment plant. It cannot be said that one or two of the board of Directors were not having any knowledge of the aforesaid fact or that they have nothing to do with the treatment plant but in fact they were duty bound as contemplated under the Act to set up a treatment plant, which they did not do and proceeded with the manufacturing deliberately and Intentionally violating the provisions of Sections 25 and 26 of the Act."

16. Similar question has been cropped up in the case of Nagarajan Krishna Murthy (supra) and this Court considering the entire facts and circumstances held as under:-

"15. Since public notice was issued to all the industries emanating air pollution situated in 16 cities of U.P. and the applicant's company is also bound to follow the directions issued by the Board. But the Company failed to perform the directions issued by the Board. Thus in my considered opinion, since a public notice was issued by the Board so it is the bounden duty of the applicant's Company and its director to comply such directions which was issued by the Board.

16. Keeping in view of the judgement of the Apex Court in U.P. Pollution Control Board vs. Dr. Bhupendra Kumar Modi (supra) and considering the provision of Section 40 of the Act, 1981 director of the company could not be absolved from the liability. Although in this complaint, project manager in-charge of the construction work, who was present at the site at the time of inspection was also responsible but no prosecution was launched by Board against him.

17. So far as quashing of entire proceedings is concerned, from the perusal of the material on record and looking into the facts of the case at this stage, it cannot be said that no offence is made out against the applicant. All the submission made relates to the disputed question of fact, which cannot be adjudicated upon by this Court. At this stage, only prima facie case is to be seen in the light of the law laid down by Supreme Court in cases of R.P. Kapur Vs. State of Punjab, A.I.R. 1960 S.C. 866, State of Haryana Vs. Bhajan Lal, 1992 SCC (Cr.) 426, State of Bihar Vs. P.P.Sharma, 1992 SCC (Cr.) 192 and lastly Zandu Pharmaceutical Works Ltd. Vs. Mohd. Saraful Haq and another (Para-10) 2005 SCC (Cr.) 283. The disputed defence of the accused cannot be considered at this stage. Moreover, the applicants have got a right of discharge according to the provisions prescribed in Cr.P.C., as the case may be, through a proper application for the said purpose and he is free to take all the submissions in the said discharge application before the trial court.

18. So far as the cognizance and summoning order passed by the learned trial court is concerned, at the stage of taking cognizance, trial court can simply form an opinion as to whether the case is fit for taking and committing the matter for trial or not. In the present case, learned trial court clearly expressed his opinion that he perused all the record and clearly indicated that the material placed before him is sufficient to proceed the case. Every aspect is touched by learned trial court. So, the cognizance and summoning order is perfectly legal and there is no occasion to quash the same.”

17. An assertion has been made in the complaint against the applicants that they are Directors of the company and in-charge as well as responsible for the conduct of the day-to-day business of the company, who willfully operate its plant and conduct its business is required to comply with the mandatory provisions of the Act, so its liabilities under the Act in accordance with provisions of Section 40 of the Act with respect to that they have exercised all due diligence to prevent the contravention of the provision of the Act and are required to abide the mandatory provisions under the Act.

18. Sub-sections (1) and (2) of Section 40 of the Act provide that notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

19. The complaint postulates allegation of negligence against the applicants, who were directors of the company, and they are responsible for the day-to-day affairs of the company, but they had denied their day-to-day affairs of the company as well as their discharge of function on the date of incident. These are the question of facts, which cannot be scanned here. The applicants may take their defence before the trial court, but certainly this Court cannot go into the merit of the case.

20. After discussing the aforesaid factual and legal aspect, it is not out of place to mention here that the offence is pertaining to the year 2020 and at the time of filling the complaint on the website of Ministry of Corporate Affairs, Government of India, the applicants were Directors of the

company. The inspection report is also pertaining to the same year. Therefore, the applicants have been impleaded in the complaint. In view of the law declared by the Hon'ble Supreme Court in the case of *Dr. Bhupendra Kumar Modi* (supra) and this Court in the case of *R.P. Rastogi* (supra), it is held that it is the Board of Directors, who are responsible for act or commission of the offence. It cannot be said that one or two of the Board of Directors were not having any knowledge of the aforesaid fact or they have nothing to do with the unit. This Court cannot weigh the evidence and do mini trial here. The defence advanced by the applicants cannot be scanned here, rather trial is required for this. Therefore, no illegality or infirmity in the impugned summoning order.

21. Both the applications being devoid of merit, *are rejected*. Interim order, if any, stands vacated.

(2026) 4 ILRA 848
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 15.04.2026

BEFORE

THE HON'BLE BRIJ RAJ SINGH, J.

Application U/S 528 BNSS. No. 82 of 2026

Gomti Prasad

...Applicant

Versus

State of U.P. & Ors.

...Opposite Parties

Issue for consideration

The applicant sought an order for the expeditious disposal of a public nuisance case pending since July 2024 before the Sub-Divisional Magistrate, Tehsil Baldirai, Sultanpur. Upon a preliminary objection by the State, the petition was converted from article 227 of the constitution to section 529 of the BNSS, prompting a Single Judge to refer the matter to a larger bench due to conflicting opinions on whether the High Court can monitor Executive Magistrate under that section.

Headnotes

A. Bhartiya Nagrik Suraksha Sanhita (BNSS) 2023-Section 529-High Court's Power of Continuous Superintendence-Scope and Jurisdiction-Executive Magistrate Vs. Judicial Magistrate-Reference to larger bench-Direction sought for expeditious disposal of a public nuisance case pending before Sub Divisional Magistrate-Conversion of petition under Article 227 of the Constitution of India to an application under section 529 BNSS-Oral prayer allowed by Single Judge-Express wording of section 529 BNSS limits High Court's continuous supervisory power to "Court of Session" and "Court of Judicial Magistrates-Prior coordinate bench and division bench rulings holding that High Court cannot exercise supervisory jurisdiction over Executive Magistrates under section 529 BNSS/section 483 CrPC-Contradiction arising from the order allowing conversion of the writ petition-Reference made to the Hon'ble Chief Justice to resolve the legal conundrum-Whether High Court can issue directions to an Executive Magistrate for speedy disposal under section 529 BNSS, or if the sole remedy lies under Article 227 of the Constitution of India.(Para 9 to 12)
Held

The court held that legal issue regarding the High Court's jurisdiction over Executive Magistrates under Section 529 BNSS requires authoritative determination by a larger bench. The matter was directed to be placed before the Chief Justice for the constitution of an appropriate bench to resolve whether the remedy for expeditious disposal before an Executive Magistrate lies under section 529 BNSS or Article 227 of the Constitution. (E-6)

Case law Cited

Sarjoo and Anr. Vs. Babadin and Anr. (1975) CrLJ 1562 (Allahabad), Manoj Kumar Yadav Vs. State of UP and 5 Others,(2025) : AHC : 88381-referred to.

List of Acts

Bhartiya Nagrik Suraksha Sanhita (BNSS) 2023, Code of Criminal Procedure 1973.

List of Keywords

Executive Magistrate, Judicial Magistrate, Sub-Divisional Magistrate, Article 227 of the Constitution of India, Continuous Superintendence, Expeditious Disposal, Public Nuisance, Section 152 BNSS/Section133 CrPC, Subordination of Magistrates, Reference to larger Bench, Conflict of Precedents/Contradictory opinion.

Case Arising from

CRIMINAL JURISDICTION: APPLICATION U/S 528 BNSS No.- 82 OF 2026

Gomti Prasad Vs. State of U.P. Thru. Addl. Chief Secy. Revenue Deptt. Lko. And 4 Others

From the judgment and order dated 15.04.2026 of the High Court of judicature at Allahabad.

Appearances for Parties

Advs. for Applicant(s)

Ravi Shankar Mishra

Advs. for Opposite Party(s)

G.A.

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

1. Initially, the petition under Article 227 of Constitution of India registered as MATTER UNDER ARTICLE 227 No.1709 of 2026 was filed by the applicant with following prayers :

"A. Issue an order or direction to the Learned Sub-Divisional Magistrate, Tehsil Baldirai, District-Sultanpur/Respondent No. 02 to decide the case no. 4727/2024 no. (Computerized T202404680904727) U/S-152 B.N.S.S/133 CrPC, (Gomti Prasad Vs Vijay Kumar Mishra and Other), which is pending since 31.07.2024, within the time specified by this Hon'ble Court.

B. Any other order or direction as this Hon'ble Court may deem fit just and proper under the facts and circumstances of the case may kindly be also passed in favour of the petitioner.

C. To award the petition with cost to the Petitioner."

2. The Hon'ble Single judge passed an order on 07.04.2026 in the petition, which reads as under :-

1. याचिकाकर्ता के विद्वान अधिवक्ता श्री सिचन पाण्डेय तथा राज्य सरकार के विद्वान अपरशासकीय अधिवक्ता प्रथम श्री गणेश दत्त भट्ट को सुना।

2. भारतीय संविधान के अनुच्छेद 227 के अंतर्गत प्रस्तुत इस याचिका द्वारा याचिकाकर्ता ने विद्वान उपजलाधिकारी, बल्दी राय, सुल्ता नपुर को वाद संख्या 4727/2019, अंतर्गत भारतीय नागरिक सुरक्षा संहिता, 2023 की धारा 152/ दण्ड प्रक्रिया संहिता की धारा 133 (कंप्पू टरीकृत वाद संख्या -T202404680904727) जो कि दिनांक 31.07.2024 से लंबित है, के निस्तारण हेतु निर्देश देने का अनुरोध किया है।

3. विद्वान अपर शासकीय अधिवक्ता ने प्रारंभिक आपित्त रखी कि यह अनुतोष भारतीय नागरिक सुरक्षा संहिता की धारा 529 के अंतर्गत प्रस्तुत करके प्रोत्त किया जा सकता है तथा वैधानिक उपचार उपलब्ध होने के कारण संवैधानिक प्रारोधान में याचिका पोषणीय नहीं है।

4. उपरोक्त आपित्त रखे जाने पर याचिकाकर्ता के विद्वान अधिवक्ता ने कहा कि उनको इसी याचिका को भारतीय नागरिक सुरक्षा संहिता की धारा 529 के अंतर्गत याचिका परिवर्तित करने की अनुमित दी जाए।

5. याचिकाकर्ता के विद्वान अधिवक्ता के मौखिक अनुरोध पर यह अनुमित दी जाती है कि याचिका में वांछित संशोधन करके याचिका को भारतीय संविधान के अनुच्छेद 227 के स्थान पर भारतीय नागरिक सुरक्षा संहिता की धारा 529 के अंतर्गत किया जाए।

6. कार्यालय को यह निर्देश दिया जाता है कि याचिका को पुनः भारतीय नागरिक सुरक्षा संहिता की धारा 529 के अंतर्गत पंजीकृत करके दिनांक 15.04.2026 को नवीन वादों की सूची में सूचीबद्ध किया जाए।"

3. In compliance of said order, the petition has been converted into 3. In compliance of said order, the petition has been converted into an application under Section 529 of Bhartiya Nagrik Suraksha Sanhita, 2023 (in short "BNSS").

4. Heard Shri Sachin Pandey, learned counsel for the applicant and Shri Rao Narendra Singh, learned AGA-I assisted by Shri Piyush Kumar Singh, learned AGA for the State-opposite party nos.1 and 2.

5. The case under Section 152 BNSS preferred by the applicant is pending before Sub-Divisional Magistrate, Tehsil Baldirai, District-Sultanpur, who is an "Executive Magistrate" and he is under the superintendence of "District Magistrate", as provided under Section 17 of BNSS.

6. Section 529 BNSS provides that every High Court shall so exercise its superintendence over the Courts of Session and Courts of Judicial Magistrates subordinate to it as to ensure that there is an expeditious and proper disposal of cases by the Judges and Magistrates.

7. Further, from a bare perusal of Section 529 BNSS, it is clear that High Court shall exercise its superintendence over "the Courts of Session" and "Courts of Judicial Magistrates" whereas "Executive Magistrate" i.e. Sub-Divisional Magistrate does not come within the purview of Section 529 BNSS. The phrases used in Section 529 BNSS are "the Courts of Session" and "Courts of Judicial Magistrates".

8. Various provisions of BNSS, particularly, Sections 13, 14, 17, 152 of BNSS . Sections 13 of BNSS provides every Chief Judicial Magistrate shall be subordinate to the Sessions Judge; and every other Judicial Magistrate shall, subject to the general control of the Sessions Judge, be subordinate to the Chief Judicial Magistrate. Similarly, Section 14 of BNSS provides that in every district, the State Government may appoint as many persons as it thinks fit to be Executive Magistrates and shall appoint one of them to be the District Magistrate. At the same time, Section 17 of BNSS provides that all Executive Magistrates shall be subordinate to the District Magistrate, and every Executive Magistrate (other than the Sub-divisional Magistrate) exercising powers in a sub-division shall also be subordinate to the Sub-divisional Magistrate, subject, to the general control of the District Magistrate.

9. Relevant sections of BNSS are quoted herein-below:-

"Section 13. Subordination of Judicial Magistrates.

(1) Every Chief Judicial Magistrate shall be subordinate to the Sessions Judge; and every other Judicial Magistrate shall, subject to the general control of the Sessions Judge, be subordinate to the Chief Judicial Magistrate.

(2) The Chief Judicial Magistrate may, from time to time, make rules or give special orders, consistent with this Sanhita, as to the distribution of business among the Judicial Magistrates subordinate to him.

Section 14. Executive Magistrates.

(1) In every district, the State Government may appoint as many persons as it thinks fit to be Executive Magistrates and shall appoint one of them to be the District Magistrate.

(2) The State Government may appoint any Executive Magistrate to be an Additional District Magistrate, and such Magistrate shall have such of the powers of a District Magistrate under this Sanhita or under any other law for the time being in force as may be directed by the State Government.

(3) Whenever, in consequence of the office of a District Magistrate becoming vacant, any officer succeeds temporarily to the executive administration of the district, such officer shall, pending the orders of the State Government, exercise all the powers and perform all the duties respectively conferred and imposed by this Sanhita on the District Magistrate.

(4) The State Government may place an Executive Magistrate in charge of a sub-division and may relieve him of the charge as occasion requires; and the Magistrate so placed in charge of a sub-division shall be called the Sub-divisional Magistrate.

(5) The State Government may, by general or special order and subject to such control and directions as it may deem fit to impose, delegate its powers under sub-section (4) to the District Magistrate.

(6) Nothing in this section shall preclude the State Government from conferring, under any law for the time being in force, on a Commissioner of Police all or any of the powers of an Executive Magistrate.

Section 17. Subordination of Executive Magistrates.

(1) All Executive Magistrates shall be subordinate to the District Magistrate, and every Executive Magistrate (other than the Sub-divisional Magistrate) exercising powers in a sub-division shall also be subordinate to the Sub-divisional Magistrate, subject, to the general control of the District Magistrate.

(2) The District Magistrate may, from time to time, make rules or give special orders, consistent with this Sanhita, as to the distribution or allocation of business among the Executive Magistrates subordinate to him.

Section 152. Conditional order for removal of nuisance.

(1) Whenever a District Magistrate or a Sub-divisional Magistrate or any other Executive Magistrate specially empowered in this behalf by the State Government, on receiving the report of a police officer or other information and on taking such evidence (if any) as he thinks fit, considers-

(a) that any unlawful obstruction or nuisance should be removed from any public place or from any way, river or channel which is or may be lawfully used by the public; or

(b) that the conduct of any trade or occupation, or the keeping of any goods or merchandise, is injurious to the health or physical comfort of the community, and that in consequence such trade or occupation should be prohibited or regulated or such goods or merchandise should be removed or the keeping thereof regulated; or

(c) that the construction of any building, or, the disposal of any substance, as is likely to occasion conflagration or explosion, should be prevented or stopped; or

(d) that any building, tent or structure, or any tree is in such a condition that it is likely to fall and thereby cause injury to persons living or carrying on business in the neighbourhood or passing by, and that in consequence the removal, repair or support of such building, tent or structure, or the removal or support of such tree, is necessary; or

(e) that any tank, well or excavation adjacent to any such way or public place should be fenced in such manner as to prevent danger arising to the public; or

(f) that any dangerous animal should be destroyed, confined or otherwise disposed of, such Magistrate may make a conditional order requiring the person causing such obstruction or nuisance, or carrying on such trade or occupation, or keeping any such goods or merchandise, or owning, possessing or controlling such building, tent, structure, substance, tank, well or excavation, or owning or possessing such animal or tree, within a time to be fixed in the order?

(i) to remove such obstruction or nuisance; or

(ii) to desist from carrying on, or to remove or regulate in such manner as may be directed, such trade or occupation, or to remove such goods or merchandise, or to regulate the keeping thereof in such manner as may be directed; or

(iii) to prevent or stop the construction of such building, or to alter the disposal of such substance; or

(iv) to remove, repair or support such building, tent or structure, or to remove or support such trees; or

(v) to fence such tank, well or excavation; or

(vi) to destroy, confine or dispose of such dangerous animal in the manner provided in the said order, or, if he objects so to do, to appear before himself or some other Executive Magistrate subordinate to him at a time and place to be fixed by the order, and show cause, in the manner hereinafter provided, why the order should not be made absolute.

(2) No order duly made by a Magistrate under this section shall be called in question in any Civil Court.

Explanation.-A "public place" includes also property belonging to the State, camping grounds and grounds left unoccupied for sanitary or recreative purposes.

Section 529. Duty of High Court to exercise continuous superintendence over Courts.

Every High Court shall so exercise its superintendence over the Courts of Session and Courts of Judicial Magistrates subordinate to it as to ensure that there is an expeditious and proper disposal of cases by the Judges and Magistrates."

10. Sarjoo and Anr. Vs. Babadin and Anr 1975 CrLJ 1562 (Allahabad) is an authority over the present controversy. The relevant portion of the said judgement is quoted as hereunder:

"The argument based on Section 483 is, however, wholly misconceived. That section says that every High Court shall so exercise its superintendence over the Courts of Judicial Magistrates subordinate to

it as to ensure that there is an expeditious and proper disposal of cases by such Magistrate. There is no question of expeditious disposal of any pending matter, as the case already stands decided. With regard to the exercise of superintendence for the proper disposal of cases, proceeding on the assumption that the supervisory power is both judicial and administrative, it is apparent that it can be exercised only over Judicial Magistrate and not Executive Magistrates. Under Section 6 of the Code, Executive Magistrates constitute a class of criminal Courts different from the class of criminal Courts manned by the Judicial Magistrates. Sections 11 to 15 deal with Judicial Magistrates, while Executive Magistrates have been dealt with by Section 20 to 23. Proceedings under Section 145 lie within the jurisdiction of Executive Magistrates and not judicial Magistrates. The impugned order was passed by an Executive Magistrate and there is thus no supervisory power to correct a mistake committed by such a Magistrate."

11. Co-ordinate Bench of this Court at Allahabad in the case of **Manoj Kumar Yadav Vs. State of UP and 5 Others, 2025:AHC:88381** has observed as under :

"17. The aforesaid definition clearly provides a distinction between the Judicial Magistrates and Executive Magistrates and since the provisions of Section 483 Cr.P.C.(Section 529 of BNSS) have been made applicable to Judicial Magistrates, they are not applicable to the orders passed by an Executive Magistrate, hence relying upon the aforesaid provisions and case laws, it can be safely concluded that the High Court under Section 529 BNSS (Section 483 Cr.P.C.) is not required to make any superintendence over the working of a Executive Magistrate and no direction under Section 483 Cr.P.C. (Section 529 of BNSS) can be issued to the Executive Magistrates where a case under Section 133 Cr.P.C. is pending before it like the present one as prescribed in Section 483 Cr.P.C.(Section 529 of BNSS)."

12. After going through the order dated 07.04.2026 passed in case UNDER ARTICLE 227 No.1709 of 2026 and the judgments rendered in **Sarjoo (Supra) and Manoj Kumar Yadav (Supra)**, this Court finds that there is contradictory opinion which requires consideration by a larger Bench. Therefore, I am of the considered opinion that the matter should be placed before the Hon'ble Chief Justice for referring the matter to a larger Bench for consideration of the following issue: "Whether while exercising the power conferred under Section 529 BNSS/Section 483 CrPC, the High Court can direct an "Executive Magistrate" for expeditious disposal of the cases or the remedy lies under Article 227 of Constitution of India?"

13. The record shall be placed before the Hon'ble Chief Justice for constituting a larger Bench of such strength, as his Lordship deems fit, for determination of the issue.

(2026) 4 ILRA 854
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 06.04.2026

BEFORE
THE HON'BLE SHREE PRAKASH SINGH, J.

Application U/S 528 BNSS. No. 872 of 2026

Ravindra Pratap
State of U.P. & Anr.

...Applicant
Versus
...Opposite Parties

Issue for consideration

The applicant challenged the charge-sheet and summoning order passed in an NCR case under Sections 115(2) and 352 BNS, contending that the NCR was lodged as a retaliatory measure after he had earlier initiated criminal proceedings against the complainant.

Headnotes

Bhartiya Nyaya Sanhita (BNS),2023-Sections 115(2), 352-Bhartiya Nyaya Suraksha Sanhita (BNSS), 2023-Section 528, 174(2) & 2((1)(h)-NCR Investigation-Investigation on Magistrate's Order-Police report disclosing Non-Cognizable offence-Deemed complaint-Section 2(1)(h) BNSS-Complaint Case Procedure Mandatory-Cognizance as Police Case Impermissible-Summoning Order Illegal-Set aside.(Para 9 to 17)

Held

The court ruled that a police report submitted after investigation of an NCR, which discloses only non-cognizable offences, is deemed to be a complaint under section 2(1)(h) BNSS; therefore, the Magistrate must proceed in accordance with the procedure applicable to complaint cases and not as a police case. The application allowed. (E-6)

List of Acts

Bhartiya Nyaya Sanhita (BNS),2023, Bhartiya Nyaya Suraksha Sanhita (BNSS), 2023

List of Keywords

NCR, Police investigation, Magistrate's order, Deemed complaint, Summoning order, Cognizance, Jurisdictional error.

Case Arising from

CRIMINAL JURISDICTION: APPLICATION U/S 528 BNSS No.- 872 OF 2026

Ravindra Pratap Vs. State of U.P. Thru. Prin. Secy. Home Lko. And Another

From the judgment and order dated 06.04.2026 of the High Court of judicature at Allahabad.

Appearances for Parties**Adv. for Applicant(s)**

Ravi Shankar Mishra

Adv. for Opposite Party(s)

G.A.

(Delivered by Hon'ble Shree Prakash Singh, J.)

1. Heard Mr. Ravi Shankar Mishra, learned counsel for the applicant, Mr. Aniruddha Kumar Singh, learned AGA-I and Mr. Bhaskar Mall, learned AGA for the State and perused the records.

2. Notice to opposite party no. 2 is hereby dispensed with, as this Court is deciding the legal issue, at the admission stage.

3. The present application has been preferred for quashing the chargesheet no. NIL/2025, dated 10.01.2026, under sections 115(2) and 352 B.N.S.(Old sections- 323, 504 of IPC), Police Station- Sangrampur District Amethi, as well as the summoning order dated 27.01.2026, in CrI. Case No. 55 of 2026 arising out of N.C.R. no. 02 of 2025, under sections 115(2) and 352 B.N.S. (Old Sections- 323 and 504 of IPC).

4. The submission of learned counsel appearing for the applicant is that the applicant is innocent and has falsely implicated. He submits that initially the applicant lodged the first information report, on 27/11/2024, against the complainant and other co-accused persons, namely Vimla, Brijesh, and Mannu, which was registered as case crime number 0208/2024, under sections 131, 351(3) and 352 of B.N.S.S., Police Station Sangrampur District Amethi and in retaliation, a frivolous complaint was moved by the opposite party no. 2, on 12.12.2024, thereafter, the present false and concocted non-cognizable report dated 30/04/2025, has been registered, as NCR No. 02 of 2025, under sections 115(2) and 352 B.N.S (old Sections- 323 and 504), of IPC, at Police Station Sangrampur District Amethi and the investigating officer, without conducting fair and proper investigation, filed the chargesheet, on 10.01.2026 and the Magistrate has also taken cognizance and summoned the applicant, vide the summoning order dated 27/01/2026, in an unlawful and erroneous manner.

5. He argued that in fact the chargesheet could not have been filed against the applicant and even if that has been filed, the Magistrate should not have proceeded with the matter, a police case, as after the investigation, the chargesheet was filed under sections 115(2) and 352 B.N.S (sections- 323 and 504 of IPC), which are non-cognizable offences. He added that as per the provision prescribed under section 2(d) of Cr.P.C., corresponding to section 2(1)(h) of BNSS, the matter could be treated as a complaint case and the procedure should be followed by the trial court, as prescribed for, in the complaint cases. He further submitted that since the learned trial court has proceeded unlawfully, therefore, the whole proceeding vitiates in the eyes of law.

6. Per contra, the learned A.G.A. appearing for the State has opposed the contentions aforesaid. He submits that there is no fault on the part of the police as after receiving the direction of the Magistrate, the police proceeded in the matter for investigation and the charge sheet has been filed.

7. Upon considering the submissions of counsel for the parties and after perusal of the record, it is apparent that initially the criminal prosecution was instituted between the parties and once the final report was submitted, again an NCR was registered bearing NCR No. 02 of 2025, under sections 115(2) and 352 B.N.S (323 & 504 of I.P.C.), thereafter, the learned trial court proceeded and directed the police to investigate into the matter and the chargesheet was filed by the Police and the cognizance has been taken by the trial court under sections 115(2) and 352 of BNSS, while summoning the applicant for the aforesaid offenses.

8. When this Court examines the matter, it emerges that the charge sheet which was filed by the investigating officer, was considered by the trial court and cognizance has been taken, though, the chargesheet has been filed under sections 115(2) and 352 B.N.S. The matter was proceeded, on an NCR, instituted by the opposite party no. 2 and the trial court, while invoking the powers under section 174(2) of BNSS directed the police for investigation into the matter.

9. The provisions of section 174 (2) BNSS[155(2) of Cr.P.C.] reads as under:-

"(2) No police officer shall investigate a non-cognizable case without the order of a Magistrate having power to try such case or commit the case for trial."

10. Having perused the aforesaid provision, it reveals that once an NCR is registered, the recourse is provided under aforesaid provision. After filing of the NCR, it shall be entered into the book, kept for and the informant shall be referred to the Magistrate having the jurisdiction. In the present case, as soon as the NCR was registered, the information was referred to the Magistrate, whereafter, the direction was given for investigation into the matter by the Police and the police submitted its report, while coming to the conclusion that the offense under sections 115(2) and 352 of B.N.S.S is made out.

11. This Court is aware of the provision of section 2 (1)(h) of B.N.S.S., which reads as under:-

"2(1)(h) - "complaint" means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Sanhita, that some person, whether known or unknown, has committed an offence, but does not include a police report.

Explanation. - A report made by a police officer in a case which discloses, after investigation, the commission of a non-cognizable offence shall be deemed to be a complaint; and the police officer by whom such report is made shall be deemed to be the complainant;"

12. The aforesaid provision provides that what would mean by 'complaint' and it is said that the 'complaint' means, any allegation made orally or in writing to a Magistrate, with view of taking action, under this code, but does not include a police report and in explanation clause, it finds mention that a report made by a police officer, in a case, which discloses after investigation, the commission of non-cognizable offence, shall be deemed to be a complaint and the police officer shall be deemed to be the complainant.

13. Having the joint reading of the provisions of section 174(2) of B.N.S.S., with section 2(i)(h) of B.N.S.S., it emerges that as soon as, an NCR is lodged, the same would be registered and the matter would be referred by the police to the Magistrate concerned and such Magistrate shall, if so desire, on the basis of the evidences, direct the police to make an investigation and on receiving the police report, may exercise its power, in the matter of cognizable offenses. The explanation of section 2 (1)(h) is very clear in its terms, that, if such police report, after investigation is filed and discloses the commission of a non-cognizable offense, that shall be deemed to be a complaint. Meaning thereby that the Magistrate is empowered to direct for investigation by the Police, on receiving a non-cognizable report and if it is found, after the investigation that matter is one of cognizable offence, the Magistrate has all power to proceed in the matter as of a cognizable offenses, but, after the investigation, if the police filed a report of commission of a non-cognizable offense, then the bar of provisions of section 2 (1)(h) will come into play and in that circumstances, the matter will run as a complaint case and in that event, such report shall be treated as a complaint and the report made by the Police shall be treated as the complainant.

14. In the instant case, it is of worth consideration that after lodging of the NCR, the investigation was conducted, on the order passed by the trial court and the police submitted its report, under Section 115(2) and 352 of B.N.S.S. The aforesaid offences disclose the commission

of non-cognizable offense. I am of the considered opinion that the case of the present applicant is covered with the explanation clause of Section 2(1)(h) of BNSS.

15. It is apt to say here that the learned trial court while passing the order impugned herein, has traveled beyond the provisions of law.

16. Consequently, the summoning order dated 27.01.2026 is unsustainable, therefore, the same is hereby set-aside.

17. The application is hereby **allowed** accordingly.

(2026) 4 ILRA 858
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 02.04.2026

BEFORE

THE HON'BLE SUBHASH VIDYARTHI, J.

Application U/S 482. No. 1424 of 2026

Surendra Singh Ex Army

...Applicant

Versus

C.B.I. Lko

...Opposite Party

Issue for consideration

The applicant an ex-army personnel, approached the High court u/s 482 CrPC seeking the quashing of a charge-sheet dated 23.05.2016 and challenging the validity of a prosecution sanction order dated 11.05.2016. The criminal proceedings arose out of RC No. 0006/2015/A/0003 involving offences under the IPC, the Prevention of Corruption Act, 1988, and the Information Technology Act, 2000.

Headnotes

A. Indian Penal Code, 1860-Sections, 120-B, 201, 409, 420, 460, 468, 471, 477-Criminal Procedure Code, 1973-Section 482-Prevention of Corruption Act, 1988-Section 13(1)(d), 13(2)-Information Technology Act, 2000-Sections 65, 66-Challenge to validity of prosecution sanction-Dismissal on ground of laches and Maintainability-Absence of Sanction vs. Invalidity of sanction-Pre-trial/In progress stage challenge-Total absence of sanction can be agitated at the inception, but any challenge to the validity of an existing sanction must be raised and examined during course of the trial-Delay and laches-Discretionary petition u/s 482 CrPC filed after an unexplained delay of nearly a decade (10 years) from the date of the sanction order cannot be entertained when the trial is actively in progress-Petition dismissed.(Para 10 to 13)

Held

The court ruled that where a sanction order actually exists, any dispute regarding its legal validity non-application of mind, or lack of authority is an issue of evidence to be raised strictly during the trial. The court cannot exercise its discretionary power to quash proceedings when the applicant approaches the court after a decade long delay while witness examination is already in progress. (E-6)

Case law Cited

Prakash Singh Badal Vs State of Panjab & Ors (2007) 1 SCC 1, Dinesh Kumar Vs Chairman Airport Authority of India & Ors: (2012) 1 SCC 532, In Director CBI & Ors Vs Ashok Kumar Aswal & Ors (2015) 16 SCC 163 & State Vs G. Eashwaran; AIR (2015) SC 1848, State Inspector of Police Vs Surya Sankaran Karri; (2006) 7 SCC 172, CBI Vs Ashok Kumar Aggarwal: (2014) 14 SCC 295, State of Karnataka Vs Nagarajswami (2005) 8 SCC 370-referred to.

List of Acts

Indian Penal Code, 1860, Criminal Procedure Code, 1973-Section 482-Prevention of Corruption Act, 1988, Information Technology Act, 2000

List of keywords

Prevention of corruption act, Prosecution sanction, absence of sanction, Invalidity of sanction, Pre-Trial challenge, Trial in progress, CBI Investigation.

Case Arising from

CRIMINAL JURISDICTION: APPLICATION U/S 482 No.- 1424 OF 2026 02.04.2026

Surendar Singh Ex Army No 2991758 Y Vs. Central Bureau of Investigation Lko.

From the Judgment and order dated 02.04.2026 of the High Court of judicature at Allahabad.

Appearances for Parties

Advs. for Applicant(s)

Surya Narayan Singh, Ajit Singh, Preeti Singh

Adv. for Opposite Party(s)

Aakash Prasad,

(Delivered by Hon'ble Subhash Vidyarthi, J.)

1. Shri Surya Narayan Singh Gaherwar, the learned counsel for the petitioner and Shri Aakash Prasad, the learned counsel for the respondent-CBI.

2. By means of the instant petition filed under Section 482 Cr.P.C., the petitioner has challenged the validity of an order dated 11.05.2016, whereby sanction was granted for his prosecution. The petitioner has also sought quashing of the charge-sheet dated 23.05.2016 submitted in furtherance of RC No.0006/2015/A/0003 under Section 120-B read with Sections 409, 420, 468, 471, 460, 477, 201 IPC, Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 and Sections 65 and 66 of Information Technology Act.

3. The learned counsel for the respondent- CBI has raised a preliminary objection that the validity of an order granting prosecution sanction cannot be challenged at this stage and validity of the same can only be examined during the trial. He has placed reliance on a judgment of the Hon'ble Supreme Court in the case of Parkash Singh Badal v. State of Punjab & Others: (2007) 1 SCC 1, wherein the Hon'ble Supreme Court has held that the absence of sanction can be agitated at the threshold but the plea of invalidity of sanction on account of non-application of mind can only be raised during trial. The ratio laid down in **Parkash Singh Badal v. State of Punjab & Others** (supra) has been followed in **Dinesh Kumar v. Chairman Airport Authority of India & Others**: (2012) 1 SCC 532, in **Director CBI & Others versus Ashok Kumar Aswal & Others** (2015) 16 SCC 163 and in **State versus G. Eashwaran**; AIR 2015 SC 1848.

4. The learned counsel for the respondent CBI has also submitted that the prosecution sanction order was issued on 11.05.2016, whereas the present petition challenging its validity has been filed on 30.01.2026, and there is no explanation for the delay of almost a decade in challenging the validity of the prosecution sanction.

5. In reply to the aforesaid preliminary objection, the learned counsel for the petitioner has placed reliance on a judgment of the Hon'ble Supreme Court in the case of **State Inspector of Police v. Surya Sankaran Karri**: (2006) 7 SCC 172, wherein the Hon'ble Supreme Court held that when a sanction is granted by a person not authorized in law, the same being without jurisdiction, would be a nullity. However, it is relevant to note that the aforesaid observation was made by the Hon'ble Supreme Court in an appeal challenging the judgment and order passed by the High Court in a criminal appeal against a judgment of conviction and sentence passed by the trial court. The question of illegality of prosecution sanction order was neither raised nor examined before the trial Court at the inception, before commencement of the trial or at any time during the trial and this question was also neither raised nor decided by the High Court and the question was examined by the Hon'ble Supreme Court while deciding the appeal against an order of the High Court setting aside the order of conviction. The Hon'ble Supreme Court criticized the trial court for having failed to take into consideration that the sanction had been accorded by a Senior Divisional Operations Manager, who was examined as PW-37 and who had accepted in his evidence that under the rules he was not the competent authority to remove the accused from service. However, he stated that he had been delegated with the power of removing the Chief Commercial Inspector of the Headquarters of the South Eastern Railway but the purported delegation of power had never seen the light of the day. No reliance could have been placed to conclude that the said witness was authorized to accord sanction.

6. In the case of **Parkash Singh Badal v. State of Punjab & Others**: (2007) 1 SCC 1, the Hon'ble Supreme Court has held as follows: -

“48.□The sanction in the instant case related to the offences relatable to the Act. There is a distinction between the absence of sanction and the alleged invalidity on account of non-application of mind. The former question can be agitated at the threshold but the latter is a question which has to be raised during trial.□”

7. In **Dinesh Kumar v. Airport Authority of India**: (2012) 1 SCC 532, the Hon'ble Supreme Court followed the aforesaid law laid down in **Parkash Singh Badal** (supra) and held that: -

“9.□While drawing a distinction between the absence of sanction and invalidity of the sanction, this Court in□Parkash Singh Badal□expressed in no uncertain terms that the question of absence of sanction could be raised at the inception and threshold by an aggrieved person. However, where sanction order exists, but its legality and validity is put in question, such issue has to be raised in the course of trial. Of course, in□Parkash Singh Badal, this Court referred to invalidity of sanction on account of non-application of mind.

10. *In our view*, invalidity of sanction where sanction order exists, can be raised on diverse grounds like non-availability of material before the sanctioning authority or bias of the sanctioning authority or the order of sanction having been passed by an authority not authorised or competent to grant such sanction. The above grounds are only illustrative and not exhaustive. All such grounds of invalidity or illegality of sanction would fall in the same category like the ground of invalidity of sanction on account of non-application of mind—a category carved out by this Court in *Parkash Singh Badal*, the challenge to which can always be raised in the course of trial.

13. *In our view*, having regard to the facts of the present case, now since cognizance has already been taken against the appellant by the trial Judge, the High Court cannot be said to have erred in leaving the question of validity of sanction open for consideration by the trial court and giving liberty to the appellant to raise the issue concerning validity of sanction order in the course of trial. Such course is in accord with the decision of this Court in *Parkash Singh Badal* and not unjustified.”

8. In **CBI v. Ashok Kumar Aggarwal**: (2014) 14 SCC 295, the Hon’ble Supreme Court followed the decisions in **Parkash Singh Badal and Dinesh Kumar** (supra) and categorically held that: -

“59. *Undoubtedly, the stage of examining the validity of sanction is during the trial and we do not propose to say that the validity should be examined during the stage of inquiry or at pre-trial stage.*”

9. In **Surya Sankaran Karri** (supra), the Hon’ble Supreme Court relied upon the judgment in **State of Karnataka v. C. Nagrajswami**, (2005) 8 SCC 370 wherein the Hon’ble Supreme Court has held that: -

“14. *Ordinarily, the question as to whether a proper sanction has been accorded for prosecution of the accused persons or not is a matter which should be dealt with at the stage of taking cognizance. But in a case of this nature where a question is raised as to whether the authority granting the sanction was competent therefor or not, at the stage of final arguments after trial, the same may have to be considered having regard to the terms and conditions of service of the accused for the purpose of determination as to who could remove him from service.*

15. *Grant of proper sanction by a competent authority is a sine qua non for taking cognizance of the offence. It is desirable that the question as regards sanction may be determined at an early stage. (See Ashok Sahu v. Gokul Saikia [1990 Supp SCC 41] and Birendra K. Singh v. State of Bihar [(2000) 8 SCC 498].)*”

This judgment does not take into consideration the precedents in the cases of **Parkash Singh Badal, Dinesh Kumar and Ashok Kumar Aggarwal** (supra) and it does not mandate that in all cases, it is mandatory to examine the validity of the prosecution sanction order at the inception of trial.

10. Moreover, in the present case, the prosecution sanction was granted on 11.05.2016, whereas the present petition challenging its validity has been filed on 30.01.2026 and there is no explanation for the delay of almost a decade in challenging the validity of the prosecution sanction. The trial is proceeding and the officer who had granted prosecution sanction has already been examined as PW-1.

11. In view of the law laid down by the Hon'ble Supreme Court in **Prakash Singh Badal** (supra), it would not be appropriate for this Court to examine the validity of the prosecution sanction order at this stage, more so on a petition filed after a delay of 10 years from the date of the prosecution sanction order, when examination of prosecution witnesses is already in progress.

12. Accordingly, this Court declines to examine the validity of the prosecution sanction order at this stage and it is left open for the petitioner to raise the plea of validity of the prosecution sanction order before the trial court at the appropriate stage.

13. The present petition is **dismissed** with the aforesaid observations.

(2026) 4 ILRA 862
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 03.04.2026

BEFORE

THE HON'BLE SUBHASH VIDYARTHI, J.

Application U/S 482. No 1535 of 2026
 Alongwith
 Application U/S 482. No 2175 of 2026

M/S Supreme Technofabs Pvt. Ltd.

...Applicant

Versus

Directorate of Enforcement Represented Asst. Director

...Opposite Party

Issue for consideration

The applicant filed a petition u/s 528 BNSS challenging a trial court's rejection of the applicants' request for copies of the complaint and prosecution documents

Headnotes

**A. Indian Penal Code, 1860-Sections 120-B, 420, 477-A-Prevention of Money laundering act, 2002-Sections 3,4 & 44(1(b))-Bhartiya Nagrik Suraksha Sanhita, 2023-Section 223 & 528-Supply of documents at pre-cognizance stage- Section 223 proviso, BNSS, mandates that no court shall take cognizance of an offence without giving the accused an opportunity of being heard-Accused entitled to copies of complaint at pre-cognizance stage-Right of hearing cannot be a mere empty formality-Principles of fair play and right to a fair trial under Article 21 of the Constitution necessitate disclosure of prosecution material at this stage-Order of trial court rejecting supply of documents set aside-Petitions allowed.(Para 20 to 24)
Held**

The court held that the statutory proviso to Section 223 BNSS creates a strict legislative departure from section 200 of the repealed CrPC by explicitly mandating a pre-cognizance hearing for the accused. The Supreme Court's ruling in Sarla Gupta is distinguished as it interpreted the old CrPC, whereas the BNSS framework successfully advances the stage of document disclosure. Consequently, the accused is entitled to receive copies of the complaint, any pre-cognizance statements, and all documents or section 50 PMLA statements relied upon by the ED. (E-6)

Case law Cited

Sarla Gupta & Anr. Vs Directorate of Enforcement:(2025) 7 SCC 626, Basanagauda R. Patil Vs Shivananda S. Patil : (2024) SCC OnLine Kar 96, Prateek Agarwal Vs State of U.P. & Anr,: 2024 SCC OnLine All 8212 & Rakesh Kumar Chaturvedi Vs State of U.P. & Anr. : 2025 SCC OnLine All 4884 ,Kushal Kumar Agarwal Vs Enforcement Directorate: (2025) SCC OnLine SC 1221-referred to.

List of Acts

Indian Penal Code, 1860, Prevention of Money laundering act, 2002-Sections 3, 4 & 44(1(b)-Bhartiya Nagrik Suraksha Sanhita, 2023.

List of Keywords

PMLA, Pre-cognizance hearing, Supply of documents, Opportunity of being heard, Section 200 CrPC, Section 223 BNSS, Enforcement Directorate.

Case Arising from

CRIMINAL JURISDICITON :APPLICATION U/S 482 No.- 1535 OF 2026

M/s Supreme Tecnofabs Pvt. Ltd. Thru. Director Mr. Mohan Lal Vs. Directorate of Enforcement represented Asst. Director

From the judgment and order dated 03.04.2026 of the High Court of Judicature at Allahabad.

Appearances for Parties

Advs. for Applicant(s)

Pranjal Krishna , Suhaib Ashraf

Advs. for Opposite Party(s)

Rohit Tripathi, Kuldeep Srivatava

(Delivered by Hon'ble Subhash Vidyarthi, J.)

1. Heard Sri Pranjal Krishna and Sri Amar Tiwari, the learned counsel for the petitioners,□ Sri Kuldeep Srivastava, the learned counsel for the opposite party-Directorate of Enforcement and perused the records.□

2. Both the aforesaid petitions have been filed under Section 528 BNSS challenging the validity of an order dated 13.01.2026, passed by the learned Special Judge, Anti-Corruption, C.B.I., Court No.3, Lucknow in Miscellaneous Case No.5058 of 2025, arising out of ECIR No.ALSZO/06/2020, under Section 3/4 of Prevention of Money Laundering Act, Police Station Enforcement Directorate, whereby the applications filed by the petitioners for being supplied copies of documents annexed to the complaint filed by the Directorate of Enforcement have been rejected.

3. As only a single legal point is involved in both the petitions, the Directorate of Enforcement has filed a counter affidavit in Application No. 1535 of 2026 only and the learned

Counsel for ED has stated that the same may be read for deciding both the petitions and there is no requirement for filing a separate counter affidavit in the other petition.

4. Briefly stated, the facts of the case are that on 04.11.2019 the CBI had filed an F.I.R. bearing No. RC0062019A0016 in Police Station CBI/ACB, under Sections 120-B, 420, 477-A I.P.C. and Section 13(1)(a) read with 13(2) of Prevention of Corruption Act, 1988 against a company M/s JVL Agro Industries Limited, seven other named persons and some unknown public servants alleging that a complaint dated 02.11.2019 had been received from an Assistant General Manager of Bank of Baroda, Varanasi Region, Varanasi alleging commission of offences of criminal conspiracy, cheating, falsification of records and criminal misconduct by the Chairman, Directors/Guarantors of M/s JVL Agro Industries Limited, Chartered Accountant of M/s Singh Dixit and Company, Chartered Account of M/s Sparsh and Company and some unknown public servants, whereby the Bank of Baroda and Punjab National Bank had been cheated to the tune of Rs.1036.43 crores. The petitioners were not named in the F.I.R.

5. After investigation, the CBI submitted a charge sheet dated 27.12.2024 against M/s JVL Agro Industries Limited, Satya Narayan Jhunjunwala, Adarsh Jhunjunwala, Rajneesh Vishwakarma, Rahul Kumar Singh and Ashok Kumar Pandey for the offences under Sections 120-B, 409, 420, 467, 468, 471, 477A I.P.C. The petitioners were not named in the charge-sheet.

6. Thereafter the Directorate of Enforcement has filed a complaint in the Court of Special Judge, CBI-III, Lucknow against 25 parties, including some companies and some individuals, which also include M/s Supreme Technofabs Pvt. Ltd (the applicant in Application No.1535 of 2026) and Anil Kumar Khemka (the applicant in Application No.2175 of 2026. Annexure No.1 to the complaint contains a list of 81 documents which are relied upon by the Directorate of Enforcement and which runs into 2231 pages.

7. The Special Judge issued notices to the accused persons under Section 223(1) BNSS. The petitioners and the other accused persons filed applications before the Special judge requesting for being provided with the copies of the complaint along with all its annexures and the documents relied upon, to enable them to advance submissions. The application has been rejected by means of the impugned order dated 13.01.2026 holding that the accused persons are entitled to received the copies of the documents only after the Court takes cognizance of the offence under PMLA, whereas in the present case cognizance is yet to be taken. Mere filing of the charge-sheet or complaint does not entitle an accused person to demand copies of documents, before the Court takes cognizance of the offence.

8. Assailing the validity of the impugned order, Sri. Pranjali Krishna, the learned Counsel for the petitioner, has submitted that the proviso appended to Section 223 BNSS provides that no Court shall take cognizance of any offence without giving the accused an opportunity of hearing. The accused can avail the opportunity of hearing only when he is aware of the material against him that is being relied upon by the prosecution, because the accused has to explain and persuade the Court that the material does not make out a case for taking cognizance of the offence.

9. Per contra, Sri. Kuldeep Srivastava, the learned Counsel for the Directorate of Enforcement has submitted that Section 231 BNSS provides that copies of the material relied upon by the prosecution shall be provided to the accused when he appears before the Court in response to the summons issued by the Court after taking cognizance of the offence. He has submitted that the statute does not provide for providing copies of the prosecution material before the Court takes cognizance of the offence.

10. The learned counsel for the petitioner have placed reliance on a judgment of Hon'ble Supreme Court in the case of **Sarla Gupta and another Vs. Directorate of Enforcement: (2025) 7 SCC 626** and a decision of the Karnataka High Court in the case of **Basanagauda R.Patil Vs. Shivananda S. Patil: (2024) SCC OnLine Kar. 96**, which has been followed by a coordinate Bench of this court in the case of **Prateek Agarwal Vs. State of U.P. and another: 2024 SCC OnLine All 8212** and **Rakesh Kumar Chaturvedi Vs. State of U.P. and another: 2025 SCC OnLine All 4884**. He has also relied upon the judgment in the case of **Kushal Kumar Agarwal v. Enforcement Directorate: 2025 SCC OnLine SC 1221**.

11. The learned counsel for the ED has also placed reliance on the judgment of Hon'ble Supreme Court in the case of **Sarla Gupta and another Vs. Directorate of Enforcement: (2025) 7 SCC 626**.

12. Section 223 of BNSS provides that a Magistrate having jurisdiction while taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present. The proviso appended to Section 223 BNSS provides that cognizance of an offence shall not be taken by the Magistrate without giving the accused an opportunity of being heard.

13. Section 231 BNSS provides for providing copies of the prosecution documents to an accused person after cognizance of the offence is taken and the accused is summoned by the Court. It also provides that supply of documents in electronic form shall be considered as duly furnished.

14. In **Kushal Kumar Agarwal v. Enforcement Directorate, 2025 SCC OnLine SC 1221**, the Hon'ble Supreme Court held that: -

"5. This Court has taken a consistent view that a complaint filed by the Enforcement Directorate under Section 44 (1)(b) of the PMLA will be governed by Sections 200 to 204 of the CrPC. This view has been taken by this Court in the cases of Yash Tuteja v. Union of India 2024 SCC OnLine SC 533 and Tarsem Lal v. Enforcement Directorate (2024) 7 SCC 61. Therefore, the provisions of Chapter XVI, containing Sections 223 to 226, will also apply to a complaint under Section 44 of the PMLA. As the complaint has been filed after 1st July, 2024, Section 223 of the BNSS will apply to the present complaint."

15. In **Sarla Gupta v. Enforcement Directorate, (2025) 7 SCC 626**, the Hon'ble Supreme Court held that: -

"33.□Now, we come to Section 208 CrPC. When a case is instituted by way of a complaint under Section 200 CrPC, if it appears to the learned Magistrate issuing process that the

offence is triable by a Court of Session, the learned Magistrate is duty-bound to supply the copies of the statements recorded under Section 200 or Section 202 of all the persons examined by the learned Magistrate to the accused. He is also duty-bound to supply to the accused the statements and confessions, if any, recorded under Section 161 or Section 164, and any document produced before the learned Magistrate on which the prosecution proposes to rely. Even Section 208 does not permit withholding of any documents from the accused. If a document is bulky, it allows the accused to inspect it.

34. *□ If we peruse Sections 209 and 238 CrPC (Sections 232 and 261 of the BNNS), these provisions reiterate the mandatory requirement of providing the documents referred to in Sections 207 and 208CrPC.*

35. *□ Both Sections 207 and 208, on the face of it, do not specifically apply to a complaint under Section 44(1)(b) of the PMLA. But, there is no reason why the principles laid down under Sections 207 and 208 should not be applied to a complaint under Section 44(1)(b) of the PMLA. The provisions are consistent with the principles of fair play. The object of the provisions is to protect the rights of accused persons. An accused is entitled to a fair trial as he has the right to defend himself. That is the essence of Article 21 of the Constitution. Therefore, once cognizance is taken on the basis of a complaint under Section 44(1)(b) of the PMLA, the learned Special Judge must direct that along with the process, a copy of the complaint and the following documents must be provided to the accused:*

(a) Statements recorded by the learned Special Judge of the complainant and the witnesses, if any, before taking cognizance;

(b) The documents including the copies of the statements under Section 50 of the PMLA produced before the Special Court, along with the complaint, and the documents produced subsequently by the ED till the date of taking cognizance; and

(c) Copies of the supplementary complaints and the documents, if any, produced with supplementary complaints.

After cognizance is taken on the basis of the complaint, the ED cannot be heard to say that a document has been produced with the complaint or in the proceedings of the complaint, but it is not a relied upon document. The copies of documents must be supplied along with a copy of the complaint as required by sub-section (3) of Section 204CrPC [sub-section (3) of Section 227 BNSS].”

16. The conclusions drawn by the Hon’ble Supreme Court in **Sarla Gupta case** (supra) have been summed up in the following words: -

“Conclusion:

68. *□ Hence, some of our important conclusions are as under:*

68.1. □ *When records, instruments or documents of title of the property are seized along with the property under Sections 17 and 18 of the PMLA, the accused from whom the same are seized is entitled to true copies thereof;*

68.2. □ *Once cognizance is taken on the basis of a complaint under Section 44(1)(b) of the PMLA, the learned Special Judge must direct that along with the process, a copy of the complaint and the following documents be provided to the accused:*

(i) Statements recorded by the learned Special Judge of the complainant and the witnesses, if any, before taking cognizance;

(ii) The documents including the copies of the statements under Section 50 of the PMLA produced before the Special Court, along with the complaint, and the documents produced subsequently by the ED till the date of taking cognizance; and

(iii) Copies of the supplementary complaints and the documents, if any, produced with supplementary complaints.

68.3. □ *We hold that a copy of the list of statements, documents, material objects and exhibits that are not relied upon by the investigating officer must also be furnished to the accused. As held by this Court, the object is to ensure that the accused has knowledge of the documents, objects, etc. in the custody of the investigating officer which are not relied upon so that at the appropriate stage, the accused can apply by invoking the provisions of Section 91CrPC (Section 94 BNSS) for providing copies of the documents which are not relied upon by the prosecution.*

68.4. □ *At the time of hearing for framing of charge, reliance can be placed only on the documents forming part of the charge-sheet. In case of the PMLA, at the time of framing charge, reliance can be placed only on those documents which are produced along with the complaint or supplementary complaints. Though the accused will be entitled to a list of documents, objects, exhibits, etc. that are not relied upon by the ED at the stage of framing of charge, in ordinary course, the accused is not entitled to seek copies of the said documents at the stage of framing of charge.*

68.5. □ *At the stage of entering upon defence, an accused can apply for the issue of process for the production of any document or thing in accordance with Section 233(3)CrPC [Section 256(3) BNSS]. At this stage, he can also apply for the production of a document or a thing that is in the custody of the prosecution but has not been produced. A fair trial is a part of the right guaranteed to an accused under Article 21 of the Constitution. The right to a fair trial of the accused includes the right to defend. The right to defend consists of the right to lead the defence evidence by examining the witnesses and producing the documents. Therefore, the accused is entitled to exercise his right at the stage of entering upon defence by compelling the prosecution or a third party to produce a document or a thing in their possession or custody. The court can decline the request of the accused for issuing process for the production of documents only on the limited grounds set out in sub-section (3) of Section 233CrPC.*

68.6. □ *When at the stage of defence evidence of the accused, documents are produced on the prayer of the accused and the accused desires to cross-examine any of the prosecution witnesses based on the said documents, it is always open for the accused to apply under Section 311CrPC (Section 348 BNSS) to recall a prosecution witness already examined for further cross-examination. The reason is that the right to effectively cross-examine the prosecution witnesses is also a part of the right to have a fair trial. The accused can exercise this right even if evidence of both sides is closed.*

68.7. □ *As compared to traditional penal statutes, at the time of trial of the offence under the PMLA, there is a huge negative burden put on the accused. Therefore, it is all the more necessary that sub-section (3) of Section 233CrPC [sub-section (3) of Section 256 BNSS] should be liberally construed in favour of the accused. The reason is that the constitutional validity of Section 24 has been upheld on the ground that the accused has a full opportunity to show that he has not violated the provisions of the PMLA. He is entitled to rebut the presumption. Therefore, if the Special Court refuses the prayer made by the accused in terms of sub-section (3) of Section 233 for compelling the attendance of any witness or for production of a document in custody of the ED or a third party, the accused will not be in a position to discharge the onerous burden on him under Section 24 of the PMLA. Hence, the valuable right of the accused under Section 233(3)CrPC needs to be protected.*

68.8. □ *At the time of hearing of an application for bail governed by Section 45(1)(ii) in connection with the offences under Section 3 of the PMLA, an accused is entitled to invoke Section 91CrPC (Section 94 BNSS) seeking production of unrelayed documents. If investigation or further investigation in progress, the ED is entitled to raise objection to production of documents sought by the accused on the ground that if the documents are disclosed at this stage to the accused, it may prejudice the investigation. Only if the court after perusing the documents is satisfied that the disclosure of the documents at that stage may prejudice the ongoing investigation, it can deny the prayer for the production of such documents."*

(Emphasis added)

17. A study of the judgment in the case of Sarla Gupta (supra) reveals that the Hon^{ble} Supreme Court has taken into considerations the provisions of Cr.P.C. and has emphasised on the principles of fair play and protection of the rights of accused persons to a fair trial by giving him the complete right to defend himself as a part of the Fundamental Right guaranteed under Article 21 of the Constitution. Under provisions of Cr.P.C., the accused had the right to defend himself only after the Court had taken cognizance of an offence and had summoned him to face the trial and keeping in view the provisions of Cr.P.C., the Hon^{ble} Supreme Court had held that upon appearance before the Court, the accused would be entitled to receive all the prosecution documents as mentioned in the judgment and noted above.

18. Cr.P.C. stands repealed and replaced by BNSS, which contains a proviso appended to Section 223 providing that the Court shall not take cognizance of an offence without giving the accused an opportunity of being heard. As the judgment in the case of **Sarla Gupta** (supra) takes into consideration the provisions of Cr.P.C., it does not take into consideration the proviso

appended to Section 223 BNSS, providing an opportunity of hearing to the accused persons before the Court takes cognizance of an offence.

19. The judgment in the case of **Sarla Gupta** (supra) categorically lays down that upon appearance before the trial Court, an accused is entitled to receive copies of the entire prosecution material mentioned in the judgment. As under the proviso appended to Section 223 BNSS, the accused has been given an opportunity of hearing before the Court takes cognizance of an offence, it necessary follows that the accused will be entitled to receive copies of the documents mentioned in paragraph 68.2 of the judgment when he appears before the trial Court to explain as to why the trial Court should not take cognizance of the offence.

20. Section 223 of BNSS corresponds to Section 200 of the Cr.P.C. which did not contain a provision for an opportunity of hearing being provided to an accused person at the pre-cognizance stage. However, a Proviso has been added to Section 223 for giving opportunity of hearing to the accused persons at pre-cognizance stage. When the corresponding provision in the new statute that has replaced the earlier provision, has introduced a specific addition to the corresponding provision of the earlier statute, the unambiguous intention of the Legislature is to deviate from the earlier provision and there is no room for interpreting the provision in any other manner. The legislature has in its wisdom introduced the provision for giving opportunity of hearing to the accused persons at pre-cognizance stage and this statutory provision has to be implemented in a meaningful manner. The opportunity of hearing will not be effective and meaningful unless the accused is provided copies of the entire material relied upon by the prosecution as mentioned in paragraph 68.2 of the judgment of the Hon^{ble} Supreme Court in the case of **Sarla Gupta** (supra).

21. **In Basanagouda R. Patil v. Shivananda S. Patil**, 2024 SCC OnLine Kar 96, the Karnataka High Court held that: -

“10. Therefore, the procedural drill would be this way: -

A complaint is presented before the Magistrate under Section 223 of the BNSS; on presentation of the complaint, it would be the duty of the Magistrate/concerned Court to examine the complainant on oath, which would be his sworn statement and examine the witnesses present if any, and the substance of such examination should be reduced into writing. The question of taking of cognizance would not arise at this juncture. The magistrate has to, in terms of the proviso, issue a notice to the accused who is given an opportunity of being heard. Therefore, notice shall be issued to the accused at that stage and after hearing the accused, take cognizance and regulate its procedure thereafter.

11. The proviso indicates that an accused should have an opportunity of being heard. Opportunity of being heard would not mean an empty formality. Therefore, the notice that is sent to the accused in terms of proviso to sub-section (1) of Section 223 of the BNSS shall append to it the complaint; the sworn statement; statement of witnesses if any, for the accused to appear and submit his case before taking of cognizance. In the considered view of this Court, it is the clear purport of Section 223 of BNSS 2023.”

22. The aforesaid view of the Karnataka High Court has been followed and reiterated by coordinate Benches of this court in **Prateek Agarwal** (supra) and **Rakesh Kumar Chaturvedi** (supra).

23. In view of the foregoing discussions, this Court is of the considered view that the proviso appended to Section 223, which provides that an accused shall be granted an opportunity of hearing before the trial court takes cognizance of the offence, applies to complaints filed under the Prevention of Money Laundering Act. While giving an opportunity of hearing to an accused person under the aforesaid proviso, the learned Special Judge must direct that a copy of the complaint and the following documents be provided to the accused: -

(i) Statements recorded by the learned Special Judge of the complainant and the witnesses, if any, before taking cognizance;

(ii) The documents including the copies of the statements under Section 50 of the PMLA produced before the Special Court, along with the complaint, and the documents produced subsequently by the ED till the date of taking cognizance; and

(iii) Copies of the supplementary complaints and the documents, if any, produced with supplementary complaints.

24. Accordingly, the petitions are allowed. The impugned order dated 13.01.2026, passed by the learned Special Judge, Anti-Corruption, C.B.I., Court No.3, Lucknow in Miscellaneous Case No.5058 of 2025, arising out of ECIR No.ALSZO/06/2020, under Section 3/4 of Prevention of Money Laundering Act, Police Station Enforcement Directorate, whereby the applications filed by the petitioners for being supplied copies of documents annexed to the complaint filed by the Directorate of Enforcement have been rejected, is set aside. The application is allowed and the trial Court is directed to provide copies of the documents mentioned above to the petitioners. The parties shall bear their own costs of the case.

(2026) 4 ILRA 870
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 10.04.2026

BEFORE

THE HON'BLE SUBHASH VIDYARTHI, J.

Application U/S 482. No. 2993 of 2026

Shubhra Tiwari

...Applicant

Versus

State of U.P. & Anr.

...Opposite Parties

Issue for consideration

The matter pertains to a murder trial u/s 302 IPC, the trial court allowed the complainant's belated application u/s 311 CrPC to exhibit existing electronic records (Google search history and Whatsapp Chats) and summon two additional material witnesses. The accused challenged the order u/s 482 CrPC on grounds of evidentiary admissibility.

Headnotes

A. Criminal Procedure Code, 1973-Section 311-Power to summon material witness or examine person present-Locus standi of private complainant at a belated stage-Electronic documents and summoning additional material witnesses cannot be dismissed as unmaintainable on the ground of locus standi, as a filing by the Public Prosecutor is not mandatory precondition for the exercise of powers u/s 311 Crpc-The provision vests wide suo motu jurisdiction in the Court to ensure a "just decision" making it immaterial that the essential circumstances were brought to its notice by the complainant rather than the prosecution-The statute explicitly permits the exercise of this power "at any stage", the application cannot be rejected solely for being belated-Hence, no interference requires.(Para 12 to 17)

Held

The court held that a private complainant has the legal standing to bring essential facts to the court's notice u/s 311 Crpc and the court can invoke this power at any stage of a trial, even during final arguments, if the evidence is necessary for a just decision. No legal prejudice is caused to the defense by marking documents already available on the record as exhibits, as the accused retains a full opportunity to challenge their admissibility, reliability, and veracity during cross-examination and the subsequent stage of final appreciation of evidence. (E-6)

Case law Cited

P. Chhagan Lal Vs M. Sanjay Saw: (2003) 11 SCC 486, Rekha Muraka Vs State of West Bengal & Anr. (2020) 2 SCC 474, Dhariwal Industries Ltd. Vs Kishore Wadhwan & Ors (2016) 10 SCC 378, Dhariwal Industries Ltd. Vs Kishore Wadhwan & Ors-referred to.

List of Acts

Criminal Procedure Code, 1973.

List of Keywords

Section 311, Locus Standi of Complainant, Victim, Exhibition of evidence, Admissibility, Electronic records, Section 65-B Certificate, Google search history, Belated application, Stage of Final arguments, Suo Motu Power of court, Just decision of the case, Prejudicial error, Whatsapp Chat evidence.

Case Arising from

CRIMINAL JURISDICTION: APPLICATION U/S 482 No.- 2993 OF 2026 10.04.2026

Shubhra Tiwari Vs. State of U.P. Thru. Addl. Chief Secy. Home. Lko. And Another

From the judgment and order dated 10.04.2026 of the High Court of judicature at Allahabad.

Appearances for Parties

Advs. for Applicant(s)

Vivek Srivastava, Prashant Shukla

Adv. for Opposite Party(s)

G.A.

(Delivered by Hon'ble Subhash Vidyarthi, J.)

1. Heard Sri Prashant Shukla, the learned counsel for the applicant and Sri Ganesh Dutt Bhatt, the learned AGA-I for the State.

2. By means of the instant petition filed under Section 482 Cr.P.C./ 528 BNSS, the petitioner has challenged the validity of an order dated 07.03.2026 passed by the learned Additional Sessions Judge, Court No. XIX, Lucknow in Sessions Trial No. 262/2019 arising out of Case Crime No. 721/2018, under Section 302 IPC, Police Station Indira Nagar, District Lucknow, whereby an application filed by the complainant under Section 311 Cr.P.C. read with Section 165 of the Evidence Act has been allowed.

3. The aforesaid application was filed by the complainant after closure of the prosecution evidence, recording of statement under Section 313 Cr.P.C. and commencement of submissions, stating that Google Search History (Document no. P-6), WhatsApp chat (Document no. P-5) and Media statement of the accused (Document no. P-18) are available on record but the same have inadvertently been left out from being marked as exhibits and she requested that the documents may be marked as exhibits. The complainant further stated that PW-1 has made a mention of accused's sister and the accused has also stated in her statement under Section 313 Cr.P.C. that about 15 days before the incident, the complainant had taken the phone of the accused and there are WhatsApp chat between the accused and her sister Ruchi Mishra. Therefore, her examination would be necessary for proper adjudication of the case. A further prayer made in the application was for examination of a neighbor of the accused Aradhana Mishra, whose name finds place in the list of witnesses but who has not been examined. She had counseled the accused on many occasions, as the accused felt troubled by having a daughter and she desired to have a son. Her testimony is essential for explaining the mental condition of the accused at the time of the incident.

4. The accused-petitioner filed objections against the application under Section 311 Cr.P.C. inter alia stating that the documents P-5, P-6 and P-18 have not been proved and, therefore, they are not admissible in evidence. She alleged that the WhatsApp chat was made by the complainant herself. In absence of the mobile phone having been examined by the Forensic Science Laboratory, no electronic evidence would be admissible. She stated that the documents have been fabricated by the complainant herself.

5. The trial Court allowed the application by the impugned order dated 07.03.2026 holding that at the stage of deciding an application under Section 311 Cr.P.C., the Court is not required to adjudicate upon the reliability, genuineness or the probative value of the materials sought to be exhibited and these aspects are to be considered at the stage of appreciation of evidence. Formal exhibition of a document does not dispense with the requirement of its proof in accordance with law. The accused shall have full opportunity to challenge the admissibility and genuineness of the electronic record during cross examination and at the stage of appreciation of evidence. No prejudice would be caused to the accused by marking the documents already available on record as exhibits. The trial Court also noted that the complainant has filed a certificate under Section 65-B of the Evidence Act supported by an affidavit. Regarding summoning of additional witnesses, the trial Court stated that at the stage of deciding the application under Section 311 Cr.P.C., the Court is not required to determine in advance whether the entire testimony of the witnesses would be admissible or not. If the witness appears to be in a position to depose about the relevant facts, her examination cannot be refused merely on the ground that some parts of her evidence may ultimately be held to be hearsay.

6. The application was also opposed on the ground that it had been filed belatedly. The trial Court rejected this objection by relying upon a decision of the Hon'ble Supreme Court in the case of **P. Chhagan Lal v. M. Sanjay Saw**: (2003) 11 SCC 486, wherein it has been held that the power under Section 311 Cr.P.C. can be exercised at any stage, even after closure of evidence of both sides, provided the evidence appears to be essential for rendering justice.

7. Assailing validity of the impugned order, the learned counsel for the petitioner has submitted that a complainant has no authority to file an application under Section 311 Cr.P.C. in a State case and the trial Court ought to have rejected the application as not maintainable.

8. In support of this contention, the learned counsel for the petitioner has placed reliance on the decision in the case of **Rekha Murarka v. State of West Bengal & Anr.**: (2020) 2 SCC 474, wherein the Hon'ble Supreme Court has examined the extent to which the complainant/victim can provide assistance to the Court and has held as follows:

"11.1. The use of the term "assist" in the proviso to Section 24(8) is crucial, and implies that the victim's counsel is only intended to have a secondary role qua the Public Prosecutor. This is supported by the fact that the original Amendment Bill to CrPC had used the words "coordinate with the prosecution". However, a change was later proposed and in the finally adopted version, the words "coordinate with" were substituted by "assist". This change is reflective of an intention to only assign a supportive role to the victim's counsel, which would also be in consonance with the limited role envisaged for pleaders instructed by private persons under Section 301(2). In our considered opinion, a mandate that allows the victim's counsel to make oral arguments and cross-examine witnesses goes beyond a mere assistive role, and constitutes a parallel prosecution proceeding by itself. Given the primacy accorded to the Public Prosecutor in conducting a trial, as evident from Sections 225 and 301(2), permitting such a free hand would go against the scheme envisaged under CrPC

. * * *

*11.5. However, even if there is a situation where the Public Prosecutor fails to highlight some issue of importance despite it having been suggested by the victim's counsel, the victim's counsel may still not be given the unbridled mantle of making oral arguments or examining witnesses. This is because in such cases, he still has a recourse by channelling his questions or arguments through the Judge first. For instance, if the victim's counsel finds that the Public Prosecutor has not examined a witness properly and not incorporated his suggestions either, he may bring certain questions to the notice of the Court. If the Judge finds merit in them, he may take action accordingly by invoking his powers under Section 311 CrPC or Section 165 of the Evidence Act, 1872. In this regard, we agree with the observations made by the Tripura High Court in **Uma Saha v. State of Tripura** [**Uma Saha v. State of Tripura**, 2014 SCC OnLine Tri 859] that the victim's counsel has a limited right of assisting the prosecution, which may extend to suggesting questions to the Court or the prosecution, but not putting them by himself." (Emphasis added)*

9. A perusal of the aforesaid passage makes it clear that although the Hon'ble Supreme Court has held that the victim has a limited role in providing assistance to the Court, if the victim's

counsel finds examination of a witness necessary, he may request the Court for invoking the powers under Section 311 Cr.P.C. In the present case precisely that has been done by the complainant. The complainant has requested the Court to invoke the power under Section 311 Cr.P.C. and the Court has accepted the request and has invoked the powers for the reasons recorded in the impugned order.

10. The learned counsel for the petitioner has next relied upon a decision of the Hon'ble Supreme Court in the case of **Dhariwal Industries Ltd. v. Kishore Wadhvani & Ors.**: (2016) 10 SCC 378. The Hon'ble Supreme Court has held as follows: -

"17. We have already explained the distinction between Sections 301 and 302 CrPC. The role of the informant or the private party is limited during the prosecution of a case in a Court of Session. The counsel engaged by him is required to act under the directions of the Public Prosecutor. As far as Section 302 CrPC is concerned, power is conferred on the Magistrate to grant permission to the complainant to conduct the prosecution independently."

11. The Hon'ble Supreme Court has clearly held in **Dhariwal Industries Ltd. v. Kishore Wadhvani & Ors.** (supra) that the trial Court has the power to grant permission to the complainant to conduct the prosecution independently.

12. Section 311 Cr.P.C. reads as follows: -

"S. 311: Power to summon material witness, or examine person present - Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case."

13. A bare perusal of Section 311 Cr.P.C. makes it manifest that filing of an application by the Public Prosecutor is not a precondition for exercise of powers under Section 311 Cr.P.C. The Court can exercise power under Section 311 Cr.P.C. if it has reasons to believe that the circumstances for exercise of powers exist. It cannot be said that the reasons cannot be brought to the notice of the Court by the complainant. The Section by no means can be interpreted to mean that the Court can exercise this powers only suo moto. Moreover, if the Court has power to act suo moto, the power can be exercised if the Court is of the view that the circumstances warranting exercising powers under Section 311 Cr.P.C. exist. It is immaterial that the circumstances have been brought to the notice of the Court by the complainant or by any other person.

14. Therefore, I find no force in the submission of the learned Counsel for the accused ? applicant that the complainant had no locus standi to file the application and I hold that the application filed by the complainant could not be dismissed as not maintainable.

15. No other submission was advanced by the learned Counsel for the petitioner.

16. A perusal of the impugned order shows that the trial Court has passed the impugned order after a proper analysis of the relevant facts and circumstances of the case, on the basis of sound reasons. Inherent powers of this Court acknowledged by Section 482 Cr.P.C. are meant to be exercised to prevent the abuse of the process of any Court or to secure the ends of justice. The filing and allowing of the application under Section 311 Cr.P.C. cannot be said to be an abuse of the process of law and there is no error or illegality in the impugned order which may be causing injustice to the petitioner.

17. In view of the foregoing discussion, I am of the considered view that there is no good ground to entertain the petition. The petition lacks merit and the same is *dismissed*.

(2026) 4 ILRA 875
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 29.04.2026

BEFORE

THE HON'BLE SANJAY KUMAR PACHORI, J.

Application U/S 482 No. 3598 of 2024

Lavkush Singh @ Uday Pratap Singh Applicant
State of U.P. & Anr. ...Opposite Parties

Issue for consideration

The police arrested four individuals, including applicant, and seized playing cards and currency for alleged gambling. Without a Magistrate's permission the police investigated this non-cognizable offence, filed a charge-sheet and the lower court subsequently issued a summoning order. The applicants approached the High Court to quash the entire criminal proceedings.

Headnotes

A. Criminal Procedure code,1973-Section 482-Public Gambling Act,1867-Section 13-Quashing of proceedings-Offence carries a maximum punishment of six months, making it strictly a non-cognizable offence under Part II of the First Schedule of CrPC-Statutory bar on police-No police officer can investigate a non-cognizable case or file a charge-sheet without the express prior order of a competent Magistrate-Criminal proceedings initiated in absolute disregard of mandatory procedural safeguards constitute an abuse of process-Fit case for quashing under Bhajan Lal Guidelines.(Para 8 to 18)

Held

The court held that Section 13 of Public Gambling Act, 1867 is a non-cognizable offence. The police had no authority to investigate the matter or file a charge-sheet without a Magistrate's permission. The Magistrate's cognizance order on an illegal report was a grave error, and the entire criminal proceedings are quashed to prevent the abuse of process of law. (E-6)

Case law Cited

State of Haryana & Ors Vs Bhajan Lal & Ors (1992) SCC (Cri) 426- referred to.

List of Acts

Criminal Procedure code, 1973, Public Gambling Act, 1867.

List of Keywords

Public Gambling Act, 1867, Non-Cognizable Offence, Section 155(2) Cr.PC., Cognizance and Summoning order, U.P. Amendment Act No. 21 of 1961, Statutory Bar on Investigation, Abuse of Process of law.

Case Arising from

CRIMINAL JURISDICITON: APPLICATION U/S 482 No.- 3598 OF 2024

Lavkush Singh @ Uday Pratap Singh Vs. State of U.P. And Another

From the judgment and order dated 29.04.2026 of the High Court of judicature at Allahabad.

Appearances for Parties

Adv. for Applicant(s)

Ragini Gupta

Adv. for Opposite Party(s)

G.A.

(Delivered by Hon'ble Sanjay Kumar Pachori, J.)

1. In the instant case short question has been arisen as to whether the offence punishable under Section 13 of the Public Gambling Act, 1867 is non cognizable offence?

2. The present application under section 482 Code of Criminal Procedure (hereinafter referred to as Cr.P.C.) has been filed with a prayer to quash the entire proceedings of Criminal Case No. 21 of 2024 arising out of Case Crime No. 153 of 2023, under Section 13 of the Public Gambling Act, 1867, Police Station Jigana, District Mirzapur as well as cognizance/ summoning order dated 03.01.2024, pending in the Court of Additional Civil Judge (Senior Division)/F.T.C., Mirzapur .

3. Brief facts of the case are that the first information report dated 25.10.2023 has been lodged by Sub Inspector of local police based on recovery and arresting of 4 accused persons including the present applicant and five other persons under Section 13 of the Public Gambling Act and recovered certain currency and playing cards. After completing investigation as State case, charge-sheet has been submitted on 13.12.2023 and cognizance/ summoning order was passed on 03.01.2024 by the concerned Magistrate.

4. Learned counsel for the applicant submitted that offence, under Section 13 of the Public Gambling Act, as amended by the U.P. Amendment Act No. 21 of 1961, constitutes a non cognizable offence and it provides punishment for first offence is punishable with a fine not exceeding two hundred and fifty rupees nor less than fifty rupees, or to rigorous imprisonment for a term not exceeding one month; and in the case of any subsequent offence punishable with a fine not exceeding five hundred rupees nor less than one hundred rupees, and rigorous imprisonment for a term not exceeding six months nor less than one month. It is further contended that as per Part II of first Schedule of the Cr.P.C., the offence under Section 13 of Gambling Act is a non-cognizable offence. Due to this reason the Investigating Officer has no power to start investigation without prior permission of concerned Magistrate.

5. It is further argued that as per allegations of the F.I.R. four persons had been arrested in chasing conditions. There is no pre-summoning evidence with regard to fact that the act of Gambling is taken place in public place or private place. It is further submitted that charge-sheet has been submitted against the other 5 persons on the basis of confessional statement of arrested co-accused persons before police which is irrelevant. It is further submitted that police report has been submitted as cognizable case after investigating a non cognizable case without any prior permission of Magistrate concerned under Section 155(2) of Cr.P.C. and cognizance order has also been passed thereupon.

6. Learned A.G.A. has vehemently opposed the prayer.

7. Heard Sri Shrey Singh and Ms. Ragini Gupta learned counsels for the applicant and Sri Kamleshwar Singh, learned A.G.A. is present and perused the material on record.

8. Before dealing with arguments of the parties, it is apposite to revisit the position of law. In this regard Section 13 of Public Gambling Act reproduced as under:

“Section 13. Gaming and setting birds and animals to fight in public streets –

A police officer may apprehend without warrant- any person found playing for money or other valuable thing, with cards, dice, counters or other instruments of gaming, used in playing any game not being a game of mere skill in any public street, place or thoroughfare situated within the limits aforesaid, or any person setting any birds or animals to fight in any public street, place or thoroughfare situated within the limits aforesaid, or any person there present aiding and abetting such public fighting of birds and animals. Such person when apprehended shall be brought without delay before a Magistrate, and shall be liable –

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

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

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

9. Scope of order of the Magistrate to investigate a non-cognizable offence is provided under Section 155(2) of Cr.P.C. for sake of convenience. Section 155 of Cr.P.C. is reproduced herein below;

(1) When information is given to an officer in charge of a police station of the commission within the limits of such station of a non-cognizable offence, he shall enter or cause to

be entered the substance of the information in a book to be kept by such officer in such form as the State Government may prescribe in this behalf, and refer, the informant to the Magistrate.

(2) No police officer shall investigate a non-cognizable case without the order of a Magistrate having power to try such case or commit the case for trial.

(3) Any police officer receiving such order may exercise the same powers in respect of the investigation (except the power to arrest without warrant) as an officer in charge of a police station may exercise in a cognizable case.

(4) Where a case relates to two or more offences of which at least one is cognizable, the case shall be deemed to be a cognizable case, notwithstanding that the other offences are non-cognizable.

10. 'Non-cognizable offence' and 'Cognizable offence' defined under Section 2(l) of Cr.P.C. and 2(c) of Cr.P.C. which are reproduced as under:

Section 2(l) *non-cognizable offence" means an offence for which, and "non-cognizable case" means a case in which, a police officer has no authority to arrest without warrant.*

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

11. After close scrutiny of the aforesaid provisions, it is crystal clear that no police officer can investigate a non cognizable offence without the order of the Magistrate having power to try such case or commit the case for trial and the police officer after passing such order may exercise same power in respect of investigation as may exercise in a cognizable offence. However, the officer has no power to arrest without warrant.

12. It is also settled position of a law that where a case relates two or more offences, if one case is cognizable, the case deemed to be a cognizable case.

13. Offence punishable under Section 13 of the Public Gambling Act as per State amendment, is punishable with imprisonment for not exceeding six months nor less than one month. In Part II of first schedule of Cr.P.C. a list of classification of offences against other laws has been given wherein it has been provided that if any offence punishable with imprisonment for less than 3 years or with fine only, the case deemed to be in the category of non-cognizable offence.

14. It is also significant to note that there is no pre-summoning evidence with regard to the fact that the incident was take place at public place, public street as define under Section 13 of the Public Gambling Act.

15. The cognizance order has been passed without considering the facts, circumstances and position of law as the charge-sheet has been submitted for a non-cognizable offence without any prior order for investigation of the Magistrate concerned having jurisdiction.

16. It is settled position of law that as illustrated in **State of Haryana and others Vs. Bhajan Lal and others 1992 SCC (Cri.) 426** wherein 7 categories of cases have been formulated for quashing of FIR/complaint with regard to prevent the abuse of process of law and to secure the ends of justice. In the present case, the trial court has committed grave error in taking cognizance in the offence related to non-cognizable offence without any prior permission of Magistrate under Section 155(2) of Cr.P.C. for investigation.

17. Hence, the present application is liable to be allowed and the entire proceedings of Criminal Case No. 21 of 2024 arising out of Case Crime No. 153 of 2023, under Section 13 of the Public Gambling Act, 1867, Police Station Jigna, District Mirzapur as well as cognizance/summoning order dated 03.01.2024, pending in the Court of Additional Civil Judge (Senior Division)/F.T.C., Mirzapur are liable to be quashed.

18. The present Application U/S 482 of Cr.P.C. is, accordingly, **allowed**.

(2026) 4 ILRA 879
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 30.04.2026

BEFORE

THE HON'BLE GAUTAM CHOWDHARY, J.

Application U/S 482. No. 4092 of 2026

Swaraj Singh Patil

**...Applicant
Versus**

State of U.P. & Anr.

...Opposite Parties

Issue for consideration

In this case, the wife filed a maintenance application u/s 125 Cr.PC claiming Rs. 1,00,000 per month and subsequently sought amendment of the claim to Rs. 1,50,000 per month, which was allowed by the Family Court. The husband challenged the amendment order u/s 528 BNSS contending that the Code of Criminal Procedure contains no provision permitting amendment of the maintenance amount claimed in a pending section 125 proceeding.

Headnotes

A. Criminal Procedure Code, 1973-Section 125-Exercise of Power-Amendment application in maintenance case-Absence of statutory sanction-Family Court exceeded jurisdiction in permitting amendment of maintenance amount claimed-Impugned order quashed.(Para 7 to 10) Held

The court held that although maintenance provision u/s 125 to 128 Cr.PC are beneficial in nature and intended to protect dependants from destitution, there is admittedly no provision under the Code permitting

amendment of the amount claimed in a pending application u/s 125 CrPC. Therefore, the Family Court acted without jurisdiction in allowing the amendment application seeking enhancement of the maintenance claim 1,00,000 per month to Rs. 1,50,000 per month. The impugned order dated 08.12.2025 was consequently set aside. The court further directed expeditious disposal of the interim maintenance application in accordance with the principles laid down in *Rajnesh Vs. Neha*. (E-6)

Case law Cited

Rajnesh Vs. Neha and another (2021) 2 SCC 324-referred to.

List of Acts

Criminal Procedure Code, 1973

List of Keywords

Maintenance, Amendment application, Enhancement of Maintenance Claim, Family Court jurisdiction, Beneficial legislation, Jurisdictional error.

Case Arising from

CRIMINAL JURISDICTION: APPLICATION U/S 528 BNSS No.- 4092 OF 2026

Swaraj Singh Patil Vs. State of U.P. And Another

From the judgment and order dated 30.04.2026 of the High Court of judicature at Allahabad.

Appearances for Parties

Adv. for Applicant(s)

Mohd. Afzal

Adv. for Opposite Party(s)

G.A.

(Delivered by Hon'ble Gautam Chowdhary, J.)

1. Heard Shri Mohd. Afzal, learned counsel for the applicant, learned A.G.A. for the State and perused the material brought on record.

2. The present application under Section 528 BNSS has been filed against the order dated 08.12.2025 passed on the amendment application No. 21-Aa filed by the opposite party no. 2 in pending maintenance case, bearing Criminal Misc. Case No. 950 of 2024 (*Smt. Akansha Vs. Swaraj Singh Patil*), under Section 125 Cr.P.C. before the Additional Principal Judge, Family Court, Court No. 02, Firozabad, whereby while rejecting the objections filed by the applicant the said amendment application has been allowed and the opposite party No. 2 has been permitted to amend the amount of interim maintenance as claimed in the said amendment application filed behalf of the opposite party No. 2 and directed the necessary amendments to be carried out within three days.

3. Learned counsel for the applicant contended that the private opposite party No. 2 had filed an application under Section 125 Cr.P.C. for grant of maintenance at the rate of Rs. 1,00,000/- per month on 19.06.2024, upon which the applicant filed his written statement to the said application. It is further contended that on 08.05.2025 the opposite party No. 2 filed an amendment application for amending the amount of monthly maintenance claimed from Rs. 1,00,000/- as mentioned in the application under Section 125 Cr.P.C. to Rs. 1,50,000/- per month, further,

praying for amendment to the extent that the salary of the applicant shall be amended as Rs. 1,20,00,000/-, which has been allowed by the Additional Principal Judge, Family Court, Firozabad by the impugned order.

4. Learned counsel for the applicant has argued that there is no provisions provided under the Code of Criminal Procedure for amendment to be allowed in the proceedings under Section 125, Cr.P.C., therefore, the order impugned is without jurisdiction and is liable to be quashed.

5. Learned A.G.A. for the State could not dispute the above submissions made on behalf of applicant, but he submits that the Judge, Family Court/Magistrate has ample power under the provisions of Section 125, Cr.P.C. to grant monthly maintenance allowance to the wife, children, father or mother on such monthly rate as the Magistrate/court deems fit, therefore, nomenclature of the application filed would not matter as the application for amendment of the amount of maintenance claimed was filed on account of changed circumstances of increase in price structure and on the basis of which it was urged that maintenance of Rs. 1,00,000/- was highly inadequate to meet needs of opposite parties No. 2. It is further argued that nomenclature of the application would not be of much relevance and the Magistrate has only directed that the amount so claimed, i.e., Rs. 1,00,000/- may be amended to Rs. 1,50,000/- per month but no direction for its payment has yet been issued, therefore, it is contended that filing of present application on behalf of the application has no merit and is deserved to be dismissed.

6. I have heard rival submissions advanced by both the parties.

7. Provisions of sections 125, 126, 127, 128 of Cr.P.C. are beneficiary in nature in order to ensure that wives, children and parent, who are unable to maintain themselves, may be maintained properly and they are not neglected by such person against whom maintenance is being claimed and who are otherwise legally liable to maintain them. Thus, the aforesaid provisions of Code of Criminal Procedure are beneficial legislation intended to secure the interest of the persons mentioned therein so as to prevent the vagaries of destitution and to ensure that they live a descent and honourable life.

8. There is no dispute between the parties that there is no provision in the Code of Criminal Procedure for amending the amount claimed under Section 125 Cr.P.C. and the application, which has been moved by the opposite parties No. 2 was for amendment to be incorporated in the amount of maintenance claimed under Section 125, Cr.P.C. which application has been allowed and such amendment has been permitted to be incorporated.

9. In view of the above admitted position, since the law does not permit for any amendment application to be allowed for amending the amount claimed in the proceedings under Section 125, Cr.P.C., the order impugned dated 08.12.2025 passed on the amendment application allowing it, cannot be sustained in the eye of law and the same is hereby set aside.

10. Accordingly, the present application under Section 528 BNSS is finally disposed of with the direction that the learned Principal Judge shall make its endeavour to decide the interim maintenance application as expeditiously as possible in accordance with law in view of the settled

law as laid down by Hon'ble Apex Court in the matter of **Rajnish Vs. Neha and another reported in 2021 (2) SCC 324.**

(2026) 4 ILRA 882
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 03.04.2026

BEFORE

THE HON'BLE SUBHASH VIDYARTHI, J.

Application U/S 482. No. 4460 of 2022
 Alongwith
 Application U/S 482. No. 3270 of 2022

Rajat Saxena & Anr.

**...Applicants
 Versus**

State of U.P. & Anr.

...Opposite Parties

Issue for consideration

A criminal litigation arising out of family-cum-property dispute. The applicants approached the High court u/s 482 CrPC seeking to quash a trial court's summoning order.

Headnotes

A. Indian Penal Code,1860-Section 420-Criminal Procedure Code,1973-Section 482-Quashing of criminal proceedings-Cheating –essential ingredients-Absence of fraudulent or dishonest inducement at the inception of the transaction-Offence not made out-Commercial and civil disputes cloaked with a criminal texture-Mere repayment of loan installments or outstanding bank dues by a third party (father) does not alter or divest the legal status of the registered property owner or mortgagor-Bank Manager accepting outstanding dues to secure bank interest and returning title deeds to the true mortgagor does not commit any criminal offence or conspiracy-Summoning order quashed.(Para 31 to 33)

Held

The Court held that a civil dispute over property partition cannot be given a criminal cloak to exert undue pressure. It ruled that a third party's voluntary repayment of a bank loan does not alter or divest the legal ownership rights of the true mortgagor. Furthermore, a bank manager commits no criminal offence by accepting dues and returning title deeds to the registered owner, making the Magistrate's mechanical summoning order a clear abuse of process. (E-6)

Case law Cited

Mitesh Kumar J.Sha Vs State of Karnataka, (2022) 14 SCC 572, Dinesh Gupta Vs State of U.P. 2024 SCC Online SC 34 , Indian Oil Corpn Vs NEPC India Ltd. [(2006) 6 SCC 736], G.Sagar Suri Vs State of U.P. [2000] 2,Randheer Singh Vs State of U.P. [(2021) 14 SCC 626], Dinesh Gupta Vs State of U.P. : (2024) 11 SCC 758, Mala Choudhary Vs State of Telangana , 2025 SCC OnLine SC 1474, Rikhab Birani Vs State of U.P. 2025 SCC OnLine SC 823-referred to.

List of Acts

Indian Penal Code, 1860, Criminal Procedure Code, 1973.

List of Keywords

Cheating, summoning order, Civil dispute cloaked as criminal, Fraudulent intention/Dishonest inducement, Mortgagor, Right of redemption, Loan repayment by third party, SARFAESI Act, DRT, Private Treaty, Release of Title deeds, Co-ownership and Partition, Mechanical application of mind.

Case Arising from

CRIMINAL JURISDICTION: APPLICATION U/S 482 No.- 4460 OF 2022

Rajat Saxena and Another Vs. State of U.P. Thru. Addl. Chief Secy. Prin. Secy. Lko. And Another

From the judgment and order dated 03.04.2026 of the High Court of judicature at Allahabad.

Appearances for Parties

Advs. for Applicant(s)

Vivek Pandey, Akshat Sinha, Chandra Shekhar Sinha

Gaurav Verma, Mohit Sharma, Pooja Mishra

Advs. for Opposite Party(s)

G.A., Pramendra Kumar Singh

(Delivered by Hon'ble Subhash Vidyarthi, J.)

1. Heard ShriChandra Shekhar Sinha, the learned counsel for the applicants in Application u/S 482 No.4460 of 2022, Shri Nadeem Murtaza, the learned counsel for the applicant in Application U/s 482 No.3270 of 2022, Shri G.D. Bhatt, the learned AGA-I for the State-opposite party No.1 in both the applications and Shri Abhishek Khare, the learned counsel for the opposite party No.2 in both the applications.

2. Both the present applications under Section 482 Cr.P.C. have been filed challenging the validity of an order dated 08.04.2022 passed by the learned Additional Chief Judicial Magistrate-V, Court No.29, Lucknow in Misc. Case No.3649 of 2021, summoning the applicants to face trial for the offence under Section 420 I.P.C.

3. The opposite party no. 2 □ Rakeshwar Dayal Saxena, had filed an application under Section 156(3) Cr.P.C. against- (i) Rajat Saxena (applicant No.1 in □Application u/S 482 No.4460 of 2022), (ii) Anil Saxena □(applicant No.2 in □Application u/S 482 No.4460 of 2022) and (iii) Anshul Srivastava, the then Manager (Senior) HDFC Ltd. (the applicant in □Application u/S 482 No.3270 of 2022) stating that Rajat Saxena is son of Rakeshwar Dayal Saxena and Anil Saxena is father-in-law of Rajat Saxena. There was a house purchased in the name of Rajat Saxena and her mother Raj Laxmi Saxena. The owners of the house Rajat Saxena and Raj Laxmi Saxena had taken a housing loan of Rs.17 lakhs from HDFC Ltd., Ashok Marg, Lucknow and thereafter they had taken a personal loan of Rs.12 lakhs. The house in question was mortgaged as security for repayment of the aforesaid loans. Smt. Raj Laxmi Saxena died on 04.11.2013. Thereafter, the complainant- Rakeshwar Dayal Saxena married another lady who is living with him as his wife. Rajat Saxena works abroad. From the averments made in the application, it appears that the relation between Rajat Saxena and Rakeshwar Dayal Saxena have turned sour. □

4. The opposite party no. 2 claims that since June 2014, he has continuously paid the installments towards repayment of the loan taken by his wife and son. Thereafter, under a conspiracy between all the accused persons, the Bank Manager Anshul Srivastava declined to receive the installments toward repayment of the loans □and he obtained a writing from the

complainant that the complainant would not pay the installments towards repayment of the loan taken by his wife and son. Thereafter, the Bank declared the loans as non-performing assets and published a notice for auction of the house. The complainant filed S.A. No.319 of 2018 before the Debts Recovery Tribunal, Lucknow and he expressed willingness to deposit the entire dues of the Bank amounting to Rs.45,95,000/-, provided the Bank executes a sale deed in his favour under a private treaty.

5. It is further stated in the application under Section 156 (3) Cr.P.C. that in compliance of an order dated 18.12.2018 passed by the Debts Recovery Tribunal, Lucknow the Bank Manager Anshul Srivastava received Rs.45,95,000/- from the complainant and gave a No Dues Certificate on 29.01.2019 but under a conspiracy, he handed over the title deed of the house to Rajat Saxena. The complainant has stated that he has opened the locks of the house on 03.12.2019 and has started residing in it. He has stated that the accused persons have cheated him and are trying to usurp the house.

6. On 08.04.2022, the trial Court passed the impugned order summoning the applicants to face the trial.

7. The opposite party No.2 has filed a counter affidavit opposing the applications under Section 482 Cr.P.C. and the applicants have filed a rejoinder affidavit.

8. On 18.12.2018, the DRT, Lucknow had passed the following order in S.A. No.391 of 2018: -

“Case called out.

Ld. Counsel for both the parties are present.

Ld. Counsel for the applicant submits that in pursuance of order dated 20.9.2018 passed by this Tribunal, the applicant has deposited a sum of Rs 10.00 lacs. He is also willing to deposit the remaining dues of the respondent-F.I.

Ld. Counsel for respondent -F.I. submits that dues against the loan account are around Rs. 36.00 lacs. In case the applicant is willing to deposit the amount, he may deposit the same.

Ld. Counsel for applicant submits that he will deposit the amount provided the title deed of secured asset is returned to him.

Heard learned counsels for both the parties.

Applicant is directed to approach the respondent- F.I. with the above proposal and the amount quoted by the learned counsel for the respondent- F.I. The proposal to be submitted by the applicant will be considered by the respondent-F.I. u/r 5(d) of the Security Interest (Enforcement) Rules, 2002.

Fixed 18.1.2018 for further order.”

9. Thereafter, on 21.12.2018, the complainant gave a letter to the bank stating that he was willing to liquidate the loan accounts and he requested that the sale deed of the house No.5/71, Jankipuram Extension, Lucknow be released in his favour.

10. On 24.12.2012, the Bank Manager wrote a letter to the complainant stating that as directed in the order passed by the DRT, the bank will accept the payment from the complainant and will return the original title deed to him subject to closure of the loan account.

11. On 29.01.2019, the Bank gave a No Dues Certificate to the complainant and asked him to file the requisite application before the DRT for further orders to enable the bank to execute necessary documents of transfer in favour of the complainant. On 17.06.2019, the DRT passed the following order: -

“The file has been put up for passing order on the application dt. 1.2.2019 moved by the applicant. The applicant has prayed in this application that respondent bank be directed to transfer the property in favour of applicant through private treaty as per Rule 8(8) of the Security Interest (Enforcement) Rules, 2002.

The applicant has stated that he has paid the entire outstanding dues of the respondent FI. The respondent Financial Institution after accepting the entire outstanding dues from the respondent bank had issued a letter to the applicant dt. 29.1.2019. The respondent Financial Institution has directed the applicant to move an application before the Tribunal to hand over the possession of the property to him and to transfer the property in his favour.

In reply to the application dt. 01.2.2019 the respondent no.2 has filed objection. According to the respondent no.2 the property in question has not been sold in auction. The Loan account has been closed and nothing is due in the said loan account. The respondent no.2 has brought out that Smt. Raj Laxmi Saxena deceased was co-owner of the said property through registered sale deed dt. 16.10.2017. She died on 04.11.2013 leaving behind her applicant K.D Saxena (Husband) respondent no.2(son) and two daughters namely Smt. Roopali Srivastava and Smt. Roopali Srivastava as her legal heirs and successors. All the legal heirs have got equal share in the property left by the deceased. According to the respondent no. 2 the Securitization Application is no.2 maintainable. Preliminary objections have been filed which are yet to be decided. The S.A. as well as application dt. 01.2.2019 of the applicant is malafide, illegal, misconceived of and beyond the provisions of SARFEASI Act, 2002.

Heard the Ld. Counsel for the applicant and respondent ho.2 and. perused the record.

It is observed from Securitization Application that in paragraph 6D of the S.A. the same prayer has been made by the applicant. Hence, the issue involved in application dt. 08.2.2019 can be considered while disposing of the Securitization Application.

Fixed 30.7.2019 for filing objection in reply to the S.A. and final arguments.

Application dt. 01.2.2019 will be disposed of along with the S.A.”

12. The S.A. was disposed off finally by means of an order dated 28.10.2019, wherein it is recorded that: -

“The cause of action for presentation of Securitization Application of applicant was the measure taken by Respondent NO. 1 Financial Institution u/s 13(4) of SARFAESI Act, 2002. The Respondent No. q1 Financial Institution is not proceeding under the provisions of SARFAESI Act hence there is no cause of action now to SARFAESI Act hence there is no cause of action now to proceed with the matter. The order issuing notice relating to share of applicant and Respondent NO. 2 and other family members is pending before the Civil Court. This Tribunal is not competent to deal with the said issue of partition or right of properties. Since there is no cause of action, the Securitization Application deserve to be disposed off.”

13. On 22.12.2020, the opposite party no. 2 has filed the application under Section 156 (3) Cr.P.C. The learned Additional Chief Judicial Magistrate Fifth, Court No. 29, Lucknow passed an order dated 16.01.2021 registering the application under Section 156 (3) Cr.P.C. as a complaint and on 08.04.2022, the impugned order was passed summoning the applicant to face the trial.

14. Challenging validity of the summoning order, the learned counsel for the applicants have submitted that Rajat Saxena and his mother Raj Laxmi Saxena were the owners of the house in question, they had borrowed the money from the Bank and they had mortgaged the house. The right of redemption of mortgage vests in the mortgagor. After death of Raj Laxmi Saxena, Rajat Saxena has remained the sole mortgagor. The applicants in Application no. 4460 of 2022 have denied the contention of the complainant that he had deposited the money and they have submitted that Rajat Saxena used to transfer money to his father Rakeshwar Dayal Saxena from being deposited in the bank and it was from the aforesaid money that the Rakeshwar Dayal Saxena used to deposit the installments but this fact is irrelevant at this stage. What is relevant is that mere deposit of installments toward repayment of loan amount would not alter the legal status of the mortgagor as well as the registered owner of the property.

15. Shri Nadeem Murtuza has submitted that the bank Manager- applicant in Application u/S 482 No.3270 of 2022 had not raised any demand from the complainant. It was the complainant himself who approached the bank for repayment of the dues of the bank. Being an officer of bank, the officer is duty bound to take all such actions as would be in the interest of the bank for recovery of the loan. By accepting money from the complainant in discharge of his official duties, the Bank Manager has not committed any offence.

16. The learned Counsel for the applicants have submitted that the facts of the case noted above do not even prima facie make out commission of any offence and filing of the complainant is an abuse of the process of law to put undue pressure upon the applicants in the ongoing civil dispute between the complainant and his son Rajat Saxena. They have placed reliance upon the judgment in the cases of **Mitesh Kumar J. Sha v. State of Karnataka**, (2022) 14 SCC 572, **Dinesh Gupta v. State of Uttar Pradesh** 2024 SCC Online SC 34, **Mala Choudhary v. State of**

Telangana, 2025 SCC OnLine SC 1474 and **Rikhab Birani v. State of U.P.**, 2025 SCC OnLine SC 823.

17. Sri. Abhishek Khare, the learned counsel for the complainant has submitted that non-execution of transfer deed in favour of the complainant amounts to cheating.

18. In **Mitesh Kumar J. Sha v. State of Karnataka**, (2022) 14 SCC 572, the Hon'ble Supreme Court referred to some precedents in the following paragraphs: -

*38. Having considered the relevant arguments of the parties and decisions of this Court we are of the considered view that existence of dishonest or fraudulent intention has not been made out against the appellants. Though the instant dispute certainly involves determination of issues which are of civil nature, pursuant to which Respondent 2 has even instituted multiple civil suits, one can by no means stretch the dispute to an extent, so as to impart it a criminal colour. As has been rightly emphasised upon by this Court, by way of an observation rendered in **Indian Oil Corpn. v. NEPC India Ltd.** [(2006) 6 SCC 736], as under:*

“14. While no one with a legitimate cause or grievance should be prevented from seeking remedies available in criminal law, a complainant who initiates or persists with a prosecution, being fully aware that the criminal proceedings are unwarranted and his remedy lies only in civil law, should himself be made accountable, at the end of such misconceived criminal proceedings, in accordance with law.”

39. It was also observed:

“13. While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged.”

*40. On an earlier occasion, in **G. Sagar Suri v. State of U.P.** [(2000) 2 SCC 636], this Court has also observed:*

“8. Jurisdiction under Section 482 of the Code has to be exercised with great care. In exercise of its jurisdiction the High Court is not to examine the matter superficially. It is to be seen if a matter, which is essentially of civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which the High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice.”

* *

43. *Recently, this Court in **Randheer Singh v. State of U.P.** [(2021) 14 SCC 626], has again reiterated the long standing principle that criminal proceedings must not be used as instruments of harassment. The Court observed as under:*

*“33. □ There can be no doubt that jurisdiction under Section 482CrPC should be used sparingly for the purpose of preventing abuse of the process of any court or otherwise to secure the ends of justice. Whether a complaint discloses criminal offence or not depends on the nature of the allegation and whether the essential ingredients of a criminal offence are present or not has to be judged by the High Court. There can be no doubt that a complaint disclosing civil transactions may also have a criminal texture. The High Court has, however, to see whether the dispute of a civil nature has been given colour of criminal offence. In such a situation, the High Court should not hesitate to quash the criminal proceedings as held by this Court in **Paramjeet Batra v. State of Uttarakhand**, (2013) 11 SCC 673 : (2012) 4 SCC (Cri) 76] extracted above. □”*

44. □ Moreover, this Court has at innumerable instances expressed its disapproval for imparting criminal colour to a civil dispute, made merely to take advantage of a relatively quick relief granted in a criminal case in contrast to a civil dispute. Such an exercise is nothing but an abuse of the process of law which must be discouraged in its entirety.”

19. In **Dinesh Gupta v. State of Uttar Pradesh**: (2024) 11 SCC 758, the issue involved was stated thus: -

*“2. The core issue of the dispute, which involves financial transactions and agreements, clearly places it in the realm of civil and commercial law. Yet, the respondent chose to pursue criminal charges in a quest to abuse the criminal justice system with a motive to seek personal vengeance rather than seeking true justice. **This unnecessary turning of a civil matter into a criminal case not only overburdens the criminal justice system but also violates the principles of fairness and right conduct in legal matters. The apparent misuse of criminal proceedings in this case not only damages trust in our legal system but also sets a harmful precedent if not addressed.**”*

(Emphasis added)

20. The Hon’ble Supreme Court found that the FIR in question, if proceeded further, would result in absolute abuse of process of court. It was a clear case of malicious prosecution. Hence, the same was quashed. Before parting with the case, the Hon’ble Supreme Court observed that a criminal complaint was filed and FIR was registered against the appellants despite the commercial nature of dispute. Such ill intended acts of abuse of power and of legal machinery seriously affect the public trust in judicial functioning. The Hon’ble Supreme Court imposed costs of Rs 25 lakhs on the respondent.

21. In **Mala Choudhary v. State of Telangana**, 2025 SCC OnLine SC 1474, was a simple dispute involving non execution of a registered sale deed in terms of a so called oral agreement

between the complainant and the appellants which was given a criminal color by the complainant. The complainant misused the process of police investigation so as to entangle the accused appellants in a false and frivolous prosecution for the offences punishable under Sections 406 and 420 of the Penal Code, 1860. The Hon^{ble} Supreme Court noted the drastic variance in terms of the consideration of the plot in question in the versions of the complainant in the FIR and in the plaint filed in the civil suit filed by him much after lodging the FIR. The Hon^{ble} Supreme Court quashed the FIR and imposed Rs.10,00,000/- costs on the complainant.

22. Rikhab Birani v. State of U.P., 2025 SCC OnLine SC 823 was yet another case where there was a dispute between the parties regarding non payment of sale consideration of a property in pursuance of an oral agreement. The complainant had filed applications under Section 156(3) Cr.P.C. twice, which was dismissed both the times holding that the dispute was of a civil nature and no criminal offence was made out against the appellants. The complainant then directly approached the Police Station and got an FIR registered against the appellants for the offences punishable under Sections 420, 406, 354, 504 and 506 of the Penal Code, 1860, a charge-sheet was filed and the appellants were summoned to face trial. A petition under Section 482 of the Cr.P.C. filed by the appellants for quashing of the criminal proceedings against them was dismissed by the High Court. The Hon^{ble} Supreme Court held that:

“15. In Lalit Chaturvedi v. State of Uttar Pradesh 2024 SCC OnLine SC 171, this Court quoted an earlier decision in Mohammed Ibrahim v. State of Bihar (2009) 8 SCC 751, wherein, referring to Section 420 of the IPC, it was observed that the offence under the said Section requires the following ingredients to be satisfied:

“18. Let us now examine whether the ingredients of an offence of cheating are made out. The essential ingredients of the offence of cheating are as follows:

(i) deception of a person either by making a false or misleading representation or by dishonest concealment or by any other act or omission;

(ii) fraudulent or dishonest inducement of that person to either deliver any property or to consent to the retention thereof by any person or to intentionally induce that person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived; and

(iii) such act or omission causing or is likely to cause damage or harm to that person in body, mind, reputation or property.”

16. Reference was also made to the decision in V.Y. Jose v. State of Gujarat (2009) 3 SCC 78 and it was observed:

“7. Similar elucidation by this Court in V.Y. Jose v. State of Gujarat, explicitly states that a contractual dispute or breach of contract per se should not lead to initiation of a criminal proceeding. The ingredient of cheating, as defined under Section 415 of the IPC, is existence of a fraudulent or dishonest intention of making initial promise or

representation thereof, from the very beginning of the formation of contract. Further, in the absence of the averments made in the complaint petition wherefrom the ingredients of the offence can be found out, the High Court should not hesitate to exercise its jurisdiction under Section 482 of the Cr.P.C. Section 482 of the Cr.P.C. saves the inherent power of the High Court, as it serves a salutary purpose viz. a person should not undergo harassment of litigation for a number of years, when no criminal offence is made out. It is one thing to say that a case has been made out for trial and criminal proceedings should not be quashed, but another thing to say that a person must undergo a criminal trial despite the fact that no offence has been made out in the complaint. This Court in V.Y. Jose (supra) placed reliance on several earlier decisions in Hira Lal Hari Lal Bhagwati v. CBI, Indian Oil Corporation v. NEPC India Ltd., Vir Prakash Sharma v. Anil Kumar Agarwal and All Cargo Movers (I) (P) Ltd. v. Dhanesh Badarmal Jain.

* * *

18. *In Kunti v. State of Uttar Pradesh (2023) 6 SCC 109, this Court referred to Sarabjit Kaur v. State of Punjab (2023) 5 SCC 360 wherein it was observed that a breach of contract does not give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction. Merely on the allegation of failure to keep a promise will not be enough to initiate criminal proceedings. Thus, the dishonest intention on the part of the party who is alleged to have committed the offence of cheating should be established at the time of entering into the transaction with the complainant, otherwise the offence of cheating is not established or made out.*

19. *It is the duty and obligation of the court to exercise a great deal of caution in issuing process, particularly when the matter is essentially of civil nature [G. Sagar Suri v. State of U.P., (2000) 2 SCC 636]. The prevalent impression that civil remedies, being time-consuming, do not adequately protect the interests of creditors or lenders should be discouraged and rejected as criminal procedure cannot be used to apply pressure [Vijay Kumar Ghai v. State of West Bengal, (2022) 7 SCC 124]. Failure to do so results in the breakdown of the rule of law and amounts to misuse and abuse of the legal process.*

20. *In yet another case, again arising from criminal proceedings initiated in the State of Uttar Pradesh [Deepak Gaba v. State of Uttar Pradesh, (2023) 3 SCC 423] this Court was constrained to note recurring cases being encountered wherein parties repeatedly attempted to invoke the jurisdiction of criminal courts by filing vexatious complaints, camouflaging allegations that are ex facie outrageous or are pure civil claims. These attempts must not be entertained and should be dismissed at the threshold. Reference was made to a judgment of this Court in Thermax Limited v. K.M. Johny (2011) 13 SCC 412, which held that courts should be watchful of the difference between civil and criminal wrongs, though there can be situations where the allegation may constitute both civil and criminal wrongs. Further, there has to be a conscious application of mind on these aspects by the Magistrate, as a summoning order has grave consequences of setting criminal proceedings in motion. Though the Magistrate is not required to record detailed reasons, there should be adequate evidence on record to set criminal proceedings into motion. The Magistrate should carefully scrutinize the evidence on record and may even put questions to the*

complainant/investigating officer etc. to elicit answers to find out the truth about the allegations. The summoning order has to be passed when the complaint or chargesheet discloses an offence and when there is material that supports and constitutes essential ingredients of the offence. The summoning order should not be passed lightly or as a matter of course.

21. *Lastly, we would refer to another detailed judgment of this Court in Sharif Ahmed v. State of Uttar Pradesh 2024 SCC OnLine SC 726, which draws out the ingredients required to establish an offence under Sections 406, 415, 420, 503 and 506 of the IPC in the following terms:*

“37. The chargesheet states that the offence under Section 420 is not made out. The offence of cheating under Section 415 of the IPC requires dishonest inducement, delivering of a property as a result of the inducement, and damage or harm to the person so induced. The offence of cheating is established when the dishonest intention exists at the time when the contract or agreement is entered, for the essential ingredient of the offence of cheating consists of fraudulent or dishonest inducement of a person by deceiving him to deliver any property, to do or omit to do anything which he would not do or omit if he had not been deceived. As per the investigating officer, no fraudulent and dishonest inducement is made out or established at the time when the agreement was entered.”

(Emphasis added)

23. When we examine the facts of the present case in light of the law laid down by the Hon’ble Supreme Court in the above mentioned cases, it appears that the house in question had been purchased in the name of Rajat Saxena and her mother Raj Laxmi Saxena and the complainant was not its co-owner. The owners of the house Rajat Saxena and Raj Laxmi Saxena had mortgaged the house with the Bank. Smt. Raj Laxmi Saxena died on 04.11.2013. The complainant claims that since June 2014, he was paying the installments towards repayment of the loan taken by his wife and son, but it would not make him the owner of the house. A default was committed in repayment of the loans and the Bank had published a notice for auction of the house. The complainant filed S.A. No.319 of 2018 before the DRT and expressed willingness to deposit the dues of the Bank, provided the Bank executes a sale deed in his favour under a private treaty.

24. A treaty is a written agreement between sovereign states or other subjects of international law that is governed by international law. There can be no treaty between a Bank and an individual willing to repay the loan taken by his son and wife. The complainant has not produced any written agreement executed between himself and the bank. The cheating alleged in the complaint is that the Bank Manager Anshul Srivastava received the dues from the complainant and gave a No Dues Certificate but he handed over the title deed of the house to Rajat Saxena under a conspiracy. The complainant has stated that he has opened the locks of the house on 03.12.2019 and has started residing in it. He has stated that the accused persons have cheated him and are trying to usurp the house.

25. The complainant had filed S.A. No. 391 of 2018 in DRT. It is recorded in the order dated 18.12.2018 passed by DRT that the complainant had voluntarily made an offer to deposit the Bank's dues provided Lucknow, provided the title deed of secured asset was returned to him. Thereafter, he gave a letter dated 21.12.2018 the bank stating that he was willing to liquidate the loan accounts and he requested that the sale deed of the house No.5/71, Jankipuram Extension, Lucknow be released in his favour. The Bank Manager wrote a letter dated 24.12.2012 to the complainant stating that as directed in the order passed by the DRT, the bank will accept the payment from the complainant and will return the original title deed to him subject to closure of the loan account. On 29.01.2019, the Bank gave a No Dues Certificate to the complainant and asked him to file the requisite application before the DRT for further orders to enable the bank to execute necessary documents of transfer in favour of the complainant.

26. It is important to note that the entire communication till this stage was without involvement of the mortgagor Rajat Saxena, but upon coming to know about the aforesaid facts, the mortgagor filed objections before DRT. The DRT disposed off the S.A. finally by means of an order dated 28.10.2019, which takes note of the contention of the mortgagor Rajat Saxena that the house was purchased in the name of Rajat Saxena and his mother Smt. Raj Laxmi Saxena deceased through registered sale deed dt. 16.10.2017. Smt. Raj Laxmi Saxena died on 04.11.2013 leaving behind her husband (the complainant Rekeshwar Dayal Saxena), a son Rajat Saxena and two daughters namely Smt. Roopali Srivastava and Smt. Roopsi Srivastava as her legal heirs and successors. All the legal heirs have got equal share in the property left by the deceased. Therefore, Rajat Saxena had become owner of 62.5% share in the house whereas the complainant and his two daughters had 12.5% share each. The complainant had concealed the fact that he had already filed Regular Suit No. 735 of 2016 in the Court of Civil Judge (Senior Division), Lucknow for partition of the house. The mortgagor contended that he used to transfer money in the account of his father every month and his father used to deposit the installments towards repayment of loan from that money and he filed copies of account statements in support of this contention. The property cannot be transferred to one of the co-owners through a private treaty.

27. DRT disposed off the S.A. by means of an order dated 28.10.2019, wherein it is recorded that: -

“The cause of action for presentation of Securitization Application of applicant was the measure taken by Respondent NO. 1 Financial Institution u/s 13(4) of SARFAESI Act, 2002. The Respondent No. 1 Financial Institution is not proceeding under the provisions of SARFAESI Act hence there is no cause of action now to SARFAESI Act hence there is no cause of action now to proceed with the matter. The order issuing notice relating to share of applicant and Respondent NO. 2 and other family members is pending before the Civil Court. This Tribunal is not competent to deal with the said issue of partition or right of properties. Since there is no cause of action, the Securitization Application deserve to be disposed off.”

28. The aforesaid facts reveal that firstly the complainant claims to have made an offer to the Bank to repay the dues, but the Bank Manager has not made any demand to the complainant. Secondly, although the complainant had put a condition that the title deed of the house be handed over to him, the Bank Manager had replied that the bank will accept the payment from the complainant and will return the original title deed to him subject to closure of the loan, as directed in the order passed by the DRT. In the final order dated 28.10.2019, DRT stated that it has no jurisdiction to decide the claims to ownership of the property, and thereafter the Bank did not hand over the title deed of the house to the complainant.

29. The aforesaid facts do not even prima facie make out a case of cheating by the Bank Manager, as he had not demanded any money from the complainant, he did not commit any illegality in accepting repayment of the Bank's dues from the complainant and he had not made any promise to transfer ownership of the property to the complainant. Although he had initially promised to hand over title deed of the house to the complainant, handing over title deeds of an immovable property does not amount to transferring ownership of the property and even if the Bank had handed over the title deed of the house, the true owners of the house would not have become divested of their ownership rights.

30. The complainant has not disclosed the true market value of the house and prima facie it appears that the complainant himself had devised a mala fide design to grab the entire house and divest his son and daughters of their share in it by making paying some money to the Bank. These facts do not at all make out a case of cheating committed by the complainant's son. There is no allegation of commission of any act by the applicant no. 2 Anil Saxena and there was absolutely no ground to summon him to face the trial.

31. The ingredient of 'cheating', as defined under Section 415 of the IPC, is existence of a fraudulent or dishonest intention of making initial promise or representation thereof, from the very beginning of the formation of contract. Rajat Saxena and Anil Saxena had not made any promise to the complainant, much less a promise made with a dishonest intention. The Bank Manager had not made any inducement to the complainant, rather the complainant had himself approached the Bank manager for repayment of the amount and the Bank manager did not commit any wrong by accepting the dues of the Bank from the complainant, who is the father of the borrower - mortgagor.

32. It appears that the trial Court has passed the impugned order dated 08.04.2022 summoning the applicants, in a mechanical manner and without application of mind to the aforesaid facts which are evident on the face of the record, which vitiates the impugned summoning order.

33. In view of the foregoing discussion, both the present applications filed under Section 482 Cr.P.C. are **allowed**. The impugned summoning order dated 08.04.2022 passed by the learned Additional Chief Judicial Magistrate-V, Court No.29, Lucknow in the Misc. Case No.3649 of 2021 is **quashed** and the complaint filed by the complainant is hereby **dismissed**.

(2026) 4 ILRA 893
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 22.04.2026

BEFORE

THE HON'BLE GAUTAM CHOWDHARY, J.

Application U/S 482. No. 4950 of 2022

Smt. Shaheen Naz @ Shaheen Taj & Anr. ...Applicants
Versus
State of U.P. & Anr. ...Opposite Parties

Issue for consideration

The complainant filed a case in Firozabad alleging that the applicants refused to return Rs. 1 lakh security deposit, cash and a gold chain left in a rented Bangalore house.

Headnotes

A. Indian Penal Code,1860-Sections 120-B, 406, 420-Criminal Procedure Code,1973-Section 482-Quashing of entire proceedings-Territorial jurisdiction-Cause of action-Dispute over non-return of security money, cash and jewelry left at the Bangalore residence-Merely because initial talks took place at Firozabad does not confer jurisdiction when the entire performance and alleged offence occurred in Bangalore-No part of the cause of action arose within the territorial jurisdiction of the Firozabad court-Magistrate failed to conduct the mandatory inquiry or investigation required u/s 202(1) before issuing the summoning order-Proceeding set aside.(Para 7 to 13)

Held

The court allowed the application and quashed the entire criminal proceedings ruling that the Firozabad court lacked territorial jurisdiction u/s 177 since the entire alleged offense and subject matter occurred in Bangalore. The court further held that the Magistrate failed to conduct the mandatory inquiry u/s 202(1) Cr.PC. required when accused reside outside its jurisdiction, demonstrating a total non-application of judicial mind. (E-6)

Case law Cited

Y. Abraham Ajith And Others Vs. Inspector of Police, Chennai And Another (2004) 8 SCC 100-referred to.

List of Acts

Indian Penal Code,1860, Criminal Procedure Code,1973.

List of Keywords

Cause of action, Territorial jurisdiction, Section 177, Section 202(1), Inquiry, Summoning order , Non-application of judicial mind, Covid-19 pandemic, Tenancy dispute, Criminal breach of trust.

Case Arising from

CRIMINAL JURISDICTION: APPLICATION U/S 482 No.- 4950 OF 2022

Smt. Shaheen Naz @ Shaheen Taj And Another Vs. State of U.P. And Another

From the judgment and order dated 22.04.2026 of the High Court of judicature at Allahabad.

Appearances for Parties**Advs. for Applicant(s)**

Arvind Agrawal

Advs. for Opposite Party(s)

G.A., Jai Prakash Yadav

(Delivered by Hon'ble Gautam Chowdhary, J.)

1. The case is taken up in the revised reading of the list. None appears for the opposite party no.2 although name of Sri Jai Prakash Yadav, learned counsel has been shown in the cause list as counsel for opposite party.

2. Heard Sri Arvind Agarwal, learned counsel for the applicants, learned A.G.A. for the State and perused the material on record.

3. A complaint dated 05.01.2021 was filed by the opposite party no.2 against the applicants in the Court of learned Chief Judicial Magistrate, District Firozabad being Complaint Case No. 312 of 2021 (Shivam Upadhyay Vs. Smt. Shaheen and others) Police Station Uttar, District Firozabad for summoning the accused applicants under Sections 120-B, 406, 420 I.P.C. and to punish them for the offence under the said Sections.

4. The complainant's story in brief is that he has sweet and friendly relations with the accused-applicants, as he has been doing job at Bangalore since 2016, on account of which, the accused-applicants visited his house at Firozabad. On 13.09.2019, the accused-applicants came to the house of the complainant and during conversation, the accused-applicants came to know that he is searching for a house on rent at Bangalore. The accused applicants told him that they have a house at Bangalore, which is vacant, and they are in need of money. Further, the accused-applicants ask him, if he could give them Rs.1 lacs as security and Rs. 15,000/- monthly rent they will rent that property to the complainant and the complainant may vacate the house, on a month's prior intimation. On vacation of the rented property, they would return Rs.1 lacs. It is further averred that due to congenial relation and since the complainant respected them as his father and mother, on 15.09.2019, he had transferred Rs. 10,000/-, on 17.09.2019 Rs. 80,000/- through net banking and Rs. 10,001/-. In this way, he had given Rs. 1,00,001/- as security. Thereafter, the complainant started residing at the house of the applicants at Bangalore and was paying rent besides electricity bill. It has also been stated that in the said house, Rs. 50,000/-, a gold chain weighing about 4 tola as well as necessary documents and clothes were kept and on 06.03.2022 due to Holi festival he returned to his house at District Firozabad. Trusting the applicants, he had handed over the keys of the house to the applicants but due to COVID-19 Pandemic, complete lockdown was imposed in the country as such neither he could to back to Bangalore nor resided in the said house and also he could not use the facilities of that house. The complainant gave intimation about vacation of the house at the initial stage of lockdown and has requested the applicants to return security amount of Rs. 1 lacs, cash, gold chain, clothes etc. that were kept in the house, but the accused-applicants were making excuses and had not returned the same. When the applicants did not return the same, the complainant sent a written notice dated 31.10.2020 through registered post but no heed had been paid. Thus the complaint was filed in the Court of learned Chief Judicial Magistrate, District Firozabad, on 05.01.2021. Upon the aforesaid complainant, the learned Magistrate, recorded the statements of the complainant as well as witnesses under Section 200 and 202 Cr.P.C. After recording of evidence, the learned Chief Judicial Magistrate vide order dated 19.03.2021 has summoned the accused-applicants under Sections 406, 420 I.P.C. in Complaint Case No. 312 of 2021 (Shivam Upadhyay Vs. Smt. Shaheen and another). It is this summoning order as well as proceedings of aforesaid complaint case that are under challenge before this Court.

5. Learned counsel for the applicants has contended that the dispute is purely of contractual nature which has been dragged into criminal prosecution of the applicants. Learned counsel further contends that the perusal of the complaint would show that the entire offence is alleged to have been committed at Bangalore, whereas the complaint has been filed at District Firozabad. He further submits that the learned Magistrate without conducting the mandatory inquiry under Section 202 (1) Cr.P.C., has summoned the accused applicants to face trial under the charged Sections. Learned counsel further argued that the criminal proceedings can only be initiated in the local areas where the offence has been committed, as has been enshrined in Section 177 Cr.P.C. He further

submits that in the instant case neither any inquiry under Section 202 (1) Cr.P.C. has been conducted nor the learned Magistrate has taken into consideration the provisions of Section 177 Cr.P.C. prior to summoning the applicants. It is thus contended that impugned order is not only illegal, arbitrary but is also without application of judicial mind, therefore, the summoning order as well as entire proceedings arising out of summoning order are liable to be quashed by this Court.

6. On the other side, learned A.G.A. has contended that the applicants came to the house of the applicants at District Firozabad and the deal had taken place at District Firozabad, therefore the complaint has rightly been filed at District Firozabad upon which the learned Magistrate summoned the accused-applicants, thus there is no illegality or perversity in the order impugned and the instant application is liable to be dismissed.

7. Section 177 of the Code of Criminal Procedure (Cr.P.C), 1973, establishes the fundamental rule for territorial jurisdiction in criminal cases, stating that every offence shall "ordinarily" be inquired into and tried by a court within whose local jurisdiction the offence was committed.

8. The Supreme Court in **Y. Abraham Ajith And Others Vs. Inspector of Police, Chennai And Another (2004) 8 SCC 100** has held in paragraph no.12 to 18 as under:

"12. The crucial question is whether any part of the cause of action arose within the jurisdiction of the Court concerned. In terms of Section 177 of the Code, it is the place where the offence was committed. In essence it is the cause of action for initiation of the proceedings against the accused.

13. While in civil cases, normally the expression "cause of action" is used, in criminal cases as stated in Section 177 of the Code, reference is to the local jurisdiction where the offence is committed. These variations in etymological expression do not really make the position different. The expression "cause of action" is, therefore, not a stranger to criminal cases.

14. It is settled law that cause of action consists of a bundle of facts, which give cause to enforce the legal inquiry for redress in a court of law. In other words, it is a bundle of facts, which taken with the law applicable to them, gives the allegedly affected party a right to claim relief against the opponent. It must include some act done by the latter since in the absence of such an act no cause of action would possibly accrue or would arise.

15. The expression "cause of action" has acquired a judicially settled meaning. In the restricted sense cause of action means the circumstances forming the infraction of the right or the immediate occasion for the action. In the wider sense, it means the necessary conditions for the maintenance of the proceeding including not only the alleged infraction, but also the infraction coupled with the right itself. Compendiously, the expression means every fact, which it would be necessary for the complainant to prove, if traversed, in order to support his right or grievance to the judgment of the Court. Every fact, which is necessary to be proved, as distinguished from every piece of evidence, which is necessary to prove such fact, comprises in "cause of action".

16. *The expression "cause of action" has sometimes been employed to convey the restricted idea of facts or circumstances which constitute either the infringement or the basis of a right and no more. In a wider and more comprehensive sense, it has been used to denote the whole bundle of material facts.*

17. *The expression "cause of action" is generally understood to mean a situation or state of facts that entitles a party to maintain an action in a court or a tribunal; a group of operative facts giving rise to one or more bases for sitting; a factual situation that entitles one person to obtain a remedy in court from another person. (Black's Law Dictionary a "cause of action" is stated to be the entire set of facts that gives rise to an enforceable claim; the phrase comprises every fact, which, if traversed, the plaintiff must prove in order to obtain judgment. In "Words and Phrases" (4th Edn.), the meaning attributed to the phrase "cause of action" in common legal parlance is existence of those facts, which give a party a right to judicial interference on his behalf.*

18. *In Halsbury Laws of England (Fourth Edition) it has been stated as follows:*

" 'Cause of action' has been defined as meaning simply a factual situation the existence of which entitles one person to obtain from the Court a remedy against another person. The phrase has been held from earliest time to include every fact which is material to be proved to entitle the plaintiff to succeed, and every fact which a defendant would have a right to traverse. 'Cause of action' has also been taken to mean that particular act on the part of the defendant which gives the plaintiff his cause of complaint, or the subject matter of grievance founding the action, not merely the technical cause of action".

9. Perusal of the record shows that in the complaint, the complainant has stated that he was residing at the house of the applicants at Bangalore, after paying Rs. 1 lacs as security, on a monthly rent of Rs. 15,000/- besides electricity bill. In the house Rs. 50,000/-, gold chain weighing about 4 tola as well as necessary documents and clothes were kept in the house and trusting the applicants, handed over the keys of the house of Bangalore, returned to his house at District Firozabad on 06.03.2020 due to Holi festival. Thereafter there was a complete lockdown in the country due to COVID-19 Pandemic as such he could neither return to Bangalore nor resided in the said house and also he could not avail the facilities of that house. The complainant gave intimation about vacation and had requested the applicants to return the security amount of Rs. 1 lacs, cash, gold chain, clothes etc. kept in the house but the accused-applicants were making excuses and had not returned the same, which itself demonstrates that the offence has been committed at Bangalore and not at District Firozabad. The complainant also sent a notice to the accused-applicants at Bangalore from District Firozabad and merely sending the notice does not demonstrate that the offence has been committed at District Firozabad. No part of cause of action is demonstrated to have arisen within the territorial jurisdiction of district Firozabad. Merely because the talks with regard to rented accommodation is stated to have taken place at the house of complainant at district Firozabad, does not give rise to any cause of action at district Firozabad as the whole incident and the subject matter of dispute lies outside the territorial jurisdiction of district Firozabad.

10. So far as contention of learned counsel for the applicants with regard to Section 202 (1) Cr.P.C. is concerned, that provision reads as under:-

"202(1). Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under section 192 may, if he thinks fit, [and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction] [Inserted by Act 25 of 2005, Section 19 (w.e.f. 23-6-2006).] postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding."

11. However perusal of the record shows that in the instant case, neither an inquiry as provided under Section 202 (1) Cr.P.C. has been conducted by the learned Magistrate nor the learned Magistrate has taken into consideration the provisions of Section 177 of Code of Criminal Procedure and has summoned the accused-applicants therefore, taking into consideration the contents of the complaint as well as entire factual and legal aspects of the matter and also the submissions of learned counsel for the parties, it is crystal clear that as per factual scenario disclosed by the complainant in the complaint, the inevitable conclusion is that no part of cause of action arose in District Firozabad and therefore the Magistrate concerned had no jurisdiction to deal with the matter.

12. Accordingly, the entire proceedings of Complaint Case No. 312 of 2021 (Shivam Upadhyay Vs. Smt. Shaheen and another) under Sections 406, 420 I.P.C. Police Station North, District Firozabad pending before Chief Judicial Magistrate is quashed.

13. The application under Section 482 Cr.P.C. is allowed.

14. However, it is open for the complainant to file the complaint in the appropriate Court to be dealt with in accordance in law, if so advised.

(2026) 4 ILRA 898
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 23.04.2026

BEFORE

THE HON'BLE ACHAL SACHDEV, J.

Application U/S 528 BNSS. No. 7481 of 2025

Smt. Mayya @ Prem Kumari & Ors. ...Applicants
Versus
State of U.P. & Anr. ...Opposite Parties

Issue for consideration

The key dispute is whether a Magistrate, while presiding over a session of a National Lok Adalat, has the legal authority to reject a police Final Report, entertain a protest petition, and order the matter to be registered as a criminal complaint case in the absence of a mutual compromise or settlement between the parties.

Headnotes

A. Indian Penal Code,1860-Sections 323, 504, 506-Criminal Procedure Code,1973-Section 482(Section 528 BNSS 2023)-Quashing of summoning order-Final Report submitted by police in NCR matter-Protest petition filed by complainant-Judicial Magistrate sitting in Lok Adalat rejected the police Final Report and ordered the matter to be registered as a complaint case-Subsequent regular court issued summoning orders against the accused applicants-Jurisdiction of Lok Adalat-Lok Adalats are purely conciliatory and advisory forums, not adjudicatory bodies-Rejecting a police report and taking cognizance are strictly judicial acts to be performed by a regular court-Where no compromise is arrived at, Lok Adalat is statutorily mandated to return the record to the regular court for disposal in accordance with law-Initial order passed by Lok Adalat converting the case into a complaint was completely without jurisdiction and nullity in law-It is settled principle of law that an initial order without jurisdiction taints and vitiates all subsequent consequential proceedings-Application allowed.(Para 7 to 22)

Held

The court held that Lok Adalat are strictly conciliatory forums lacking jurisdiction to adjudicate cases on merit, reject police Final Reports or register complaint cases. Because acts of taking cognizance are purely judicial functions reserved exclusively for regular courts, the initial Lok Adalat order was a jurisdictional nullity. Thus, Impugned Lok Adalat order, summoning order and entire criminal proceedings quashed as unsustainable. (E-6)

Case law Cited

State of Punjab & Ors Vs Ganpat Raj, (2006) 8 SCC 364., Estate Officer Vs Colconel HV Mankotia (2021) SCC ONLINE SC 898-referred to.

List of Acts

Indian Penal Code, 1860, Criminal Procedure Code,1973.

List of Keywords

Legal Services Authorities Act,1987, Lok Adalat jurisdiction, Conciliatory forum, Final Report rejection, Protest Petition, complaint case registration, Summoning order, Jurisdictional nullity, Vitiating of proceedings.

Case Arising from

CRIMINAL JURISDICTION: APPLICATION U/S 528 BNSS No.-7481 OF 2025

Smt. Mayya @ Prem Kumari & 2 Ors Vs. State of U.P. & Anr.

From the judgment and order dated 23.04.2026 of the High Court of judicature at Allahabad.

Appearances for Parties

Advs. for Applicant(s)

Markandey Rai, Pradeep Kumar Rai, Sandeep Kumar Rai

Advs. for Opposite Party(s)

Anil Kumar Dubey, G.A., Ram Milan Dwivedi

(Delivered by Hon'ble Achal Sachdev, J.)

1. Learned counsel for the applicants, learned A.G.A. for the State and learned counsel for the opposite party no. 2 are present.

2. From perusal of order sheet, it appears that this Court, vide order dated 11.08.2025, had granted three weeks time to the opposite party no. 2 to file counter affidavit but till date, no counter affidavit has been filed.

3. Learned A.G.A. submits that the matter has been decided in Lok Adalat which is not as per law laid down by the Hon'ble Supreme Court.

4. Perused the record.

5. The protest petition had been filed against the final report no. Nil/2016 dated 10.12.2016 submitted in NCR No. 141/2015 against which the complainant/informant had filed his protest petition and the protest petition was treated as complaint by the court of Judicial Magistrate, Banda, in National Lok Adalat vide order dated 09.12.2017.

6. Learned counsel for the applicants, by way of the present application u/s 482 Cr.P.C., has challenged the order dated 09.12.2017 by which final report has been treated as complaint case in National Lok Adalat and also the impugned summoning order dated 28.03.2024 by which applicants have been summoned in Complaint Case No. 725/??/2017 (Gulab Singh Vs. Smt. Mayya Alias Prem Kumari and others) u/s 323, 504, 506 I.P.C., Police Station- Atarra, District- Banda.

7. Learned counsel for the applicants has drawn the attention of the Court to the judgement of Supreme Court in the case of **State of Punjab and Ors. Vs. Ganpat Raj, (2006) 8 SCC 364**.

8. A Magistrate has the legal authority to reject a police Final Report (FR) and instead treat the matter as a complaint case. However, this typically occurs in a regular court setting rather than during Lok Adalat proceedings, as Lok Adalats lack the jurisdiction to adjudicate or decide cases on merit if no settlement is reached.

9. Section 21 of the LSA Act provides that every award of a Lok Adalat shall be deemed to be a decree of a civil court, that it shall be final and binding on the parties to the dispute, and that no appeal shall lie against it. Similarly, section 22E, which deals with awards of a Permanent Lok Adalat, similarly declares that every award shall be final and binding on the parties and persons claiming under them, shall be deemed to be a decree of a civil court and shall not be called in question in any original suit, application or execution proceeding. Both provisions reflect a common legislative intent that such awards are to attain finality, are not appealable in the ordinary sense, and are to operate as decrees only for the limited purpose of execution. But in a case investigated by the police, when the police submit a report stating that no case is made out, the Magistrate has following primary options :

1) Accept the final report and close proceedings.

2) Disagree with the final report and take cognizance under Section 190(1)(b) Cr.P.C. based on the police papers.

3) Treat the protest petition/complaint as a complaint case under Section 190(1)(a) Cr.P.C. and proceed under Chapter XV (Sections 200-203 Cr.P.C.).

4) Direct further investigation.

10. If the Magistrate rejects the final report and registers the matter as a complaint, he must follow the complaint case procedure as laid out in Chapter XV of Cr.P.C,1973/Chapter XVI BNSS,2024

i) Record statements under Section 200 Cr.P.C.

ii) Conduct an inquiry under Section 202 Cr.P.C. if necessary.

iii) Only thereafter, if sufficient grounds exist, issue a process under Section 204 Cr.P.C.

11. The summoning order must reflect the application of the judicial mind. Courts have repeatedly held that a cryptic or mechanical order summoning the accused is invalid. (Pepsi Foods Ltd. and Another Vs. Special Judicial Magistrate & Others, 1998 CrLJ 01)

12. A Magistrate, while sitting as a member of Lok Adalat, has a limited jurisdiction regarding matters before him. The primary role of a Lok Adalat is to facilitate a settlement between the parties on the basis of their consent regarding the dispute. If no compromise is reached, the Lok Adalat must return the case to the regular court. It cannot perform judicial functions like rejecting an final report or deciding to treat it as a complaint case. Any judicial order rejecting a report and switching to a complaint procedure must be made by the regular court where the case was originally pending. Under the Legal Services Authorities Act, 1987, Lok Adalats are purely conciliatory forums, not adjudicatory ones.

13. If, after rejection of final report, the matter is "registered as a complaint" in Lok Adalat, that order itself is procedurally questionable. Since Lok Adalat cannot adjudicate or direct cognisance, such an order has no independent legal sanctity unless it reflects a compromise. Criminal complaints cannot be "registered" by Lok Adalat in substitution of the Magistrate's judicial function.

14. The settled principle is that if the initial order is without jurisdiction, all subsequent proceedings?including a summoning order?stand vitiated and cannot survive. The Supreme Court has explicitly held that jurisdictional nullity taints every consequential step.

15. The Supreme Court has unequivocally held in **Estate Officer vs. Colonel HV Mankotia (2021 SCC ONLINE SC 898)** that Lok Adalats have no jurisdiction to decide cases on merits or pass judicial orders if a settlement is not reached. If parties do not reach a compromise, the Lok Adalat is statutorily bound to return the case file to the regular court for disposal according to law.

16. Acts such as "rejecting an FR" or "taking cognisance" are judicial functions that must be performed by a Magistrate in their regular court capacity, not as a member of a Lok Adalat panel. Once an order is found to be passed without jurisdiction, all subsequent proceedings automatically come to an end. If a Lok Adalat "registers" a complaint after FR rejection, that act is without jurisdiction (Lok Adalat cannot adjudicate or direct cognisance). Any summoning order flowing from such registration is vitiated because its foundation is void.

17. The order of the Lok Adalat in this case (extracted above), shows that it assumed a judicial role and ignored the absence of consensus while passing an order rejecting the Final Report in NCR No. 141 of 2015 and ordered the same to be registered as a complaint case.

18. For the sake of convenience, Sections 20 and 21 of the Legal Services Authorities Act, 1987 are being reproduced hereinbelow :

20. Cognizance of cases by Lok Adalats.-(1) *Where in any case referred to in clause (i) of sub-section (5) of section 19,? (i)(a) the parties thereof agree;*

or (b) one of the parties thereof makes an application to the Court, for referring the case to the Lok Adalat for settlement and if such court isprima facie satisfied that there are chances of such settlement; or

(ii) the court is satisfied that the matter is an appropriate one to be taken cognizance of by the Lok Adalat, the Court shall refer the case to the Lok Adalat: Provided that no case shall be referred to the Lok Adalat under sub-clause (b) of clause (i) or clause (ii) by such court except after giving a reasonable opportunity of being heard to the parties.

(2) Notwithstanding anything contained in any cither law for the time being in force, the Authority or Committee organising the Lok Adalat under sub-section (1) of section19 may, on receipt of an application from any one of the parties to any matter referred to in clause (ii) of sub-section (5) of section 19 that such matter needs to be determined by a Lok Adalat, refer such matter to the Lok Adalat, for determination: Provided that no matter shall be referred to the Lok Adalat except after giving a reasonable opportunity of being heard to the other party.

(3) Where any case is referred to a Lok Adalat under sub-section (1) or where a reference has been made to it under sub-section (2), the Lok Adalat shall proceed to dispose of the case or matter and arrive at a compromise or settlement between the parties.

(4) Every Lok Adalat shall, while determining any reference before it under this Act, act with utmost expedition to arrive at a compromise or settlement between the parties and shall be guided by the principles of justice, equity, fair play and other legal principles.

(5) Where no award is made by the Lok Adalat on the ground that no compromise or settlementcould be arrived at between the parties, the record of the case shall be returned by it to the court, from which the reference has been received under sub-section (1) for disposal in accordance with law.

(6) Where no award is made by the Lok Adalat on the ground that no compromise or settlement could be arrived at between the parties, in a matter referred to in sub-section (2), that Lok Adalat shall advice the parties to seek remedy in a court.

(7) Where the record of the case if returned under sub-section (5) to the court, such court shall proceed to deal with such case from the stage which was reached before such reference under sub-section (1).]

21. Award of Lok Adalat.- *[(1) Every award of the Lok Adalat shall be deemed to be a decree of a civil court or, as the case may be, an order of any other court and where a compromise or settlement has been arrived at, by a Lok Adalat in a case referred to it under sub-section(1) of section 20, the court-fee paid in such case shall be refunded in the manner provided under the Court-fees Act, 1870 (7 of 1870).]*

(2) Every award made by a Lok Adalat shall be final and binding on all the parties to the dispute, and no appeal shall lie to any court against the award.

19. Perusal of Annexure No. 1 shows that Complaint Case No. 725/नौ/2017 (Gulab Singh Vs. Smt. Mayya Alias Prem Kumari and others) was fixed in National Lok Adalat on 09.12.2017 and the following order was passed in the case :

पत्रावली राष्ट्रीय लोक अदालत में पेश हुयी। परिवादी उपस्थित। परिवादी की ओर से प्रोटेस्ट याचिका प्रस्तुत की गयी तथा विपक्षी को तलब किये जाने की याचना की गयी है।

सुना तथा पत्रावली का अवलोकन किया। पत्रावली के अवलोकन से विदित है कि अन्तिम आख्या जिन आधारों पर प्रस्तुत की गयी है यदि वह पुनः अग्रेतर विवेचना हेतु प्रेषित की जाती है तो प्रकरण निष्पक्ष विवेचना किये जाने की सम्भावना नहीं है।

उपलब्ध प्रपत्रों

के आधार पर विपक्षीगण को तलब किये जाने भी आधार पर्याप्त नहीं हैं किन्तु परिवादी प्रकरण के सभी आवश्यक तथ्यों से परिचित भी है। साक्षीगण भी उसकी पहुँच की परिधि में है। प्रकरण को वह अपने साक्ष्यों के माध्यम से भी साबित कर सकता है। प्रस्तुत प्रकरण में अग्रेतर विवेचना अथवा विपक्षीगण को तलब किये जाने के स्थान पर मामले को परिवाद के रूप में संस्थित किया जाना न्यायोचित होगा।

आदेश

अन्तिम आख्या Nil/16 दिनांकित 10/12/2016 निरस्त करते हुये प्रकरण को परिवाद के रूप में दर्ज किया जाता है। कार्यालय अविलम्ब अनुपालन सुनिश्चित करे तत्पश्चात पत्रावली वास्ते साक्ष्य अंतर्गत धारा- 200 दं०प्र०सं० दिनांक 3/2/18 को पेश हो।

20. The final report was rejected and case was registered as a complaint case. In consequence to order dated 09.12.2017, the order dated 28.03.2024 was passed in the case of Gulab Singh Vs. Smt. Mayya Alias Prem Kumari and others, arising out of order dated 09.12.2017 on protest petition filed on final report Nil/2016 dated 10.12.2016 in N.C.R. No. 141/2015 u/s 323, 504, 506 I.P.C., Police Station- Atarra, District- Banda and accused/applicant nos. 1, 2 and 3, namely, Smt. Mayya @ Prem Kumari, Smt. Ranjana and Km. Bandana were summoned as accused in the aforementioned case.

21. In the eyes of law and ratio given by the Supreme Court in a catena of judgements, the impugned cognizance/summoning order dated 28.03.2024, impugned order dated 09.12.2017 as

well as entire proceedings of Complaint Case No. 725/नौ/2017 (Gulab Singh Vs. Smt. Mayya Alias Prem Kumari and others), are not sustainable in law and are hereby quashed.

22. The present application u/s 528 B.N.S.S. is accordingly **allowed**.

(2026) 4 ILRA 904
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 08.04.2026

BEFORE

THE HON'BLE SAMIT GOPAL, J.

Application U/S 482 No. 8190 of 2023

Ramdular Singh

...Applicant
Versus

State of U.P. & Anr.

...Opposite Parties

Issue for consideration

The applicant filed a third petition under section 482 Crpc to quash a 2019 charge-sheet and summoning order arising out of case crime no. 119 of 2018. He had previously filed two separate petitions u/s 482 CrPC challenging intermediate orders and processes in the same case-one of which was dismissed and the other disposed of with specific directions to surrender-thereby abandoning or failing to obtain the relief of quashing the entire underlying criminal proceedings.

Headnotes

A. Indian Penal Code, 1860-Sections 149, 420, 467, 468, 471, 504, 506- Criminal Procedure Code,1973-Section 482-Successive petitions for quashing-Maintainability-Applicant challenging the summoning order and charge sheet after a delay of 3 years and after filing two earlier petitions with limited prayers-Accused cannot raise one plea after another by repeatedly invoking the inherent jurisdiction of the High Court when such pleas were very much available to him at the first instance-Challenges cannot be made in a piecemeal manner by abandoning grounds in previous petitions and taking them up in a new petition-Petition dismissed.(Para 15 to 18)

Held

The court held that agitating a matter in parts by abandoning grounds in earlier rounds of litigation and resurrecting them in subsequent petitions constitutes an abuse of process of law, amounts to forum shopping and directly demeans the efficacy of the criminal justice administration system. (E-6)

Case law Cited

M.C. Ravikumar Vs D.S Velmurugan: (2025) SCC OnLine SC 1498, Vijay Kumar Ghai Vs State of W.B.: (2022) 7 SCC 124-referred to.

List of Acts

Indian Penal Code, 1860, Criminal Procedure Code,1973.

List of Keywords

Maintainability, Successive Petitions, Piecemeal challenges, Abandoned grounds, Forum shopping Abuse of process.

Case Arising from

CRIMINAL JURISDICITON: APPLICATION U/S 482 No.- 8190 OF 2023

Ramdular Singh Vs. State of U.P. And Another**From the** judgment and order dated 08.04.2026 of the High Court of judicature at Allahabad.**Appearances for Parties****Advs, for Applicant(s):**

Anurag Vajpeyi, Praveen Kumar Singh

Advs. for Opposite Party(s):

Arvind Kumar Rai, G.A., Prashant Sharma,

Sanjay Kumar Srivastava, Vishesh Kumar Singh, Yogesh Singh

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

1. Heard Sri Manish Tiwary, learned Senior Advocate assisted by Sri Praveen Kumar Singh, learned counsel for the applicant, Sri Yogesh Singh, learned counsel for the opposite party no.2 and Sri Ajay Singh, learned A.G.A.-I for State and perused the records.

2. The present application U/S 482 Cr.P.C. has been filed by the applicant- Ramdular Singh with the following prayer:-

"It is, therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to allow this application u/s 482 Cr.P.C. and quash the charge-sheet dated 16.02.2019 as well as summoning order dated 13.03.2019 and the entire proceedings of Case No. 330 of 2019 (State Vs. Ram Dular Singh and others) arising out of Case Crime No. 119 of 2018, under Sections 149, 420, 467, 468, 471, 504, 506 I.P.C., Police Station Lohta, District Varanasi, pending in the court of A.C.J.M.-IV, Varanasi.

It is further prayed that this Hon'ble Court may graciously be pleased to stay the entire proceedings of Case No. 330 of 2019 (State Vs. Ram Dular Singh and others) arising out of Case Crime No. 119 of 2018, under Sections 149, 420, 467, 468, 471, 504, 506 I.P.C., Police Station Lohta, District Varanasi

And / or this Hon'ble Court be pleased to pass any order which this Hon'ble Court may deem fit and proper in the circumstances of the case."

3. An order dated 27.05.2024 was passed by another Bench of this Court which reads as under:-

"1. The judgment could not be pronounced on account of sufficient time has been lapsed.

2. The matter requires further clarification.

3. List for further hearing before appropriate Court in due course."

4. The said order dated 27.05.2024 was subjected to challenge by the applicant Ramdular Singh before the Apex Court in Special Leave to Appeal (Crl.) No. 11919 / 2024 (Ramdular Singh

Vs. State of U.P. & Anr.) which stood disposed of by an order dated 02.12.2024 by which the Apex Court directed that till such time, the matter is considered next by the High Court, there shall be stay of proceedings before the trial court and the petitioner therein was granted liberty to seek extension of the stay order till disposal of the petition on merits. The roster Bench of this Court was requested to dispose of the petition in accordance with law as early as possible, preferably within three months from the date upon hearing all the parties. The said order reads as under:

“1. Read the office report dated 29th November, 2024.

2. Notice sought to be served on the respondent no.2 appears to have been returned with the postal remark □receiver went somewhere and will return only after 5-6 days, hence notice could not be served.”

3. Having regard to the short issue involved in the special leave petition, we do not consider it necessary to wait for the respondent no.2 to appear.

4. According to the petitioner, a civil dispute has been given the colour of a criminal offence and proceedings launched against him based on the complaint of the respondent no.2. He had approached the High Court with a petition¹ under Section 482 of the Code of Criminal Procedure, 1973 challenging such proceedings. On 28th March, 2023, the High Court reserved judgment without, however, passing any interim order. Exactly 14 (fourteen) months later, i.e., on 27th May, 2024, the High Court de-reserved judgment and directed listing of the said petition before an appropriate Bench.

5. Learned counsel for the petitioner expresses a grievance that in the absence of any order of stay passed by the High Court, the proceedings against the petitioner which continued have reached the stage of charges being framed, thereby effectively rendering the petition before the High Court infructuous.

6. We do not know the exact reason as to why the learned Judge of the High Court, despite lapse of 14 (fourteen) months since judgment was reserved, could not deliver the judgment and dispose of the petition one way or the other.

7. Be that as it may, without expressing any further comment on the matter of keeping a reserved judgment pending for 14 (fourteen) months and then not delivering the same, we request the roster bench of the High Court to dispose of the petition in accordance with law as early as possible, preferably within three months from date upon hearing all the parties. Should there be any lack of cooperation from any party, the High Court may proceed according to law.

8. Till such time, the matter is considered next by the High Court, there shall be stay of proceedings before the trial court, i.e., the court of the Additional Chief Judicial Magistrate-IV, Varanasi, in Case No. 330 of 2019. The petitioner shall be at liberty to seek extension of the order of stay till the disposal of the 1 Criminal Misc. Application No. 8190/2023 petition on merits.

9. With the aforesaid observation, the special leave petition stands disposed of.

10. Pending application(s), if any, shall stand disposed of."

5. Subsequently the matter came up for hearing before a co-ordinate Bench of this Court on 20.01.2025 and despite repeated calls since no one appeared to press the present application, the same was dismissed for want of prosecution, the order passed therein reads as under:-

"List revised. None is present for the applicant. However learned AGA for the State is present.

Vide order dated 04.12.2024 passed by the Hon'ble Supreme Court, a direction was issued to decide the instant matter, expeditiously.

Despite repeated call, none appeared for the applicant to press the instant application.

Case is dismissed for want of prosecution."

6. The order-sheet reflected that an application for recall was filed which was allowed vide order dated 08.04.2025 passed by a co-ordinate Bench of this Court and the petition was restored to its original number and status with a further order that the trial court shall defer the proceedings of the trial till the disposal of this application before this Court, the order reads as under:-

"Order on Recall Application

Heard Mr. Praveen Kumar Singh, the learned counsel for applicant, the learned A.G.A. for State opposite party 1 and Mr. Arvind Kumar Rai, the learned counsel representing first informant opposite party 2.

Perused the record.

This recall application has been filed by applicant seeking recall of the order dated 20.1.2025 passed by His Lordship Hon'ble Dinesh Pathak, J. For ready reference, same is reproduced herein under:-

"List revised. None is present for the applicant. However learned AGA for the State is present.

Vide order dated 04.12.2024 passed by the Hon'ble Supreme Court, a direction was issued to decide the instant matter, expeditiously.

Case is dismissed for want of prosecution."

Learned counsel for applicant submits that in view of the averment made in paragraph 5 of the affidavit filed in support of present application, he could not appear before Court at the time when present application was taken up in revised call. He, therefore, submits that there is no

deliberate negligence or laches on the part of applicant in pursuing the present application. As such, the order dated 20.1.2025 is liable to be recalled."

Per contra, the learned A.G.A. representing State opposite party 1 and Mr. Arvind Kumar Rai, the learned counsel representing first informant opposite party 2 have opposed the present application. However, they could not dislodge the factual/equitable submissions urged by the learned counsel for applicant in support of prayer for recall of order dated 20.1.2025.

Having heard the learned counsel for applicant, the learned A.G.A. for State opposite party 1, Mr. Arvind Kumar Rai, the learned counsel representing first informant opposite party 2 and upon perusal of record, this Court finds there is no deliberate negligence or laches on the part of learned counsel for applicant in pursuing this application. Cause shown for non appearance of the learned counsel for applicant at the time when present application was taken up in revised call is devoid of any deliberate negligence or laches.

In view of above, the recall application filed by applicant is liable to be allowed.

Accordingly, the order dated 20.1.2025 is, hereby, recalled. The recall application shall stand allowed.

Order on the Application Under Section 482 Cr. P. C.

In view of order of date passed on the recall application, the present application under Section 482 Cr.P. C. shall stand restored to its original number and status.

In view of observations made by the Apex Court, vide order dated 02.12.2024 passed in Special Leave to Appeal (Crl.) No (s). 11919/2024 (Ramdular Singh Vs. State of U.P. & Anr.), Court below shall defer the proceedings of the trial till the disposal of this application before this Court.

List for admission on 7.5.2025."

7. In the meantime, a counter affidavit dated 14.03.2023 on behalf of the opposite party no.2 to which a rejoinder affidavit 23.03.2023 was filed on behalf of the applicant.

8. At the very outset, learned counsel for the opposite party no.2 has submitted that although an order dated 18.10.2022 passed in Application U/S 482 No. 31531 of 2022 (Ram Dular Singh Vs. State of U.P. and Another) has been annexed as Annexure-2 to the affidavit but the fact that the said petition was also filed to quash the entire proceedings of the said case along with the prayer to quash the order dated 12.09.2022 passed by the A.C.J.M.-IV, Varanasi in Case No. 330 of 2019, arising out of Case Crime No. 435 of 2017, Police Station Lohta, District Varanasi stood disposed of by the said order giving directions for consideration of bail of the accused applicant therein and thus the prayer for quashing of the entire proceedings was not entertained by the Court and thus the present application u/s 482 Cr.P.C. being the second application for the same prayer is not maintainable. It is further submitted that even the fact that the applicant had even earlier also

filed an Application U/S 482 No. 32968 of 2019 (Ram Dular Singh Vs. State of U.P. and Another) challenging the order dated 13.08.2019 passed by the trial court which was also dismissed vide order dated 11.09.2019 and the said order is annexed as Annexure-1 to the affidavit would also render the present petition not maintainable in as much as even at that point of time the grounds as are being tried to be raised in the present petition were available but were not taken up before this Court in the 482 Cr.P.C. petitions. The said orders have been placed before the Court which read as under:-

(i) Application U/S 482 No. 32968 of 2019 (Ram Dular Singh Vs. State of U.P. and Another):

"Heard applicant's counsel as well as learned AGA for the State and perused the record.

Counsel for the applicant has not been able to point out any such illegality, impropriety or incorrectness, much less than any abuse of Court's process which may permit this court to interfere in the impugned order. This is interlocutory order in nature.

In the Trial Court, the reasons for absence of the accused could not be explained. Lower revisional court also sought explanation but the same could not be given even before lower revisional court.

Counsel has been fair enough to admit that accused has not obtained bail so far and still is seeking his discharge without submitting to the jurisdiction of the Court. In such circumstances, there is absolutely no good reason for this Court to interfere with the impugned order.

The application lacks merit and it is dismissed."

(ii) Application U/S 482 No. 31531 of 2022 (Ram Dular Singh Vs. State of U.P. and Another):

“आवेदक की ओर से धारा 482 दं०प्र०सं० के अन्तर्गत यह आवेदन पत्र, मु०अ०सं० 0119 सन 2018, अन्तर्गत धारा 419, 420, 467, 468, 504, 506 471 भा०दं०वि०, थाना लोहटा, जिला वाराणसी में प्रेषित आरोप पत्र दि० 12-9-2022 से उद्भूत वाद सं० 330 सन 2019, जो फोर्थ ए०सी० जे०एम०, वाराणसी के न्यायालय में लम्बित है तथा इसमें पारित आदेश दि० 12-9-2022 के विरुद्ध दायर किया गया है।

आवेदक के विद्वान अधिवक्ता ने पूरक शपथपत्र दाखिल किया, इसे पत्रावली पर रखा जाय।

आवेदक के विद्वान अधिवक्ता, विपक्षी सं० 2 के विद्वान अधिवक्ता एवं विद्वान अपर शासकीय अधिवक्ता को सुना तथा पत्रावली का परिशीलन किया।

आवेदक के विद्वान अधिवक्ता का कथन है कि नियत तिथि पर आवेदक के अवर न्यायालय में अनुपस्थित हो जाने के कारण उनके विरुद्ध एन०बी०डब्लू० जारी कर दिया गया है, अब आवेदक अवर न्यायालय में नियत तिथि पर उपस्थित होने को तत्पर हैं।

आवेदक के विद्वान अधिवक्ता के अनुरोध के दृष्टिगत यह आवेदन पत्र अन्तिम रूप से निस्तारित किया जाता है तथा उपरोक्त वाद में पारित एन०बी०डब्लू० आदेश का कियान्वयन आज से 15 दिन के लिए स्थगित किया जाता है। यदि आवेदक द्वारा 15 दिन के अन्दर आदेश का अनुपालन सुनिश्चित नहीं किया जाता तो संबंधित अवर न्यायालय नियमानुसार आवश्यक कार्यवाही करने को स्वतंत्र है।“

9. It is submitted that as such this is the third petition by the same applicant with an intention to challenge the proceedings of the said case and get them quashed having been unsuccessful in two earlier petitions which is an attempt of forum hunting also.

10. Learned counsel for the applicant in order to meet out the said objection of learned counsel for the opposite party no.2 submitted that he has in all fairness disclosed the factum and filing of the said two earlier petitions in paragraph nos. 2 & 3 of the affidavit and now by way of the present application is challenging the validity of the charge-sheet dated 16.02.2019 as well as the summoning order dated 13.03.2019 and the entire proceedings in the present matter. He has placed before the Court paragraph 2, 3 & 4 of the affidavit which reads as under:-

"2. That prior to the present case, two more applications were filed under section 482 Cr.P.C. for a different cause in which one application under section 482 Cr.P.C. was filed challenging the impugned order dated 11.09.2019 and it was dismissed on the ground stating that there is absolutely no good reason for the Hon'ble Court to interfere with the impugned order as the applicant has not obtained bail and still is seeking his discharge without submitting to the jurisdiction of the Court. Copy of the order dated 11.09.2019 passed by this Hon'ble Court is being filed herewith and marked as Annexure No.1 to this affidavit.

3. That further the applicant had also filed another application under section 482 Cr.P.C. challenging the coercive processes issued against the applicant vide order dated 12.09.2022 pending before the Court of learned ACJM-IV, Varanasi in which this Hon'ble Court vide order dated 18.10.2022 was pleased to dispose off the petition with the direction that the applicant shall surrender before the court below. Copy of the order dated 18.10.2022 passed by this Hon'ble Court is being filed herewith and marked as Annexure No.2 to this affidavit.

4. That by way of the present application, the applicant is challenging the legality and validity of the charge sheet dated 16.02.2019 as well as summoning order dated 13.03.2019 in Case No.330 of 2019 (State Vs. Ram Dular Singh and others) arising out of Case crime no.119 of 2018 under sections 419, 420, 467, 468, 471, 504, 506 IPC, Police Station Lohta, District Varanasi, pending in the Court of A.C.J.M.-IV, Varanasi."

11. Further learned counsel for the applicant submits that in so far as the prayer for quashing of the entire proceedings as prayed for in Application U/S 482 No. 31531 of 2022 is concerned, although the said petition stood disposed of finally vide order dated 18.10.2022 but the same was not considered and the applicant was directed to appear before the trial court within 15 days and secure bail and till that time the execution of the N.B.W. against him was stayed. It is submitted that thus the said petition during its disposal was confined only to issuance of N.B.W. It is submitted that thus the present petition u/s 482 Cr.P.C. is maintainable and cannot be dismissed

on the ground of being a second petition and the objection as raised at the inception by learned counsel for the opposite party no.2 is totally misplaced.

12. Further learned counsel for the applicant argued that the proceedings are an abuse of process of Court and the two orders passed by the High Court do not amount to review of the order passed by the co-ordinate bench in the quashing petition being Criminal Misc. Application U/S 482 No. 31531 of 2022 (Ram Dular Singh Vs. State of U.P. and Another), since the said order did not address the issue of quashing although a prayer for quashing was in it but the relief therein was confined only to the aspect of issuance of non - bailable warrant and liberty was granted with regards to it only and thus this petition is maintainable raising the grounds/pleas which were not effectively raised in the said quashing petition. He submitted further that the High Court has the power to exercise its inherent jurisdiction at any stage of criminal proceedings in order to prevent abuse of law and manifest injustice and exercise of such power cannot be termed to be in violation of the provisions of Section 362 Cr.P.C.

13. He lastly by addressing on the merits of the matter submitted that the dispute between the parties is purely civil in nature and the admitted allegations can in no circumstance give rise to criminal prosecution. The criminal proceedings have been initiated against the accused-applicant with the sole intent of falsely implicating and harassing him.

14. This Court thus proceeds to examine the matter and this petition with the prayer as aforesaid as to whether this petition is maintainable at this instance or not.

15. The facts which culled out in the present matter are as under:-

(i) The applicant approached this Court by filing a petition being Application U/S 482 No. 32968 of 2019 (Ram Dular Singh Vs. State of U.P. and Another) with the following prayers:-

"It is therefore most respectfully prayed that Hon'ble Court may graciously be pleased to allow the present application and quashed/set aside the order dated 13-8-2019 passed by Incharge/Session Judge, Varanasi and further stay the proceedings of Criminal Case no-330 of 2019, C.C. No 119 of 2018, pending in the court of Additional Chief Judicial Magistrate-IV, Varanasi during the pendency of Criminal Revision no-220 of 2019 otherwise applicant will suffer great loss and injury.

And/ or pass such other and further order which this Hon'ble Court may deem fit and proper under the circumstances of the case."

(ii) The said petition stood dismissed vide order dated 11.09.2019 passed by another Bench of this Court (Quoted in Para 8 (i) above).

(iii) Subsequently the applicant filed a petition being Application U/S 482 No. 31531 of 2022 (Ram Dular Singh Vs. State of U.P. and Another) with the prayer to quash the order dated 12.09.2022 passed by the A.C.J.M., Varanasi and to quash the entire proceedings as well.

(iv) The order dated 12.09.2022 was an order by which N.B.W. was issued against the applicant.

(v) The said petition Application U/S 482 No. 31531 of 2022 came to be disposed by an order dated 18.10.2022 passed by a co-ordinate Bench of this Court directing the applicant therein to appear within 15 days before the trial court concerned and till the said period the operation of the N.B.W. was stayed (Quoted in Para 8 (ii) above).

(vi) Subsequently this application u/s 482 Cr.P.C. comes out by the same applicant for an effort to get the proceedings against him terminated by an order from this Court u/s 482 Cr.P.C. which are pending before the trial court concerned.

(vii) The order summoning is dated 13.03.2019 which has been challenged after about 03 years before this Court and in between two petitions u/s 482 Cr.P.C. were filed by the same applicant before this Court with different prayers (amongst which one of the petitions carries a prayer to quash the proceedings of the trial court as well) which have been detailed as above.

(viii) The law on the subject is trite.

A. The Apex Court in the case of ***M.C. Ravikumar v. D.S. Velmurugan : 2025 SCC OnLine SC 1498*** took up a question for consideration which reads as under:

“11.The short question that arises for our consideration is □Whether a second quashing petition under Section 482CrPCwould be maintainable on the grounds/pleas that were available to be raised even at the time of filing/decision of the first quashing petition ?”

The matter was the finally decided as under:

“13. This Court in catena of judgments has held that it is not open to an accused person to raise one plea after the other, by repeatedly invoking the inherent jurisdiction of the High Court under Section□482□CrPC, though all such pleas were very much available to him even at the first instance. We may hasten to add that there is no sweeping rule to the effect that a second quashing petition under Section□482□CrPC□is not maintainable and its maintainability will depend on the facts and circumstances of each case. However, the onus to show that there arose a change in circumstances warranting entertainment of a subsequent quashing petition would be on the person filing the said petition. In this regard, we may gainfully refer to the observations made by this Court in the case of Bhisham Lal Verma v. State of UP, □2023 SCC OnLine SC 1399, which are extracted below for ready reference:□

“11. ... Though it is clear that there can be no blanket rule that a second petition under Section□482□Cr. P.C.□would not lie in any situation and it would depend upon the facts and circumstances of the individual case,it is not open to a person aggrieved to raise one plea after the other, by invoking the jurisdiction of the High Court under Section□482□Cr. P.C., though all such pleas were very much available even at the first instance. Permitting the filing of successive petitions under Section□482□Cr. P.C.□ignoring this principle would enable an ingenious

accused to effectively stall the proceedings against him to suit his own interest and convenience, by filing one petition after another under Section 482 Cr. P.C., irrespective of when the cause therefor arose. Such abuse of process cannot be permitted.”

(Emphasis Supplied)

14. Furthermore, we are of the opinion that the order passed by the High Court in the second quashing petition amounted to review (plain and simple) of the earlier order passed by the co-ordinate bench of the High Court in the first quashing petition, since there was admittedly no change in circumstances and no new grounds/pleas became available to the accused-respondents, after passing of the order of dismissal in the first quashing petition. The order passed by the High Court is in gross disregard to all tenets of law as Section 362 CrPC expressly bars review of a judgment or final order disposing of a case except to correct some clerical or arithmetical error.

15. This Court has time and again held that the High Courts while exercising their inherent jurisdiction under Section 482 CrPC cannot override a specific bar laid down by other provisions of CrPC, i.e., to say that the High Court is not empowered to review its own decision under the purported exercise of its inherent powers. To fortify the aforesaid conclusion, we may gainfully refer to the observations made by this Court in the case of *Simrikhia v. Dolley Mukherjee and Chhabi Mukherjee*, (1990) 2 SCC 437, the relevant portions whereof are quoted below for ease of reference:

“6. In *Superintendent & Remembrancer of Legal Affairs v. Mohan Singh*, (1975) 3 SCC 706, this Court held that Section 561A preserves the inherent power of the High Court to make such orders as it deems fit to prevent abuse of the process of the Court or to secure the ends of justice and the High Court must therefore exercise its inherent powers having regard to the situation prevailing at the particular point of time when its inherent jurisdiction is sought to be invoked. In that case the facts and circumstances obtaining at the time of the subsequent application were clearly different from what they were at the time of the earlier application. The question as to the scope and ambit of the inherent power of the High Court vis-a-vis an earlier order made by it was, therefore, not concluded by this decision.

7. The inherent jurisdiction of the High Court cannot be invoked to override bar of review u/s 362. It is clearly stated in *Sooraj Devi v. Pyare Lal*, (1981) 1 SCC 500 that the inherent power of the Court cannot be exercised for doing that which is specifically prohibited by the Code. The law is therefore clear that the inherent power cannot be exercised for doing that which cannot be done on account of the bar under other provisions of the Code. The court is not empowered to review its own decision under the purported exercise of inherent power. We find that the impugned order in this case is in effect one reviewing the earlier order on a reconsideration of the same materials. The High Court has grievously erred in doing so. Even on merits, we do not find any compelling reasons to quash the proceedings at that stage.”

(Emphasis supplied)

16. In the instant case, the quashing by the High Court of a similar complaint, i.e., Criminal Complaint No. 41 of 2015 filed by the complainant against the accused-respondents in respect of properties situated at Thanjavur vide order dated 9th March, 2020 was an event that happened well before the dismissal of the first quashing petition under Section 482 CrPC and the said ground/plea was manifestly available to the accused-respondents while seeking adjudication of the first quashing petition. That being the situation, the accused-respondents were not at liberty to invoke the inherent jurisdiction of the High Court raising the aforesaid ground/plea at a later point of time by filing the second quashing petition.

B. The Apex Court in the case of *Vijay Kumar Ghaiv. State of W.B. : (2022) 7 SCC 124* has in paragraphs 11, 12, 13, 14 and 17 while dealing with the issue of forum shopping and deprecating it has stated as follows:

“11. Predominantly, the Indian Judiciary has time and again reiterated that forum shopping takes several hues and shades but the concept of ‘forum shopping’ has not been rendered an exclusive definition in any Indian statute. Forum shopping as per Merriam-Webster Dictionary is:

The practice of choosing the court in which to bring an action from among those courts that could properly exercise jurisdiction based on determination of which court is likely to provide the most favourable outcome.

12. The Indian Judiciary's observation and obiter dicta has aided in streamlining the concept of forum shopping in the Indian legal system. This Court has condemned the practice of forum shopping by litigants and termed it as an abuse of law and also deciphered different categories of forum shopping.

13. A two-Judge Bench of this Court in Union of India v. Cipla Ltd. [Union of India v. Cipla Ltd., (2017) 5 SCC 262] has laid down factors which lead to the practice of forum shopping or choice of forum by the litigants which are as follows : (SCC pp. 318-20, paras 148-51 & 155)

148. A classic example of forum shopping is when litigant approaches one court for relief but does not get the desired relief and then approaches another court for the same relief. This occurred in Rajiv Bhatia v. State (NCT of Delhi) [Rajiv Bhatia v. State (NCT of Delhi), (1999) 8 SCC 525]. The respondent mother of a young child had filed a petition for a writ of habeas corpus in the Rajasthan High Court and apparently did not get the required relief from that Court. She then filed a petition in the Delhi High Court also for a writ of habeas corpus and obtained the necessary relief. Notwithstanding this, this Court did not interfere with the order [Priyanka Bhatia v. State (NCT of Delhi), 1999 SCC OnLine Del 192] passed by the Delhi High Court for the reason that this Court ascertained the views of the child and found that she did not want to even talk to her adoptive parents and therefore the custody of the child granted by the Delhi High Court to the respondent mother was not interfered with. The decision of this Court is on its own facts, even though it is a classic case of forum shopping.

149. In *Arathi Bandi v. Bandi Jagadrakshaka Rao* [Arathi Bandi v. Bandi Jagadrakshaka Rao, (2013) 15 SCC 790 : (2014) 5 SCC (Civ) 475] this Court noted that jurisdiction in a court is not attracted by the operation or creation of fortuitous circumstances. In that case, circumstances were created by one of the parties to the dispute to confer jurisdiction on a particular High Court. This was frowned upon by this Court by observing that to allow the assumption of jurisdiction in created circumstances would only result in encouraging forum shopping.

150. Another case of creating circumstances for the purposes of forum shopping was *World Tanker Carrier Corpn. v. SNP Shipping Services (P) Ltd.* [World Tanker Carrier Corpn. v. SNP Shipping Services (P) Ltd., (1998) 5 SCC 310] wherein it was observed that the respondent/plaintiff had made a deliberate attempt to bring the cause of action, namely, a collision between two vessels on the high seas within the jurisdiction of the Bombay High Court. Bringing one of the vessels to Bombay in order to confer jurisdiction on the Bombay High Court had the character of forum shopping rather than anything else.

151. Another form of forum shopping is taking advantage of a view held by a particular High Court in contrast to a different view held by another High Court. In *Ambica Industries v. CCE* [Ambica Industries v. CCE, (2007) 6 SCC 769] the assessee was from Lucknow. It challenged an order [Ambica Industries v. CCE, 2003 SCC OnLine CESTAT 1365] passed by the Customs, Excise and Service Tax Appellate Tribunal (Cestat) located in Delhi before the Delhi High Court. Cestat had jurisdiction over the State of Uttar Pradesh, NCT of Delhi and Maharashtra. The Delhi High Court did not entertain the proceedings initiated by the assessee for want of territorial jurisdiction. Dismissing the assessee's appeal this Court gave the example of an assessee affected by an assessment order in Bombay invoking the jurisdiction of the Delhi High Court to take advantage of the law laid down by the Delhi High Court or an assessee affected by an order of assessment made at Bombay invoking the jurisdiction of the Allahabad High Court to take advantage of the law laid down by it and consequently evade the law laid down by the Bombay High Court. It was said that this could not be allowed and circumstances such as this would lead to some sort of judicial anarchy.

155. The decisions referred to clearly lay down the principle that the court is required to adopt a functional test vis-à-vis the litigation and the litigant. What has to be seen is whether there is any functional similarity in the proceedings between one court and another or whether there is some sort of subterfuge on the part of a litigant. It is this functional test that will determine whether a litigant is indulging in forum shopping or not.

14. Forum shopping has been termed as disreputable practice by the courts and has no sanction and paramountcy in law. In spite of this Court condemning the practice of forum shopping, Respondent 2 filed two complaints i.e. a complaint under Section 156(3) CrPC before the Tis Hazari Court, New Delhi on 6-6-2012 and a complaint which was eventually registered as FIR No. 168 under Sections 406, 420, 120-BIPC before PS Bowbazar, Calcutta on 28-3-2013 i.e. one in Delhi and one complaint in Kolkata. The complaint filed in Kolkata was a reproduction of the

complaint filed in Delhi except with the change of place of occurrence in order to create a jurisdiction.

17. *A two-Judge Bench of this Court in K. Jayaram v. BDA [K. Jayaram v. BDA, (2022) 12 SCC 815 : 2021 SCC OnLine SC 1194] observed : (SCC para 14)*

¶14. It is necessary for us to state here that in order to check multiplicity of proceedings pertaining to the same subject-matter and more importantly to stop the menace of soliciting inconsistent orders through different judicial forums by suppressing material facts either by remaining silent or by making misleading statements in the pleadings in order to escape the liability of making a false statement, we are of the view that the parties have to disclose the details of all legal proceedings and litigations either past or present concerning any part of the subject-matter of dispute which is within their knowledge. In case, according to the parties to the dispute, no legal proceedings or court litigations were or are pending, they have to mandatorily state so in their pleadings in order to resolve the dispute between the parties in accordance with law.¶

The said petition was dismissed on various counts including forum hunting.

16. A ground abandoned by the applicant at the time of previous two petitions, although available at that time cannot be agitated at a subsequent period of time. The challenges in this matter have been in piecemeal by the applicant. Even a challenge of proceedings in Application U/S 482 No. 31531 of 2022 (Ram Dular Singh Vs. State of U.P. and Another) was abandoned by him but now the same is being taken up in a new petition being the present one.

17. Thus this Court holds that the present petition under Section 482 Cr.P.C. is a repeated attempt of the same applicant for setting aside the proceedings against him pending before the trial court which is not maintainable. This is even forum hunting by him.

18. The present petition under Section 482 Cr.P.C. is thus ***dismissed***.

19. Pending application(s), if any, shall stand disposed of.

(2026) 4 ILRA 916

ORIGINAL JURISDICTION

CRIMINAL SIDE

DATED: LUCKNOW 07.04.2026

BEFORE

THE HON'BLE BRIJ RAJ SINGH, J.

Application U/S 482. No. 9282 of 2022

Fatima Begum & Ors.

...Applicants

Versus

State of U.P. & Anr.

...Opposite Parties

Issue for consideration

The applicant filed an application u/s 482 CrPC seeking to quash the entire criminal proceedings in the complaint case alleging rape under the false promise of marriage.

Headnotes

A. Indian Penal Code,1860-Section 375, 376-Criminal Procedure Code,1973-Section 482-Quashing of proceedings-Rape Vs Consensual sex-Promise of marriage-Subsequent breach Vs. False promise from inception-Material of sterling quality showing consensual relationship turning acrimonious-Frivolous and vexatious proceedings-Private grudge-Abuse of process of court-Criminal proceedings maliciously instituted with an ulterior motive to settle a personal score out of retaliation cannot be sustained-Entire proceedings quashed.(Para 15 to 25)

Held

The court held that the offence of rape is not made out because Applicant no. 3 was always ready to marry. The breakdown of the alliance was caused solely by the conduct of the complainant whose prior relationship and private photos were exposed and her subsequent marriage to another man on the scheduled wedding date. Out of vengeance, the complainant filed a false case to settle a personal score. Applying the principles laid down in State of Haryana Vs. Bhajan Lal and the structured four step test from Pradeep Kumar Keshawani, the court ruled that allowing the trial to continue would be a gross abuse of the judicial process. (E-6)

Case law Cited

Pradeep Kumar Keshawani Vs State of U.P. & Anr. (2025) SCC OnLine SC 1947, Pramod Suryabhan Pawar Vs State of Maharashtra & Anr. (2019) 9 SCC 608, Pramod Kumar Navratna Vs State of Chhattisgarh & Ors. (2026) SCC OnLine SC 154, Mohammad Wajid Vs State of U.P., (2023) SCC OnLine SC 951, Deepak Gulati Vs State of Haryana, (2013) 7 SCC 675, Sajal Bose Vs The State of West Bengal & Ors (2026) SCC OnLine SC 525, State of Haryana Vs Bhajan Lal, (1992) Supp (1) SCC 335 Salib Vs State of U.P., (2023) 20 SCC 194-referred to.

List of Acts

Indian Penal Code,1860, Criminal Procedure Code,1973

List of Keywords

Abuse of process of court, Quashing of criminal proceedings, Allegation of rape, False promise of marriage, Deceptive intent from inception, Consensual relationship, rape, Broken marriage alliance, Private photographs, Settling personal scores, Sterling quality material.

Case Arising from

CRIMINAL JURISDICTION: APPLICATION U/S 482 No. - 9282 OF 2022

Fatima Begum & 2 Ors Vs. The State of U.P. Thru. Addl. Chief Secy Home And Anr.

From the Judgment and order dated 07.04.2026 of the High Court of judicature at Allahabad.

Appearances for Parties**Advs. for Applicant(s)**

Nadeem Murtaza, Inam Uddin Ahmad,
Sheeran Mohiuddin Alavi, Shubham Tripathi

Advs. for Opposite Party(s)

G.A., Salman Abbas , Vikas Vikram Singh

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

1. The present application has been filed seeking quashing of the entire proceedings of Complaint Case No.53786 of 2022, Nazish Fatima Vs. Mohd. Abbas and others, Police Station

Hazratganj, District Lucknow and the summoning order dated 19.11.2022 passed by the Additional Chief Judicial Magistrate-IV, Lucknow.

2. It is the case of the applicants that applicant no.1 is an old aged house-wife, whereas applicant no.2 is the retired Engineer from the U.P. State Cement Corporation and applicant no.3 is an engineering graduate, currently working in a private multinational company at Noida. It is said that applicants are innocent and have been falsely implicated by opposite party no.2 by making false allegation with oblique motive. It is said that applicant no.3 came in contact with opposite party no.2 through matrimonial website, namely, Shaadi.com and consequently both of them met at Barista Coffee House, Rana Pratap Marg, Hazratganj, Lucknow on 04.09.2021. Opposite party no.2 introduced herself as a conservative and religious person and informed that she is pursuing D.Pharm from the Integral University, Lucknow. Opposite party no.2 told applicant no.3 that her father had been residing and working in a Motor Garage, in Saudi Arabia for the past twenty five years and had recently returned to India during the Covid-19 pandemic and now he is running a General Store in Muftiganj, Lucknow. Due to the aforesaid, it was informed by the opposite party no.2 that there are compatibility issues in her family and thus, she wants to get married at the earliest and get settled in her life.

3. It is said that applicants no.1 and 2 after intimation to the family members of opposite Party no.2, visited her home along with close relatives on 30.10.2021 and the Engagement Ceremony of applicant no.3 and opposite party no.2 was done, wherein applicants no.1 and 2 also handed presented a Gold Ring, Cash of Rs.20,000/- and sweets etc. In return, the family members of opposite party no.2 visited the house of the applicants on 13.11.2021. On 13.02.2022, applicants no.1 and 2 visited the residence of opposite party no.2 to finalize the dates of marriage and on mutual agreement, the dates for Nikah and Walima were fixed as 04.11.2022 and 07.11.2022 respectively. Thereafter, parents of opposite party no.2 visited the residence of brother of applicant no.1 on 14.02.2022 on the occasion of the Birth Anniversary of Hazrat Ali and they spent time together discussing the future marriage plans.

4. It is said that shockingly in February, 2022, applicant no.3 started receiving messages on Instagram Id from an unknown person and on 23.02.2022, several obscene and vulgar photographs of opposite party no.2 were shared by the said person, who was identified as one Haris Javed Ansari by opposite party no.2. Applicant no.3 came to know that opposite party no.2 was in relationship with the aforesaid person, namely, Haris Javed Ansari of Shahjahanpur and, therefore, on the news of the engagement of applicant no.3 opposite party no.2, the said person decided to intervene and stop the marriage of applicant no.3. Applicant no.3 also came to know that one Aman Husaini of Varanasi was also in relationship with opposite party no.2 earlier and the photographs of opposite party no.2 are with Aman Husaini as well as with Haris Javed Ansari. The aforesaid details were informed to opposite party no.2 and her family members, on which on 27.02.2022, parents of opposite party no.2 called the applicants to Shahnajaf Imambara, Hazratganj and there opposite party no.2 took oath on the religious book that she has no relation with the aforesaid persons at present. On 03.03.2022, father of opposite party no.2 visited the house of the applicants and informed that he would take action against Haris Javed Ansari for sharing private photographs of opposite party no.2 on internet and thereafter opposite party no.2 visited Shahjahanpur along with her parents and called Haris Javed Ansari to the Police Station Sadar Bazar, Shahjahanpur and

was made to sign the apology letter. Opposite party no.2 herself shared the photograph of the apology letter as well as the photograph of Haris Javed Ansari signing the apology letter and the mobile phone screen shot of Haris Javed Ansari as proof that he was the one messaging and sharing private photographs on Instagram application.

5. It is said that opposite party no.2 demanded Rs.15,000/- through Whats App chat from applicant no.3 and when the aforesaid transaction could not be done due to technical fault, opposite party no.2 got angry and blocked the WhatsApp of applicant no.3. Thereafter, parents of opposite party no.2 proceeded to get her marriage fixed with one Zaim Ali Zamin, whilst the applicants awaited response from them. The applicants could not comprehend when they came across the Wedding Invitation Card as well as the online invitation video of the marriage of opposite party no.2 with Zain Ali Zamin, which was scheduled to take place on 04.11.2022 itself, i.e. the date on which earlier the marriage of applicant no.3 was fixed with the opposite party no.2.

6. Sri Nadeem Murtaza assisted by Sri Shubham Tripathi and Inamuddin Ahmad, counsel for the applicants submits that in February, 2022, applicant no.3 started receiving messages on Instagram Id from an unknown person and on 23.02.2022 several obscene and vulgar photographs of opposite party no.2 were shared by the said person. This fact has been stated in paragraph-14 of the application. However, while replying to the said paragraph, opposite party no.2 has admitted the fact. He further submits that opposite party no.2 was in relation with the aforesaid person, namely, Haris Javed Ansari of Shahjahanpur and on the news of engagement of applicant no.3 with opposite party no.2, the said person decided to intervene and stop the marriage of opposite party no.2. It is submitted that in such scenario, the marriage could not be solemnized as certain differences arose between the parties as opposite party no.2 was in relation with another man. Since the marriage could not be solemnized, out of retaliation opposite party no.2 instituted the criminal proceedings by filing the present complaint against the applicants just to settle her personal score.

7. Counsel for the applicants further submits that even if it is assumed that there was physical relationship between applicant no.3 and opposite party no.2, then the same is consensual and such relationship does not come within the purview of Section 376 IPC.

8. Counsel for the applicants by placing reliance upon the judgement of the Hon^{ble} Supreme Court rendered in the case of ***Pradeep Kumar Keshawani Vs. State of Uttar Pradesh and another***, 2025 SCC OnLine SC 1947 has submitted that there is a clear distinction between rape and consensual sex and in a case where there is a promise of marriage, the Court must very carefully examine whether the accused had actually wanted to marry the victim or had mala fide intention. He has further relied upon paragraph-20 of the aforesaid judgment, where four guidelines have been framed while entertaining the application under Section 482 Cr.P.C. and in guideline (ii) it is provided that whether the material relied upon by the accused, would rule out the assertions contained in the charges levelled against the accused, i.e., the material is sufficient to reject and overrule the factual assertions contained in the complaint, i.e., the material is such, as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false. Counsel for the applicants has pointed out that the attending circumstances are very relevant in the present case, wherein it is established that opposite party no.2 had relationship with some other person on account of which the marriage could not be solemnized. Once this fact has been

admitted, then the judgement of the Hon^{ble} Supreme Court rendered in the case of Pradeep Kumar Kesharwani (supra) comes to the rescue of the applicant.

9. Counsel for the applicants by placing reliance upon the judgement of the Hon^{ble} Supreme Court rendered in the case of **Pramod Suryabhan Pawar Vs. State of Maharashtra and another**, (2019) 9 SCC 608 has submitted that in the case of woman engaging in sexual relations on false promise to marriage, the Court has to be very careful and after examining the facts and circumstances of the case, the Court may take decision on the given facts.

10. Sri Rao Narendra Singh, learned AGA-I on the other hand by opposing the case has submitted that the offence is serious in nature, therefore, statement of the prosecutrix is self-sufficient to prosecute the applicants. Therefore, the trial court has rightly summoned the applicants and no interference is required by this Court.

11. Heard learned counsel for the applicants as well as learned AGA and perused the record. However, no one has put in appearance on behalf of opposite party no.2 though name of the counsels have been shown in the cause list.

12. Hon^{ble} Supreme Court in the case of Pramod Suryabhan Pawar (supra) held as under:-

“12 This Court has repeatedly held that consent with respect to Section 375 of the IPC involves an active understanding of the circumstances, actions and consequences of the proposed act. An individual who makes a reasoned choice to act after evaluating various alternative actions (or inaction) as well as the various possible consequences flowing from such action or inaction, consents to such action. In Dhruvaram Sonar which was a case involving the invoking of the jurisdiction under Section 482, this Court observed:

“15. ? An inference as to consent can be drawn if only based on evidence or probabilities of the case. ?Consent? is also stated to be an act of reason coupled with deliberation. It denotes an active will in mind of a person to permit the doing of the act complained of.”

This understanding was also emphasised in the decision of this Court in Kaini Rajan v State of Kerala:

“12. ? ?Consent?, for the purpose of Section 375, requires voluntary participation not only after the exercise of intelligence based on the knowledge of the significance of the moral quality of the act but after having fully exercised the choice between resistance and asset. Whether there was consent or not, is to be ascertained only on a careful study of all relevant circumstances.?”

14 In the present case, the ?misconception of fact? alleged by the complainant is the appellant?s promise to marry her. Specifically in the context of a promise to marry, this Court has observed that there is a distinction between a false promise given on the understanding by the maker that it will be broken, and the breach of a promise which is made in good faith but subsequently not fulfilled. In Anurag Soni v State of Chhattisgarh, this Court held:

“12. The sum and substance of the aforesaid decisions would be that if it is established and proved that from the inception the accused who gave the promise to the prosecutrix to marry, did not have any intention to marry and the prosecutrix gave the consent for sexual intercourse on such an assurance by the accused that he would marry her, such a consent can be said to be a consent obtained on a misconception of fact as per Section 90 of the IPC and, in such a case, such a consent would not excuse the offender and such an offender can be said to have committed the rape as defined under Sections 375 of the IPC and can be convicted for the offence under Section 376 of the IPC.”

Similar observations were made by this Court in Deepak Gulati v State of Haryana (“Deepak Gulati”):

“21. ? There is a distinction between the mere breach of a promise, and not fulfilling a false promise. Thus, the court must examine whether there was made, at an early stage a false promise of marriage by the accused..”

16. Where the promise to marry is false and the intention of the maker at the time of making the promise itself was not to abide by it but to deceive the woman to convince her to engage in sexual relations, there is a ?misconception of fact? that vitiates the woman?s ?consent?. On the other hand, a breach of a promise cannot be said to be a false promise. To establish a false promise, the maker of the promise should have had no intention of upholding his word at the time of giving it. The ?consent? of a woman under Section 375 is vitiated on the ground of a ?misconception of fact? where such misconception was the basis for her choosing to engage in the said act. In Deepak Gulati this Court observed:

“21. .. There is a distinction between the mere breach of a promise, and not fulfilling a false promise. Thus, the court must examine whether there was made, at an early stage a false promise of marriage by the accused; and whether the consent involved was given after wholly understanding the nature and consequences of sexual indulgence. There may be a case where the prosecutrix agrees to have sexual intercourse on account of her love and passion for the accused, and not solely on account of misrepresentation made to her by the accused, or where an accused on account of circumstances which he could not have foreseen, or which were beyond his control, was unable to marry her, despite having every intention to do so. Such cases must be treated differently.

....

“24. Hence, it is evident that there must be adequate evidence to show that at the relevant time i.e. at the initial stage itself, the accused had no intention whatsoever, of keeping his promise to marry the victim. There may, of course, be circumstances, when a person having the best of intentions is unable to marry the victim owing to various unavoidable circumstances. The ?failure to keep a promise made with respect to a future uncertain date, due to reasons that are not very clear from the evidence available, does not always amount to misconception of fact. In order to come within the meaning of the term ?misconception of fact?, the fact must have an immediate relevance?. Section 90 IPC cannot be called into aid in such a situation, to pardon the act of a girl

in entirety, and fasten criminal liability on the other, unless the court is assured of the fact that from the very beginning, the accused had never really intended to marry her.? (Emphasis supplied)

18. To summarise the legal position that emerges from the above cases, the ?consent? of a woman with respect to Section 375 must involve an active and reasoned deliberation towards the proposed act. To establish whether the ?consent? was vitiated by a ?misconception of fact? arising out of a promise to marry, two propositions must be established. The promise of marriage must have been a false promise, given in bad faith and with no intention of being adhered to at the time it was given. The false promise itself must be of immediate relevance, or bear a direct nexus to the woman?s decision to engage in the sexual act.”

13. In the case of **Pramod Kumar Navratna Vs. State of Chhattisgarh and others**, 2026 SCC OnLine SC 154, Hon?ble supreme Court held as under:-

“18. It has been time and again settled by this Court, that the mere fact that the parties indulged in physical relations pursuant to a promise to marry will not amount to a rape in every case. An offence under Section 375 of the IPC could only be made out, if promise of marriage was made by the accused solely with a view to obtain consent for sexual relations without having any intent of fulfilling said promise from the very beginning and that such false promise of marriage had a direct bearing on the prosecutrix giving her consent for sexual relations. The issue for consideration is whether, given the facts and circumstances of the case and after examining the FIR, the High Court was correct in refusing to quash the ongoing criminal proceedings against the accused-appellant arising out of FIR No.213/2025 dated 06.02.2025 and the Chargesheet No.269/2025.

19. Upon a careful consideration of the record in the present case, we are unable to discern any material that would warrant the invocation of Section 376(2)(n) of the IPC. The facts of the present case unmistakably indicate towards a classic case of a consensual relationship turning acrimonious. Upon perusal of the records of the case, it is evident that the complainant-respondent No. 3 is a married lady with a ten years old child. The said marriage was solemnized on 02.06.2011 and although divorce proceedings are currently pending adjudication between her and her husband, by no stretch of imagination can it be held that the complainant-respondent No. 3 was eligible for being married with the accused-appellant on 18.09.2022, the date on which the first of the multiple instances of acts of rape on the false pretext of marriage has been committed by the accused-appellant are alleged. Therefore, even for the sake of argument, if the contention of the respondent No. 1 State and the complainant-respondent No. 3 is accepted that there indeed was a false promise of marriage based on which the accused-appellant indulged in sexual activities, such a promise would not be legally enforceable or even capable of being acted upon as the victim herself was not eligible for marriage, neither on the date of the first alleged act of offence i.e. 18.09.2022 nor on any subsequent dates wherein the parties indulged in the sexual activities, till the point of the date of registration of FIR i.e. 06.02.2025. The said embargo arises from sub-clause (i) of Section 5 of the Hindu Marriage Act, 1955 which categorically prohibits marriage between two individuals if either of them have a living spouse. The said position of law has been reiterated under sub-clause (1) of Section 4 of the Special Marriage Act, 1954.

22. *The Courts have to be extremely careful and cautious in identifying the genuine cases filed under Section 376(2)(n) of the IPC by identifying the essential ingredients to constitute the said offence. There should be a promise of marriage made by the accused solely with a view to obtain consent for sexual relations and without having any intent of fulfilling said promise from the very beginning, and that such false promise of marriage had a direct bearing on the prosecutrix giving her consent for sexual relations. Such genuine cases that deserve prosecution of the accused must be clearly demarcated from the litigation that arises from the cases of consensual relationships between consenting adults going acrimonious on account of dispute and disagreement or a future change of mind. In view of the aforesaid settled position of law, the respondent No. 1-State and the complainant -respondent no.3 has failed to place any material on record to show how the accused-appellant on the subsequent meetings managed to repeatedly coax and dupe the complainant-respondent no.3 into having physical relations with him on the false pretext of marriage considering the fact that within initial meetings, both parties were aware about the marital status of the victim and therefore it cannot be, by any stretch imagination said that the consent of the complainant-respondent No. 3 has been vitiated or obtained on fraud and misrepresentation made by the accused-appellant.*

23. *At this stage, it is material to refer to the decision of this Court in Mahesh Damu Khare v. State of Maharashtra, (2024) 11 SCC 398, wherein the following observations were made:*

"29. It must also be clear that for a promise to be a false promise to amount to misconception of fact within the meaning of Section 90 IPC, it must have been made from the very beginning with an intention to deceive the woman to persuade her to have a physical relationship. Therefore, if it is established that such consent was given under a misconception of fact, the said consent is vitiated and not a valid consent."

14. Now, the question which falls for consideration is that whether the act of applicant no.3, as alleged in the complaint, comes within the purview of Section 376 IPC and whether the allegation of committing rape on the false promise of marriage by applicant no.3 is proved prima facie on the basis of averments made in the complaint coupled with the attending circumstances of the case. Before dealing with this issue, it is relevant to recollect the attending facts and circumstances of the case again, which run as under:-

"Applicant no.3 came in contact with opposite party no.2 through matrimonial website and thereafter they met at a Coffee House on 04.09.2021. After introduction of each other, parents of applicant no.3 visited the house of opposite party no.2 along with their close relatives on 30.10.2021 and engagement ceremony was also done, wherein they exchanged the gifts including gold ring and cash. After much deliberations, dates for Nikah and Walima were fixed as 04.11.2022 and 07.11.2022 respectively. In the meantime, applicant no.3 and opposite party no.2 met so many times and established physical relation on their free will and consent. All of sudden, in February, 2022, applicant no.3 received messages and obscene and vulgar photographs of opposite party no.2 on Instagram Id from an unknown person and later on it came to the knowledge of applicant no.3 that the said person is Haris Javed Ansari from Shahjahanpur. Applicant no.3 also came to know that one Aman Hussaini of Varanasi was also in relationship

with opposite party no.2 earlier and the obscene and vulgar photographs of opposite party no.2 are also with him. After intervention of the parents of opposite party no.2, on 27.02.2022 at Shahnajaf Imambara, Hazratganj, Lucknow opposite party no.2 took oath on the religious Book ?Quran? that she has no relation with the aforesaid persons at present. Thereafter, father of opposite party no.2 visited the house of the applicants and informed them that he would take action against Haris Javed Ansari for the aforesaid act, pursuant to which they visited Shahjahanpur and at the Police Station Sadar Bazar, Shahjahanpur an apology letter was written and signed by Haris Javed Ansari and photograph of the same was also sent to applicant no.3. Thereafter, marriage of opposite party no.2 was fixed with one Zaim Ali Zamin without intimation to the applicants on 04.11.2022 i.e. the date on which earlier marriage of applicant no.3 was fixed with opposite party no.2.”

15. After going through the aforesaid attending facts and circumstances coupled with the allegation made in the complaint, it is amply clear that because of the conduct of opposite party no.2, the marriage could not be solemnized and parents of opposite party no.2 fixed the marriage of opposite party no.2 with another person without intimation to the applicants. It is not the case that promise of marriage was made by the accused solely with a view to obtain consent for sexual relations without having any intent of fulfilling said promise from the very beginning and that such false promise of marriage had a direct bearing on the prosecutrix giving her consent for sexual relations as narration of the aforesaid attending facts and circumstances of the case, clearly indicate that applicant no.3 is always ready to perform marriage with opposite party no.2 from the very beginning, but because of the intervening unfortunate developments regarding conduct of opposite party no.2, the marriage between them could not be solemnized, for which applicant no.3 cannot be blamed. One relevant fact is to be noted here that applicant no.3 and opposite party no.2 were in contact near about five months and during this period they established physical relation so many times on their free will and consent, but at no point of time, opposite party no.2 made a complaint that applicant no.3 physically assaulted or out of coercion he established physical relation with her. Hon’ble Supreme Court time and again held that mere fact that the parties indulged in physical relations pursuant to a promise to marry will not amount to a rape in every case and an offence under Section 375 IPC could only be made out if promise of marriage was made by the accused solely with a view to obtain consent for sexual relations without having any intent of fulfilling said promise from the very beginning and that such false promise of marriage had a direct bearing on the prosecutrix giving her consent for sexual relations. However, in the present case the essential ingredients are missing and the facts unmistakably indicate towards a classic case of a consensual relationship turning acrimonious.

16. Hon’ble Supreme Court in the case of *Mohammad Wajid Vs. State of U.P.*, 2023 SCC OnLine SC 951 while dealing with the duty of the court in cases where an accused seeks quashing of an FIR or proceedings on the ground that such proceedings are manifestly frivolous, or vexatious, or instituted with an ulterior motive for wreaking vengeance, held as under:-

“34. At this stage, we would like to observe something important. Whenever an accused comes before the Court invoking either the inherent powers under Section 482 of the Code of Criminal Procedure (CrPC) or extraordinary jurisdiction under Article 226 of the Constitution to get the FIR or the criminal proceedings quashed essentially on the ground that such

proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance, then in such circumstances the Court owes a duty to look into the FIR with care and a little more closely. We say so because once the complainant decides to proceed against the accused with an ulterior motive for wreaking personal vengeance, etc., then he would ensure that the FIR/complaint is very well drafted with all the necessary pleadings. The complainant would ensure that the averments made in the FIR/complaint are such that they disclose the necessary ingredients to constitute the alleged offence. Therefore, it will not be just enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not. In frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines. The Court while exercising its jurisdiction under Section 482 of the CrPC or Article 226 of the Constitution need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in the course of investigation. Take for instance the case on hand. Multiple FIRs have been registered over a period of time. It is in the background of such circumstances the registration of multiple FIRs assumes importance, thereby attracting the issue of wreaking vengeance out of private or personal grudge as alleged.? (Emphasis supplied).

17. If this Court considers the attending circumstances of the present case in the light of the aforesaid judgement, then it is clear that opposite party no.2 in order to settle her personal score and out of vengeance, instituted the present criminal proceedings by filing a complaint against the applicants subsequently on 02.06.2022 i.e. after applicant no.3 came to know about the conduct of opposite party no.3 and her physical relations with other persons, therefore, the offence under Section 376 IPC and allegation of rape by applicant no.3 on false promise of marriage is bereft of record.

18. Hon'ble Supreme Court in the case of Pradeep Kumar Kesharwani (supra) while dealing with the terms 'Rape' and 'consensual sex' and by relying upon the judgement of the Supreme Court rendered in the case of **Deepak Gulati Vs. State of Haryana**, (2013) 7 SCC 675 held as under

"18. There is a clear distinction between rape and consensual sex and in a case where there is a promise of marriage, the court must very carefully examine whether the accused had actually wanted to marry the victim, or had mala fide motives and had made a false promise to this effect only to satisfy his lust, as the latter falls in the ambit of cheating or deception.

19. In the aforesaid context, we may refer to and rely upon the decision of this Court in the case of **Deepak Gulati v. State of Haryana**, (2013) 7 SCC 675. This Court made the following observations:

"18. Consent may be express or implied, coerced or misguided, obtained willingly or through deceit. Consent is an act of reason, accompanied by deliberation, the mind weighing, as in a balance, the good and evil on each side. There is a clear distinction between rape and consensual

sex and in a case like this, the court must very carefully examine whether the accused had actually wanted to marry the victim, or had mala fide motives, and had made a false promise to this effect only to satisfy his lust, as the latter falls within a ambit of cheating or deception. There is a distinction between the mere breach of a promise, and not fulfilling a false promise. Thus, the court must examine whether there was made, at an early stage a false promise of marriage by the accuse; and whether the consent involved was given after wholly, understanding the nature and consequences of sexual indulgence. There may be a case where the prosecutrix agrees to have sexual intercourse on account of her love and passion for the accused, and not solely on account of mis-representation made to her by the accused, or where an accused on account of circumstances which he could not have foreseen, or which were beyond his control, was unable to marry her, despite having every intention to do so. Such cases must be treated differently. An accused can be convicted for rape only if the court reaches a conclusion that the intention of the accused was mala fide, and that he had clandestine motives.

21. Hence, it is evident that there must be adequate evidence to show that at the relevant time, i.e. at initial stage itself, the accused had no intention whatsoever, of keeping his promise to marry the victim. There may, of course, be circumstances, when a person having the best of intentions is unable to marry the victim owing to various unavoidable circumstances. The "failure to keep a promise made with respect to a future uncertain date, due to reasons that are not very clear from the evidence available, does not always amount to misconception of fact. In order to come within the meaning of the term misconception of fact, the fact, the fact must have an immediate relevance." Section 90, IPC cannot be called into aid in such a situation, to pardon the act of a girl in entirety, and fasten criminal liability on the other, unless the court is assured of the fact that from the very beginning, the accused had never really intended to marry her.? (Emphasis supplied)

19. Further, in the case of Pradeep Kumar Kesharwani (supra), Hon^{ble} Supreme Court has framed four guidelines for entertaining the application under Section 482 Cr.P.C. and in guideline (ii) it is provided that whether the material relied upon by the accused, would rule out the assertions contained in the charges levelled against the accused, i.e., the material is sufficient to reject and overrule the factual assertions contained in the complaint, i.e., the material is such, as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false. For the sake of convenience, the aforesaid four guidelines framed by the Hon^{ble} Supreme Court are extracted herein below:-

“20. The following steps should ordinarily determine the veracity of a prayer for quashing, raised by an accused by invoking the power vested in the High Court under Section 482 of the Cr.P.C.:-

(I) Step one, whether the material relied upon by the accused is sound, reasonable, and indubitable, i.e., the materials is of sterling and impeccable quality”

(II) Step two, whether the material relied upon by the accused, would rule out the assertions contained in the charges levelled against the accused, i.e., the material is sufficient to reject and overrule the factual assertions contained in the complaint, i.e., the material is such, as

would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false.

(iii) *Step three, whether the material relied upon by the accused, has not been refuted by the prosecution/complainant; and/or the material is such, that it cannot be justifiably refuted by the prosecution/complainant?"*

(iv) *Step four, whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of Justice?*

If the answer to all the steps is in the affirmative, judicial conscience of the High Court should persuade it to quash such criminal proceedings, in exercise of power vested in it under Section 482 of the Cr. P.C. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as, proceedings arising therefrom) specially when, it is clear that the same would not conclude in the conviction of the accused. [(See: Rajiv Thapar v. Madan Lal Kapoor (Criminal Appeal No. 174 of 2013)]."

20. Recently, a three Judges Bench of the Hon'ble Supreme Court in the case of **Sajal Bose Vs. The State of West Bengal and others**, 2026 SCC OnLine SC 525 while dealing with the similar question held as under:-

"31. In view of the foregoing discussion and upon a cumulative consideration of the allegations in the FIR, the material collected during investigation, and the evidence placed before us, we are of the considered opinion that the present case falls squarely within the illustrative categories (1), (3) and (7) enumerated in paragraph 102 of Bhajan Lal (supra). Even if the allegations in the FIR and the material collected during investigation are taken at their face value and accepted in their entirety, they do not prima facie constitute the necessary ingredients of offences alleged against the appellants. Further, the uncontroverted material available on record, to be specific, the CCTV footage, completely belies the allegation of their participation in the alleged offences so as to justify their being put to trial. Additionally, the attendant circumstances, particularly the admitted pre-existing disputes between the parties and the absence of specific and distinct overt acts attributed to the appellants, lend substance to their contention that the criminal proceedings are manifestly attended with malafide and have been initiated with an ulterior motive. In such circumstances, permitting the continuation of prosecution of the appellants would not advance the cause of justice but would instead amount to an abuse of the process of law.

32. Recently, this Court in *Pradeep Kumar Kesarwani v. State of Uttar Pradesh*, revisited and further elucidated the parameters governing the exercise of inherent jurisdiction under Section 482 of CrPC. While drawing guidance from earlier precedents, this Court delineated a structured four step test to assess the sustainability of a prayer for quashing criminal proceedings. The said decision underscores that where the material relied upon by the accused is of sterling and impeccable quality; is sufficient to negate the allegations in the complaint; remains unrefuted or incapable of justifiable refutation by the prosecution; and where continuation of the proceedings would amount to an abuse of the process of Court and not serve the ends of justice, the High Court

would be justified in exercising its inherent powers to quash the proceedings. For ready reference, the relevant observations from the said judgment are reproduced hereinbelow: -

20. The following steps should ordinarily determine the veracity of a prayer for quashing, raised by an accused by invoking the power vested in the High Court under Section 482 of the Cr.P.C.:

(i) Step one, whether the material relied upon by the accused is sound, reasonable, and indubitable, i.e., the materials is of sterling and impeccable quality?

(ii) Step two, whether the material relied upon by the accused, would rule out the assertions contained in the charges levelled against the accused, i.e., the material is sufficient to reject and overrule the factual assertions contained in the complaint, i.e., the material is such, as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false.

(iii) Step three, whether the material relied upon by the accused, has not been refuted by the prosecution/complainant; and/or the material is such, that it cannot be justifiably refuted by the prosecution/complainant?

(iv) Step four, whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?

If the answer to all the steps is in the affirmative, judicial conscience of the High Court should persuade it to quash such criminal proceedings, in exercise of power vested in it under Section 482 of the Cr.P.C. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as, proceedings arising therefrom) specially when, it is clear that the same would not conclude in the conviction of the accused. [(See: *Rajiv Thapar v. Madan Lal Kapoor* (Criminal Appeal No. 174 of 2013))]?

33. Applying the aforesaid ratio to the case at hand, we find that the material relied upon by the appellants in the present case, particularly the CCTV footage forming part of the chargesheet, is of unimpeachable provenance and reliability, having been collected during investigation and forming part of prosecution's own record. The footage, which was heavily relied upon by both the sides during the course of arguments, upon careful scrutiny, does not depict the appellants participating in any act of assault or overt aggression, thereby substantially dislodging the factual foundation of the allegations against them. The said material stands unrefuted in any meaningful manner and is of such character that it cannot be lightly brushed aside even at the stage when the Court is considering a prayer for quashing the proceedings of the criminal case at its inception.

34. In this backdrop, compelling appellant Nos. 1, 2 and 3 to face a full-fledged criminal trial would serve no meaningful purpose. The continuation of such proceedings, in face of total lack of credible material connecting them with the alleged offences, would amount to misuse of the

criminal process. The present case, therefore, satisfies each of the parameters delineated in Pradeep Kumar Kesarwani (supra). Where reliable and unimpeachable material demonstrably displaces the factual basis of the accusations and the prosecution is unable to effectively counter the same, the Court would be justified in invoking its inherent jurisdiction to prevent injustice. Such an approach not only accords justice to the accused but also obviates the wastage of precious judicial time on proceedings which, on the admitted material, do not hold a reasonable prospect of culminating in conviction."

21. It is relevant to mention here that the averments made in paragraph-14 of the application regarding the messages, obscene and vulgar photographs of opposite party no.2 sent on the Instagram ID of applicant no.3 by Haris Javed Ansari are also not rebutted by opposite party no.2 in paragraph-18 of the counter affidavit.

22. It is very strange to note that applicant no.3 has not broken the marriage, rather it is opposite party no.2, who had committed breach of promise as her parents fixed the marriage of opposite party no.2 with another person in consultation with her even without intimation to the applicants that too on 04.11.2022 i.e. the date on which earlier marriage of applicant no.3 was fixed with opposite party no.2, but in spite of that opposite party no.2 has made allegation against applicant no.3 for committing rape on false promise of marriage. Legal acts and laws are fundamentally designed to dispense justice, maintain social order and protect rights, rather than serve as tools for personal vengeance, retaliation or settling private scores. Hon'ble Supreme Court has time and again consistently held that using legal proceedings, such as criminal complaints to harass or pressure on opposite party constitutes an abuse of the legal process. In this regard, Hon'ble Supreme Court in the well known judgement in the case of ***State of Haryana Vs. Bhajan Lal***, 1992 Supp (1) SCC 335 has delineated seven categories of cases, particularly category no.7, wherein such extraordinary jurisdiction may be invoked to prevent abuse of the process of law or otherwise to secure the ends of justice. For ready reference, the relevant extract of the said judgement is quoted below:-

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we have given the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

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

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police

officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

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

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

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

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

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

23. Hon'ble Supreme Court in the case of ***Salib Vs. State of U.P.***, (2023) 20 SCC 194 again held as under:-

"26. At this stage, we would like to observe something important. Whenever an accused comes before the Court invoking either the inherent powers under Section 482 of the Code of Criminal Procedure (CrPC) or extraordinary jurisdiction under Article 226 of the Constitution to get the FIR or the criminal proceedings quashed essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance, then in such circumstances the Court owes a duty to look into the FIR with care and a little more closely. We say so because once the complainant decides to proceed against the accused with an ulterior motive for wreaking personal vengeance, etc. then he would ensure that the FIR/complaint is very well drafted with all the necessary pleadings. The complainant would ensure that the averments made in the FIR/complaint are such that they disclose the necessary ingredients to constitute the alleged offence. Therefore, it will not be just enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not. In frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines. The Court while exercising its jurisdiction under Section 482CrPC or Article 226 of the Constitution need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the

initiation/registration of the case as well as the materials collected in the course of investigation. Take for instance the case on hand. Multiple FIRs have been registered over a period of time. It is in the background of such circumstances the registration of multiple FIRs assumes importance, thereby attracting the issue of wreaking vengeance out of private or personal grudge as alleged.”

24. Upon a cumulative consideration of the allegations in the complaint, the evidence placed on record and the attending circumstances enumerated above, prima facie, appears that they do not constitute the necessary ingredients of offence alleged against the applicants and the reliable and unimpeachable material demonstrably displaces the factual basis of the accusations and the prosecution is unable to effectively counter the same, the Court would be justified in invoking its inherent jurisdiction under Section 482 Cr.P.C. to prevent injustice as such an approach not only accords justice to the accused but also obviates the wastage of precious judicial time on proceedings which, on the admitted material, do not hold a reasonable prospect of culminating in conviction. Therefore, I am of the considered opinion that the impugned proceedings cannot be sustained in law and the same deserve to be quashed.

25. Application is accordingly *allowed* and the entire proceedings of Complaint Case No.53786 of 2022, Nazish Fatima Vs. Mohd. Abbas and others, Police Station Hazratganj, District Lucknow and the summoning order dated 19.11.2022 passed by the Additional Chief Judicial Magistrate-IV, Lucknow, are hereby quashed qua the applicants.

(2026) 4 ILRA 931
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 02.04.2026

BEFORE

THE HON'BLE BRIJ RAJ SINGH, J.

Application U/S 482. No. 10324 of 2025

Indu Tandon

**...Applicant
Versus**

State of U.P. & Ors.

...Opposite Parties

Issue for consideration

The dispute concerned possession of a shop situated at Mohalla Golaganj, Gonda. The applicant sought attachment of the shop u/s 164/165 BNSS alleging attempted encroachment, whereas opposite parties claimed tenancy and actual possession of the premises.

Headnotes

A. Bhartiya Nagrik Suraksha Sanhita, 2023-Section 164 and 165-Dispute regarding possession of immovable property-Attachment of shop by Magistrate-Revisonal Court setting aside attachment order-Validity-Opposite parties claiming tenancy and actual possession-Police report indicating possession with opposite parties-Proceedings u/s 164/165 BNSS are maintainable only where there exists a genuine dispute regarding actual possession likely to result in breach of peace-Where possession is admitted to be with one party, such party cannot be dispossessed

**through summary proceedings under BNSS-Remedy of landlord lies in appropriate civil proceedings for eviction-The Revisional Court rightly quashed the attachment order passed by the City Magistrate-Order affirmed-Application rejected.(Para 23,24)
Held**

The court held that proceedings u/s 164/165 BNSS are intended to prevent breach of peace and not to adjudicate title or tenancy rights. Jurisdiction u/s 164/165 BNSS arises only when there is a bona fide dispute regarding actual possession of immovable property. A person in admitted or established possession cannot be dispossessed through summary preventive proceedings. Landlord-tenant disputes and questions of eviction must be resolved through appropriate civil proceedings. (E-6)

Case law Cited

Pawan Singhania Vs State of U.P. (2023) SCC OnLine All 4579, Mahabirji Mandir Committee Vs State of U.P. (1992) SCC OnLine All 1154: 1993 Cri LJ 2132, Virendra Kumar Vs State of U.P (2002) SCC OnLine All 1606: 2003 Cri LJ 2709-referred to.

List of Acts

Bhartiya Nagrik Suraksha Sanhita, 2023.

List of Keywords

Dispute as to Possession, Attachment of Property, Breach of Peace, Executive Magistrate, Tenant in Possession, Landlord-Tenant Dispute, Summary proceedings, Preventive jurisdiction, Civil remedy, Shop Premises Police Report, Section 164/165 BNSS.

Case Arising from

CRIMINAL JURISDICTION: APPLICATION U/S 482 No.- 10324 OF 2025 02.04.2026

Indu Tandon Vs. State of U.P. Thru. Prin Secy. Home Lko & 2 Ors

From the judgment and order dated 02.04.2026 of the High Court of judicature at Allahabad.

Appearances for Parties

Advs. for Applicant(s)

Ashish Kumar Singh

Advs. for Opposite Party(s)

G.A., Priya Bharti, Saima Khan

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

1. Heard. Ms. Sudiksha Singh, holding brief of Sri Ashish Kumar Singh, learned counsel for applicant; Ms. Tanvi Jain, learned AGA-I for State and Ms. Saima Khan, learned counsel for opposite party nos.2 and 3.

2. By means of present application, applicant has challenged the order dated 01.11.2025 passed by Additional Sessions Judge, Room No.1, Gonda (Revisional Court) in Criminal Revision No. 580 of 2024 (*Dileep Soni and Another Vs. State of U.P. and Another*), under Sections 438/440 of Bhartiya Nagrik Suraksha Sanhita (in short "BNSS") filed by the opposite party nos. 2 and 3 by which the Revisional Court set aside the order dated 24.10.2024 passed by City Magistrate, Gonda, under Section 164 of BNSS.

3. It has been submitted that applicant is old and widow lady whose son live out of town and house of applicant wherein the shop in question is situated at Mohalla Golaganj is registered on Form No.45 of Nagar Palika Parishad, Gonda in the name of Narain Kishore Tandon (husband of

applicant) since 1946 and after the death of husband of applicant, his legal heir i.e. applicant and her son Bheeshm Tandon became owner and in possession of the house.

4. It has been further submitted that a temple was also constructed by husband of applicant in the premises of house and opposite party no.2, knowing the fact that applicant is old, ill and weak lady, is illegally trying to encroach a room for shop, therefore, the applicant gave an application to District Magistrate/City Magistrate, Gonda on 25.05.2024.

5. It has been further submitted that the police of Kotwali Nagar, District Gonda has submitted a report on 03.08.2024/05.08.2024, under Section 164 BNSS stating therein that due to dispute regarding possession, the situation was under tension and some unpleasant incident may took place between the parties and prayed for the necessary action and recommended to attach the property under Section 165 BNSS.

6. It has been further submitted that both parties appeared before the City Magistrate, Gonda and on 05.09.2024, applicant gave an application under Section 165(1) BNSS stating therein that opposite party nos.2 and 3 are trying to possess the shop of applicant and prayed therein to attach the shop and appoint the receiver.

7. It has been further submitted that opposite party no.2 also appeared before the City Magistrate, Gonda and on 19.09.2024 filed an objection on false and frivolous fact praying therein to quash the proceedings under Section 164 BNSS.

8. It has been further submitted that the City Magistrate has recorded finding that in Civil Suit No. 1459 of 2024 preferred by opposite party no.2, the description of the shop is different from the description of the shop described in the objection dated 19.09.2024 filed by opposite party no.2 and the map mentioned in police challani report and mentioned in the suit is not same and after giving proper opportunity of hearing to all parties, Magistrate has attached the shop in question vide order dated 24.10.2024.

9. It has been further submitted that opposite party nos.2 and 3 preferred a revision before the Revisional Court on 28.10.2024 on false and frivolous fact stating therein in para 12 of revision that the order has been passed ex-parte whereas the order has been passed after giving opportunity to both the parties.

10. It has been further submitted that applicant appeared before Revisional Court and filed her objection stating that no rent agreement has been executed by applicant and opposite party nos.2 and 3. The applicant also mentioned in para 5 of the objection that opposite party no.2 after drinking wine with his associates and friends abuses the applicant, taking the advantage of illness, oldness and weakness of applicant.

11. It has been further submitted that opposite party no.2 filed a civil suit for permanent injunction before Civil Judge (Junior Division)-I, Gonda on the false and frivolous fact on 01.07.2024 which was registered as Civil Suit No.1459 of 2024.

12. It has been further submitted that applicant appeared in the suit and filed her written statement denying all the wrong facts claimed by opposite party no.2, on 03.10.2025.

13. She has placed reliance on the judgment of this Court passed in **Pawan Singhania v. State of U.P.**, reported in **2023 SCC OnLine All 4579**. Relevant para is extracted herein-under:-

"6. Considering the rival contention of the parties, I am of the view that impugned order was passed mainly on the ground that civil suit is pending between the parties without looking to the nature of leave of civil suit and without even going into the question that civil suit is not regarding the possession but merely to protect the possession till the process of law adopted and from perusal of plaint of the suit No. 709 of 2009, it appears that there is no title dispute between the parties and private respondents did not claim ownership or possession on the basis of any right, therefore, there is no occasion to drop the proceeding under Section 145 Cr. P.C. when there is purely question of possession is pending before the Magistrate even in the judgement relied upon by the counsel for the revisionist. The Apex Court clearly observed that question of possession is involved then the Magistrate is empowered to take cognizance under Section 145 Cr. P.C. Even in the judgement of Full Bench of this court reported AIR 1959 All 141, Ganga Bux Singh v. Sukhdin has settled the issue. "It has been held that the proceedings under Sections 145 Cr. P.C. are only in the interest of the maintenance of peace and not in the interest of the preservation of the rights of any party. It was further held that the proceedings under Section 145 of the Code of Criminal Procedure are materially different from the proceedings in a proper suit. From the nature of the provisions it is clear that the Magistrate has been given this power primarily to preserve peace. The individual rights are affected only incidentally. The nature of the enquiry is quasi civil. It is an incursion by the criminal court in the jurisdiction of the civil court. It is, therefore, necessary that this incursion should be carefully circumscribed to the extend absolutely necessary discharging the function laid on the Magistrate of preserving the peace. The provisions of Section 145, Code of Criminal Procedure make that ample clear.

The Magistrate does not enquire into the merits of the claims of the parties or even their right to possess the subject of the dispute. He is only concerned with the question as to who was in actual physical possession on the relevant date. This also indicates that the starting point of the proceedings) must be the date when he was satisfied that an apprehension of a breach of the peace existed and not even he received the first information." 7. The Apex Court clearly held that proceeding under Section 145 Cr. P.C. cannot be dropped merely on the ground that one party had approached civil court not with regard to title or right to possession therefore in view of law and fact, the impugned order dated 28.04.2010 passed by the Additional Sessions Judge, Gorakhpur in Criminal Revision No. 217 of 2010 is absolutely erroneous and passed on non-application of mind, therefore, the impugned order is liable to be quashed and it is accordingly quashed.

14. Referring to para 6, it has been submitted that even if civil suit is pending between the parties without looking to the nature of leave of civil suit and without even going into the question that civil suit is not regarding the possession but merely to protect the possession till the process of law adopted, the Revisional Court has not applied its mind and the proceedings under Section 164 BNSS cannot be dropped merely on the ground that one party has approached the civil Court not

with regard to title or right of the possession, therefore, in view of law laid and fact, the proceeding was illegal.

15. On the other hand, Ms. Saima Khan, learned counsel for opposite party nos.2 and 3 has submitted that opposite party no.2 is running shop and he has also filed electricity bill. The predecessor of applicant namely Narain Kishore Tandon (husband of applicant) was land lord of shop of question which is situated in Mohalla Golaganj. Answering opposite party no.2 was tenant of late Narain Kishore Tandon.

16. Ms. Saima Khan, learned counsel has invited attention of this Court towards the police report wherein it is mentioned that there is shop running by answering opposite party no.2 and applicant wants to evict him but opposite party no.2 does not want to evict the shop.

17. It has been submitted that once the possession of shop is admitted, it is open for applicant to file suit for eviction but proceeding under Sections 164/165 BNSS cannot be allowed. Answering opposite party nos.2 and 3 are getting their livelihood by running a jewellery shop and their possession should not be disturbed.

18. To buttress her arguments, she has placed reliance on following judgments of this Court:

i- **Mahabirji Mandir Committee v. State of U.P., reported in 1992 SCC OnLine All 1154 : 1993 Cri LJ 2132**

ii- **Virendra Kumar v. State of U.P., reported in 2002 SCC OnLine All 1606 : 2003 Cri LJ 2709**

19. Emphasis has been placed on paragraph 9 of the judgment passed in **Virendra Kumar (Supra)**, is extracted herein-under :-

"9. The fact that the petitioner was all along in possession and never vacated disputed premises gains support from the Commission's report. As would appear from his report, he found certain documents belonging to the petitioner in the disputed shop. No explanation has been offered by respondent No. 3 as to how those papers could be found in the said premises when according to him, the petitioner having entered into a compromise left the premises in his possession. To my mind the petitioner continued to possess the said premises and used the same as shop till it was attached and receiver was appointed. In my opinion, it is a fit case where the Court in order to do justice to the petitioner should come to his rescue and put him back in possession of his tenanted premises in question."

20. Paragraphs 5 and 6 of the judgment passed in **Mahabirji Mandir Committee (Supra)**, is extracted herein-under :-

"5. In order to appreciate the legal aspect of the case the provisions of S. 145, Cr. P.C. are necessary to be quoted. It is needless to say that a duty is cast on the Executive Magistrate to

act in emergent situation and to exercise in public interest the power to prevent breach of the peace under the provisions of the Code, like Ss. 107/116, 144 and 145, Cr. P.C. No doubt all the proceedings including the proceedings under S. 145, Cr. P.C. are summary in nature but in every case the Magistrate has to act in a judicial manner and exercise his power strictly within the four corners of the Code. In this case it is the duty of the Magistrate to decide first the ambit of his jurisdiction and thereafter take a decision as to what provision in the particular facts and circumstances of the case can be invoked by him to preserve the peace and public tranquillity. The relevant provisions of S. 145, Cr. P.C. are as follows:?

"145. Procedure where dispute concerning land or water is likely to cause breach of peace.?

(1) Wherever an Executive Magistrate is satisfied from a report of a police officer or upon other information that a dispute likely to cause a breach of the peace exists concerning any land or water or the boundaries thereof, within his local jurisdiction, he shall make an order in writing, stating the grounds of his being so satisfied, and requiring the parties concerned in such dispute to attend his Court in person or by pleader, on a specified date and time, and to put in written statements of their respective claims as respects the fact of actual possession of the subject of dispute.

(2) to (3)

(4) The Magistrate shall then, without reference to the merits or the claims of any of the parties to a right to possess the subject of dispute, peruse the statements so put in, hear the parties, receive all such evidence as may be produced by them, take such further evidence, if any, as he thinks necessary, and, if possible, decide whether any and which of the parties was, at the date of the order made by him, under sub-sec. (1), in possession of the subject of dispute.

Provided that if it appears to the Magistrate that any party has been forcibly and wrongfully dispossessed within two months next before the date on which the report of a police officer or other information was received by the Magistrate, or after that date and before the date of his order under subsection (1), he may treat the party so dispossessed as if that party had been in possession on the date of his order under sub-section(1).

(5) Nothing in this section shall preclude any party so required to attend, or any other person interested, from showing that no such dispute as aforesaid exists or has existed, and in such case the Magistrate shall cancel his said order, and all further proceedings thereon shall be stayed, but, subject to such cancellation, the order of the Magistrate under sub-sec. (1) shall be final.

(6)(a) If the Magistrate decides that one of the parties was, or should under the proviso to sub-sec. (4) be treated as being in such possession of the said subject, he shall issue an order declaring such party to be entitled to possession thereof until evicted therefrom in due course of law, and forbidding all disturbance of such possession until such eviction and when he proceeds under the proviso to sub-sec. (4), may restore to possession the party forcibly and wrongfully dispossessed.

(b) the order made under this sub-section shall be served and published in the manner laid down in sub-section (3).

*(7), (8), (9) and (10)" 6. From the bare perusal of S. 145, Cr. P.C. it is clear that the jurisdiction to initiate proceedings under S. 145, Cr. P.C. arises in case only when there is a dispute about actual possession of any immoveable property which is likely to lead to the breach of the peace. In my opinion for initiation of proceedings under S. 145, Cr. P.C. it is necessary that both the parties must disagree on the question of actual possession or claim possession within two months of the preliminary order. On the other hand in my opinion proceedings under S. 145, Cr. P.C. cannot be initiated e.g. if one party admits the other party's possession on the property in dispute then in these circumstances the Magistrate should not initiate proceedings under S. 145, Cr. P.C. the question of possession is not in dispute but the Magistrate finds that there is danger of the breach of the peace then the proper course is to take action under S. 107, 116, Cr. P.C. Thus, what is necessary to give jurisdiction to the Magistrate to act under S. 145, Cr. P.C. is the fact that there must be a dispute in respect of actual possession of the property in dispute. Similarly, if the claim is vague or if from the perusal of the application for initiation of proceedings under S. 145, Cr. P.C. it is proved that there is no dispute in respect of possession or if it appears that one party is in possession of the property in dispute from a very long time then in these circumstances the Magistrate has no jurisdiction to initiate the proceedings under S. 145, Cr. P.C. In the case of *Makhan Lal Raina v. Addl. City Magistrate, Lucknow, 1989 LCD 143*, this Court in similar circumstances quashed the order holding that the proceedings under S. 145, Cr. P.C. should not have been initiated because admittedly the first party was in possession of the property in dispute. In the instant case from the perusal of the application (Annexure 3) it is clear that the petitioner is in possession of the temple and is managing the affairs of the temple for a very long time i.e. 1986."*

21. She has submitted that it is clear that jurisdiction to initiate proceeding under Sections 164/165 BNSS, akin to Sections 145/146 CrPC (now repealed), arises in case there is dispute of actual possession of any immovable property, which is likely to lead to the breach of peace. There is a police report which shows possession of shop with answering-opposite party nos.2 and 3.

22. I have learned counsel for the contesting parties and have perused the records.

23. After going through record and the police report, it is clear that answering-opposite party nos.2 and 3 are claiming tenants of applicant and they are in possession of shop in question. The proceeding under Sections 126/135 BNSS has already been initiated between the parties by the Magistrate as is apparent from Police Report dated 03.08.2024. If there is any law and order situation certainly, the police is under obligation to look into the matter. The State Authority has to protect the parties but if actual possession is there with answering-opposite party nos.2 and 3, they cannot be dispossessed by proceeding under Sections 164/165 BNSS except in accordance with law by the order of Court. The case of answering-opposite party nos.2 and 3 is covered by the judgment of this Court passed in **Mahabirji Mandir Committee (Supra)** and **Virendra Kumar (Supra)**.

24. The Revisional Court has rightly set aside the order passed by the City Magistrate vide impugned order, which is hereby affirmed. The application is, accordingly, rejected.

25. It is, however, made clear that the observation made by this Court will not be considered by any Court or Authority in future and whatever is observed in this case, is only applicable for disposal of this application.

(2026) 4 ILRA 938
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 02.04.2026

BEFORE

THE HON'BLE MANOJ BAJAJ, J.

Application U/S 528 BNSS No. 12417 of 2025
 alongwith
 Application U/S 528 BNSS. No. 1738 of 2021
 alongwith
 Application U/S 528 BNSS. No. 42067 of 2022

Urmila Yadav

...Applicant
Versus

State of U.P. & Anr.

...Opposite Parties

Issue for consideration

In the present case applicant challenge to orders passed during rape case trial permitting expert examination of a disputed handwritten letter at the instance of the accused u/s 311 CrPC, refusing DNA testing of the accused with the child allegedly born from the prosecutrix, and dismissing an application u/s 319 CrPC for summoning additional accused persons.

Headnotes

A. Indian Penal Code,1860-Sections 376, 313, 506-Criminal Procedure Code,1973-Sections 311, 319-Expert examination of disputed handwriting-Accused relied upon a letter allegedly written by the prosecutrix to establish consent and sought handwriting comparison by an expert-Mere denial of authorship by the prosecutrix during cross-examination does not render the document inadmissible or foreclose scientific examination thereof-Trial court justified in permitting expert analysis of the disputed document, the same being relevant for effective adjudication of the defence case-Order allowing application u/s 311 CrPC upheld.(Para 10)

B. DNA Testing-Child allegedly born from relationship between prosecutrix and accused-DNA profiling of the accused and the child alleged to have been born from the sexual relationship would constitute crucial scientific evidence having direct nexus with the prosecution case-Rejection of such prayer solely on the grounds that the Investigating officer had not conducted the test or that the trial had reached an advanced stage held unsustainable-Application for DNA testing allowed.(Para 11, 12)

Summoning of additional accused-Section 319 CrPC-Revision challenging refusal to summon additional accused persons having been withdrawn by the petitioner, the same was dismissed as withdrawn.(Para 13)

Held

The court observed that both the prosecution and the defence are entitled to rely upon the best available evidence in a criminal trial. While the order allowing handwriting comparison was affirmed, the rejection of

the prosecutrix's request for DNA profiling was held to be contrary to the interest of justice. The application for DNA testing consequently allowed. The remaining revision stood dismissed as withdrawn. (E-6)

List of Acts

Indian Penal Code, 1860, Criminal Procedure Code, 1973.

List of Keywords

Rape, Consent, Disputed Handwritten Letter, Handwriting Expert, Expert opinion, Section 311 CrPC, Section 319 CrPC, DNA Test, Scientific Evidence, Fair Trial, Prosecutrix, Accused, Sexual offences, Criminal Trial, Evidentiary Value, Truth Discovery, Expert Examination, Inherent jurisdiction, Appreciation of evidence.

Case Arising from

CRIMINAL JURISDICTION: APPLICATION U/S 528 BNSS No.- 12417 OF 2025 02.04.2026

Urmila Yadav Vs. State of U.P. & Anr

From the judgment and order dated 02.04.2026 of the High Court of judicature at Allahabad.

Appearances for Parties

Adv. for Applicant(s)

Raj Kumar Tripathi

Advs. for Opposite Party(s)

G.A., Suraj Kumar Singh

(Delivered by Hon'ble Manoj Bajaj, J.)

1. Petitioner-Complainant has filed the above three separate petitions, i.e. two petitions under Section 528 B.N.S.S. and 482 Cr.P.C. to challenge the orders dated 23.10.2024 and 25.8.2022 respectively, passed by Additional Sessions Judge/ FTC-2, Ghaziabad in Session Trial No. 776 of 2018, titled *State Vs. Shashi Bhushan Gupta*, arising out of Case Crime No. 188 of 2018, under Sections 376, 313, 506 I.P.C., registered at Police Station Kavi Nagar, District Ghaziabad, whereby the application moved by the accused-opposite party no.2 under Section 311 Cr.P.C. was allowed, whereas vide order dated 25.8.2022 the application by the prosecutrix for DNA test of the accused with his daughter born from the forcible physical relation has been dismissed. Criminal Revision Petition challenges the order dated 22.3.2021, whereby the application by petitioner under Section 319 Cr.P.C. seeking summoning of additional accused-relatives of the accused-opposite party no.2 has been dismissed.

2. Learned counsel for the petitioner-prosecutrix has argued that the prosecutrix lodged the subject F.I.R. against the accused-opposite party no.2 and his relatives, who had allegedly raped her on 27.9.2015 in her house by use of force, and after committing the crime he threatened her not to disclose it to anyone, and accused had also promised that he would perform marriage with her. Learned counsel submits that as per the allegations, the prosecutrix turned pregnant, but the accused forced abortion of her pregnancy on 29.7.2016 in the clinic of Dr. Nisha Khurana, and thereafter, he continued to forcibly set up physical relations with her on the strength of her obscene videos prepared by him. As a result, the prosecutrix again turned pregnant and again the accused-opposite party no.2 requested for abortion and also threatened to kill her, if, she refuses for abortion. Broadly, on these allegations, the F.I.R. was registered for the alleged commission of offences punishable under Sections 376, 313, 506 I.P.C.

3. Learned counsel for the petitioner submits that after completion of investigation, the charge sheet was filed only against the accused-opposite party no.2, whereas other accused persons-his close relatives were exonerated. Learned counsel submits that after commencement of trial, the testimony of prosecutrix was recorded in the year 2020 and during her cross-examination, the accused had confronted her with a document-a letter in the handwriting of the prosecutrix, but she categorically denied the said document to be written by her. Learned counsel submits that once the prosecutrix had denied the said document set up by the accused-opposite party no.2, the trial court could not have ordered the examination of the handwriting of the said letter by an expert vide impugned order dated 23.10.2024 by accepting the application.

4. Learned counsel for the petitioner has further argued that another application was moved by the prosecutrix-petitioner for conducting DNA test of the accused with the minor daughter of the prosecutrix alleged to be born as a result of forcible physical relations set up by him and the said application has been dismissed by the trial court vide impugned order dated 25.8.2022 on the ground that the investigating officer was not informed about such a test and the charge sheet filed against the accused is silent in this regard.

5. That apart, the application is dismissed on another ground that the trial has reached at an advanced stage. He submits that both these orders call for interference by this Court in exercise of inherent powers.

6. The prayer is opposed by learned counsel for the accused-opposite party no.2, who has argued that the trial court has rightly allowed the application under Section 311 Cr.P.C. moved by the accused-opposite party no.2 as the accused has set up a defence that the letter written in the handwriting of the prosecutrix-petitioner to the accused would reveal her consent in setting up physical relations. He submits that the said letter is in the handwriting of the prosecutrix, and if, the said document which would have a direct bearing on the prosecution case, is not allowed to be analyzed by expert, it would result in prejudice to the accused. He prays that the petition challenging the impugned order dated 23.10.2024 be dismissed.

7. Learned counsel for the accused-opposite party no.2 has argued that the trial court vide order dated 25.8.2022 has given valid reasons while refusing DNA test as the request was made by the prosecutrix at a belated stage, therefore, the said order does not call for any interference by this Court.

8. However, learned counsel for the petitioner-prosecutrix does not press the revision petition challenging the impugned order dated 22.3.2021 dismissing her application under Section 319 Cr.P.C. to summon the additional accused persons-opposite party nos.2 to 4.

9. The prayer for withdrawal of the revision petition seeking summoning of additional accused under Section 319 Cr.P.C. is not opposed by the learned counsel for the opposite party no.2.

10. After hearing the learned counsel for the parties and considering their submissions, this Court finds that merely because the prosecutrix had denied the handwriting in the subject letter to

be in her handwriting when she was confronted during her cross-examination cannot be treated as a valid ground to deny the exercise of jurisdiction under Section 311 Cr.P.C. It is the case of the prosecutrix herself that she was allegedly raped on 27.9.2015 by use of force and subsequently also the accused exploited her resulting in her turning pregnant on two occasions. Though, according to prosecutrix, the first pregnancy was terminated, but the second pregnancy resulted in delivery of a child, therefore, if, the accused is making an attempt to rebut the prosecution evidence to prove consent by the prosecutrix, the examination of the handwriting in the subject letter by an expert would be a crucial piece of evidence for effective and proper adjudication. Even otherwise, if, the application under Section 311 Cr.P.C. filed by the accused-opposite party no.2 is rejected, it would be amounting to depriving him of his right to fair trial. A perusal of the impugned order dated 23.10.2024 would show that the trial court has given valid reasons while accepting the application moved by the accused-opposite party no.2 under Section 311 Cr.P.C., therefore, the order dated 23.10.2024 does not call for any interference by this Court in exercise of inherent powers.

11.As far as the issue of conducting the DNA test of the accused-opposite party no.2 with the daughter delivered by the prosecutrix is concerned, the said report would also be a crucial piece of evidence having a direct bearing on the prosecution case, and the reasons given by the trial court that the trial has reached at an advanced stage or the investigating officer had not conducted the test, as a good ground to reject the prayer. Thus, the order dated 25.8.2022 is not sustainable.

12.As a result, the application filed by the petitioner-prosecutrix for comparison of DNA of the accused with the daughter of the prosecutrix is allowed and it is directed that the accused-opposite party no.2 shall give the requisite samples for the said purpose as and when directed by the trial court.

13.Resultnatly, the Application U/S 528 BNSS No. 12417 of 2025 is dismissed; the Application U/S 482 No. 42067 of 2022 stands allowed and the Revision Petition No. 1738 of 2021 is dismissed as withdrawn.

(2026) 4 ILRA 941
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 20.04.2026

BEFORE

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

Application U/S 528 BNSS. No. 12833 of 2026

Reyazuddin @ Bablu & Anr.

...Applicants

Versus

State of U.P. & Anr.

...Opposite Parties

Issue for consideration

In the present case the woman died by hanging within three years of marriage. The victim's mother later moved an application to add a murder charge, which the trial court allowed mechanically without supporting medical or prima facie evidence on record. The applicants challenged this addition of charge.

Headnotes

A. Indian Penal Code,1860-Sections 498-A, 304-B & 3/4 of Dowry Prohibition Act,1961- Criminal Procedure Code,1973-Section 482(528 BNSS 2023)-Dowry death and alteration of charge-Mechanical addition of section 302 IPC-Allegation of dowry death- Trial court allowed application for framing additional charge of murder u/s 302 IPC solely relying on Rajbir Vs. State of Haryana directives-Challenged by applicants on grounds f lack of homicidal evidence-Medical report and post-mortem report indicating cause of death as asphyxia due to hanging-No prima facie evidence or material on record to justify homicidal hanging or murder-Supreme Court precedent in Jasvinder Saini Vs. State clarifies that addition of Section 302 IPC is not a mechanical mandate and requires independent evidentiary support-Court cannot alter or add charges in a routine manner without judicial application of mind and recording satisfaction-Impugned trial court order set aside.(Para 9 to 11)

Held

The court held that a charge under section 302 IPC should not be added automatically to every dowry death case unless independent supporting evidence or material is present on record. The court observed that the autopsy and statements from the medical examiner confirmed the cause of death as asphyxia resulting from hanging. The court allowed the application and remitted back to the Varanasi trial court to proceed with the trial expeditiously under existing charges. (E-6)

Case law Cited

Rajbir @ Raju & Anr Vs State of Haryaa (2010) 15 SCC 116, Jasvinder Saini Ors Vs State(Govt. of NCT of Delhi) (2013) 83 ACC 132-referred to.

List of Acts

Indian Penal Code, 1860, Dowry Prohibition Act,1961- Criminal Procedure Code,1973 (BNSS 2023)

List of Keywords

Dowry Death, Murder, Cruelty, Addition of Charge, Mechanical application of mind, Asphyxia due to Hanging, Prima Facie Evidence, Remand, Section 304-B, Section 302.

Case Arising From

CRIMINAL JURISDICTION: APPLICATION U/S 528 BNSS No.- 12833 OF 2026

Reyazuddin @ Bablu & Anr. Vs. State of U.P. & Anr

From the judgment and order dated 20.4.2026 of the High Court of judicature at Allahabad.

Appearances for Parties

Advs. for Applicant(s)

Ali Hasan, Asif Hasan

Adv. for Opposite Party(s)

G.A.

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

1. Heard Sri Ali Hasan, learned counsel for the applicants, learned AGA for the State and perused the record.

2. The present application under section 528 BNSS has been filed with a prayer to allow this application and quash the order dated 22.01.2026 passed by learned Additional District Judge, FTC-I, Varanasi in Sessions Trial No. 1275 of 2022 (State vs. Reyazuddin and others) arising out of Case Crime No. 268 of 2022 under sections 498-A, 304-B IPC and 3/4 of Dowry Prohibition Act, Police Station Lohta, District Varanasi.

3. In the instant matter, the Opposite Party No.2, Raziun lodged an FIR No. 0268 of 2022 dated 01.09.2022 under sections 498-A, 304-B IPC and 3/4 D.P. Act against the applicants alleging that his daughter Zahra, aged about 28 years, was married to Sultan (applicant no.2). The marriage was about three years old. Soon after the marriage, his daughter was constantly harassed for demand of dowry and all her jewellerys were sold and finally his son-in-law and his brother Babloo killed her by throttling her neck.

4. As per the post mortem report dated 01.09.2022, the immediate cause of death was asphyxia as a result of hanging, howsoever, viscera was preserved for chemical analysis and the following ante-mortem injuries were found:

(i) Ligature mark all around neck, 30 cm x 1-2 cm Hip of neck, obliquely placed with a gap of 9 cm over back of neck.

(ii) Ligature mark 20 cm below from top of head (upper end of ligature).

(iii) Ligature mark 04 cm below from Rt. Ear pinna, Ligature mark 03 cm below from Lt. Ear pinna, 05 cm above from sternum knoth.

(iv) Ligature mark 124 cm above from Rt. heel.

(v) Ligature mark in front of neck is 2 cm hence the total body length 146 cm.

(vi) Skin under ligature is parchmented, tissue underneath is ecchymosis.

5. After the investigation, the charge sheet was submitted under sections 498-A, 304-B IPC and 3/4 of Dowry Prohibition Act and after the committal, the charges were framed on 05.10.2023 against the applicants under sections 498-A, 304-B IPC and 3/4 of Dowry Prohibition Act.

6. On 16.10.2025, the opposite party no.2 moved an application for framing of the additional charge under section 302 IPC in the light of direction given by the Hon'ble Apex Court in **Rajbir @ Raju and Another vs. State of Haryana (2010) 15 SCC 116**.

7. Aggrieved by the said order, the applicants have preferred the present petition on the ground that the order impugned has been passed in a mechanical manner without application of mind and without recording the satisfaction whether the case under section 302 IPC is made out. It has further been stated that there is no evidence on record that it was a case of murder rather it is apparent that the deceased committed suicide after hanging which is corroborated with the medical evidence and the charges have already been framed under section 304B IPC.

8. Learned counsel for the applicants has further relied upon the decision rendered by Hon'ble Apex Court in **Jasvinder Saini and others vs. State (Govt. of NCT of Delhi) 2013 (83) ACC 132** wherein the Hon'ble Apex Court has emphasised that *"Be that as it may the common thread running through both the orders is that this Court had in **Rajbir's case (supra)** directed the addition of a charge under Section 302 IPC to every case in which the accused are charged with Section 304-B. That was not, in our opinion, the true purport of the order passed by this Court. The direction was not meant to be followed mechanically and without due regard to the nature of the evidence available in the case. All that this Court meant to say was that in a case where a charge alleging dowry death is framed, a charge under Section 302 IPC can also be framed if the evidence otherwise permits. No other meaning could be deduced from the order of this Court."*

9. In the case in hand and from perusal of records, it transpires that the deceased died within seven years of her marriage at her matrimonial home and the immediate cause of death was asphyxia due to hanging and the viscera was preserved, however, the chemical analysis report is not on record. The charges have been framed against the applicants under sections 498A, 304B IPC and section 3/4 D.P. Act. Thus, prima facie from perusal of evidence, there is no evidence or material on record to justify framing of a charge under section 302 IPC. It transpires that the order dated 22.01.2026 has been passed against spirit and tenor of the judgement rendered by Hon'ble Apex Court in **Jasvinder Saini's case**. The doctor who conducted the autopsy in his statement recorded under section 161 Cr.P.C. has stated that *"ligature mark was found and the immediate cause of death was Asphyxia as a result of hanging as the congestion was found in the abdomen, therefore, viscera was preserved."* The application dated 16.10.2025 moved by mother of the deceased for framing of the additional charge under section 302 IPC does not disclose any reasoning or justification for invoking section 302 IPC except in the light of Rajbir's Case directives. The charge framed under section 304B IPC is neither defective nor any other evidence is available for the alteration of the charge.

10. Accordingly, keeping in view the observation made by Hon'ble Apex Court in **Jasvinder Saini's case (supra)**, the order dated 22.01.2026 passed by learned Additional District Judge, FTC-I, Varanasi is hereby set aside and the matter is remitted back to the Court concerned to conclude the trial expeditiously in accordance with law after giving opportunity of hearing to both the parties.

11. With the aforesaid observation, the application under section 528 BNSS is allowed.

(2026) 4 ILRA 944
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 29.04.2026

BEFORE

THE HON'BLE SAURABH SRIVASTAVA, J.

Application U/S 528 BNSS. No. 12863 of 2026

Jubair Ansari & Anr.

...Applicants

Versus

State of U.P. & Anr.

...Opposite Parties

Issue for consideration

In the present case, the informant lodged an FIR alleging that the accused persons shared anti-national and objectionable Facebook posts containing derogatory remarks against the Prime Minister of India and RSS.

Headnotes

A. Bhartiya Nyaya Sanhita (BNS),2023-Sections 196(1)(a), 351(2), 352, 353(2), 3(5)-Bhartiya Nyaya Suraksha Sanhita (BNSS), 2023-Section 528-Social Media Posts-Quashing of proceedings-Anti-national and objectionable Facebook posts-Charge-sheet filed after investigation-Prima facie case disclosed-No mini-trial permissible-Disputed questions of fact to be examined during trial-Application dismissed.(Para 15 to 18)

Held

The court held that the allegations in the FIR were supported by material collected during investigation and disclosed prima facie case. At the stage of cognizance and summoning, the court is only required to ascertain whether sufficient grounds exist for proceeding and not whether the accused are likely to be convicted. Since the pleas of false implication and innocence involved disputed questions of fact requiring trial, no case for exercise of inherent powers under section 528 BNSS was made out. (E-6)

Case law cited

S.W. Palanitkar and Others Vs. State of Bihar and Another (2002) 1 SCC 241, Nupur Talwar Vs. Central Bureau of Investigation and Another (2012) 11 SCC 465-referred to.

List of Acts

Bhartiya Nyaya Sanhita (BNS),2023, Bhartiya Nyaya Suraksha Sanhita (BNSS), 2023, Information Technology Act, 2000.

List of Keywords

Social media Posts, Facebook Post, Anti-National content, Derogatory remarks, Prime Minister, RSS,Hate Speech, Promoting Enmity, Public Harmony, Religious Feelings, Deliberate and Malicious Act, Cognizable offence, Inherent jurisdiction, Section 528 BNSS.

Case Arising from

CRIMINAL JURISDICITON: APPLICATION U/S 528 BNSS No.-12863 OF 2026

Jubair Ansari And Another Vs. State of U.P. and Another

From the judgment and order dated 29.04.2026 of the High Court of judicature at Allahabad.

Appearances for Parties**Advs. for Applicant(s)**

Deepak Kumar Singh, Shishir Kumar Singh, Vinanjay Kumar Patel

Adv. for Opposite Party(s)

G.A.

(Delivered by Hon'ble Saurabh Srivastava, J.)

1. Heard Sri Deepak Kumar Singh, learned counsel for applicants and learned AGA for State.

2. Present application has been preferred with prayer to quash entire proceeding of Criminal Case no. 12299 of 2025 (State vs. Sabbir Ansari and others) arising out of Case Crime no. 78 of 2025 under sections 353(2), 196(1)(a), 3(5), 352 and 351(2) of BNS, PS- Anapara, District Sonbhadra and also quash charge sheet dated 13.5.2025 as well as cognizance/summoning order dated 15.11.2025 passed by learned Additional Civil Judge (J.D.) Court No. 3, Sonbhadra.

3. Brief facts of the case are that opposite party no. 2/informant lodged FIR bearing Case Crime no. 78 of 2025 under sections 353(2), 196(1)(a) and 3(5) of BNS against applicants and another co-accused alleging therein that applicants have posted anti-national posts along with objectionable post against Prime Minister of India with derogatory remarks. The posts are alleged to be shared/circulate from Facebook ID of a Pakistani Youtuber. The Facebook account of accused persons shows that almost every post are anti-national, against Prime Minister of India and Rashtriya Swayamsewak Sangh(RSS).

4. After conducting detailed investigation, charge sheet submitted against the applicants on dated 13.5.2025, whereupon cognizance of offence has been taken up vide impugned order dated 15.11.2025 passed by learned Chief Judicial Magistrate, Sonbhadra.

5. Learned counsel for applicants contended that from perusal of FIR and Case Diary, no specific date and time of alleged incident has been mentioned. Informant has lodged the present FIR only with mala fide intention and ulterior motive. Allegations made in the FIR are vague and without substantial evidence and the FIR is a result of malicious intent to harass the applicants. Without looking into the facts and circumstances of the case, learned Magistrate concerned has passed the order impugned in a mechanical manner without application of judicial mind which is illegal, unjust and against the principles of law and as such entire proceeding initiated against the applicants are liable to be quashed and set aside, since basically allegation has been fastened only on the basis of a post on Facebook.

6. Per contra, learned AGA vehemently opposed the prayer sought through instant application and submitted that entire arguments raised at the behest of applicants are subject matter of trial which involves appreciation of evidence and the same cannot be adjudicated at this stage, hence no interference is required.

7. After hearing rival submissions extended by learned counsels for the parties and perusing the records, this Court notes that Social Media has caught the imagination of People. People express their views on the social networking site. They now access social media through various application and devices. People invariably post information and express their opinion freely and openly on the Social Media. However sometimes the line is crossed when such information is posted without understanding the consequence of such instances. One way, if we consider life has become very easy and easily accessible where people can get together and express their views on certain issues. It is one way very good where the views of the people are known to everyone. But sometimes the Social Media is misused where people post such comments which hurts the feelings of others and triggers disharmony on a large scale.

8. The Information technology Act, 2000, categorically makes one liable on any illegal content posted on Social Media. Section 66(A) of Information Technology Act, 2000 defines the punishment for sending 'offensive' messages through a computer or any other device like a mobile phone or a tablet. However the Supreme Court declared Section 66(A) of Information and Technology Act, 2000 as unconstitutional. It has observed that the section has been widely misused. It laid down that it actually amounts to restraining citizens to exchange their views. This section has been misused by the police in various states to arrest innocent persons for posting

critical comments about social and political issues and political leaders on social networking sites. The Court had said such a law hit at the root of the liberty and freedom of expression, the two cardinal pillars of Democracy. It said that it hit and went against the freedom of speech and expression which has been enshrined in the Constitution. The Court however upheld the validity of Section 69(B) of the Act of 2000 and the 2011 guidelines for the implementation of the Information and Technology Act, that allowed the Government to block websites, if their content had the potential to create communal disturbance, social disorder or affect India's relationship with other countries.

9. The Supreme Court delivered the above judgement on the bunch of petition filed over the misuse of the Penal provisions by the Government authority. A Public Interest Litigation was filed by a Delhi student, Ms. Shreya Singhal taking into account the law, it was held that the phrase of the section 66(A) of the Information Technology Act, 2000 is so wide and vague and incapable of being so judged objectively. It also stands unconstitutional to some extent as it falls against the article 14, 19(1)(a) and 21 of the Constitution.

10. Social Media is actually to express the views and opinions about any issues. Such rights should not be misused or overused. It is a duty or responsibility of every individual towards the society before posting anything in such social networking sites. In 2012, one of the early cases of misuse of Social Media came to the Government's attention, when morphed pictures and videos of earthquake victims began to go viral on the Social Media. Miscreants were morphing these images to show that these women were Muslim victims of civil riots in Assam and Burma. This was done to provoke further riots by vested interest and it did bring a reaction.

11. Another drawback of the Social Media is the evolution of adult videos or porn videos which are so easily accessible by minors, which is resulting in the changing behaviour of the society. Accessing the internet has become so easy these days that it is difficult to draw the line of restriction.

12. Section 196(1)(a) of the Bharatiya Nyaya Sanhita (BNS), 2023 which replaced Section 153A of the Indian Penal Code (IPC) is attracted to a Facebook post when the content deliberately promotes enmity, hatred, or ill-will between different groups based on religion, race, place of birth, residence, language, caste, or community. Under this section, a post can lead to a cognizable offence (meaning police can register an FIR and arrest without a warrant), if it disrupts public harmony.

13. The key aspects attracting Section 196(1)(a) BNS are as under:

a. **Intent (Mens Rea):** The post must show a clear, deliberate intention to create disharmony, not just a vague statement.

b. **Targeting Groups:** The content must target a specific group (caste, religion, community), rather than merely criticizing a policy or Government.

c. **Impact:** The post is deemed likely to provoke breach of peace or cause enmity between communities.

Examples of Prohibited Content: Mocking a community using derogatory terms, promoting hatred based on religion, or attempting to cause violent conflict between groups.

Reasonable Person Test: The court assesses whether a "reasonable, strong-minded, firm and courageous" person would be swayed by the post to commit disorder, rather than focusing on a "weak and vacillating mind"

14. Through the post initiated by the applicant over Facebook amounted to a ?deliberate and malicious attempt? to outrage religious feelings. ?...on the face of it, the conduct of the applicant in depicting the Rashtriya Swayamsewak Sangh(RSS), which is a organization rendering its services to the various sections of society with its allied organization for last 100 years, along with the Prime Minister of this country who is indirectly elected by the majority of citizen of our country who invoked their right to vote for a particular political party.

15. The allegations fastened upon the applicants are corroborated with the evidence collected during investigation prima facie up to the satisfaction of learned Court concerned to take cognizance of offence in pursuance to Section 3(5), 196(1)(a), 351(2), 352 & 353(2) of BNS. This Court is of the opinion that at the stage of summoning, the Magistrate is only required to record a prima facie opinion, based on the material on record, and is not expected to hold a mini trial or to examine the defence of the accused. In judgment rendered by Hon'ble Apex Court in case of **S.W. Palanitkar and Others v. State of Bihar and Another; (2002) 1 SCC 241** it was held that the test which was required to be applied was whether there is "sufficient ground for proceeding" and not whether there is "sufficient ground for conviction". In the case of **Nupur Talwar v. Central Bureau of Investigation and Another; (2012) 11 SCC 465**, it was reiterated that the limited purpose of consideration of material at the stage of issuing process being tentative as distinguished from the actual evidence produced during trial, the test to be applied at the stage was whether the material placed before the Magistrate was "sufficient for proceeding against the accused" and not "sufficient to prove and establish the guilt".

16. From perusal of the material on record, at this stage, it cannot be said that no offence is made out against the applicants. The assertions of false implication raised by the applicants are factual issues that requires proper adjudication by the trial court based on evidence and cannot be conclusively determined in proceedings under Section 528 BNSS. In proceeding u/s 528 BNSS, this Court is not inclined to hold mini-trial.

17. It is well settled that the inherent powers under Section 528 BNSS are to be exercised sparingly and with caution, primarily to prevent abuse of the process of the court or to secure the ends of justice. In the instant case, no sufficient ground have been made out to invoke the extraordinary jurisdiction of this Court under Section 528 BNSS. There is hardly any infirmity in the order dated 15.11.2025 passed by learned Court of Additional Civil Judge (J.D.) Court No. 3, Sonbhadra and as such no case of seeking interface by this Court is made out by learned counsel for applicants.

Criminal Breach of trust, Cheating, Grand Venice Project, Clubbing of FIRs, Parent FIR, Composite charge sheet, Vicarious liability of Directors, Prima facie case, Factual adjudication at Trial, Cancellation of bail, Commercial transaction.

Case Arising from

CRIMINAL JURISDICTION: APPLICATION U/S 482 No.- 25724 OF 2022

Satinder Singh Bhasin and Another Vs. State of U.P. And Another

From the judgment and order dated 09.04.2026 of the High Court of judicature at Allahabad.

Appearances for Parties

Advs. for Applicant(s)

Aditya Yadav, Pankaj Kumar Shukla, Styra Prakash Tiwari, Shivam Yadav, Swatantra Pratap Singh

Advs. for Opposite Party(s)

Akash Sharma, Ashish Dwivedi, G.A.

(Delivered by Hon'ble Padam Narain Mishra, J.)

1. Heard Sri Manish Tiwary, learned Senior Counsel for the applicants assisted by Sri Shivam Yadav, Sri Pranay Sharma, Sri Aditya Yadav and Sri I.K. Chaturvedi, learned Senior Counsel, Sri Pankaj Kumar Shukla learned counsel for the Opposite Party No. 2, learned A.G.A. for the State and perused the materials available on record.

2. The present application under Section 482 Cr.P.C. has been filed with the prayer to quash the entire proceedings of Case No. 1559 of 2019 (State v. Satinder Singh Bhasin) arising out of Case Crime No. 353 of 2015, under Sections 406 and 420 I.P.C., Police Station Kasna, District Gautam Budh Nagar, pending in the court of Additional Chief Judicial Magistrate - II, Gautam Budh Nagar.

3. Brief fact of the present is that an FIR was lodged against the applicant - Satinder Singh Bhasin and one another for the offences punishable under Sections 406 and 420 of IPC, which was registered as Case Crime No. 353 of 2015. Investigating Officer, after thorough investigation, submitted a final report on 30.11.2016. Against the said final report, a protest petition was filed on 13.03.2017. Thereafter, Investigating Officer has submitted a charge sheet in the present case on 17.02.2019. In the present case, various FIRs were lodged against the present applicant and other persons with the allegations of large scale misappropriation of fund and cheating with regard to Grand Venice. Apart from the FIR No. 353 of 2015, Forty one (41) FIRs were lodged in the various districts of Uttar Pradesh and five (5) FIRs were lodged in New Delhi with the identical allegations. In the present case, Hon'ble Supreme Court, vide order dated 12.05.2022, has directed for clubbing of all FIRs i.e. Forty Six (46) and also directed to the Investigating Officer to submit a composite charge sheet. In compliance of order of Hon'ble Supreme Court, a composite charge sheet was submitted on 23.12.2022 under sections 420, 406 and 120 - B of IPC. Thereafter, a further supplementary charge-sheet was also submitted on 10.04.2025.

4. Learned Senior Counsel for the applicant vehemently submitted that the dispute between the parties is essentially civil in nature arising out of a commercial transaction. The allegations, even if taken at their face value, do not disclose the essential ingredients of offences punishable under Sections 406 and 420 I.P.C. It is submitted that there is no entrustment nor dishonest

intention from the inception, which are sine qua non for constituting the said offences. It is further submitted that the project is ready and allotment has been handed over to various buyers.

5. Learned Senior Counsel has vehemently submitted that for fastening vicarious liability upon a Director or office bearers of a company, the company itself must be arraigned as an accused. It is further submitted that in the absence of the company being impleaded as a party, prosecution against its Directors or officers alone is not maintainable. It is further submitted that the vicarious liability in criminal law cannot be fastened upon a Director or officers of a company in the absence of specific allegations demonstrating their active role in the commission of the offence. It is further submitted that merely holding a position in the company is not sufficient to attract criminal liability unless there are clear and unambiguous averments indicating personal involvement.

6. It is further submitted that in the present case, the Investigating Officer after due investigation, has submitted the final report on 30.11.2016. Against the said final report, a protest petition was filed by the opposite party no. 2 on 13.03.2017. He further submitted that without passing any judicial order either accepting the final report or treating the protest petition as a complaint case, the learned Magistrate proceeded to direct further investigation. Pursuant thereto, a supplementary charge-sheet under Section 406 I.P.C. has been submitted. Learned counsel for the applicants has vehemently contended that the entire proceedings are vitiated in law. In absence of such order, the direction for submission of supplementary charge-sheet is wholly without jurisdiction.

7. Learned Senior Counsel for the applicants has vehemently submitted that parallel civil proceedings bearing Original Suit No. 448 of 2017 is pending in the court of Senior Civil Judge, Patiala House Courts, New Delhi. It is further submitted that insolvency proceedings is also pending before the National Company Law Tribunal. It is vehemently submitted that in the peculiar facts and circumstances of the present case, where appropriate civil proceedings are pending, present criminal proceedings is liable to be quashed. In support of their contentions, learned Senior Counsel for the applicants has placed reliance upon the judgment passed by Hon'ble Supreme Court in the case of ***G. Sagar Suri vs State of U.P. (2000) 2 SCC 636, S.K. Alag v. State of U.P. and Others (2008) 5 SCC 662 and Aneeta Hada Vs. Godfather Travels and Tours Private Limited (2012) 5 SCC 661.***

8. Learned Senior Counsel appeared on behalf of opposite party no. 2 has opposed the submissions advanced by the learned Senior Counsel for the applicants. It is further submitted that the present case is very distinct in nature. It is further submitted that the FIR No. 353 of 2015 relates to the non-payment of rent for the use of shuttering material but the remaining FIRs, that are forty six (46), primarily relates with large scale fraud involving misappropriation of money and land. It is further submitted that the applicants, in connivance with others, induced a large number of innocent buyers to invest money in a project 'Grand Venice' and collected huge amounts running into crores of rupees, but failed to deliver the promised property, thereby causing wrongful loss to the investors and wrongful gain to himself. It is further submitted that if the present FIR No. 353 of 2015 is quashed by this Hon'ble Court, the remaining FIR would also be quashed. It is further

submitted that in the interest of public at large, the present matter must be tried by Trial Court concerned.

9. It is further submitted that on the perusal of FIR and statements recorded under Section 161 of Cr.P.C., prima facie offence has been made out against the applicants. It is further submitted that the scope of inherent power of Hon'ble High Court is very restricted with regard to the quashing of Criminal Proceedings when the material available on record, prima facie, discloses the commission of offence. It is further submitted that pleas raised by the learned counsel for the applicants involve the factual questions, which can be adjudicated at the stage of trial.

10. It is further submitted that by Learned Senior Counsel for the opposite party no.2 that the Hon'ble Supreme Court, vide order dated 12.05.2022, has directed that Case Crime No. 353 of 2015 shall be treated as the parent FIR and all other 46 FIRs be clubbed with it. In compliance thereof, a composite charge-sheet has been filed and the proceedings are continuing in accordance with law. It is further submitted that in view of the said order, the challenge to the parent FIR would have far-reaching consequences, affecting not only the present case but also numerous connected FIRs, thereby prejudicing the rights of a large number of victims. It is further submitted that the material collected during investigation clearly discloses a prima facie case against the applicants and, therefore, the matter requires adjudication on evidence during trial. It is further submitted that proceedings by the Enforcement Directorate have been initiated, which further indicates the seriousness and magnitude of the alleged offence.

11. Learned Senior Counsel for the opposite party no.2 has submitted that the applicants in collusion with co-accused has fabricated and forged allotment letter dated 15.4.2015, wherein a GST Number was mentioned despite the fact that the GST was implemented on 01.07.2017. The conduct of applicants clearly shows that they have dishonest intention from the inception of the transaction. It is further submitted that the applicants and other co-accused were enlarged on bail by Hon'ble Supreme Court vide order dated 6.11.2019. It is further submitted that the bail of the applicants and other co-accused has been cancelled by Hon'ble Supreme Court vide order dated 02.04.2026 for not complying with the conditions of bail. It is further submitted that the conduct of the applicants clearly shows that they are not complying the order of Hon'ble Supreme Court.

12. At the outset, it is necessary to reiterate the settled legal position governing the exercise of inherent powers under Section 482 Cr.P.C. The Hon'ble Supreme Court in ***State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335*** has exhaustively laid down the categories of cases wherein the High Court may exercise its inherent jurisdiction to quash criminal proceedings. However, it has been equally emphasized that such power is to be exercised sparingly and with great caution. Further, in ***M/s Neeharika Infrastructure Private Limited v. State of Maharashtra, 2021 SCC OnLine SC 315***, the Hon'ble Supreme Court has categorically held that while exercising jurisdiction under Section 482 Cr.P.C., the High Court should not embark upon an enquiry into the reliability or genuineness of the allegations and should refrain from interfering at the stage of investigation or when a prima facie case is disclosed. Guided by the aforesaid principles, this Court proceeds to examine the contentions raised by the applicants.

13. On perusal of records, it appears that in the present matter, an FIR was lodged against the applicants, namely Satinder Singh Bhasin, and another under Sections 406 and 420 IPC, registered as Case Crime No. 353 of 2015. It transpires that multiple FIRs were lodged against the present applicants and other co-accused persons in connection with alleged large-scale misappropriation of funds and cheating relating to the "Grand Venice" project. In all, 41 FIRs were registered in various districts of Uttar Pradesh and 5 FIRs were lodged in New Delhi on similar allegations. The Hon'ble Supreme Court, vide order dated 12.05.2022, directed that all the aforesaid 46 FIRs be clubbed together and further directed that Case Crime No. 353 of 2015 shall be treated as the parent FIR. It was also directed that a composite charge-sheet be submitted. It transpires that FIR No. 353 of 2015 is related to non-payment of money for the shuttering material supplied but other 46 FIRs are related to serious allegations of the misappropriation of the money and land. On the perusal of records, it is evident that only some documents are available on record with regard to other FIRs.

14. The submission advanced by the learned Senior Counsel with regard to the absence of specific allegations against the applicants has also been considered. However, the Court has also clarified that where material on record discloses prima facie involvement, the matter must proceed to trial. In the present case, whether the applicants had any active role or mens rea is a matter which requires evidence and cannot be conclusively determined at this stage.

15. The argument that the dispute is purely of civil nature does not persuade this Court at this stage. The Hon'ble Supreme Court in **P. Swaroopa Rani vs. M. Hari Narayana Alias Hari Babu, (2008) 5 SCC 765** has held as under:-

"11. It is, however, well settled that in a given case, civil proceedings and criminal proceedings can proceed simultaneously. Whether civil proceedings or criminal proceedings shall be stayed depends upon the fact and circumstances of each case. (See M.S. Sheriff v. State of Madras [AIR 1954 SC 397] , Iqbal Singh Marwah v. Meenakshi Marwah [(2005) 4 SCC 370 : 2005 SCC (Cri) 1101] and Institute of Chartered Accountants of India v. Assn. of Chartered Certified Accountants [(2005) 12 SCC 226 : (2006) 1 SCC (Cri) 544] "

On the perusal of the above mentioned judgment of Hon'ble Supreme Court, it is evident that if a dispute gives rise to civil liability, it does not mean that criminal proceedings are not maintainable if the allegations disclose the ingredients of a criminal offence. It is also evident that the presence of a civil dispute does not bar criminal prosecution where allegations of fraud, cheating or dishonest intention are made out. In the present case, the allegations prima facie disclose inducement of a large number of persons and alleged misappropriation of funds, which cannot be brushed aside as a mere breach of contract.

16. This Court finds that it is not in dispute that the applicants were granted bail by the Hon'ble Supreme Court on 06.11.2019 and the same has subsequently been cancelled by the Hon'ble Supreme Court vide order dated 02.04.2026 due to non-compliance of the conditions of bail. It is also evident that the co ordinate bench of this court has granted the interim protection to the applicants in the present case, but the applicants did not disclose the fact that a charge sheet has already been submitted on 23.12.2022. The cancellation of bail by the Hon'ble Supreme Court on

account of violation of conditions and the concealment of fact of submission of the charge sheet while obtaining the order dated 27.04.2023 are significant circumstances, which reflect upon the conduct of the applicants.

17. This Court has given thoughtful consideration to the submission advanced by the learned Senior Counsel for the opposite parties that the present case has been treated as the parent FIR pursuant to the directions issued by the Hon'ble Supreme Court. It is not in dispute that by virtue of the order passed by the Hon'ble Supreme Court, all the connected FIRs, arising out of identical and similar allegations, have been directed to be clubbed with the present FIR and a composite charge-sheet has also been submitted. Thus, the present FIR has assumed a central and pivotal position in the entire set of proceedings. In such circumstances, any interference with the parent FIR at this stage cannot be viewed in isolation. Quashing of the said FIR would inevitably have a cascading and far-reaching effect on all the connected FIRs, which have been consolidated pursuant to the directions of the Hon'ble Supreme Court. The consequence of such interference would be that the entire framework of investigation and prosecution, as structured under the directions of the Hon'ble Supreme Court, may stand seriously affected. This would not only disrupt the course of trial but may also lead to multiplicity of proceedings and legal complications in respect of the connected matters. More importantly, the allegations in the present case pertain to large-scale financial irregularities and cheating affecting a substantial number of investors/victims. Therefore, any premature interference with the parent FIR would have the effect of prejudicing the rights and interests of a large number of victims, whose grievances are sought to be addressed through the consolidated proceedings.

18. In view of the aforesaid discussions, this Court does not find any good ground to exercise its inherent jurisdiction under Section 482 Cr.P.C. to quash the impugned proceedings.

19. Accordingly, the present application is **dismissed**.

20. Application pending, if any, stands disposed of.

(2026) 4 ILRA 954
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 28.04.2026

BEFORE

THE HON'BLE ACHAL SACHDEV, J.

Application U/S 482. No. 26175 of 2024

Amar Singh & Anr.

...Applicants

Versus

State of U.P. & Anr.

...Opposite Parties

Issue for consideration

The matter pertains to an application u/s 482 CrPC seeking the quashing of a summoning order issued in a criminal complaint case u/s 406 IPC for the offence of criminal breach of trust.

Headnotes

A. Indian Penal Code,1860-Section 406-Criminal Procedure Code,1973-Section 482-Quashing of proceedings-Summoning order challenged-Matrimonial discord between families leading to financial transactions-Allegation of non-return of money advanced for purchasing a plot-Transaction held to be a civil loan rather than criminal breach of trust-Summoning order quashed for non-application of judicial mind-Application allowed. (Para 7 to 23)

Held

The court held that a financial transaction where money is voluntarily advanced to a relative for purchasing a plot constitutes a civil loan(lending) rather than an entrustment of property under criminal law. A mere breach of contract or failure to repay the debt cannot be criminalized u/s 406 IPC in the complete absence of a dishonest intention or mens rea at inception. Thus, the summoning order quashed. (E-6)

Case law Cited

Anand Kumar Mohatta (S) Vs. State(Govt. of NCT of Delhi), Binod Kumar and Others Vs. State of Bihar and Another, (2014) 10 SCC 663, Indian Oil Corporation Vs. Npc India Ltd. And Others (2006) 6 SCC 736,Pradeep Kumar Alias Pradeep Kumar Verma Vs State of Bihar & Anr, 2007 (7) SCC 413 and Arti & 3 Ors Vs State of U.P. & Anr, Neutral Citation No. – 2024:AHC: 152597. In K. Sampath Kumar Vs State , Velji Raghavji Mehta Vs State of Maharashtra, (AIR 1965 1433),[Delhi Race Club (1940) Ltd Vs State of U.P. & Anr.,(2024) 10 SCC 690]-referred to.

List of Acts

Indian Penal Code, 1860, Criminal Procedure Code,1973.

List of Keywords

Criminal breach of trust, Entrustment , Lending, Summoning order, Civil dispute, Fiduciary relationship, Dishonest Misappropriation, Mens Rea, Non-application of judicial mind.

Case Arising from

CRIMINAL JURISDICTION: APPLICATION U/S 482 No.- 26175 OF 2024

Amar Singh and Another Vs. State of U.P. And Another

From the judgment and order dated 28.04.2026 of the High Court of judicature at Allahabad.

Appearances for Parties

Advs. for Applicant(s)

Krishna Kumar Pandey, Vikrant Neeraj

Advs. for Opposite Party(s)

Dhruva Dixit, G.A.

(Delivered by Hon'ble Achal Sachdev, J.)

1. The case has been taken up on mention slip given by Sri Dhruva Dixit, learned counsel for the opposite party no. 2.

2. Heard Sri Vikrant Neeraj, learned counsel for the applicants and learned A.G.A. for the State.

3. However, the learned counsel for the opposite party no. 2 is not present at the time of hearing.

4. The present application u/s 482 Cr.P.C. has been preferred by the applicants with a prayer to quash the summoning order dated 10.07.2019 passed by Additional Chief Judicial Magistrate, Room No. 4, Aligarh in Complaint Case No. 629 of 2017 (Suresh Chandra Vs. Amar Singh and Ors.) u/s 406 I.P.C., Police Station- Quarsi, District- Aligarh.

5. Learned counsel for the applicants submits that the applicants have been wrongly roped in, in the criminal case just to harass them. Fact of the matter is that the daughter of applicant no.1 and sister of applicant no. 2 was married to son of opposite party no. 2 on 28.11.2014. The applicants had given gifts as per their status and daughter of applicant no. 1 went to her in-laws house (sasural) and discharged her duties to the best of her abilities but opposite party no. 2, his son and his wife were not satisfied with the gifts provided at the time of marriage of their son and were making additional dowry demand from the applicants that were beyond the financial capabilities of applicant no. 1 and on being annoyed due to non-fulfillment of additional dowry demand, they treated the daughter of applicant no. 1 with cruelty and forced her out of her in-laws house (sasural) and from then onwards, she is being residing with the applicant no. 1.

6. The complainant in his complaint has stated that on 30.07.2017, the father of his daughter-in-law, Praveen, and her uncle came to the house of the complainant and told him that they should send her daughter-in-law, Praveen along with them as her mother was running unwell. It is also stated that they were short of Rs.1,00,000/- in buying a plot and asked for money and the same was provided by the complainant to the opposite party no.1 (applicant no. 1 herein). At the most, it can be said that applicant no. 1 had borrowed a sum of money from the complainant as he was running short of finances for purpose of buying a plot and the same was provided by the complainant to the opposite party no.1 (applicant no. 1 herein) to buy a plot.

7. The question arises whether giving of money for buying a plot to a person in relation can be termed as entrustment of property. The court distinction between □entrustment of property□ and □lending□ hinges on the transfer of ownership and the purpose of transfer and the resulting liability. □Entrustment□ and □lending□ both involve one person handing property to another but the underlying intent and legal consequences are entirely different. Entrustment occurs when a property is handed to other person for specific purpose or service with the clear expectation that the property or its result will be returned or handled according to instructions. Lending is a broader category where property is delivered to another person for their own use either for a said period or a specific cause after which it may be returned and if the person misappropriates the item that has been entrusted to him, it may be treated as criminal breach of trust but lending is generally governed by law of bailment and if the borrower fails to return it, it is usually a civil matter (breach of contract) unless there is a clear evidence of theft.

8. As per **Black's Law Dictionary**, the definition of both the terms, being, "entrustment" and "lending" are as under :-

Entrustment : To give (a person) the responsibility for something, usually after establishing a confidential relationship.

Lending : To allow the temporary use of (something), sometimes in exchange for compensation, on condition that the thing or its equivalent be returned.

9. In the context of Section 406 I.P.C., proceedings may be quashed if the complaint or F.I.R., even if taken at face value, does not disclose the essential ingredients of the offence. A clear absence of allegations regarding entrustment or dishonest misappropriation can be a ground for quashing. The Supreme Court in **Anand Kumar Mohatta (S) v. State (Govt. Of NCT Of Delhi)**, emphasized the need to ascertain if the facts make out an offence under Section 406 I.P.C.

10. The punishment for an offence under Section 406 I.P.C. is imprisonment which may extend to three years, or with fine, or with both. Consequently, as per Section 468(2)(c) of the Code of Criminal Procedure, 1973 (Cr.P.C.), the period of limitation for taking cognizance of such an offence is three years. The commencement of the limitation period can be contentious, particularly in cases involving commercial transactions where it might be argued to commence from the date of demand and refusal. Section 406 I.P.C. is generally not considered a continuing offence. However, Section 473 Cr.P.C. empowers a court to take cognizance of an offence after the expiry of the period of limitation if it is satisfied on the facts and in the circumstances of the case that the delay has been properly explained or that it is necessary so to do in the interests of justice.

11. Section 406 of the Indian Penal Code, 1860 (I.P.C.) prescribes the punishment for the offence of criminal breach of trust. This provision plays a crucial role in upholding fiduciary relationships and ensuring accountability for the misappropriation of property entrusted to another. Criminal breach of trust, as defined in Section 405 of the I.P.C., is a nuanced offence, requiring a careful examination of the elements of entrustment, dishonest misappropriation, and the violation of legal or contractual duties. Section 406 I.P.C. is intrinsically linked to Section 405 I.P.C., as the former provides punishment for the offence defined by the latter.

12. For the sake of convenience, Section 405 I.P.C. is being reproduced hereinbelow :

405. Criminal breach of trust - *Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits criminal breach of trust.*

This definition is further elucidated by two explanations, which create deeming fictions in specific employer-employee contexts.

Explanation 1 pertains to deductions made by an employer from an employee's wages for contribution to a Provident Fund or Family Pension Fund. If the employer defaults in remitting such contributions, they are deemed to have been entrusted with the amount and to have dishonestly used it.

Similarly, Explanation 2 addresses deductions for the Employees' State Insurance Fund, with a similar deeming provision for default in payment.

13. For a conviction under Section 406 I.P.C., the prosecution must prove the commission of criminal breach of trust as defined in Section 405 I.P.C. In **Binod Kumar and Others v. State Of Bihar and Another, (2014) 10 SCC 663**, the Supreme Court reiterated that the prosecution must prove:

(i) entrustment with property or dominion over it ; and

(ii) dishonest misappropriation, conversion, use, or disposal of that property in violation of law or legal contract.

14. The cornerstone of criminal breach of trust is 'entrustment'. The expression "entrusted" as used in Section 405 I.P.C. is not a term of art with a narrow technical meaning. Entrustment implies that the accused had voluntarily handed over property for a specific purpose, creating a relationship of trust and confidence.

15. At this stage, it is crucial to distinguish entrustment from other transactions. For instance, a mere transaction of sale does not amount to entrustment. Similarly, the Supreme Court in **Indian Oil Corporation Vs. Nepe India Ltd. And Others, 2006 (6) SCC 736**, held that hypothecation of goods as security for a debt does not constitute "entrustment" as required under Section 405 I.P.C., because ownership and possession (subject to the hypothecatee's rights) remain with the debtor. The absence of a clear allegation or proof of entrustment is fatal to a prosecution under Section 406 I.P.C., as highlighted in cases like **Pradeep Kumar Alias Pradeep Kumar Verma Vs. State Of Bihar and Another, 2007 (7) SCC 413** and **Arti And 3 Others Vs. State of U.P. and Another, Neutral Citation No. - 2024:AHC:152597**. In **K. Sampath Kumar Vs. State**, where a contractor purchased cement, it was argued that there was no entrustment, leading to an alteration of the charge from Section 406 to Section 403 I.P.C. (dishonest misappropriation of property).

16. The second critical element is the "dishonest misappropriation or conversion" of the entrusted property. "Dishonestly" is defined in Section 24 I.P.C. as doing anything with the intention of causing wrongful gain to one person or wrongful loss to another. This implies a deliberate act of using the property for a purpose other than that for which it was entrusted, or converting it to the accused's own use.

17. The Apex Court in **Anand Kumar Mohatta (supra)** has held that the dishonest misappropriation or use must be "in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust."

18. This means the accused's actions must contravene either a statutory duty or a contractual term (whether express or implied) governing how the entrusted property was to be handled. This element underscores the fiduciary nature of the relationship and the breach of the specific terms of that trust.

19. Mens rea, specifically a "dishonest intention," is the lynchpin of the offence of criminal breach of trust. A mere failure to return property or a simple breach of contract does not automatically translate into a criminal breach of trust. The prosecution must establish that the accused acted with a dishonest mind. The

Supreme Court in **Indian Oil Corporation (supra)** emphasized the distinction between a civil wrong (breach of contract) and a criminal offence, noting that criminal liability arises when elements like fraudulent or dishonest intention are present. The lack of dishonest intention can lead to the quashing of proceedings under Section 406 I.P.C. Dishonest intention is the sine qua non of the offence of criminal breach of trust. Mere failure to account for money does not constitute criminal breach of trust. The prosecution must establish that the accused dishonestly misappropriated or converted the property. A mere civil liability to pay does not attract Section 406 I.P.C. as held by the Apex Court in **Velji Raghavji Mehta Vs. State of Maharashtra, (AIR 1965 SC 1433)**.

20. The Delhi Race Club case [**Delhi Race Club (1940) Ltd. Vs. State of U.P. and Anr., (2024) 10 SCC 690**], is a recent Supreme Court precedent emphasizing that commercial disputes should not be criminalized unless clear evidence of dishonest intention exists. It is now a strong authority for quashing criminal complaints in business debt recovery matters.

21. In the present complaint, it appears that a sum of money had been lent by the complainant to the opposite party no. 1 (applicant no. 1 herein) for buying a plot as he was running short of amount to enable him to purchase the property. There were no clear instructions as to how the money has to be used for a specific purpose. There is clear admission on the part of the complainant that the money had been provided to the opposite party no. 1 (applicant no. 1 herein) to enable him to purchase the plot.

22. The trial court has clearly ignored this aspect of law and the summoning order dated 10.07.2019 passed by Additional Chief Judicial Magistrate, Room No. 4, Aligarh in Complaint Case No. 629 of 2017 (Suresh Chandra Vs. Amar Singh and Ors.) u/s 406 I.P.C., Police Station- Quarsi, District- Aligarh, suffers from non-application of judicial mind and is unsustainable and is hereby quashed.

23. The present application u/s 482 Cr.P.C. is accordingly, **allowed**.

(2026) 4 ILRA 959
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 20.04.2026

BEFORE

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

Application U/S 528 BNSS. No. 50778 of 2025

Smt. Ramvati

...Applicant

Versus

State of U.P. & Ors.

...Opposite Parties

Issue for consideration

The matter arises from a double-murder trial where a material prosecution witness (the father of the deceased victim) supported the case in his examination-in-chief but completely retracted his testimony during cross-examination. Three years later, the victim's mother sought to recall and re-examine him u/s 311 CrPC, claiming his retraction was forced by threats.

Headnotes

A. Criminal Procedure Code, 1973 (BNSS 2023)-Section 482/528, Section 311-Recall/Re-examination of witness-Scope of power- Filling up of lacuna-Belated applicaiton-Prayer to recall and re-examine a material prosecution witness(PW-3)-Witness supported the prosecution in examination-in-chief but completely resiled and retracted in cross-examination-recall application moved by the mother after a belated gap of more than three years from cross-examination alleging that the witness had resiled under threat-Power u/s 311 CrPC is highly discretionary, it must be exercised judicially-It cannot be invoked at a belated stage to fill up a lacuna in the prosecution case-Allegations of threat and coercion remained completely unsubstantiated as no date, time or particulars of incidents were disclosed-Order of the Trial Court rejecting the recall application upheld.(Para 10 to 16)

Held

The court ruled that the power u/s 311 CrPC cannot be invoked at a belated stage of more than three years to fill up a lacuna in the prosecution case. Unsubstantiated and delayed allegations of threat and coercion cannot be accepted as valid ground for recalling a witness when no timely complaint was ever made to the police or the court. (E-6)

Case law Cited

Raja Ram Prasad Yadav Vs State of Bihar & Anr, (2013) 14 SCC 461,-referred to.

List of Acts

Criminal Procedure code, 1973. Bhartiya Nagrik Suraksha Sanhita 2023.

List of Keywords

Section 311 CrPC, Recall of witness, Re-examination, Hostile witness, Retraction of Testimony, Cross-examination, Filling up of lacuna, Belated application, Threat and Coercion, Prejudice to Accused.

Case Arising from

CRIMINAL JURISDICTION: APPLICATION U/S 528 BNSS No.- 50778 OF 2025 20.04.2026

Smt. Ramvati Vs. State of U.P. & 3 Others

From the judgment and order dated 20.04.2026 of the High Court of judicature at Allahabad.

Appearances for Parties

Adv. for Applicant(s)

Saksham Srivastava

Adv. for Opposite Party(s)

G.A.

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

1. Heard Sri Saksham Srivastava, learned counsel for the applicant, learned AGA-I Shri Ratan Singh for the State and perused the record.

2. The present application under section 528 BNSS has been filed with a prayer to set aside the order dated 10.11.2025 passed by the Court of learned Additional District and Sessions Judge (4th), District Gautam Budh Nagar in Session Trial No. 50 of 2020 (State Vs. Sukhmeet and Others) in Case Crime No. 1310 of 2019 under sections 302 and 201 IPC, Police Station Surajpur, District Gautam Budh Nagar, pending before the concerned Court, whereby the learned Court has rejected the application moved by the applicant under section 311 Cr.P.C in a very routine and mechanical manner which is being annexed as Annexure No.2 to this present application, and to further direct the Court of learned Additional District and Sessions Judge (4th) District Gautam

Budh Nagar to allow the P.W.-3 i.e., to be re-examined during the pendency of the aforesaid Session Trial.

3. To narrate the brief facts, the applicant Ramvati is the mother of the deceased Rahul who moved an application dated 14.08.2025 (38Kha) under section 311 Cr.P.C. praying for the re-examination of P.W.-3, Rishipal Singh (Father of the deceased).

4. In the instant matter, an FIR No. 1310 of 2019 was lodged on 03.09.2019 at 14:28 under sections 302, 201 I.P.C. by one Shri Harendra Singh at Police Station Surajpur, District Gautam Budh Nagar against unknown persons stating that two dead bodies were found lying in the jungle at village Jumpat in the field of Jagat Singh, near the service road. Both the deceased appeared to have been fire shot and thrown away in the field. During investigation, it was found that one of the deceased was son of the applicant namely Rahul and the other was Kuldeep Nagar, s/o Hari Narayan Singh. After the investigation, the charge sheet was submitted against the respondent-accused Nos. 2 to 4, namely, Sukhmeet, Yogesh alias Bachhi and Saurabh Rana.

5. During trial, the examination-in-chief of P.W.-3, Rishipal (father of the deceased Rahul) was recorded on 23.09.2021 and cross-examination was recorded on 28.07.2022.

6. The prosecution witness No.3, Rishipal, in his examination-in-chief supported the prosecution case but in his cross-examination, did not support the prosecution case and had retracted and resiled from his previous testimony. The said witness was not declared hostile and was not re-examined.

7. Thereafter, on 14.8.2025, the applicant moved an application under section 311 Cr.P.C. (38-kha) for recalling the prosecution witness, P.W.-3 Rishipal and to re-examine him on certain grounds as her husband, Rishipal did not swear the evidence out of his own free will and volition and had deposed under the coercion and threat meted out to him by local villagers who had close affinity with the accused persons and the accused persons posed a threat by going to the extent of eliminating him. An affidavit dated 06.10.2025 43-kha supporting the said application sworn by P.W.-3, Rishipal was filed after a gap of about 50 days affirming the facts mentioned in the application.

8. The learned Trial Court, after hearing the counsel for the applicant and the counsel for the accused rejected the application vide order impugned dated 10.11.2025 on the ground that P.W.-3, in his examination-in-chief dated 23.09.2021, had fully supported the prosecution case and due to paucity of time, the said witness was cross-examined on 28.07.2022 who retracted in his cross-examination and did not support the prosecution case and further deposed that he had given his testimony without any fear or coercion and was true and correct.

9. Per contra, learned State Counsel has opposed the aforesaid facts.

10. Upon having heard the learned counsel appearing for the parties and having gone through the material on record, it transpires that though the said witness in his cross-examination had completely resiled from the evidence adduced by him during his examination-in-chief but was

not declared hostile by the prosecution and was neither re-examined. After a gap of about 3 years, the applicant moved an application under section 311 Cr.P.C for the re-examination of P.W.-3 to fulfil the lacuna and to make improvements. The trial is still at the stage of evidence, eight prosecution witnesses have been examined and no evidence under section 313 Cr.P.C. has been recorded.

11. It has been noticed that previously on 05.10.2023, the applicant moved an application under section 311 Cr.P.C. for re-examining P.W.-3 but no fact was disclosed that P.W.-3 was under threat perception or coercion and the said application was not moved by the public prosecutor but was moved under the signature of the private counsel and no signature of the prosecution witness or the first informant was found and the same was rejected.

12. Subsequently, applicant moved another application dated 14.08.2025 (38kha) through Assistant Public Prosecutor wherein the parties have been heard and impugned order has been passed rejecting the application on merit.

13. In the backdrop of aforesaid facts, it can be said that the application (38-kha) has been moved by the applicant, Smt. Ramwati (mother of deceased, Rahul) who is neither the first informant nor an eye witness nor has been examined as a prosecution witness. The P.W.-3, Rishipal (father of the deceased-Rahul) is a material witness and he in his examination-in- chief dated 23.09.2021 had supported the prosecution case. Thereafter, after a gap of ten months and five days, the said witness was cross-examined on 28.7.2022 wherein the witness retracted and resiled from his previous testimony. Despite the said fact, the P.W.-3 was not declared hostile by the prosecution and was neither re-examined. The trial is in progress and the application dated 14.08.2025 under section 311 Cr.P.C has been moved by the applicant at a belated stage after a gap of more than three years to fulfil the lacuna in a prosecution case and to reopen and to avail another opportunity to reconcile the discrepancies if any between the statements in the examination-in-chief and cross examination and further to explain any statement inadvertently made in cross examination and to remove any ambiguity in the deposition or suspicion caste on the evidence by cross examination and to re-examine P.W.-3, which may cause serious prejudice to the accused and may result in the miscarriage of justice. It appears that the applicant-mother has been sponsored by P.W.-3, Rishipal to rectify and improve the misgivings that happened while adducing his evidence during his testimony. The records reveal that applicant, Smt. Ramwati moved the application under section 311 Cr.P.C. on 14.08.2025 and the affidavit supporting the application has been sworn by P.W.-3 on 06.10.2025 after a gap of about 50 days with an averment that the contents of the application were in his personal knowledge but not a single instance i.e. date, time, place and other particulars has been disclosed or claimed that the evidence tendered during examination in chief or cross examination was not out of his own free will and volition but due to threat and coercion meted out to him in past five years from the accused or his associates though the applicant and her husband, Rishipal had ample opportunity to lodge the complaint or raise their grudge before the learned Trial Judge or to the Police Officers or to any prosecution agency but both remain indifferent and silent throughout.

14. In the recent pronouncement of the Supreme Court in the case of **Raja Ram Prasad Yadav vs. State of Bihar and Another, 2013 (14) SCC 461**, the Court has very exhaustively discussed the law on the subject of Section 311 Cr.P.C. which reads as follows:

“A conspicuous reading of Section 311 Cr.P.C. would show that widest of the powers have been invested with the Courts when it comes to the question of summoning a witness or to recall or re-examine any witness already examined. A reading of the provision shows that the expression ‘any’ has been used as a pre-fix to ‘court’, ‘inquiry’, ‘trial’, ‘other proceeding’, ‘person as a witness’, ‘person in attendance though not summoned as a witness’, and ‘person already examined’. By using the said expression ‘any’ as a pre-fix to the various expressions mentioned above, it is ultimately stated that all that was required to be satisfied by the Court was only in relation to such evidence that appears to the Court to be essential for the just decision of the case. Section 138 of the Evidence Act, prescribed the order of examination of a witness in the Court. Order of re-examination is also prescribed calling for such a witness so desired for such re-examination. Therefore, a reading of Section 311 Cr.P.C. and Section 138 Evidence Act, insofar as it comes to the question of a criminal trial, the order of re-examination at the desire of any person under Section 138, will have to necessarily be in consonance with the prescription contained in Section 311 Cr.P.C. It is, therefore, imperative that the invocation of Section 311 Cr.P.C. and its application in a particular case can be ordered by the Court, only by bearing in mind the object and purport of the said provision, namely, for achieving a just decision of the case as noted by us earlier. The power vested under the said provision is made available to any Court at any stage in any inquiry or trial or other proceeding initiated under the Code for the purpose of summoning any person as a witness or for examining any person in attendance, even though not summoned as witness or to recall or re-examine any person already examined. Insofar as recalling and re-examination of any person already examined, the Court must necessarily consider and ensure that such recall and re-examination of any person, appears in the view of the Court to be essential for the just decision of the case. Therefore, the paramount requirement is just decision and for that purpose the essentiality of a person to be recalled and re-examined has to be ascertained. To put it differently, while such a widest power is invested with the Court, it is needless to state that exercise of such power should be made judicially and also with extreme care and caution.

15. In this context, we also wish to make a reference to certain decisions rendered by this Court on the interpretation of Section 311 Cr.P.C. where, this Court highlighted as to the basic principles which are to be borne in mind, while dealing with an application under Section 311 Cr.P.C. In the decision reported in *Jamatraj Kewalji Govani vs. State of Maharashtra - AIR 1968 SC 178*, this Court held as under in paragraph 14:-

“14. It would appear that in our criminal jurisdiction, statutory law confers a power in absolute terms to be exercised at any stage of the trial to summon a witness or examine one present in court or to recall a witness already examined, and makes this the duty and obligation of the Court provided the just decision of the case demands it. In other words, where the court exercises the power under the second part, the inquiry cannot be whether the accused has brought anything suddenly or unexpectedly but whether the court is right in thinking that the new evidence is needed by it for a just decision of the case. If the court has acted without the requirements of a just

decision, the action is open to criticism but if the court's action is supportable as being in aid of a just decision the action cannot be regarded as exceeding the jurisdiction.” (Emphasis added)

16. In the decision reported in Mohanal Shamji Soni vs. Union of India and another - 1991 Suppl.(1) SCC 271, this Court again highlighted the importance of the power to be exercised under Section 311 Cr.P.C. as under

in paragraph 10:-

“10?In order to enable the court to find out the truth and render a just decision, the salutary provisions of Section 540 of the Code (Section 311 of the new Code) are enacted whereunder any court by exercising its discretionary authority at any stage of enquiry, trial or other proceeding can summon any person as a witness or examine any person in attendance though not summoned as a witness or recall or re- examine any person in attendance though not summoned as a witness or recall and re-examine any person already examined who are expected to be able to throw light upon the matter in dispute; because if judgments happen to be rendered on inchoate, inconclusive and speculative presentation of facts, the ends of justice would be defeated.”

17. In the decision in Raj Deo Sharma (II) vs. State of Bihar - 1999 (7) SCC 604, the proposition has been reiterated as under in paragraph 9:-

“9. We may observe that the power of the court as envisaged in Section 311 of the Code of Criminal Procedure has not been curtailed by this Court. Neither in the decision of the five-Judge Bench in A.R. Antulay case nor in Kartar Singh case such power has been restricted for achieving speedy trial. In other words, even if the prosecution evidence is closed in compliance with the directions contained in the main judgment it is still open to the prosecution to invoke the powers of the court under Section 311 of the Code. We make it clear that if evidence of any witness appears to the court to be essential to the just decision of the case it is the duty of the court to summon and examine or recall and re-examine any such person.? (Emphasis added)

18. In U.T. of Dadra and Nagar Haveli and Anr. vs. Fatehsinh Mohansinh Chauhan - 2006 (7) SCC 529, the decision has been further elucidated as under in paragraph 15:-

“15. A conspectus of authorities referred to above would show that the principle is well settled that the exercise of power under Section 311 CrPC should be resorted to only with the object of finding out the truth or obtaining proper proof of such facts which lead to a just and correct decision of the case, this being the primary duty of a criminal court. Calling a witness or re-examining a witness already examined for the purpose of finding out the truth in order to enable the court to arrive at a just decision of the case cannot be dubbed as ?filling in a lacuna in the prosecution case? unless the facts and circumstances of the case make it apparent that the exercise of power by the court would result in causing serious prejudice to the accused resulting in miscarriage of justice.” (Emphasis added)

19. In Iddar & Ors. vs. Aabida & Anr. - AIR 2007 SC 3029, the object underlying under Section 311 Cr.P.C., has been stated as under in paragraph 11:-

“11. The object underlying Section 311 of the Code is that there may not be failure of justice on account of mistake of either party in bringing the valuable evidence on record or leaving ambiguity in the statements of the witnesses examined from either side. The determinative factor is whether it is essential to the just decision of the case. The section is not limited only for the benefit of the accused, and it will not be an improper exercise of the powers of the court to summon a witness under the section merely because the evidence supports the case for the prosecution and not that of the accused. The section is a general section which applies to all proceedings, enquiries and trials under the Code and empowers Magistrate to issue summons to any witness at any stage of such proceedings, trial or enquiry. In Section 311 the significant expression that occurs is ‘at any stage of inquiry or trial or other proceeding under this Code’. It is, however, to be borne in mind that whereas the section confers a very wide power on the court on summoning witnesses, the discretion conferred is to be exercised judiciously, as the wider the power the greater is the necessity for application of judicial mind.” (Emphasis added)

20. In P. Sanjeeva Rao vs. State of A.P.- AIR 2012 SC 2242, the scope of Section 311 Cr.P.C. has been highlighted by making reference to an earlier decision of this Court and also with particular reference to the case, which was dealt with in that decision in paragraphs 13 and 16, which are as under:-

“13. Grant of fairest opportunity to the accused to prove his innocence was the object of every fair trial, observed this Court in Hoffman Andreas v. Inspector of Customs, Amritsar (2000) 10 SCC 430. The following passage is in this regard apposite:

“In such circumstances, if the new counsel thought to have the material witnesses further examined, the Court could adopt latitude and a liberal view in the interest of justice, particularly when the court has unbridled powers in the matter as enshrined in Section 311 of the Code. After all the trial is basically for the prisoners and courts should afford the opportunity to them in the fairest manner possible”

16. We are conscious of the fact that recall of the witnesses is being directed nearly four years after they were examined-in-chief about an incident that is nearly seven years old. Delay takes a heavy toll on the human memory apart from breeding cynicism about the efficacy of the judicial system to decide cases within a reasonably foreseeable time period. To that extent the apprehension expressed by Mr. Rawal, that the prosecution may suffer prejudice on account of a belated recall, may not be wholly without any basis. Having said that, we are of the opinion that on a parity of reasoning and looking to the consequences of denial of opportunity to cross-examine the witnesses, we would prefer to err in favour of the appellant getting an opportunity rather than protecting the prosecution against a possible prejudice at his cost. Fairness of the trial is a virtue that is sacrosanct in our judicial system and no price is too heavy to protect that virtue. A possible prejudice to prosecution is not even a price, leave alone one that would justify denial of a fair opportunity to the accused to defend himself.” (Emphasis added)

21. In a recent decision of this Court in Sheikh Jumman vs. State of Maharashtra - (2012) 9 SCALE 80, the above referred to decisions were followed.

22. *Again in an unreported decision rendered by this Court dated 08.05.2013 in Natasha Singh vs. CBI (State)- Criminal Appeal No.709 of 2013, where one of us was a party, various other decisions of this Court were referred to and the position has been stated as under in paragraphs 14 and 15:*

“14. The scope and object of the provision is to enable the Court to determine the truth and to render a just decision after discovering all relevant facts and obtaining proper proof of such facts, to arrive at a just decision of the case. Power must be exercised judiciously and not capriciously or arbitrarily, as any improper or capricious exercise of such power may lead to undesirable results. An application under Section 311 Cr.P.C. must not be allowed only to fill up a lacuna in the case of the prosecution, or of the defence, or to the disadvantage of the accused, or to cause serious prejudice to the defence of the accused, or to give an unfair advantage to the opposite party. Further the additional evidence must not be received as a disguise for retrial, or to change the nature of the case against either of the parties. Such a power must be exercised, provided that the evidence that is likely to be tendered by a witness, is germane to the issue involved. An opportunity of rebuttal, however, must be given to the other party.

The power conferred under Section 311 Cr.P.C. must, therefore, be invoked by the Court only in order to meet the ends of justice, for strong and valid reasons, and the same must be exercised with great caution and circumspection.

The very use of words such as ‘any Court’, ‘at any stage’, or ‘or any enquiry’, trial or other proceedings’, ‘any person’ and ‘any such person’ clearly spells out that the provisions of this section have been expressed in the widest possible terms, and do not limit the discretion of the Court in any way. There is thus no escape if the fresh evidence to be obtained is essential to the just decision of the case. The determinative factor should, therefore, be whether the summoning/recalling of the said witness is in fact, essential to the just decision of the case.

15. Fair trial is the main object of criminal procedure, and it is the duty of the court to ensure that such fairness is not hampered or threatened in any manner. Fair trial entails the interests of the accused, the victim and of the society, and therefore, fair trial includes the grant of fair and proper opportunities to the person concerned, and the same must be ensured as this is a constitutional, as well as a human right. Thus, under no circumstances can a person’s right to fair trial be jeopardized. Adducing evidence in support of the defence is a valuable right. Denial of such right would amount to the denial of a fair trial. Thus, it is essential that the rules of procedure that have been designed to ensure justice are scrupulously followed, and the court must be zealous in ensuring that there is no breach of the same. (Vide Talab Haji Hussain v. Madhukar Purshottam Mondkar & Anr., AIR 1958 SC 376; Zahira Habibulla H. Sheikh & Anr. v.

State of Gujarat & Ors. AIR 2004 SC 3114; Zahira Habibullah Sheikh & Anr. v. State of Gujarat & Ors, AIR 2006 SC 1367; Kalyani Baskar (Mrs.) v. M.S. Sampooranam (Mrs.) (2007) 2 SCC 258; Vijay Kumar v. State of U.P. & Anr., (2011) 8 SCC 136; and Sudevanand v. State through C.B.I. (2012) 3 SCC 387.)”

23. *From a conspectus consideration of the above decisions, while dealing with an application under Section 311 Cr.P.C. read along with Section 138 of the Evidence Act, we feel the following principles will have to be borne in mind by the Courts:*

a) Whether the Court is right in thinking that the new evidence is needed by it? Whether the evidence sought to be led in under Section 311 is noted by the Court for a just decision of a case?

b) The exercise of the widest discretionary power under Section 311 Cr.P.C. should ensure that the judgment should not be rendered on inchoate, inconclusive speculative presentation of facts, as thereby the ends of justice would be defeated.

c) If evidence of any witness appears to the Court to be essential to the just decision of the case, it is the power of the Court to summon and examine or recall and re-examine any such person.

d) The exercise of power under Section 311 Cr.P.C. Cr.P.C. should be resorted to only with the object of finding out the truth or obtaining proper proof for such facts, which will lead to a just and correct decision of the case.

e) The exercise of the said power cannot be dubbed as filling in a lacuna in a prosecution case, unless the facts and circumstances of the case make it apparent that the exercise of power by the Court would result in causing serious prejudice to the accused, resulting in miscarriage of justice.

f) The wide discretionary power should be exercised judiciously and not arbitrarily.

g) The Court must satisfy itself that it was in every respect essential to examine such a witness or to recall him for further examination in order to arrive at a just decision of the case.

h) The object of Section 311 Cr.P.C. simultaneously imposes a duty on the Court to determine the truth and to render a just decision.

i) The Court arrives at the conclusion that additional evidence is necessary, not because it would be impossible to pronounce the judgment without it, but because there would be a failure of justice without such evidence being considered.

j) Exigency of the situation, fair play and good sense should be the safe guard, while exercising the discretion. The Court should bear in mind that no party in a trial can be foreclosed from correcting errors and that if proper evidence was not adduced or a relevant material was not brought on record due to any inadvertence, the Court should be magnanimous in permitting such mistakes to be rectified.

k) The Court should be conscious of the position that after all the trial is basically for the prisoners and the Court should afford an opportunity to them in the fairest manner possible. In that

parity of reasoning, it would be safe to err in favour of the accused getting an opportunity rather than protecting the prosecution against possible prejudice at the cost of the accused. The Court should bear in mind that improper or capricious exercise of such a discretionary power, may lead to undesirable results.

l) The additional evidence must not be received as a disguise or to change the nature of the case against any of the party.

m) The power must be exercised keeping in mind that the evidence that is likely to be tendered, would be germane to the issue involved and also ensure that an opportunity of rebuttal is given to the other party.

n) The power under Section 311 Cr.P.C. must therefore, be invoked by the Court only in order to meet the ends of justice for strong and valid reasons and the same must be exercised with care, caution and circumspection. The Court should bear in mind that fair trial entails the interest of the accused, the victim and the society and, therefore, the grant of fair and proper opportunities to the persons concerned, must be ensured being a constitutional goal, as well as a human right."

15. In view of the foregoing discussions and applying the various principles set out above, the factors noted by the Trial Court and the conclusion drawn are all appropriate and just and the order impugned does not call for any interference. The Trial Court shall proceed with the trial from the stage it was left and conclude the same, expeditiously, in accordance with law.

16. Accordingly, the application u/s 528 B.N.S.S. is dismissed.

(2026) 4 ILRA 968
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 23.04.2026

BEFORE

THE HON'BLE JITENDRA KUMAR SINHA, J.

Criminal Misc. Bail Application No. 13548 of 2026

Aman Yadav

...Applicant

Versus

State of U.P.

...Respondent

Issue for Consideration

Matter pertains to whether, considering the nature of allegations, the material collected during investigation, recovery of alleged stolen articles from the possession of applicant, period of incarceration, and the likelihood of delay in conclusion of trial, the accused-applicant was entitled to be enlarged on bail during pendency of trial.

Headnotes

Bharatiya Nagarik Suraksha Sanhita, 2023 - s. 483 - Bharatiya Nyaya Sanhita, 2023 - ss. 309(6), 317(2) - Arms Act, 1959 - ss.3/25 - Robbery - Stolen property - Bail - Grant of - The prosecution case was that three unknown persons allegedly intercepted the first informant and his wife by hitting their scooty, causing them to fall down, and thereafter snatched a bag containing jewellery, cash and mobile phones - Further, an FIR was registered against unknown persons - During investigation, the applicant was arrested and certain stolen articles were allegedly recovered from his possession - The applicant sought bail on the ground of false implication, absence of criminal history, prolonged incarceration, and likelihood of delay in conclusion of trial - The State opposed the bail application.

Held: FIR has been lodged against three unknown persons and as per FIR three unknown persons are said to have hit the scooty of the first informant as a result of which first informant and his wife fell down and thereafter three unknown persons are said to have snatched the bag containing jewellery, cash and mobile phones - During investigation, the applicant has been arrested and some stolen articles are said to have been recovered from his possession - Upon considering the totality of facts, nature and the evidence reflected from record and without expressing any opinion on merits of the case, it is a fit case for bail - Hence, the instant bail application allowed with certain directions. [Paras 5 to 9] (E-13)

Case Law Cited

Nil

List of Acts

Bharatiya Nagarik Suraksha Sanhita, 2023; Bharatiya Nyaya Sanhita, 2023; Arms Act, 1959

List of Keywords

Bail Application; BNS, 2023; Arms Act, 1959; BNSS, 2023; Falsely implicated; FIR; Unknown persons; During investigation name of accused surfaced; Recovery of stolen articles from his possession; Hit the scooty of first informant; Unknown persons snatched the bag containing jewellery, cash and mobile phones; Bail application allowed.

Case Arising From

ORIGINAL JURISDICTION: Criminal Misc. Bail Application No. - 13548 of 2026

From the Judgment and Order passed in Crime No. 94 of 2025, Police Station - Shivrajpur, District - Kanpur Nagar.

Appearances for Parties

Adv. for the Applicant(s):

Hari Nath Chaubey

Adv. for the Opposite Party(s)

G.A.

(Delivered by Hon'ble Jitendra Kumar Sinha, J.)

1. Heard Sri Hari Nath Chaubey, learned counsel for the applicant and Sri Shiv Dutt Shukla, learned AGA for the State-respondents and perused the record.

2. The present bail application under Section 483 of Bharatiya Nagarik Suraksha Sanhita, 2023, has been filed on behalf of applicant with a prayer to release him on bail in Case Crime No. 94 of 2025, under Sections 309(6), 317(2) BNS and Section 3/25 Arms Act, registered at Police Station Shivrajpur, District Kanpur Nagar, during pendency of the trial.

3. It has been argued by the learned counsel for the applicant that applicant is innocent and he has been falsely implicated in this case and he has been languishing in jail since 3.6.2025. It is further submitted that FIR has been lodged against three unknown persons and during investigation the name of the applicant has surfaced and some stolen articles are said to have been recovered from his possession. It is also submitted that the applicant undertakes that he will not misuse the liberty, if granted. It has also been pointed out that in the wake of heavy pendency of cases in the Court, there is no likelihood of any early conclusion of trial.

4. On the other hand, learned A.G.A. has opposed the prayer for grant of bail to the applicant.

5. FIR has been lodged against three unknown persons and as per FIR three unknown persons are said to have hit the scooty of the first informant as a result of which first informant and his wife fell down and thereafter three unknown persons are said to have snatched the bag containing jewellery, cash and mobile phones. During investigation, the applicant has been arrested and some stolen articles are said to have been recovered from his possession.

6. Upon considering the totality of facts, nature and the evidence reflected from record and without expressing any opinion on merits of the case, I find it to be a fit case for bail. Hence, the present bail application is **ALLOWED**.

7. Let the applicant- Aman Yadav involved in the aforesaid case crime be released on bail on his furnishing a personal bond of Rs. 50,000/- with two sureties each in the like amount to the satisfaction of the Court concerned with the following conditions :-

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

(ii) The applicant shall not pressurize/intimidate the prosecution witnesses.

(iii) The applicant shall remain present, in person, before the trial court on the dates fixed for (i) opening of the case, (ii) framing of charge and (iii) recording of statement under Section 351 of B.N.S.S.

(iv) The applicant shall file an undertaking to the effect that he shall not seek any adjournment on the dates fixed for evidence when the witnesses are present in the trial court.

(v) The applicant shall remain present before the trial court on each date fixed, either personally or through his counsel.

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

9. It is clarified that anything said in this order is limited to the purpose of determination of this bail application and will in no way be construed as an expression on the merits of the case. The

trial court shall be absolutely free to arrive at its independent conclusions on the basis of evidence led unaffected by anything said in this order.

(2026) 4 ILRA 971
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 20.04.2026

BEFORE

THE HON'BLE ABDUL MOIN, J.
THE HON'BLE PRAMOD KUMAR SRIVASTAVA, J.

Criminal Misc. Writ Petition No. 3360 of 2026

Mohit Yadav @ Mohit Kumar	...Petitioner
	Versus
State of U.P. & Ors.	...Respondents

Issue for Consideration

Issue pertains to whether the First Information Report registered under the U.P. Gangsters and Anti-Social Activities (Prevention) Act, 1986 was liable to be quashed on the ground that no joint meeting of the competent authorities had taken place for approval of gang chart as mandated by Rule 5(3)(a) of Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Rules, 2021, thereby vitiating the preparation of gang chart and the consequential FIR.

Headnotes

U.P. Gangsters and Anti-Social Activities (Prevention) Act, 1986 - ss. 2(b)(i), 2(b)(xi), 2(b)(xiv), 2(b)(xxv), and 3(1) - Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Rules, 2021 - Rules. 5(3)(a), 16 - Bharatiya Nagarik Suraksha Sanhita, 2023 - s. 14 - Gang chart - Requirement of joint meeting - Competent Authorities - Approval - Procedural Compliance - Legality - FIR - Quashing of - Impugned order - The petitioner challenged the First Information Report dated 17.03.2026 registered under various provisions of U.P. Gangsters and Anti-Social Activities (Prevention) Act, 1986 - The principal contention advanced was that the gang chart forming the foundation of prosecution had been prepared and approved without convening the mandatory joint meeting contemplated under Rule 5(3)(a) of Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Rules, 2021 - It was urged that such non-compliance rendered the gang chart and the consequential FIR legally unsustainable - While the State produced the minutes of a joint meeting dated 23.02.2026 held between the Commissioner of Police and Deputy Commissioner of Police (East), Lucknow, wherein approval of proposed gang chart was deliberated and endorsed.

Held: From the perusal of the record reveals that the gang chart was prepared by the concerned Police Station, detailing the criminal activities of the gang, and subsequently presented for approval - It was forwarded to the Commissioner of Police, Lucknow, along with all relevant annexures - The Commissioner of Police, Commissionerate Lucknow, upon being satisfied that sufficient grounds existed for initiating action under the Act, approved the gang chart on 24.02.2026 - The legal requirement under Rule 5 of Rules, 2021, mandates that a joint meeting must be held between the head of police and head of district administration for approval of a gang chart - In the district of Lucknow, where the Police Commissionerate system is in force, the Commissioner of Police exercises the powers of an Executive Magistrate as envisaged u/s 14 of Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 - Furthermore, the judgment of Hon'ble Supreme Court in the case of *Gabbar Singh (infra)* cited by learned counsel for the petitioner does not support the petitioner's stance - The

argument that the signing of gang chart by various authorities on different dates constitutes a violation of Rule 5 is directly controverted by minutes of the meeting produced by State - In view of the fact that the procedural requirements of Rule 5(3)(a) and Rule 16 have been scrupulously followed, as such, the said judgment shall have no applicability in the instant case - Accordingly, the petition, being devoid of merit, dismissed. [Para 13, 16, 18] (E-13)

Case Law Cited

Gabbar Singh @ Devendra Pratap Singh @ Rajesh Singh v. State of U.P. and Others, **2026 INSC 271 - distinguished**

List of Acts

U.P. Gangsters And Anti-Social Activities (Prevention) Act, 1986; Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Rules, 2021; Bharatiya Nagarik Suraksha Sanhita, 2023

List of Keywords

Writ Petition; First Information Report; Bharatiya Nagarik Suraksha Sanhita, 2023; U.P. Gangsters And Anti-Social Activities (Prevention) Act, 1986; Joint meeting; Competent authorities; Preparation of gang chart; Approval; Mandatory requirement; Violation of Rule 5(3)(a) of Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Rules, 2021; Minutes showed joint meeting between Commissioner of Police and Deputy Commissioner of Police; Devoid of Merit; Dismissed.

Case Arising From

ORIGINAL JURISDICTION: Criminal Misc. Writ Petition No. - 3360 of 2026

From the First Information Report dated 17.03.2026, registered as Crime No. 47/2026 at Police Station Vikas Nagar, District Lucknow.

Appearances for Parties

Adv. for the Petitioner(s):

Ashok Kumar Singh Tomar

Adv. for the Respondent(s):

G.A.

(Delivered by Hon'ble Pramod Kumar Srivastava, J.)

1. Heard learned counsel for the petitioner and Shri Shiv Nath Tilhari, learned Additional Government Advocate appearing for the State-respondents. Shri Tilhari states that he accepts notice on behalf of respondent no. 4, the Inspector-in-Charge, Police Station Vikas Nagar, District Lucknow.

2. By means of the instant petition, the petitioner has challenged the First Information Report (FIR) dated 17.03.2026, registered as Crime No. 47/2026, under Sections 2(b)(i), 2(b)(xi), 2(b)(xiv), 2(b)(xxv), and 3(1) of the U.P. Gangsters and Anti-Social Activities (Prevention) Act, 1986, at Police Station Vikas Nagar, District Lucknow.

3. The primary ground urged by the learned counsel for the petitioner while challenging the impugned FIR is that no joint meeting of the competent authorities took place during the preparation and approval of the gang chart, which is a mandatory requirement under the law. A copy of the said gang chart has been annexed as Annexure No. 2 to the writ petition.

4. The argument of the learned counsel for the petitioner is that as no joint meeting took place at the time of the preparation of the gang chart, there is a violation of Rule 5(3)(a) of the Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Rules, 2021 (hereinafter referred to as the Rules, 2021). Consequently as no joint meeting took place, the preparation of the gang chart and the lodging of the impugned FIR on the basis of the said gang chart vitiate the FIR itself; therefore, the FIR is liable to be quashed. In this regard, learned counsel for the petitioner places reliance on the judgment of the Hon'ble Supreme Court in the case of **Gabbar Singh @ Devendra Pratap Singh @ Rajesh Singh Vs. State of U.P. and Others, 2026 INSC 271.**

5. On the other hand, Shri Shiv Nath Tilhari, learned Additional Government Advocate (AGA), produced a copy of the minutes of the joint meeting dated 23.02.2026, held between the Commissioner of Police and the Deputy Commissioner of Police (East), Lucknow. The said minutes are taken on record.

6. A perusal of the said minutes indicates that a joint meeting took place between the Commissioner of Police and the Deputy Commissioner of Police (East), Lucknow, on 23.02.2026. Reliance is placed on the said minutes and the approval of the gang chart, which was given on 24.02.2026.

7. The argument of Shri Tilhari is that the authorities have scrupulously adhered to the mandate of Rule 5(3)(a) of the Rules, 2021; consequently, there is no illegality or infirmity either in the preparation of the gang chart or in the impugned FIR lodged on the basis thereof.

8. Before advertng to the facts of the present case, it would be apposite to recapitulate the relevant provision of the Rules, 2021:-

"CHAPTER 3 PRINCIPALS RELATED TO GANG CHART

Rule - 5. General Rules.

(1) To initiate proceedings under this Act, the concerned Incharge of Police Station/Station House Officer/Inspector shall prepare a gang-chart mentioning the details of criminal activities of the gang.

(2) The gang-chart will be presented to the district head of police after clear recommendation of the Additional Superintendent of Police mentioning the detailed activities in relation to all the persons of the said gang.

(3) The following provisions shall be complied with in respect of gang-charts.

(a) The gang-chart will not be approved summarily but after due discussion in a joint meeting of the Commissioner of Police/District Magistrate/Senior Superintendent of Police/Superintendent of Police.

(b) X.

(c) X

(d) X

(e) X

Along with the above, a certified copy of the gang register kept at the police station shall also be attached with the gang-chart. In addition to the above, the information of crime and gang members mentioned in the gang-chart will also be updated on Interoperable Criminal Justice System (ICJS) portal and Crime and Criminal Tracking Network System (CCTNS).

Rule - 16. Forwarding of Gang-Chart- *The following manner shall be followed in the forwarding of Gang-Chart:*

(1) Forwarding of the gang-chart by the Additional Superintendent of Police: *The Additional Superintendent of Police will not only take a quick forwarding action in the case but he will duly peruse the gang-chart and all the attached forms; and when it is satisfied that there is a just and satisfactory basis to pursue the case, only then will he forward the letter along with the recommendation given below on the gang-chart to the Superintendent of Police/Senior Superintendent of Police.*

"Thoroughly studied the gang-chart and attached evidence. The basis of action under the Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986 exists. Accordingly, forwarded with recommendation."

(2) Forwarding of the gang-chart by the district police in-charge: *When the gang-chart along with all the Forms is received by the Senior Superintendent of Police/Superintendent of Police with the clear recommendation of the Additional Superintendent of Police, he will also thoroughly analyze all the facts and when it is confirmed that all the formalities of the Act have been fulfilled and there is a legal basis for taking action in the case, then he should forward the gang-chart to the Commissioner of Police/District Magistrate stating that: "I have duly perused the gang-chart and attached forms and I am fully satisfied that all the particulars mentioned in the case are correct and there is a satisfactory basis for taking action under the Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986. Accordingly, approved."*

9. As it reveals that the matter relates to Police Station Vikas Nagar, District Lucknow, which falls under the Police Commissionerate, the relevant provision of the Bharatiya Nagarik Suraksha Sanhita, 2023 is also expedient to mention hereinbelow:

"Section 14. Executive Magistrates:-

(1) X

(2) X

(3) X

(4) X

(5) X(6) *Nothing in this section shall preclude the State Government from conferring, under any law for the time being in force, on a Commissioner of Police all or any of the powers of an Executive Magistrate."*

10. From the Rules, 2021 & Act, 2023 quoted above, it is apparent that the joint meeting for the preparation of the gang chart, as envisaged in Rule 5(3)(a) of the Rules, 2021, is distinct from the forwarding of the gang chart, which is envisaged in Rule 16 of the Rules, 2021.

11. It is also clear that while a joint meeting may not be required for the formal act of recommendation itself, it is mandatory that the underlying decision to approve the gang chart is taken during a joint meeting.

12. Learned A.G.A. has produced a copy of the minutes of the meeting dated 23.02.2026. A perusal of the said minutes clearly demonstrates that the Commissioner of Police, Lucknow, and the Deputy Commissioner of Police (East), Lucknow, jointly convened the meeting and, after due deliberation, concluded that there are sufficient grounds for the approval of the proposed gang chart and there is no legal impediment in the same.

13. Further, a perusal of the record reveals that the gang chart annexed to the petition was prepared by the concerned Police Station, detailing the criminal activities of the gang, and subsequently presented for approval. It was forwarded to the Commissioner of Police, Lucknow, along with all relevant annexures. The Commissioner of Police, Commissionerate Lucknow, upon being satisfied that sufficient grounds existed for initiating action under the Act, approved the gang chart on 24.02.2026.

14. The issue raised by the learned counsel for the petitioner is that the recommendations by the Commissioner of Police and other police officials were not made collectively on the same date. While the ACP recommended the gang chart on 12.02.2026, the Deputy Commissioner of Police (East) and the Joint Commissioner of Police made their recommendations on 23.02.2026, and finally, the Commissioner of Police approved the gang chart on 24.02.2026. It is contended by the learned counsel for the petitioner that these individual endorsements, made on different dates, do not constitute a 'joint meeting' as mandated under the Rules.

15. As discussed in the preceding paragraphs and in light of the relevant rules, it is evident that the 'joint meeting' envisaged under Rule 5(3)(a) is a distinct legal requirement, separate and different from the recommendations recorded in the gang chart during its preparation.

16. The legal requirement under Rule 5 of the Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Rules, 2021, mandates that a joint meeting must be held between the head of the police and the head of the district administration for the approval of a gang chart. In the district of Lucknow, where the Police Commissionerate system is in force, the Commissioner of

Police exercises the powers of an Executive Magistrate as envisaged under Section 14 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023.

17. Consequently, a joint meeting was duly convened on 23.02.2026, wherein the Commissioner of Police and the Deputy Commissioner of Police, upon collective deliberation, found sufficient grounds to approve the proposed gang chart. The gang chart was subsequently approved on 24.02.2026. Therefore, the contention raised by the learned counsel for the petitioner that the gang chart is vitiated because it was not approved during a joint meeting is legally untenable.

18. Furthermore, the judgment of Hon'ble Supreme Court in the case of **Gabbar Singh (Supra)** cited by the learned counsel for the petitioner does not support the petitioner's stance. The argument that the signing of the gang chart by various authorities on different dates constitutes a violation of Rule 5 is directly controverted by the minutes of the meeting produced by the learned AGA. In view of the fact that the procedural requirements of Rule 5(3)(a) and Rule 16 have been scrupulously followed, as such, the said judgment shall have no applicability in the present facts and circumstances. Accordingly, the petition, being devoid of merit, is liable to be dismissed and it is, accordingly, **dismissed**.

(2026) 4 ILRA 976
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 17.04.2026

BEFORE

THE HON'BLE SANDEEP JAIN, J.

Criminal Misc. Writ Petition No. 8278 of 2026

Lav Kush Kumar Shukla

....Petitioner

Versus

State of U.P. & Ors.

...Respondents

Issue for Consideration

Issue pertains to whether the confiscation of petitioner's vehicle u/s 5-A of U.P. Prevention of Cow Slaughter Act, 1955 was legally sustainable in the absence of cogent material establishing that the cows were being transported outside the State of Uttar Pradesh for slaughter, and whether transportation of bovine animals within the State without recovery of beef or other incriminating material could justify confiscation of vehicle.

Headnotes

U.P. Prevention of Cow Slaughter Act, 1955 - s. 5-A - U.P. Prevention of Cow Slaughter Rules, 1964 - R. 16 - Illegal transportation of cow/cattle - Requirement of valid permit - Scope of - Statutory provisions - Transportation of bovine animals within State of Uttar Pradesh - Whether prohibited - Not prohibited - Vehicle ordered to be released - The petitioner challenged the order of District Magistrate, Ghazipur, as affirmed in appeal by Commissioner, Varanasi Division, whereby his Bolero Pick-Up vehicle bearing registration No. UP-70-JT-9507 was confiscated on the allegation that four cows were being illegally transported for slaughter - The vehicle was intercepted on 03.06.2024 on the basis of an alleged tip-off while carrying four cow animals -

According to the prosecution, the animals were being transported to State of Bihar for slaughter - The petitioner contended that neither beef nor any dead animal was recovered from the vehicle, that transportation was within State of Uttar Pradesh, and that no statutory prohibition existed against such transportation - It was further asserted that the seizure and continued detention of vehicle were arbitrary and had caused deprivation of livelihood and pecuniary loss.

Held: From a conjoint reading of provisions and the precedents of the High Court, it is abundantly clear that the statutory embargo is attracted only when the transportation is for the purpose of slaughter, particularly when such transportation is intended beyond the territorial limits of State of Uttar Pradesh - There is no blanket prohibition under the Act or Rules against transportation of bovine animals within the State - In the instant case, there is no cogent or admissible material on record to establish that the animals were being transported for slaughter outside the State - The mere fact that the vehicle was intercepted in proximity to State border does not, ipso facto, lead to a presumption of illegal intent - Such an inference is speculative and legally unsustainable - Further, the order dated 18.06.2024 passed in Bail Application No. 1073 of 2024 (*Luvkush Shukla and another v. State of U.P.*) by Additional Sessions Judge, Court No. 1, Ghazipur records that neither any instrument used for slaughter nor any beef was recovered - No medical examination of the animals was conducted to indicate cruelty or injury - The said order further acknowledges that transportation of bovine animals within the State is not prohibited - The stand taken by the State is thus founded on mere conjectures and surmises, without any substantive evidentiary basis - The impugned orders suffer from manifest arbitrariness, non-application of mind, and are unsustainable in the eye of law - Thus, writ petition allowed, impugned orders quashed - Direction to release vehicle. [Paras 12 to 16] (E-13)

Case Law Cited

Kaliya v. State of UP And Others **2023 SCC OnLine All 1974**; *Munib v. State of UP and 2 others* **2024 SCC OnLine All 9631** - referred to

List of Acts

U.P. Prevention of Cow Slaughter Act, 1955; U.P. Prevention of Cow Slaughter Rules, 1964

List of Keywords

Article 226 of Constitution of India; District Magistrate; Commissioner; Vehicle; Confiscated; Illegal transportation of cows for slaughtering; Intercepted in proximity to State border; Illegal seizure and detention; Compensation; No medical examination of animal was conducted to indicate cruelty and injury; Transportation of bovine animals within the State is not prohibited; Mere conjectures and surmises; Without any substantive evidentiary basis; Manifest arbitrariness, non-application of mind; Consequent loss of livelihood; Illegal State Action; Award of reasonable compensation; Writ petition allowed; Impugned orders quashed; Direction to release vehicle.

Case Arising From

ORIGINAL JURISDICTION: Criminal Misc. Writ Petition No. - 8278 of 2026

From the Judgment and Order dated 14.08.2025 passed by the District Magistrate, Ghazipur in Case No. 222 of 2025 and Appellate Order dated 27.11.2025 passed by Commissioner, Varanasi Division, Varanasi in Case No. 3361 of 2025.

Appearances for Parties

Advs. for the Petitioner(s):

Ashvni Mishra, Shubhendu Mishra

Adv. for the Respondent(s):

G.A.

(Delivered by Hon'ble Sandeep Jain, J.)

1. The instant writ petition has been filed under Article 226 of the Constitution of India, assailing the order dated 14.08.2025 passed by the District Magistrate, Ghazipur in Case No. 222 of 2025 (State of U.P. vs. Lav Kush Kumar Shukla) under Section 5-A of the U.P. Prevention of Cow Slaughter Act, 1955, as well as the appellate order dated 27.11.2025 passed by the Commissioner, Varanasi Division, Varanasi in Case No. 3361 of 2025 (Lav Kush Shukla vs. State of U.P. & others), whereby the Bolero Pick-Up vehicle bearing registration No. UP-70-JT-9507 has been confiscated in favour of the State on the allegation of illegal transportation of four cows for slaughtering.

2. The factual matrix, as borne out from the record, is that the petitioner's aforesaid vehicle was intercepted on 03.06.2024 at about 13:10 hours on the basis of an alleged tip-off while carrying four cow animals. The prosecution case is that the cows were being transported for slaughter to the State of Bihar, which is impermissible under the Act, 1955, and accordingly, the vehicle was seized and subsequently confiscated by the District Magistrate by order dated 14.08.2025, which has been affirmed in appeal.

3. Learned counsel for the petitioner submits that neither any beef nor any dead animal was recovered from the vehicle. It is further contended that the transportation, if any, was within the State of Uttar Pradesh, which is not prohibited under the provisions of the Act, 1955 or the Rules framed thereunder. It is urged that the impugned action is wholly arbitrary, without jurisdiction, and has resulted in deprivation of the petitioner's right to livelihood guaranteed under Article 21 of the Constitution of India. It is further submitted that the petitioner has suffered pecuniary loss due to illegal seizure and continued detention of the vehicle and is, therefore, entitled to compensation.

4. Per contra, learned AGA submits that the petitioner failed to produce a valid permit at the time of interception, thereby violating the provisions of the Act, 1955. It is further contended that the animals were being transported for slaughter to the State of Bihar, and thus the confiscation is justified. The impugned orders have been supported as lawful.

5. I have heard learned counsel for the parties and perused the record, including the impugned orders.

6. According to the office report, there is a delay of 43 days in filing this writ petition. In the facts and circumstances of the case, the delay is condoned.

7. For proper adjudication, it is apposite to refer to the relevant statutory provisions.

8. Section 5-A of The U.P. Prevention of Cow Slaughter Act, 1955, reads as under:

"5A.Regulation on transport of cow, etc.-(1) No person shall transport or offer for transport or cause to be transported any cow, or bull or bullock, the slaughter whereof in any place in Uttar Pradesh is punishable under this Act from any place within the State to any place

***outside the State, except under a permit** issued by an officer authorized by the State Government in this behalf by notified order and except in accordance with the terms and conditions of such permit.*

(2) Such officer shall issue the permit on payment of such fee not exceeding [five hundred rupees] for every cow, bull or bullock as may be prescribed :

Provided that no fee shall be chargeable where the permit is for transport of the cow, bull or bullock for a limited period not exceeding six months as may be specified in the permit.

(3) Where the person transporting a cow, bull or bullock on a permit for a limited period does not bring back such cow, bull or bullock into the State within the period specified in the permit, he shall be deemed to have contravened the provision of sub-section (1).

(4) The form of permit, the form of application therefor and the procedure for disposal of such application shall be such as may be prescribed.

(5) The State Government or any officer authorized by it in this behalf by general or special notified order, may, at any time for the purpose of satisfying itself or himself, as to the legality or propriety of the action taken under this section, call for and examine the record of any case and pass such orders thereon as it or he may deem fit.]

[(6) Where the said conveyance has been confirmed to be related to beef by the competent authority or authorised laboratory under this Act, the driver, operator and owner related to transport, shall be charged with the offence under this Act, unless it is not proved that transport medium used in crime, despite all its precautions and without its knowledge, has been used by some other person for causing the offence.

(7) The vehicle by which the beef or cow and its progeny is transported in violation of the provisions of this Act and the relevant rules, shall be confiscated and seized by the law enforcement officers. The concerned District Magistrate/Commissioner of Police will do all proceedings of confiscation and release, as the case may be.

(8) The cow and its progeny or the beef transported by the seized vehicle shall also be confiscated and seized by the law enforcement officers. The concerned District Magistrate/Commissioner will do all proceedings of the confiscation and release, as the case may be.

(9) The expenditure on the maintenance of the seized cows and its progeny shall be recovered from the accused for a period of one year or till the release of the cow and it's progeny in favour of the owner thereof whichever is earlier.

(10) Where a person is prosecuted for committing abetting, or attempting to an offence under section 3, 5 and 8 of this Act and the beef or cow-remains in the possession of accused has been proved by the prosecution and transported things are confirmed to be beef by the competent authority or authorized laboratory, then the Court shall presume that such person has committed

such offence or attempt or abetment of such offence, as the case may be, unless the contrary is proved.

(11) Where the provision of this Act or the related rules in context of search, acquisition, disposal and seizure are silent, the relevant provisions of the Code of Criminal Procedure, 1973 shall be effective thereto.]"

9. Rule 16 of the U.P. Prevention of Cow Slaughter Rules, 1964 reads as under:-

"(1) Any person intending to transport or the offer for transport or to cause to transport any cow, bull or bullock, the slaughter whereof is punishable under this Act in any place in Uttar Pradesh from any place within the State to any place outside the State shall apply for a permit to the officer authorised under Section 5-A of the Act on prescribed Form "G".

(2) The officer authorised under Section 5-A of the Act may grant such permit on payment of fee of Rs. 5.00 (Rupees five) per cow, bull or bullock to be deposited through treasury Challan under the receipt head '110 - Puashupalan - A - Other receipt (6) Misc.' In case the animal so transported is brought back to the State within the period of six months from the date of issue of the permit, the fee Rs. 5.00 shall be refunded to the permit-holder, if the refund is claimed. All animal intended to be transported shall be tattooed in right ear prior to the transportation from the State.

(3) Cow, bull or bullock transported without a valid permit shall be confiscated and shall be auctioned and the sale proceeds will be deposited under the receipt head given in sub-rule (2) above and such person, who causes unauthorised transport shall be prosecuted under Section 8 of the Act.

(4) The permit referred in sub-rule (2) shall be in Form 'H'.

(5) In the event of death of the cow, bull or bullock being so transported prior to its return, the permit-holder shall submit the death certificate from the local Veterinary Surgeon to the officer authorised under Section 5-A of the Act failing which he shall be liable for prosecution under Section 8 of the Act.

(6) These rules shall also apply to the cow, bulls or bullocks transported to cattle fairs, exhibitions and markets outside the State. The permit-holder shall have to submit a certificate of sale from the manager of such fairs, exhibitions and market to the officer authorised under Section 5-A of the Act on Form I failing which he shall be liable to prosecution under Section 8 of the Act.

(7) In case cow, bulls or bullocks are needed by another State Government of recognised institutions outside the State, such permit for transportation of animal will be granted on deposit of requisite fees by the party concerned under sub-rule (2), but the application shall have to be routed through the State Government concerned."

10. Further, this Court in the case of ***Kaliya vs. State of UP And Others 2023 SCC OnLine All 1974***, held as under:-

"10. Having heard learned counsel for the petitioner, learned A.G.A. and going through the record as well as provisions of the Act, I find that the moot question involved in this case is whether the present petitioner has violated any provision of law in transportation of cows and its progeny by the aforesaid vehicle and whether the impugned orders have been passed confiscating the said vehicle in accordance with law.

11. ***

12. A perusal of section 5-A(1) of the Act shows that the said provision shall come into place when the cow or its progeny is transported from within the State of U.P. to any other place outside the State and in that case, permit issued by the authorised officer of the State government shall be required.

13. There is nothing on record to show that the alleged recovered animals, i.e. the cows were being transported from within the State of U.P. to any other State. Therefore, from the plain reading of section 5-A of the Act, the permit is not required in the peculiar facts of this case.

14. The question involved in the case in hand has also come up for consideration before this court in *Kailash Yadav v. State of U.P.* 2008 (10) ADJ 623 wherein it has been held that no permit is required for transportation of cow or its progeny within the State of U.P. Section 5-A(6 to 8) provides for confiscation and release of vehicle by which beef or cow and its progeny is transported in violation of the provisions of the Act and relevant rules.

15. From perusal of sub sections (1 to 5) of section 5-A of the Act and the law laid down by this court in *Kailash Yadav's case (supra)*, it is evident that there is no need of permit to transport cow(s) and its progeny within the State of U.P. Hence, such transportation of cow and its progeny cannot be said to be in violation of the Act. Consequently, it can also not be said that the seized vehicle has been used in violation of Section 5-A or any other provision of the Act. Therefore, the police has no power or jurisdiction to seize or confiscate the vehicle in question and the District Magistrate also could not have issued notice under section 5-A of the Act when there is nothing to substantiate that the animals were being transported from within the State to some other State. In other words, in case the animals were being transported within the State of U.P., no show cause notice under section 5-A of the Act could have been given.

16. A coordinate Bench of this Court vide judgment and order dated 25.8.2022 passed in *Mohd. Shakib v. State of U.P.* Application under section 482 CrPC No. 23143 of 2021 has held that no permit is required to transport cow and its progeny within the State of U.P. and therefore, it cannot be said that the seized vehicle in question was used in violation of section 5A(1) to (11) or any provisions of the Cow Slaughter Act. Relevant paras 12 and 13 of the judgment in *Mohd. Shakib's case (supra)* is reproduced as below:

"12. Now, it is to be considered whether permit is required for transportation of the cow or its progeny within the State of Uttar Pradesh. This question came up for consideration before this Court in *Criminal Revision No. 131 of 2005 (Kailash Yadav v. State of U.P., 2008 (10) ADJ 623)*, wherein it is held that no permit is required for transportation of cow or its progeny within

the State of Uttar Pradesh. Sub-section 5A (6 to 8) provides for confiscation and release of vehicle by which beef or cow and its progeny is transported in violation of the provision of this Act and the relevant rules. Sub-section 5A (6 to 8) reads as follows: ”

(6) Where the said conveyance has been confirmed to be related to beef by the competent authority or authorised laboratory under this Act, the driver, operator and owner related to transport, shall be charged with the offence under this Act, unless it is not proved that the transport medium used in crime, despite all its precautions and without its knowledge, has been used by some other person for causing the offence.

(7) The vehicle by which the beef or cow and its progeny is transported in violation of the provisions of this Act and the relevant rules, shall be confiscated and seized by the law enforcement officers. The concerned District Magistrate/Commissioner of Police will do all proceedings of confiscation and release, as the case may be.

(8) The cow and its progeny or the beef transported by the seized vehicle shall also be confiscated and seized by the law enforcement officers. The concerned District Magistrate/Commissioner will do all proceedings of the confiscation and release, as the case may be.

13. From the perusal of sub-section (1 to 5) of Section 5A of this Act and the law laid down by this Court in Kailash Yadav v. State of U.P. (supra), it is abundantly clear that there is no need of permit to transport cow and its progeny within the state of Uttar Pradesh. Therefore, transportation of a cow and its progeny within the state of Uttar Pradesh is not a violation of any of the provisions of the Cow Slaughter Act. Therefore, it cannot be said that the seized vehicle in question was used in violation of Section 5A (1) to (11) or any provisions of the Cow Slaughter Act, and therefore, police has no power or jurisdiction to seize or confiscate the vehicle in question. The District Magistrate, Varanasi has passed the impugned confiscation order dated 18.08.2021 in contravention of the law, as no permit is required to transport cow and its progeny within the state of Uttar Pradesh. In above circumstances, the impugned order dated 18.08.2021 passed by District Magistrate, Varanasi is without jurisdiction and the same is liable to be set-aside. Likewise, the revisional court has not considered the relevant provisions of Section 5A of Cow Slaughter Act while dismissing the criminal revision of the applicant, therefore, the impugned order dated 13.10.2021 passed by Special Judge (SC/ST Act), Chandauli is also against the provisions of law and is liable to be set-aside.”

(emphasis supplied)

11. Similarly, this Court again in the case of **Munib vs. State of UP and 2 others 2024 SCC OnLine All 9631** held as under:-

”12. Thus transportation of cow etc. is regulated by Section 5A and Section 5A(7) confers power upon the District Magistrate/Commissioner of Police to confiscate the vehicle by which the beef or cow and its progeny is transported in violation of the provisions of this Act and the relevant Rules. A perusal of the F.I.R. indicates that none of the cow were maimed nor physically injured. Further, the allegation that they were being transported to West Bengal from Prayagraj for

slaughtering requires no **consideration as the condition precedent for the application of the section is that the cattle described in the Act should have been transported from any place in the State of U.P. to any place outside the State. Even if the story of seizure of cattle is believed then also 06 cattle are said to have been seized within the jurisdiction of Police Station Lalganj District Mirzapur namely within the State of Uttar Pradesh and admittedly, the border is far away. The fact remains that cattle were apprehended from within the State of U.P. and, therefore, it cannot be said that they were transported to a place outside the State of U.P.**

13. ..Commission of offence is one of the requisite ingredients for passing an order of confiscation and an order of confiscation should not be passed automatically. Thus, there is no material, as exist on record, to justify the exercise of powers under Sub Section 7 of Section 5A. The same is clearly contrary to the mandates and powers conferred upon the District Magistrate.

14. The confiscation by its very connotation implies depriving a person of his property to which he is entitled to retain. Article 300A of the Constitution of India provides that no person shall be deprived of his property save by authority of law. Arbitrary confiscation of the property which he might be using for his trade, profession or occupation is a serious encroachment on the fundamental right of a citizen under Article 19(1)(g) of the Constitution of India to carry on his trade, occupation or business. The procedure prescribed by law for confiscating the property as contained in Section 5A(7) of the Cow Slaughter Act, empowers the District Magistrate/Commissioner of Police to confiscate/seize the vehicle only if the conditions so prescribed under Sub Section 7 of Section 5A are fulfilled."

(emphasis supplied)

12. From a conjoint reading of the aforesaid provisions and the precedents of this Court, it is abundantly clear that the statutory embargo is attracted only when the transportation is for the purpose of slaughter, particularly when such transportation is intended beyond the territorial limits of the State of Uttar Pradesh. There is no blanket prohibition under the Act or the Rules against transportation of bovine animals within the State.

13. In the present case, there is no cogent or admissible material on record to establish that the animals were being transported for slaughter outside the State. The mere fact that the vehicle was intercepted in proximity to the State border does not, ipso facto, lead to a presumption of illegal intent. Such an inference is speculative and legally unsustainable. Significantly, it is not the prosecution case that any beef, carcass, or incriminating material was recovered from the vehicle.

14. Further, the certified copy of the order dated 18.06.2024 passed in Bail Application No. 1073 of 2024 (Luvkush Shukla and another vs. State of U.P.) by the Additional Sessions Judge, Court No. 1, Ghazipur records that neither any instrument used for slaughter nor any beef was recovered. It is also noted that no medical examination of the animals was conducted to indicate cruelty or injury. The said order further acknowledges that transportation of bovine animals within the State is not prohibited.

15. The stand taken by the State is thus founded on mere conjectures and surmises, without any substantive evidentiary basis. The impugned orders suffer from manifest arbitrariness, non-application of mind, and are clearly unsustainable in the eye of law.

16. It is also not in dispute that the vehicle has remained in the custody of the State since 03.06.2024, resulting in continuous deprivation of its use and consequent loss of livelihood to the petitioner. Such deprivation, occasioned by patently illegal State action, warrants award of reasonable compensation. The petitioner can file suit for claiming compensation for the damages suffered.

17. In view of the aforesaid, the writ petition deserves to be allowed.

18. **Accordingly, the writ petition is allowed.** Consequently, the impugned order dated 14.08.2025 passed by the District Magistrate, Ghazipur and the appellate order dated 27.11.2025 passed by the Commissioner, Varanasi Division, Varanasi are hereby quashed.

19. The State authorities are directed to release forthwith the vehicle bearing registration No. UP-70-JT-9507 in favour of the petitioner, if not already released, in accordance with law, within a week

(2026) 4 ILRA 984
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 20.04.2026

BEFORE

THE HON'BLE SANDEEP JAIN, J.

Criminal Misc. Writ Petition No. 27666 of 2025

Satendra

...Petitioner

Versus

State of U.P. & Ors.

...Respondents

Issue for Consideration

Issue pertains to whether an externment order passed u/s 3(1) of U.P. Control of Goondas Act, 1970 could be sustained when the petitioner was sought to be declared as a "Goonda" solely on the basis of two pending criminal cases, without any conviction and without sufficient material to establish habituality within the meaning of s. 2(b) of the Act.

Headnotes

U.P. Control of Goondas Act, 1970 - ss. 2(b), 3(1), 3(3) - Indian Penal Code, 1860 - ss. 147, 148, 149, 308, 427, 323, 504, 506 - The Scheduled Castes and The Scheduled Tribes (Prevention Of Atrocities) Act, 1989 - ss. 3(1)(d) - Externment order - Goonda - Ground - Two criminal cases - Habitual offender - Public threat - Legality of impugned orders - The petitioner challenged the order passed by Additional District Magistrate (Finance & Revenue), Bulandshahr, and the appellate order of Commissioner, Meerut Division, whereby he was externed for a period of six months under the provisions of U.P. Control of Goondas Act, 1970 - The proceedings were

initiated on the basis of two criminal cases registered against the petitioner at Police Station Khurja Nagar, District Bulandshahr - In response to the proceedings, the petitioner asserted that the criminal cases had been falsely lodged due to personal enmity, remained pending adjudication and had not culminated in any conviction - The authorities nevertheless concluded that the petitioner was a habitual offender whose activities generated fear and terror in the locality and, consequently, treated him as a "Goonda" under the Act - While State contended that the petitioner falls within the definition of 'Goonda' u/s 2 of Act of 1970 - It was further argued that conviction is not a prerequisite for initiating proceedings, and the pendency of criminal cases along with material on record sufficiently establishes his habitual criminal conduct and authorities, therefore, rightly held him to be a threat to public order and passed the externment order, which calls for no interference.

Held: It is apparent from the statutory scheme that conviction is specifically required only in respect of certain offences under special enactments such as the Suppression of Immoral Traffic in Women and Girls Act, the U.P. Excise Act, the Public Gambling Act, and the Arms Act - However, in respect of offences under the IPC, the Act does not mandate prior conviction as a prerequisite for initiating proceedings - It is further evident that the Act does not prescribe any fixed number of offences required to classify a person as a "Goonda," nor does it stipulate a specific time gap between offences for determining habituality - It is apparent that Court has consistently held that merely on the basis of one or two criminal cases, a person cannot be branded as a "Goonda" - Such punitive action of State causes irreparable damage to reputation of such person and his family - Accordingly writ petition allowed, impugned orders quashed. [Paras 15 to 17, 19] (E-13)

Case Law Cited

Lalani Pandey @ Vijay Shankar Pandey v. State of U.P. **reported in 2011 (1) ADJ 434; Lalani Pandey @ Vijay Shankar Pandey v. State of UP, 2010 SCC OnLine All 2411; Shahanshah v. State of UP and 2 Others, Neutral Citation No.-2022:AHC:35631 decided on 16.03.2022; Govardhan v. State of UP, Neutral Citation No.- 2023:AHC:169934-DB; Saurabh @ Saurabh Kumar v. the State of UP and 2 Ors., Neutral Citation No. - 2025:AHC:131125-DB - referred to**

Vijay Narain Singh v. State of Bihar **(1984) 3 SCC 14 - relied on**

List of Acts

U.P. Control of Goondas Act, 1970; Indian Penal Code, 1860; The Scheduled Castes and The Scheduled Tribes (Prevention Of Atrocities) Act, 1989

List of Keywords

Writ Petition; Goonda; Commissioner; Appeal; s. 3(1); U.P. Control of Goondas Act; Externment order; Two criminal cases; Habitual offender; Menace to society; Atmosphere of fear and terror; Due opportunity of hearing; Personal enmity; Charge sheets; Cognizance; Dissuading members of public; Criminal activities; Threat to public order; Prior conviction as a prerequisite; Act does not prescribe any fixed number of offences required to classify a person; Preventive legislation; Element of habituality; Punitive action of State; Irreparable damage to reputation of such person and family; Writ petition allowed; Impugned orders quashed.

Case Arising From

ORIGINAL JURISDICTION: Criminal Misc. Writ Petition No. - 27666 of 2025

From the Judgment and Order dated 02.06.2025 passed by the Commissioner, Meerut Division, Meerut in Appeal No. 720 of 2025 and Order dated 12.02.2025 passed by the Additional District Magistrate (Finance & Revenue), District Bulandshahr in Case No. 1650 of 2024.

Appearances for Parties

Advs. for the Petitioner(s):

Ramesh Singh Kushwaha, Vikas Srivastava

Adv. for the Respondent(s):

G.A.

(Delivered by Hon'ble Sandeep Jain, J.)

1. The present writ petition has been instituted challenging the impugned judgment and order dated 02.06.2025 passed by the Commissioner, Meerut Division, Meerut in Appeal No. 720 of 2025 (Satendra vs. State of U.P.), as well as the order dated 12.02.2025 passed by the Additional District Magistrate (Finance & Revenue), District Bulandshahr in Case No. 1650 of 2024 (State of U.P. vs. Satendra), whereby proceedings under Section 3(1) of the U.P. Control of Goondas Act, 1970 culminated in an externment order against the petitioner for a period of six months.

2. Factual matrix is that the record reveals that two criminal cases have been registered against the petitioner at Police Station Khurja Nagar, District Bulandshahr. The first case, being Case Crime No. 3 of 2022, was registered under Sections 147, 323, 504, 506 IPC along with Sections 3(1)(d) of the SC/ST Act. The second case, being Case Crime No. 445 of 2023, was registered under Sections 147, 148, 149, 308, 323, 427, 504, 506 IPC alongwith other allied provisions of the SC/ST Act.

3. On account of the aforesaid criminal cases, proceedings under Section 3(1) of the U.P. Control of Goondas Act, 1970 were initiated against the petitioner. After providing due opportunity of hearing and upon consideration of the submissions made by the petitioner, wherein it was contended that the aforesaid cases were falsely lodged due to personal enmity and are still pending without any conviction, the externment order came to be passed.

4. The authorities below have concurrently recorded a finding that the petitioner is a habitual offender, posing a menace to society, and that his activities have created an atmosphere of fear and terror in the locality, thereby dissuading members of the public from coming forward to depose against him. It has further been taken into account that charge-sheets have been submitted in the aforesaid cases and cognizance has already been taken by the competent court. Consequently, the petitioner has been adjudged to be a "Goonda" within the meaning of the Act of 1970 and has been externed under Section 3(3) thereof for a period of six months, which has been affirmed by the appellate authority, which are under challenge in the present writ petition

5. Learned counsel for the petitioner contended that only two criminal cases are pending against the petitioner and no conviction has been recorded therein. It was argued that mere pendency of two cases cannot justify branding the petitioner as a "Goonda" within the meaning of the Act of 1970. Reliance has been placed upon the judgment in ***Lalani Pandey @ Vijay Shankar Pandey vs. State of U.P.*** reported in 2011 (1) ADJ 434 as well as the law laid down by the Hon'ble Supreme Court in ***Vijay Narain Singh vs. State of Bihar*** (1984) 3 SCC 14, to contend that habituality cannot be inferred from isolated incidents.

6. Per contra, learned A.G.A. has submitted that the petitioner squarely falls within the ambit of the definition of "Goonda" as envisaged under Section 2 of the Act of 1970. It has been urged that it is not sine qua non that the person must have been convicted of the offences in question; rather, the pendency of criminal cases, coupled with the material available on record, is sufficient to warrant initiation of proceedings under the Act.

7. It has further been contended that the petitioner's involvement in multiple criminal cases within close proximity of time unequivocally demonstrates his habitual propensity to indulge in criminal activities. Learned A.G.A. submits that the authorities below have, upon due consideration of relevant material, rightly concluded that the petitioner is a habitual offender and a threat to public order, and therefore, the externment order does not warrant any interference by this Court in exercise of its extraordinary writ jurisdiction.

8. I have heard learned counsel for the parties and perused the impugned orders as well as the material available on record.

9. Section 2(b) of the Act 1970 reads as under:-

"Goonda' means a person who?

(i) either by himself or as a member or leader of a gang, habitually commits, or attempts to commit, or abets the commission of an offences punishable under section 153 or section 153-B or section 294 of the Indian Penal Code or Chapter XV, Chapter XVI, Chapter XVII or Chapter XXII of the said Code ; or

(ii) has been convicted for an offence punishable under the Suppression of Immoral Traffic in Women and Girls Act, 1956 ; or

(iii) has been convicted not less than thrice for an offence punishable under the U. P. Excise Act, 1910 or the Public Gambling Act, 1867 or section 25, section 27 or section 29 of the Arms Act, 1959 ; or

(iv) is generally reputed to be a person who is desperate and dangerous to the community ; or

(v) has been habitually passing indecent remarks or teasing women or girls ; or

(vi) is a tout ;

10. A Coordinate Bench of this Court in the case of **Lalani Pandey @ Vijay Shankar Pandey vs. State of UP, 2010 SCC OnLine All 2411**, held as under:-

"14....In this case the accused has not been treated as 'goonda' on the grounds mentioned in clause 2 (b) (ii) to (vii) of the Act as referred above. He has been treated as goonda under clause 2 (b) (i) of the Act. As per definition of goonda as contained in clause 2 (b) (i) of the Act, a person

*can be teated as goonda only when he is habitually involved in commission of offence as mentioned therein. The word goonda carries on the meaning that a person who by habit is involved to commit repeated offences as mentioned above will be treated as 'goonda'. **One or two criminal cases against a person will not be sufficient to hold him that he is habitually involved in commission of such offences and he is a 'goonda'.***

15. In the case of Shankar Ji Shukla v. Ayukt, Allahabad Mandal, Allahabad and Others 2005 (52) ACC 638 the word 'habitually' came for consideration before this Court. The court relying on its previous judgment in the case of Imaran @ Abdul Qaddus Khan v. State of U.P. And others reported in 2000 (Suppl.) ACC 171 (Alld) as well as the case of Vijay Narain Singh V State of Bihar and Others reported in (1984) 3 SCC 14 decided by the Hon'ble Apex Court held that a single or two acts of the accused will not be sufficient to hold that he is habitually involved in commission of the offences referred in the Act. The relevant observation of the Hon'ble court finds place in para 6 of the judgment which is being extracted below:

"?.. 6. The emphasis is on the work habitual and a single or two acts after a long gap does not amount to the term 'Habitually'. The expression 'habitually' means 'repeatedly' or 'persistently'. It implies a thread of continuity stringing together similar repetitive acts. Repeated, persistent and similar, but not isolated, individual and dissimilar acts are necessary to justify an inference of habit. It connotes frequent commission of acts or omissions of the same kind. Because, the idea of 'habit' involves an element of persistence and a tendency to repeat the acts or omissions of the same kind, if the acts or omissions in question are not of the same kind or even if they are of the same kind when they are committed with a long interval of time between them, they cannot be treated as habitual ones. Learned counsel for the petitioner further relied on the case of Imaran @ Abdul Qaddus Khan v. State of U.P. And Others. In Imran's case (supra), the Court relied on the judgment of Hon'ble Supreme Court in the case of Vijay Narain Singh v. State of Bihar and Others, for defining the term 'Goonda'. It was further held in Imaran's case (supra) that even the minority view which was taken in Vijay Narain's case (supra) was that the word 'habitually' means 'by force of habit'. From the facts found above I find that the petitioner is not a habitual offender and he cannot be brought under the term 'Goonda' as defined under the Act???"

16. In this case, in counter affidavit filed by Awadhesh Kumar Awasthi, Sub Inspector, P.S. Saraini, District Raebareli, it has been specifically stated that the petitioner has a criminal history of as many as 9 cases but in the impugned notice issued by the learned Additional District Magistrate, only two cases as referred above have been mentioned therein, therefore, the criminal history of rest cases cannot be a ground to treat the petitioner as goonda which do not find place in the impugned order. If the criminal history of those cases would have been mentioned in the impugned notice, they could be considered for holding the accused as goonda. Since only two criminal cases have been referred in the impugned notice issued by the learned Additional District Magistrate to the petitioner hence only those two cases cannot be considered to determine as to whether the petitioner is goonda.

18. In the case of *Shankar Ji Shukla v. Ayukt, Allahabad Mandal, Allahabad and Others* (supra), it has been held **that a person cannot be held to be 'goonda' only on the basis of one or two acts, a person can be held to be goonda only when he is in habit of committing repeated offences**. In this case, only two criminal cases have been shown against the accused which too were registered by the police in pursuant to the order passed by the Judicial Magistrate on the applications moved by the respective complainants under Section 156 (3) of the Code. The petitioner on the basis of these two cases cannot be said to be habitually involved in commission of offences as defined under Section 2 (1) (b) of the Act. He, therefore, cannot be held to be goonda..."

(emphasis supplied)

11. A Coordinate Bench of this Court in the case of *Shahanshah vs. State of UP and 2 Others, Neutral Citation No.- 2022:AHC:35631* decided on 16.03.2022, held as under:-

"The Apex Court in the case *Vijay Narain Singh versus State of Bihar and others*, (1984) 3 SCC 14 observed **that it is essential to refer to at least two incidents of commission of crime for applicability of Clause (i) of section 2(b) of the 1970 Act.**

Since there is reference of one incident only in the notice in hand, it falls short of the legal requirement as provided in Clause (i) of section 2(b) of the 1970 Act.

Again, a Division Bench of this Court in *Suresh Tewari Vs. State of U.P. and others* decided on 23.5.2018, after considering the Apex Court judgement in *Vijay Narain Singh Vs. State of Bihar*, 1984 (3) SCC 14 and Full Bench judgement of this Court in *Bhim Sain Tyagi Tyagi Vs. State of U.P.* 1999 (39) ACC 321, while considering the issue relating to slapping of the penal provisions of the Act against an individual on basis of a solitary case, has observed as follows:-

"The Hon'ble Apex Court in the case of *Vijay Narain Singh versus State of Bihar and others* (1984) 3 SCC 14 has been pleased to hold **that it is essential to refer to at least two incidents of commission of crime for applicability of Clause (i) of section 2(b) of the Act.** Since there is reference of one incident only in the notice, it falls short of the legal requirement as provided in Clause (i) of section 2(b) and in this way the notice being illegal could be challenged before this Court as laid down by the Full Bench of this Court in the case of *Bhim Sain Tyagi v. State of U.P. And others* 1999 (39) ACC 321. If there had been reference of two or more incidents in the impugned notice, then the minimum legal requirement of section, 2(b) Clause (i) would have been satisfied, and then in that case sufficiency of the material on merits could not be challenged before this Court, but before the authority concerned as laid down in the Division Bench ruling in the case of *Jaindendra @ Chhotu Singh Versus State of U.P.* (supra). But since the impugned notice in the present case is short of the legal requirement, it could be challenged in this Court. The observations in para 12 of the ruling in the case of *Jaindendra* (supra) which have been quoted above, also support this conclusion."

(emphasis supplied)

12. A Division Bench of this Court again in the case of **Govardhan vs. State of UP**, **Neutral Citation No.- 2023:AHC:169934-DB**, held as under:-

"9. It is a fundamental right of every citizen to reside peacefully and profess his business, but if the executive authorities are issuing notice under this deterrent law, then they must be doubly sure about the individual's past image, his past credentials, his family, social educational background and after assessing all these factors if the executive authorities comes to the conclusion that individual is a "Goonda" or a potential threat to society at large and should be thrown out from the municipal limits, then only by well reasoned order, after applying his own independent judicial mind pass a well reasoned order for externment of that individual or even issue notice to that individual calling upon him to justify his past conduct.

*10. The public perception regarding the individuals' image carries weight. If the individual is enjoying a bad reputation and name in the area and coupled with the fact that he has got a chequered past then executive authorities are well within their right to issue notice to that individual or to pass an externment order for that individual. **Trivial and insignificant offences having one or two in number would not make the person branded as a "Goonda". This adjective "Goonda" itself carries bundle load of bad name, and the executive authorities casually and irresponsibly brand a person as a Goonda, goes without saying, that his entire future and reputation would go to dogs and cause irreparable damage to his name and reputation of his family.***

(emphasis supplied)

13. Similarly, a Division Bench of this Court in the case of **Saurabh @ Saurabh Kumar vs. the State of UP and 2 Ors.**, **Neutral Citation No. - 2025:AHC:131125-DB**, while relying on the case of Goverdhan (supra), held as under:-

"3. From the perusal of the impugned notice, following cases are registered against the petitioner :-

(1) Case Crime No. 150 of 2024 under Sections 389, 504, 506, 120B IPC and Section 67 of I.T. Act.

(2) Case Crime No. 1042 of 2024 under Sections 352, 351(3) B.N.S., and

(3) Beat Report No. 37/04.04.2025.

4. Learned counsel for the petitioner submits that on the basis of two cases, the petitioner has been issued notice under Section 3 U.P.Control of Goondas Act, which is not justified. This Court in the case of Goverdhan Vs. State of U.P. passed in Crl. Misc. Writ Petition No. 12619 of 2023 has struck down such a notice on the ground that because of implication only in two cases, a person cannot be held to be a Goonda within the definition of the Act.

5. This Court deprecated such practice on the part of the Government Officials and struck down such notice in view of the settled legal position, the impugned notice cannot be said to be in accordance with law, it is accordingly quashed."

14. Section 2(b) of the U.P. Control of Goondas Act, 1970 defines a "Goonda" as a person who habitually commits, attempts to commit, or abets the commission of offences punishable under various provisions of the Indian Penal Code, including offences affecting the human body such as causing hurt or injury, use of criminal force, kidnapping, sexual offences, as well as offences against property, including criminal trespass, mischief, and cheating, etc.

15. It is apparent from the statutory scheme that conviction is specifically required only in respect of certain offences under special enactments such as the Suppression of Immoral Traffic in Women and Girls Act, the U.P. Excise Act, the Public Gambling Act, and the Arms Act. However, in respect of offences under the IPC, the Act does not mandate prior conviction as a prerequisite for initiating proceedings.

16. It is further evident that the Act does not prescribe any fixed number of offences required to classify a person as a "Goonda," nor does it stipulate a specific time gap between offences for determining habituality. However, the Hon'ble Supreme Court in *Vijay Narain Singh* (supra), has held that for invoking the provisions of such preventive legislation, the person must be shown to be a habitual offender, and if offences are committed with a long time gap, the element of habituality may not be established.

17. It is apparent that this Court has consistently held that merely on the basis of one or two criminal cases, a person cannot be branded as a "Goonda". Such punitive action of the State causes irreparable damage to the reputation of such person and his family.

18. Since in the instant case also, the petitioner has been branded as "Goonda" on the basis of only two criminal cases registered against him, hence, the proceedings initiated under the Act of 1970 are unsustainable and liable to be quashed.

19. Accordingly, the instant writ petition is allowed. Consequently, the impugned order dated 12.02.2025 and 02.06.2025 are quashed.

(2026) 4 ILRA 991
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 30.04.2026

BEFORE

THE HON'BLE SANDEEP JAIN, J.

Criminal Misc. Writ Petition No. 28877 of 2025

Chandrabhan Kumar

...Petitioner

Versus

State of U.P. & Ors.

...Respondents

Issue for Consideration

Issue pertains to whether the confiscation of the petitioner's vehicle u/s 5-A of U.P. Prevention of Cow Slaughter Act, 1955, on the allegation of transporting bovine animals for slaughter without permit, was legally sustainable when there was no material showing that the animals were being transported outside the State of Uttar Pradesh and no beef or slaughtered animal remains were recovered from the vehicle.

Headnotes

U.P. Prevention of Cow Slaughter Act, 1955 - ss. 3 , 5, 5-A(8), 5-B - Prevention of Cruelty to Animals Act, 1960 - s. 11 - Constitution of India, 1950 - Article 226 - Confiscation of vehicle - Requirement of permit - Transportation of bovine animals within State - Presumption of intended slaughter - Legality of confiscation - Challenged before District Magistrate, dismissed - Appeal before Commissioner, dismissed - Impugned orders - Compensation granted - Restoration of vehicle - The petitioner's vehicle was intercepted by police at Police Station Saiyadraja, District Chandauli, on the basis of information regarding transportation of bovine animals for slaughter to Bihar - Ten bovine animals were allegedly recovered from the vehicle, leading to registration of an FIR under U.P. Prevention of Cow Slaughter Act, 1955 and the Prevention of Cruelty to Animals Act, 1960 - Subsequently, proceedings for confiscation of vehicle were initiated u/s 5-A of Act, 1955, and the District Magistrate, Chandauli confiscated the vehicle, which order was affirmed by Commissioner, Varanasi Division - The petitioner challenged the orders before the High Court contending that there was no evidence of transportation outside the State or for slaughter and that the confiscation was based only on presumption - While, the State argued that petitioner failed to establish that the confiscated animals were not being transported to Bihar for slaughter - It is submitted further that the surrounding circumstances gave rise to a strong presumption against the petitioner and the confiscation and auction of vehicle were in accordance with law.

Held: Admittedly, no beef or slaughtered animal flesh was recovered from the vehicle - The sole basis of confiscation appears that the animals were allegedly being transported without permit - However, there is no cogent material on record to establish that the animals were in fact being transported to State of Bihar for slaughter - Mere interception of vehicle near the Bihar border cannot ipso facto justify such presumption. Suspicion, however strong, cannot substitute legal proof - The entire action of State in confiscating the petitioner's vehicle was arbitrary, illegal and unsupported by statutory provisions of Act of 1955 - It is equally disturbing that during pendency of proceedings before the Commissioner, the State proceeded to auction the vehicle without awaiting adjudication of petitioner's challenge - Such arbitrary action has caused grave prejudice to petitioner - The material on record further indicates that the vehicle was a commercial transport vehicle and the principal source of livelihood of petitioner - It also appears that the vehicle had been financed through Shriram Finance Ltd. and the petitioner was paying monthly loan instalments of Rs.9,843/- until August, 2024, but defaulted thereafter owing to seizure of vehicle - In the circumstances, the Court deems it just and proper to award compensation to petitioner - Accordingly, the State is directed to pay compensation @ Rs.15,000/- per month for a period of about twelve months from 08.09.2024 to 14.09.2025, totalling Rs.1,80,000/-, together with an additional sum of Rs.20,000/- towards mental agony and harassment - Accordingly, writ petition allowed. [Paras 18, 21, 22, 24, 25, 29] (E-13)

Case Law Cited

Kaliya v. State of UP And Others **2023 SCC OnLine All 1974**; *Munib v. State of UP and 2 others* **2024 SCC OnLine All 9631**; *Nilabati Behera (Smt.) Alias Lalita Behera(Through The Supreme Court Legal Aid Committee) v. State of Orissa and Others* **(1993) 2 SCC 746**; *Indibily Creative Private Ltd. And Others v. Government of West Bengal And Others* **(2020) 12 SCC 436 - referred to**

List of Acts

U.P. Prevention of Cow Slaughter Act, 1955; Prevention of Cruelty to Animals Act, 1960; Constitution of India, 1950.

List of Keywords

Art. 226 of Constitution of India; Writ Petition; Commissioner (Appeal); District Magistrate; U.P. Prevention of Cow Slaughter Act, 1955; Vehicle confiscated; Prevention of Cruelty to Animals Act, 1960; During search ten bovine animals were recovered from vehicle of petitioner; Vehicle was seized; FIR registered; Transportation of animals for slaughter; Arbitrary; Illegal; Unsustainable in law; Presumption of intended slaughter; Auction of vehicle; Economic Loss; Livelihood of petitioner; Compensation to petitioner; Restoration of vehicle; Grave prejudice to petitioner; Damages; Mental agony; Harassment; Impugned orders quashed; Writ petition allowed.

Case Arising From

ORIGINAL JURISDICTION: Criminal Misc. Writ Petition No. - 28877 of 2025

From the Judgment and Order dated 22.03.2025 passed by District Magistrate, Chandauli in Case No. 1253 of 2024 and also Order dated 27.11.2025 passed by the Commissioner, Varanasi Division, Varanasi in Case No. 3546 of 2025.

Appearances for Parties

Adv. for the Petitioner(s):

Hira Lal

Adv. for the Respondent(s):

G.A.

(Delivered by Hon'ble Sandeep Jain, J.)

1. The instant writ petition has been instituted under Article 226 of the Constitution of India assailing the impugned order dated 27.11.2025 passed by the Commissioner, Varanasi Division, Varanasi in Case No.3546 of 2025, Computerized Case No.C202514000003546 (*Chandrabhan Kumar vs. State of U.P.*), under Section 5-A(8) of the U.P. Prevention of Cow Slaughter Act, 1955, whereby the order dated 22.03.2025 passed by the District Magistrate, Chandauli in Case No.1253 of 2024, Computerized Case No.D202414180001253 (*State vs. Moti Patel and others*), under Section 5-A of the Act, 1955, was affirmed. By the said order, vehicle no. UP65-JT-0125 belonging to the petitioner was confiscated on the allegation that it was carrying ten bovine animals for slaughter to the State of Bihar without a permit, which was mandatory under the Act of 1955.

2. The factual matrix, as emerging from the record, is that on 08.09.2024 at about 14:00 hours, the police personnel of Police Station Saiyadraja, District Chandauli, acting upon information supplied by an informer, that certain vehicles were transporting cows and their progeny for slaughter to the State of Bihar, intercepted vehicle no. UP65-JT-0125 belonging to the petitioner. Upon search, ten bovine animals, namely six heifers, two cows, one bull and one bullock, were allegedly recovered therefrom. Consequently, the vehicle was seized and FIR being Case Crime No.162 of 2024, under Sections 3/5-A/8 and 5 of the U.P. Prevention of Cow Slaughter Act, 1955, as well as Section 11 of the Prevention of Cruelty to Animals Act, 1960, was registered at Police Station Saiyadraja, District Chandauli against Moti Patel, Anup, Chandrabhan Kumar (owner of the vehicle), and one unknown person.

3. Since, according to the prosecution, the aforesaid bovine animals were being transported in contravention of the provisions of the Act of 1955, proceedings for confiscation of the vehicle

were initiated by issuance of notice under Section 5-A(7) of the Act, 1955 by the District Magistrate, Chandauli. The petitioner submitted his reply asserting that the vehicle had been forcibly seized and that no animals were being transported therein.

4. The District Magistrate, however, was not satisfied with the explanation furnished by the petitioner and recorded a finding that under the provisions of the Act and the Rules framed thereunder, a permit was required for transporting the animals to the State of Bihar and further, the animals were being transported for slaughter. Since the vehicle had been intercepted near the Bihar border, a presumption was drawn that the vehicle was proceeding towards Bihar and the animals were intended for slaughter. Consequently, in exercise of powers under Section 5-A(7) of the Act, 1955, the vehicle of the petitioner was confiscated.

5. The petitioner preferred an appeal/revision before the Commissioner, Varanasi Division, Varanasi under Section 5-A(8) of the Act, 1955, which too came to be dismissed by the impugned order dated 27.11.2025. The Commissioner concurred with the view that a permit was necessary for transportation of the aforesaid animals.

6. It is pertinent to note that the order dated 22.03.2025 passed by the District Magistrate was initially challenged by the petitioner by means of Criminal Revision No.49 of 2025 (*Chandrabhan Kumar vs. State of U.P. and another*), which was dismissed by the District Judge, Chandauli vide order dated 16.06.2025 on the ground of lack of jurisdiction, holding that the competent authority under Section 5-A of the Act, 1955 was the Commissioner.

7. Thereafter, the petitioner approached this Court by filing Petition under Article 227 No.6375 of 2025 (*Chandrabhan Kumar vs. State of U.P. and 3 others*), which was disposed of by a Coordinate Bench vide order dated 04.08.2025 granting liberty to the petitioner to file Criminal Revision before the Divisional Commissioner within four weeks. Pursuant thereto, the petitioner filed Criminal Revision under Section 5-A(8) of the Act, 1955, which was dismissed by the impugned order dated 27.11.2025.

8. Learned counsel for the petitioner submits that the action of the State in confiscating the petitioner's vehicle is wholly arbitrary, illegal and unsustainable in law. It is contended that the vehicle was apprehended within the State of Uttar Pradesh and no beef or slaughtered animal remains were recovered therefrom. It is further submitted that there was no material whatsoever to infer that the bovine animals were being transported to Bihar for slaughter and the confiscation order is founded merely upon conjectures and presumptions.

9. It is next submitted that the proceedings before the Commissioner were instituted on 29.08.2025 and an application for interim protection against operation of the order dated 22.03.2025 was also moved, yet no order was passed thereon. During pendency of the said proceedings, the State authorities proceeded to auction the vehicle for a paltry sum of Rs.85,000/-, despite the market value of the vehicle being more than Rs.7 lakhs. It is argued that the State acted in undue haste and in gross disregard of fairness, as it ought to have awaited the final outcome of the proceedings pending before the Commissioner.

10. It is further submitted that the petitioner has suffered grave economic loss, inasmuch as the vehicle constituted his sole source of livelihood and sustenance. Accordingly, it is prayed that the impugned orders be quashed and suitable compensation be awarded.

11. Per contra, Sri Sanjeev Singh, learned Additional Advocate General, assisted by Sri Pankaj Saxena and Ms. Seema Shukla, learned A.G.A., has sought to support the impugned orders contending that the petitioner failed to establish that the animals were not being transported to Bihar for slaughter. It is submitted that the surrounding circumstances gave rise to a strong presumption against the petitioner and that the confiscation and auction of the vehicle were in accordance with law. It is thus urged that no interference is warranted in exercise of jurisdiction under Article 226 of the Constitution of India.

12. I have heard learned counsel for the parties and perused the impugned order and the documents submitted with the petition.

13. Section 5-A and 5-B of the Act, 1955, which are relevant, reads as under:-

“5-A. Regulation on transport of cow, etc.*(1) No person shall transport or offer for transport or cause to be transported any cow, or bull or bullock, the slaughter whereof in any place in Uttar Pradesh is punishable under this Act, from any place within the State to any place outside the State, except under a permit issued by an officer authorised by the State Government in this behalf by notified order and except in accordance with the terms and conditions of such permit.*

(2) Such officer shall issue the permit on payment of such fee not exceeding five hundred rupees for every cow, bull or bullock as may be prescribed:

Provided that no fee shall be chargeable where the permit is for transport of the cow, bull or bullock for a limited period not exceeding six months as may be specified in the permit.

(3) Where the person transporting a cow, bull or bullock on a permit for a limited period does not bring back such cow, bull or bullock into the State within the period specified in the permit, he shall be deemed to have contravened the provision of sub-section (1).

(4) The form of permit, the form of application therefore and the procedure for disposal of such application shall be such as may be prescribed.

(5) The State Government or any officer authorised by it in this behalf by general or special notified order, may, at any time, for the purpose of satisfying itself, or himself, as to the legality or propriety of the action taken under this section, called for and examine the record of any case and pass such orders thereon as it or he may deemed fit.

(6) Where the said conveyance has been confirmed to be related to beef by the competent authority or authorized laboratory under this Act, the driver, operator and owner related to transport, shall be charged with the offence under this Act, unless it is not proved that the transport

medium used in crime, despite all its precautions and without its knowledge, has been used by some other person for causing the offence.

(7) The vehicle by which the beef or cow and its progeny is transported in violation of the provisions of this Act and the relevant rules, shall be confiscated and seized by the law enforcement officers. The concerned District Magistrate/Commissioner of Police will do all proceedings of confiscation and release, as the case may be.

(8) The cow and its progeny or the beef transported by the seized vehicle shall also be confiscated and seized by the law enforcement officers. The concerned District Magistrate/Commissioner will do all proceedings of the confiscation and release, as the case may be.

(9) The expenditure on the maintenance of the seized cows and its progeny shall be recovered from the accused for a period of one year or till the release of the cow and its progeny in favour of the owner thereof whichever is earlier.

(10) Where a person is prosecuted for committing, abetting, or attempting to an offence under Sections 3, 5 and 8 of this Act and the beef or cow-remains in the possession of accused has been proved by the prosecution and transported things are confirmed to be beef by the competent authority or authorized laboratory, then the court shall presume that such person has committed such offence or attempt or abetment of such offence, as the case may be, unless the contrary is proved.

(11) Where the provisions of this Act or the related rules in context of search, acquisition, disposal and seizure are silent, the relevant provisions of the Code of Criminal Procedure, 1973 shall be effective thereto.

5-B. Whoever causes any physical injury to any cow or its progeny so as to endanger the life thereof such as to mutilate its body or to transport it in any situation whereby endangering the life thereof or with the intention of endangering the life thereof does not provide with food or water shall be punished with imprisonment for a term which shall not be less than one year and which may extend to seven years and with fine which shall not be less than one Lakh rupees and which may extend to three Lakh rupees."

14. This Court in the case ***of Kaliya vs. State of UP And Others 2023 SCC OnLine All 1974***, held as under:-

"10. Having heard learned counsel for the petitioner, learned A.G.A. and going through the record as well as provisions of the Act, I find that the moot question involved in this case is whether the present petitioner has violated any provision of law in transportation of cows and its progeny by the aforesaid vehicle and whether the impugned orders have been passed confiscating the said vehicle in accordance with law.

12. A perusal of section 5-A(1) of the Act shows that the said provision shall come into place when the cow or its progeny is transported from within the State of U.P. to any other place outside the State and in that case, permit issued by the authorised officer of the State government shall be required.

13. There is nothing on record to show that the alleged recovered animals, i.e. the cows were being transported from within the State of U.P. to any other State. Therefore, from the plain reading of section 5-A of the Act, the permit is not required in the peculiar facts of this case.

14. The question involved in the case in hand has also come up for consideration before this court in *Kailash Yadav v. State of U.P.* 2008 (10) ADJ 623 wherein it has been held that no permit is required for transportation of cow or its progeny within the State of U.P. Section 5-A(6 to 8) provides for confiscation and release of vehicle by which beef or cow and its progeny is transported in violation of the provisions of the Act and relevant rules.

15. From perusal of sub sections (1 to 5) of section 5-A of the Act and the law laid down by this court in *Kailash Yadav's case (supra)*, it is evident that there is no need of permit to transport cow(s) and its progeny within the State of U.P. Hence, such transportation of cow and its progeny cannot be said to be in violation of the Act. Consequently, it can also not be said that the seized vehicle has been used in violation of Section 5-A or any other provision of the Act. Therefore, the police has no power or jurisdiction to seize or confiscate the vehicle in question and the District Magistrate also could not have issued notice under section 5-A of the Act when there is nothing to substantiate that the animals were being transported from within the State to some other State. In other words, in case the animals were being transported within the State of U.P., no show cause notice under section 5-A of the Act could have been given.

16. A coordinate Bench of this Court vide judgment and order dated 25.8.2022 passed in *Mohd. Shakib v. State of U.P.* Application under section 482 CrPC No. 23143 of 2021 **has held that no permit is required to transport cow and its progeny within the State of U.P. and therefore, it cannot be said that the seized vehicle in question was used in violation of section 5A(1) to (11) or any provisions of the Cow Slaughter Act.** Relevant paras 12 and 13 of the judgment in *Mohd. Shakib's case (supra)* is reproduced as below:

"12. Now, it is to be considered whether permit is required for transportation of the cow or its progeny within the State of Uttar Pradesh. This question came up for consideration before this Court in Criminal Revision No. 131 of 2005 (*Kailash Yadav v. State of U.P.*, 2008 (10) ADJ 623), wherein it is held that no permit is required for transportation of cow or its progeny within the State of Uttar Pradesh. Sub-section 5A (6 to 8) provides for confiscation and release of vehicle by which beef or cow and its progeny is transported in violation of the provision of this Act and the relevant rules. Sub-section 5A (6 to 8) reads as follows:"

(6) Where the said conveyance has been confirmed to be related to beef by the competent authority or authorised laboratory under this Act, the driver, operator and owner related to transport, shall be charged with the offence under this Act, unless it is not proved that the transport

medium used in crime, despite all its precautions and without its knowledge, has been used by some other person for causing the offence.

(7) The vehicle by which the beef or cow and its progeny is transported in violation of the provisions of this Act and the relevant rules, shall be confiscated and seized by the law enforcement officers. The concerned District Magistrate/Commissioner of Police will do all proceedings of confiscation and release, as the case may be.

(8) The cow and its progeny or the beef transported by the seized vehicle shall also be confiscated and seized by the law enforcement officers. The concerned District Magistrate/Commissioner will do all proceedings of the confiscation and release, as the case may be.

13. From the perusal of sub-section (1 to 5) of Section 5A of this Act and the law laid down by this Court in Kailash Yadav v. State of U.P. (supra), it is abundantly clear that there is no need of permit to transport cow and its progeny within the state of Uttar Pradesh. Therefore, transportation of a cow and its progeny within the state of Uttar Pradesh is not a violation of any of the provisions of the Cow Slaughter Act. Therefore, it cannot be said that the seized vehicle in question was used in violation of Section 5A (1) to (11) or any provisions of the Cow Slaughter Act, and therefore, police has no power or jurisdiction to seize or confiscate the vehicle in question. The District Magistrate, Varanasi has passed the impugned confiscation order dated 18.08.2021 in contravention of the law, as no permit is required to transport cow and its progeny within the state of Uttar Pradesh. In above circumstances, the impugned order dated 18.08.2021 passed by District Magistrate, Varanasi is without jurisdiction and the same is liable to be set-aside. Likewise, the revisional court has not considered the relevant provisions of Section 5A of Cow Slaughter Act while dismissing the criminal revision of the applicant, therefore, the impugned order dated 13.10.2021 passed by Special Judge (SC/ST Act), Chandauli is also against the provisions of law and is liable to be set-aside."

(emphasis supplied)

15. This Court again in the case of *Munib vs. State of UP and 2 others* 2024 SCC OnLine All 9631 held as under:-

"12. Thus transportation of cow etc. is regulated by Section 5A and Section 5A(7) confers power upon the District Magistrate/Commissioner of Police to confiscate the vehicle by which the beef or cow and its progeny is transported in violation of the provisions of this Act and the relevant Rules. A perusal of the F.I.R. indicates that none of the cow were maimed nor physically injured. Further, the allegation that they were being transported to West Bengal from Prayagraj for slaughtering requires no consideration as the condition precedent for the application of the section is that the cattle described in the Act should have been transported from any place in the State of U.P. to any place outside the State. Even if the story of seizure of cattle is believed then also 06 cattle are said to have been seized within the jurisdiction of Police Station Lalganj District Mirzapur namely within the State of Uttar Pradesh and admittedly, the border is far

away. The fact remains that cattle were apprehended from within the State of U.P. and, therefore, it cannot be said that they were transported to a place outside the State of U.P.

13. ..Commission of offence is one of the requisite ingredients for passing an order of confiscation and an order of confiscation should not be passed automatically. Thus, there is no material, as exist on record, to justify the exercise of powers under Sub Section 7 of Section 5A. The same is clearly contrary to the mandates and powers conferred upon the District Magistrate.

14. The confiscation by its very connotation implies depriving a person of his property to which he is entitled to retain. Article 300A of the Constitution of India provides that no person shall be deprived of his property save by authority of law. Arbitrary confiscation of the property which he might be using for his trade, profession or occupation is a serious encroachment on the fundamental right of a citizen under Article 19(1)(g) of the Constitution of India to carry on his trade, occupation or business. The procedure prescribed by law for confiscating the property as contained in Section 5A(7) of the Cow Slaughter Act, empowers the District Magistrate/Commissioner of Police to confiscate/seize the vehicle only if the conditions so prescribed under Sub Section 7 of Section 5A are fulfilled."

(emphasis supplied)

16. The Apex Court in the case of ***Nilabati Behera (Smt.) Alias Lalita Behera(Through The Supreme Court Legal Aid Committee) vs. State of Orissa and Others (1993) 2 SCC 746***, held as under:-

"34. The public law proceedings serve a different purpose than the private law proceedings. The relief of monetary compensation, as exemplary damages, in proceedings under Article 32 by this Court or under Article 226 by the High Courts, for established infringement of the indefeasible right guaranteed under Article 21 of the Constitution is a remedy available in public law and is based on the strict liability for contravention of the guaranteed basic and indefeasible rights of the citizen. The purpose of public law is not only to civilize public power but also to assure the citizen that they live under a legal system which aims to protect their interests and preserve their rights. **Therefore, when the court moulds the relief by granting "compensation" in proceedings under Article 32 or 226 of the Constitution seeking enforcement or protection of fundamental rights, it does so under the public law by way of penalising the wrongdoer and fixing the liability for the public wrong on the State which has failed in its public duty to protect the fundamental rights of the citizen. The payment of compensation in such cases is not to be understood, as it is generally understood in a civil action for damages under the private law but in the broader sense of providing relief by an order of making 'monetary amends' under the public law for the wrong done due to breach of public duty, of not protecting the fundamental rights of the citizen. The compensation is in the nature of 'exemplary damages' awarded against the wrongdoer for the breach of its public law duty** and is independent of the rights available to the aggrieved party to claim compensation under the private law in an action based on tort, through a suit instituted in a court of competent jurisdiction or/and prosecute the offender under the penal law.

35. *This Court and the High Courts, being the protectors of the civil liberties of the citizen, have not only the power and jurisdiction but also an obligation to grant relief in exercise of its jurisdiction under Articles 32 and 226 of the Constitution to the victim or the heir of the victim whose fundamental rights under Article 21 of the Constitution of India are established to have been flagrantly infringed by calling upon the State to repair the damage done by its officers to the fundamental rights of the citizen, notwithstanding the right of the citizen to the remedy by way of a civil suit or criminal proceedings. The State, of course has the right to be indemnified by and take such action as may be available to it against the wrongdoer in accordance with law ? through appropriate proceedings. Of course, relief in exercise of the power under Article 32 or 226 would be granted only once it is established that there has been an infringement of the fundamental rights of the citizen and no other form of appropriate redressal by the court in the facts and circumstances of the case, is possible?."*

(emphasis supplied)

17. Similarly, the Apex Court again in the case of ***Indibily Creative Private Ltd. And Others vs. Government of West Bengal And Others (2020) 12 SCC 436***, has granted compensation for consequential financial losses caused by State authorities. In this case the petitioner suffered violation of fundamental rights under Articles 19(1)(a) & (g), 14 and 21. The respondent State authorities were directed to pay compensation of Rs 20 lakhs, which was a huge amount. The relevant para is extracted hereinbelow:-

"52. As a consequence of the pulling off of the film from the theatres where it was screened on 16-2-2019, the petitioners have suffered a violation of their fundamental right to free speech and expression and of their right to pursue a lawful business. This has been occasioned by the acts of commission and, in any event, of omission on the part of the State in failing to affirm, fulfil and respect the fundamental freedoms of the petitioners. We are clearly of the view that a remedy in public law for the grant of remedial compensation is required in the present case. We order and direct the respondents to pay to the petitioners compensation which we quantify at Rs 20 lakhs within a period of one month from the date of the present judgment."

18. It is undisputed that ten bovine animals, namely six heifers, two cows, one bull and one bullock, were allegedly recovered from the petitioner's vehicle. Admittedly, no beef or slaughtered animal flesh was recovered from the vehicle. The sole basis of confiscation appears to be that the animals were allegedly being transported without permit. However, there is no cogent material on record to establish that the animals were in fact being transported to the State of Bihar for slaughter. Mere interception of the vehicle near the Bihar border cannot ipso facto justify such presumption. Suspicion, however strong, cannot substitute legal proof.

19. Further, it is apparent that cruelty to animals under Section 5-B of the Act, 1955 may attract separate proceedings, but the authorities below have not recorded any categorical finding that the vehicle was liable to confiscation on account of cruelty inflicted upon the animals. Even otherwise, for invoking such provisions, there must be evidence of such physical injury or conditions of transport as would endanger the life of the animals. There must be such injury on the body of the animals which either endangers their life or mutilates their body. It is apparent that a

simple injury which neither endangers their life nor mutilates their body, is not sufficient to attract the provision of Section 5-B of the Act. Besides this, the prosecution is bound to prove such injuries in accordance with law. In the instant case, neither such evidence has been brought on record by the prosecution nor there is any discussion on this aspect by the authorities below.

20. The only ground assigned in the impugned orders is absence of permit. However, for transportation of cows or its progeny within the State of Uttar Pradesh, no permit is required. In absence of reliable evidence that the animals were being transported outside the State for slaughter, the very substratum of the confiscation proceedings collapses.

21. This Court is, therefore, constrained to hold that the entire action of the State in confiscating the petitioner's vehicle was arbitrary, illegal and unsupported by the statutory provisions of the Act of 1955.

22. It is equally disturbing that during pendency of proceedings before the Commissioner, the State proceeded to auction the vehicle without awaiting adjudication of the petitioner's challenge. Such arbitrary action has caused grave prejudice to the petitioner.

23. The petitioner has disclosed in the rejoinder affidavit that the vehicle had been purchased in May, 2023 for Rs.5,20,000/-. Yet, the same was auctioned on 14.09.2025 for only Rs.85,000/-. Even after accounting for depreciation @10% per annum, the vehicle was worth about Rs.4 lacs at the time of auction. The sale for such grossly inadequate consideration demonstrates manifest arbitrariness.

24. The material on record further indicates that the vehicle was a commercial transport vehicle and the principal source of livelihood of the petitioner. It also appears that the vehicle had been financed through Shriram Finance Ltd. and the petitioner was paying monthly loan instalments of Rs.9,843/- until August, 2024, but defaulted thereafter owing to seizure of the vehicle.

25. In the circumstances, this Court deems it just and proper to award compensation to the petitioner. Accordingly, the State is directed to pay compensation @ Rs.15,000/- per month for a period of about twelve months from 08.09.2024 to 14.09.2025, totalling Rs.1,80,000/-, together with an additional sum of Rs.20,000/- towards mental agony and harassment.

26. Learned A.A.G. submits that, in the alternative, the State is prepared to restore the vehicle to the petitioner. In the event the vehicle is restored, the petitioner shall nevertheless be entitled to compensation towards loss of earnings from September, 2024 till the date of actual restoration, calculated @ Rs.15,000/- per month. But if the vehicle is not restored to the petitioner, then the petitioner is entitled to depreciated cost of the vehicle of Rs.4 lacs also, alongwith the above damages.

27. In view of the aforesaid discussion, the writ petition deserves to be allowed.

28. In view of the aforesaid analysis, the petitioner is entitled to the following reliefs from the State and its functionaries:-

- The petitioner be paid damages @Rs.15,000/- per month for the economic loss from 08.09.2024 till the restoration of vehicle.

-The petitioner be also paid damages of Rs.20,000/- for the mental agony and harassment.

- If the State fails to restore the vehicle to the petitioner, then, the petitioner is also entitled to depreciated cost of vehicle of Rs.4 lacs, but in this case, the petitioner will be entitled to damages @ Rs.15,000/- per month for only 12 months.

- The above amounts be paid to the petitioner within 15 days.

29. Accordingly, the writ petition is **allowed**. The impugned order dated 22.03.2025 passed by the District Magistrate, Chandauli and the order dated 27.11.2025 passed by the Commissioner, Varanasi Division, Varanasi are hereby quashed. The State is at liberty to realize the damages awarded to the petitioner from the concerned employees and officials.

(2026) 4 ILRA 1002
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 29.04.2026

BEFORE

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

Criminal Appeal No. 104 of 1989

Ram Das & Ors.

...Appellants

Versus

State of U.P.

...Respondent

Issue for Consideration

Matter pertains to whether the prosecution had proved the charge under S. 302 I.P.C. beyond reasonable doubt where the F.I.R. was lodged after more than 24 hours of the incident, the informant was not an eyewitness, one eyewitness turned hostile, the other eyewitness was found unreliable, the ocular evidence was not supported by the medical evidence, and an eyewitness cited by the prosecution was not examined. (Paras 23-33)

Headnotes

Criminal Law - Murder - Appreciation of evidence - Indian Penal Code, 1860 - S. 302 - Burden of proof in criminal trial - Prosecution required to prove its case beyond reasonable doubt - Where the case rests on direct evidence, credibility of eyewitnesses assumes significance - Held, prosecution failed to establish the charge beyond reasonable doubt. (Paras 23, 32, 33)

Criminal Law - Murder - Delay in lodging F.I.R. - Indian Penal Code, 1860 - S. 302 - First Information Report lodged after more than 24 hours of the occurrence - Informant not an

eyewitness - Evidence indicating that police had reached the place of occurrence on the same day at about 8:00 p.m. - No plausible explanation for lodging the F.I.R. on the next day in the afternoon - Held, F.I.R. lodged with inordinate delay without any plausible explanation raising serious doubt about the prosecution case. (Paras 23-25)

Criminal Law - Murder - Motive - Indian Penal Code, 1860 - S. 302 - Though motive loses significance in a case based on direct evidence, where prosecution sets up a motive it must prove the same - No evidence to show that the deceased had shot the father of one of the appellants - Held, prosecution failed to prove the alleged motive. (Para 26)

Criminal Law - Murder - Eyewitness account - Evidence of hostile witness - Code of Criminal Procedure, 1973 - S. 161 - Eyewitness not supporting prosecution case and unable to identify assailants due to poor vision - Statement under S. 161 Cr.P.C. not a substantive piece of evidence and usable only for corroboration or contradiction - Held, statement recorded under S. 161 Cr.P.C. had no evidentiary value and testimony of the witness was of no help to the prosecution. (Para 27)

Criminal Law - Murder - Appreciation of testimony of related and interested witness - Indian Penal Code, 1860 - S. 302 - Sole supporting eyewitness being cousin of deceased - Material contradictions between examination-in-chief and cross-examination regarding manner of occurrence - Held, testimony did not inspire confidence and was not reliable. (Para 28)

Criminal Law - Murder - Ocular evidence vis-à-vis medical evidence - Indian Penal Code, 1860 - S. 302 - Witness stating that deceased was shot from behind while running - Post-mortem showing that except one injury, all gunshot entry wounds were on the front side of the body - Held, medical evidence did not corroborate ocular testimony creating serious doubt about the prosecution case. (Paras 29, 30)

Criminal Law - Murder - Non-examination of material eyewitness - Indian Penal Code, 1860 - S. 302 - One eyewitness not examined by prosecution though cited as present at the scene - Other eyewitnesses found unreliable or hostile - Held, adverse inference liable to be drawn against the prosecution. (Para 31)

Criminal Law - Murder - Acquittal - Indian Penal Code, 1860 - S. 302 - Trial Court convicting appellants on appreciation of evidence found erroneous - Prosecution failing to prove case beyond reasonable doubt - Held, conviction and sentence liable to be set aside and appellants acquitted. (Paras 32-34)

Held: In a criminal case, the burden of proof lies upon the prosecution to prove its case beyond reasonable doubt - the F.I.R. was lodged after more than 24 hours of the incident and has been lodged with inordinate delay without any plausible explanation which raises serious doubt about the prosecution case - the prosecution failed to prove the motive for the appellants to commit the offence and there is no evidence to show that appellant Munender's father was shot by the deceased - the evidence of P.W.4 Baba Ravi Giri is of no help for the prosecution and the statement recorded under S. 161 Cr.P.C. has no evidentiary value - the testimony of P.W.2 Ram Deen does not inspire confidence and it is hard to rely upon it and being a relative and interested witness his testimony required careful scrutiny - the medical evidence does not corroborate the ocular testimony of P.W.2 Ram Deen which creates a serious doubt about the prosecution case - the non-examination of the other eyewitness gives rise to an adverse inference against the prosecution - the testimony of P.W.2 Ram Deen is not trustworthy or consistent and P.W.4 Baba Ravi Giri has not supported the prosecution case and P.W.3 Ram Ratan is not an eyewitness to the incident - the ocular evidence is not supported by the medical evidence and the prosecution has failed to prove its case beyond reasonable doubt - the Trial Court appreciated the evidence incorrectly and reached the conclusion of guilt in error based on conjectures and the conviction and sentence of the appellants are liable to be set aside - Appeal allowed. (Paras 23-34) (E-7)

Case Law Cited

Meharaj Singh (L/Nk.) v. State of U.P., (1994) 5 SCC 188; Hem Raj v. State of Haryana, (2005) 10 SCC 614.

List of Acts

Indian Penal Code, 1860; Code of Criminal Procedure, 1973; Bharatiya Nagarik Suraksha Sanhita, 2023

List of Keywords

murder; burden of proof; direct evidence; eyewitness; interested witness; relative witness; hostile witness; delayed F.I.R.; motive; ocular evidence; medical evidence; contradiction; corroboration; adverse inference; Section 161 Cr.P.C.; beyond reasonable doubt; acquittal; conjectures

Case Arising From

APPELLATE JURISDICTION: Criminal Appeal arising from the common judgment and order dated 12.01.1989 passed by the Ist Additional Session Judge, Farrukhabad in Session Trial No. 09 of 1985 connected with Session Trial No. 210 of 1985 convicting the appellants under S. 302 I.P.C. and sentencing them to imprisonment for life.

Appearances for Parties

Advs. for the Appellant:

Ms. Tahira Kazmi, learned Amicus Curiae.

Advs. for the Respondents:

Ms. Divya Ojha, learned Additional Government Advocate-I for the State.

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

1. This criminal appeal has been preferred by three convicts Ram Das, Suraj Singh and Munendra against the common judgment and order dated 12.01.1989 passed by Sri Sarnam Singh, the then Ist Additional Session Judge, Farrukhabad, in Session Trial No. 9 of 1985 connected with Session Trial No.210 of 1985, under Section 302 Indian Penal Code (in short □I.P.C.□).

2. By the impugned judgment and order, the appellants, namely Ram Das, Suraj Singh and Munendra were held guilty of the offence punishable under Section 302 I.P.C., convicted and sentenced to suffer imprisonment for life.

3. Brief facts of the prosecution case are that the informant, Ram Ratan, son of Bhairav, a resident of Village Nardoli, Police Station Sikanderpur Baish, District Etah submitted a written application (tehrir) at Police Station Kampil, District Farrukhabad, stating therein that on 17.07.1984, his brother of full blood, Asha Ram, had gone to Kampil to meet his aunt (Bua). While returning to Village Nardoli along with Baba Ravi Giri, Sohan Lal and Ram Deen, near Village Nakara falling within local limits of Police Station Sikanderpur Baish, four men, namely Vinod Kumar, Ram Das, Suraj Singh and Munendra Singh, residents of Village Nagla Malikhan, Police Station Patiyali, District Etah, intercepted and surrounded them and pointed country-made pistols at his brother, Asha Ram and his companions. Despite repeated requests and entreaties to spare him, Munendra Singh instructed his companions to leave the others unharmed and thereafter shot at Asha Ram, declaring that Asha Ram had earlier killed his father, Kishan Pal and that the time had come to take revenge. Thereupon, Munendra Singh, Ram Das and Suraj Singh opened fire employing their country-made pistols to shoot the informant's brother, Asha Ram, causing his death on the spot. Vinod Kumar stood nearby, brandishing his country-made pistol (tamancha) and threatening the informant and others. Upon alarm being raised, all the accused fled from the scene towards Jinol. It is further said that on the previous day, the informant had gone to Police Station Sikandarpur, District Etah to lodge a report, but the same was not registered on the ground that the offence fell within the jurisdiction of Police Station Kampil. Thereafter, the informant proceeded to

lodge the present First Information Report. The incident is stated to have occurred on 17.07.1984 at about 12:00 noon.

4. On the basis of this information, First Information Report being Case Crime No. 141 of 1984, Section 302 I.P.C. was lodged at Police Station Kampil on 18.07.1984 at 12:20 p.m.. The investigation was entrusted to D.R. Mishra, Station House Officer of the police station concerned. The Investigating Officer commenced investigation and reached the place of occurrence, from where he collected plain earth, bloodstained earth, bloodstained umbrella and a towel and prepared a recovery memo thereof. He also prepared the site-plan and recorded the statements of the informant and other witnesses. The inquest of the deceased was held, an inquest report was prepared and the body was sent for autopsy. The post-mortem of the deceased was conducted and the cause of death was opined as shock and hemorrhage as a result of ante-mortem gunshot injuries.

5. After investigation, a charge sheet was filed against Vinod Kumar, Ram Das and Suraj Singh under Section 302 IPC before the learned magistrate and a separate charge sheet was filed against Munendar Singh, also for an offence punishable under Section 302 IPC.

6. The magistrate took cognizance of the offence and summoned the accused. They appeared before the Court and were furnished copies of the relevant prosecution papers under Section 207 Cr.P.C. Thereafter, the cases were committed to the Court of Sessions for trial. Before the Sessions Court, accused Vinod Kumar, Ram Das and Suraj Singh appeared in Sessions Trial No.09 of 1985, while accused Munender Singh appeared in Sessions Trial No.210 of 1985. Charges under Section 302 I.P.C. were framed against them, to which they pleaded not guilty and claimed to be tried.

7. Since both the sessions trials arose out of the same incident, the Trial Court consolidated both the trials and Sessions Trial No. 09 of 1985 was treated as the leading case.

8. The prosecution has examined six witnesses to prove its case, namely, P.W.1 Constable Multan Singh, P.W.2 Ram Deen, P.W.3 Ram Ratan, P.W.4 Baba Ravi Giri, P.W.5 S.I. Data Ram, and P.W.6 Dr. Manohar Singhal.

9. P.W.1, Constable Multan Singh, a formal witness, proved the G.D. entry dated 18.07.1984 made at 12:20 p.m. at Police Station Kampil while being posted there as Head Moharrir, on the basis of the chik FIR Ext:Ka-1, the copy of which he has proved as Ext. Ka-2. In his cross-examination, he has said that no other report regarding any cognizable or non-cognizable offence was recorded either before or after this entry.

10. P.W.2 Ram Deen has said that he knew all the four accused . The deceased, Asha Ram was his cousin. At the time of the incident, he, along with Baba Giri, Asha Ram, the deceased and one more man were all returning from Village Kampil. He also said that they were proceeding to their village, Nardoli. When the party reached near a thatched structure located in Village Nakara, all the four accused emerged from Behaya tree, carrying country-made pistols. The assailants surrounded them and Munender Singh, Suraj Pal and Ram Das opened fire targeting Asha Ram,

while Vinod threatened them not to come forward. Asha Ram died on the spot. The accused fled away. Thereafter, he sent information to Asha Ram's brother, Ram Ratan, through a messenger.

11. In his cross-examination, P.W.2 Ram Deen has said that Asha Ram had met him at Village Kampil along with Babu Ram and Ram Chander and they stayed there during the night. Ram Chander and Babu Ram are sons of Asha Ram. Baba Giri met at Lord Kailash Nath Temple at about 7:00 p.m. The next day, at about 7:00 a.m., they proceeded towards their village. At the time of the incident, he was present at the place of occurrence and was on his way back from Shamshabad to Kampil. Ravi Giri, Sohan Lal and Asha Ram were there with him. As soon as they reached near Chetram's hut, they saw the accused at a distance of 4-5 steps. The accused pulled out country-made pistols from their pockets and pounced upon the victims. The informant along with others ran to save themselves and the accused chased and followed them across a distance of about 8-10 paces. The informant had taken a lead, Sohan Lal was to his left, Ravi Giri to his right and Asha Ram was running behind him. They heard four shots ring out. Asha Ram sustained injuries and collapsed to the ground. The rest of the victim party stopped after running across 10 paces. Baba Giri and Sohan Lal were running at a distance of one step to his left and right respectively and Asha Ram was about 4-5 steps behind him. The accused fled away after Asha Ram collapsed to the ground. He has stated that he saw the occurrence after he stopped and turned his face back. He did not go to the police station and Ravi Giri went to Police Station Nardoli. The police came to the spot at about 8:00 p.m. The police arrived there, followed by Ram Ratan, his mother Phool Mati and 8-10 other persons. The police asked Ram Ratan to go and lodge a report. The police inspected the place of occurrence, prepared the site-plan and the Investigating Officer also recorded statements at the same place.

12. P.W.3, Ram Ratan, the informant, has said that Asha Ram was his brother, who was shot at about 12:00 noon while returning to his house at Nardoli from village Kampil, where his aunt (Bua) resides. Ram Deen, Ravi Giri and Sohan Lal accompanied Asha Ram and when they reached near Chetram's hut, all the four accused met on the way. They pounced upon Asha Ram and his companions, whereupon they pleaded for their life. In consequence the accused Munender Singh asked others to spare all but Asha Ram and further, said that Asha Ram had shot and killed his father and that they would take revenge. Vinod Kumar kept standing there, waving his country-made pistol and the rest of the three accused opened fire employing their country-made pistols, shot Asha Ram and killed him. Upon alarm, the accused ran towards Village Jinaula. Thereafter, he went to Police Station Sikanderpur, where the Police refused to lodge the report, saying that the incident falls under the local limits of Police Station Kampil. He also has said that he got the Tehrir scribed from his Bua's son, Jyoti Swaroop and thereafter affixed his signature over it. The witness has proved the Tehrir Ext. Ka-3 and stated that the FIR was lodged at Police Station Kampil. In his cross-examination, he has said that a Gram Pradhan election was conducted prior to incident, in which Devraj @ Mahendra Singh was one of the contestants. He has also said that he was not an eye-witness to the incident and lodged the report on the basis of information given by Ram Deen, Ravi Giri and Sohan Lal.

13. P.W.4, Baba Ravi Giri, is an eyewitness to the incident, but has not supported the prosecution case. He said that he could not identify the accused who committed the offence due to

his poor vision. The witness was declared hostile and cross-examined by the prosecution. However, nothing material has emerged from his testimony in support of the prosecution case.

14. P.W.5 Data Ram, the Investigating Officer of the case, has stated about the investigation carried out by him and said that for a first he reached the place of occurrence and took the dead body into his custody. Thereafter, the inquest was held and a report prepared by S.I. Raja Ram along with the other connected papers, which he has proved as Ext. Ka-4 to Ka-9. He further said that he recorded the statements of the informant and other witnesses and on pointing out of the informant, prepared the site-plan of the place of occurrence, which he proved as Ext. Ka-9. He collected blood stained earth and plain earth from the place of occurrence, along with a blood stained umbrella and towel and prepared its recovery memo, which he proved as Ext. Ka-10. He also recorded the statement of Baba Giri on 18.07.1984 and filed its copy, which is in his own handwriting and has been proved as Ext. Ka-11. After collecting evidence, he filed a charge-sheet against the accused, except Munendra Singh. Thereafter, the charge-sheet against accused Munendra Singh was filed by S.I. Babu Ram Sagar, which has been proved through secondary evidence.

15. P.W.6 Dr. Manohar Singhal is a formal witness, who conducted the autopsy of the deceased, Asha Ram, on 19.04.1984 at 3:15 p.m. while on duty at District Hospital, Fatehgarh. He has stated that the deceased was about 40 years of age and average built. Rigor mortis had passed off from all limbs. The skin had peeled off at places. The body was swollen, with blisters present at several places. The scrotum and penis were swollen. Reddish froth was coming from the mouth and nostrils. The clothes were soiled with dirt and clotted blood at places. He found the following ante-mortem injuries on the body of the deceased:-

*“(i) Gunshot wound of entry 2.5 cm * 2 cm, bone deep, present on the right side of the neck, lacerated, ecchymosed, and inverted.*

*(ii) Gunshot wound of entry 4 cm * 3.5 cm * chest cavity deep, present on the right side of the chest (lateral aspect), 12 cm below the axillary fold, oval in shape.*

*(iii) Multiple gunshot wounds of entry, 7 in number, present in an area of 14 cm * 12 cm over the left scapular region up to the midline, varying in size from 0.5 cm * 0.25 cm to 0.25 cm * 0.2 cm, skin to chest cavity deep.*

*(iv) Gunshot wound of entry 6 cm * 4 cm * abdominal cavity deep, present on the left side of the back near the midline, surrounded by multiple gunshot wounds of entry, 18 in number, in an area of 11 cm * 7 cm, varying in size from 0.5 cm * 0.5 cm to 0.2 cm * 0.2 cm, skin to cavity deep.*

*(v) Gunshot wound of entry 6 cm * 5 cm * □ abdominal cavity deep, present on the midline at the level of T12-L1, oval in shape.”*

16. During the internal examination, P.W.6 Dr. Manohar Singhal found that the C2, C3, and C4 cervical vertebrae, as well as T12 and L1, were fractured, the spinal cord was lacerated, the pleura was lacerated, the larynx and trachea were lacerated, both lungs were lacerated, the

pericardium was lacerated and the stomach, intestines, liver, pancreas, spleen and both kidneys were lacerated. A total of 125 small and medium-sized pellets and 7(wads) were recovered from the dead body.

17. P.W.6, Dr. Manohar Singhal, has also said that the cause of death was shock and hemorrhage as a result of ante-mortem injuries and the death could have occurred about two days earlier. The witness proved the post-mortem report (Ext. Ka-14) and said that Asha Ram could have died on 17.07.1988 at about 12:00 noon due to gunshot, fired from a country-made pistol. In his cross-examination, the witness said that injury Nos. 1 and 4 could have been caused when the assailant was at a higher level than the deceased. He further said that all the injuries were caused from a distance of more than four feet.

18. After the closure of the prosecution evidence, the statements of accused were recorded under Section 313 Cr.P.C., wherein they denied the prosecution case and stated that the witnesses had deposed against them due to enmity. No evidence was adduced by the accused in their defence.

19. After hearing the arguments of both parties and perusing the evidence on record, the Trial Court came to the conclusion that the prosecution had proved its case beyond reasonable doubt against the accused, Ram Das, Suraj Singh and Munender, while the charge against the accused Vinod was not proved. Accordingly, accused Vinod Kumar was acquitted and the appellants, Ram Das, Suraj Singh and Munender were convicted for the offence punishable under Section 302 IPC and sentenced to imprisonment for life.

20. Heard Ms. Tahira Kazmi, learned Amicus Curiae appearing for the appellants and Ms. Divya Ojha, learned Additional Government Advocate-I appearing on behalf of the State.

21. It is submitted on behalf of the appellants that the testimony of the eyewitnesses is not reliable. It is further submitted that the first informant, Ram Ratan is not an eyewitness to the alleged incident. Another eyewitness, Baba Ravi Giri has not supported the prosecution case and turned hostile. It is also submitted that the oral testimony is not corroborated by the medical evidence, which raises serious doubts about the prosecution case. It is further submitted that another eyewitness, Sohan Lal was never examined and although the incident is alleged to have taken place near the hut of Chetram, he was also not examined. There are material contradictions in the testimony of P.W.2, Ram Deen, which directly contradicts the chronology of events. It is further submitted that, according to P.W.2 Ram Deen, the deceased, Asha Ram was shot from behind while running, however, the post-mortem report indicates that the entry wounds are on the front side of the body and there is no entry wound on the back of the deceased. It is also submitted that there was no motive for the appellants to commit murder. Therefore, the prosecution case is highly doubtful and the Trial Court has convicted and sentenced the appellants without properly appreciating the evidence, on the basis of conjectures.

22. Per contra, learned A.G.A.-I has submitted that the prosecution case is proved beyond reasonable doubt. It is a daylight murder and the eye-witness account has duly proved the prosecution case. The oral testimony is consistent, reliable and trustworthy. It is also submitted that there are no major contradictions between the oral and medical evidence and minor contradictions

in the oral testimony are likely to occur when a witness is cross-examined at length. Therefore, the appellants were rightly convicted. This appeal has no force and is liable to be dismissed.

23. It is settled law that in a criminal case, the burden of proof lies upon the prosecution to prove its case beyond reasonable doubt. The present case is based on direct evidence. The first argument on behalf of the appellants is that the F.I.R. has been lodged belatedly without any reasonable explanation for the delay, which raises a serious doubt about the prosecution case. In this regard, according to the prosecution, the incident occurred on 17.07.1984 at 12:00 noon and the F.I.R. was lodged on the next day, i.e., on 18.07.1984 at 12:20 p.m. This would mean that the F.I.R. was lodged after more than 24 hours of the incident. According to the check F.I.R., the distance of the place of occurrence from the Police Station is 7 miles. The informant, P.W.3 Ram Ratan, is a brother of full blood of the deceased, Asha Ram. Admittedly, Ram Ratan was not present at the place of occurrence at the time of the incident and he has stated on oath that he lodged the F.I.R. on the basis of information furnished by Ram Deen, Ravi Giri and Sohan Lal, as he did not witness the incident. The reason for the delay in lodging the F.I.R. has been explained by the prosecution that firstly, Ram Ratan went to Police Station Sikanderpur to lodge the F.I.R., where it was refused on the ground that the incident had occurred within the jurisdiction of Police Station Kampil. Thereafter, the informant went to Police Station Kampil, where he lodged the F.I.R.

24. It is relevant to mention that P.W.2, Ram Deen, the cousin of the deceased, is an eyewitness to the incident. He has testified that after the incident, he informed the deceased's brother, Ram Ratan. In his cross-examination, he has said that the police reached the place of occurrence at 8:00 p.m. followed by Ram Ratan, his mother Phool Mati and others. The police told Ram Ratan to go and lodge the F.I.R. The above testimony of P.W.2, Ram Deen, is significant because if the police had reached at the place of occurrence at about 8:00 p.m., the same day, then there was no reason for the informant to lodge the F.I.R. the next day in the afternoon. Therefore, the F.I.R. has been lodged with inordinate delay without any plausible explanation, which raises serious doubt about the prosecution case.

25. In this regard, the observation of the Supreme Court in **Meharaj Singh (L/Nk.) v. State of U.P., (1994) 5 SCC 188**, in paragraph 12 is relevant and reads as follows:

“ FIR in a criminal case and particularly in a murder case is a vital and valuable piece of evidence for the purpose of appreciating the evidence led at the trial. The object of insisting upon prompt lodging of the FIR is to obtain the earliest information regarding the circumstance in which the crime was committed, including the names of the actual culprits and the parts played by them, the weapons, if any, used, as also the names of the eye witnesses, if any. Delay in lodging the FIR often results in embellishment, which is a creature of an after thought. On account of delay, the FIR not only gets bereft of the advantage of spontaneity, danger also creeps in of the introduction of a coloured version or exaggerated story. With a view to determine whether the FIR, was lodged at the time it is alleged to have been recorded, the courts generally look for certain external checks. One of the checks is the receipt of the copy of the FIR, called a special report in a murder case, by the local Magistrate. If this report is received by the Magistrate late it can give rise to an inference that the FIR was not lodged at the time it is alleged to have been recorded, unless, of course the prosecution can offer a satisfactory explanation for the delay in dispatch or

receipt of the copy of the FIR by the local Magistrate. Prosecution has led no evidence at all in this behalf. The second external check equally important is the sending of the copy of the FIR along with the dead body and its reference in the inquest report. Even though the inquest report, prepared u/s 174 Cr.P.C. is aimed at serving a statutory function, to lend credence to the prosecution case, the details of the FIR and the gist of statements recorded during inquest proceedings get reflected in the report. The absence of those details is indicative of the fact that the prosecution story was still in embryo and had not been given any shape and that the FIR came to be recorded later on after due deliberations and consultations and was then ante timed to give it the colour of a promptly lodged FIR.”

26. According to the prosecution, the motive for the appellants to commit the murder was that the appellant Munender swore revenge on Asha Ram, as he was under the impression that his father, Kishan Pal, had been shot dead by Asha Ram. This is a case of direct evidence and in such cases, motive loses its significance. However, it is relevant to note that if the prosecution sets up a case that there was a motive for the appellants to commit the offence, then it is its duty to prove the same like any other fact asserted by it. In this regard, the prosecution have failed to prove the motive for the appellants to commit the crime. There is no evidence to show that appellant Munender's father, Kishan Pal was shot by the deceased Asha Ram. Therefore, although motive has no significant role to play in this case, but the prosecution has failed to prove the alleged motive for the appellants to commit the offence.

27. According to the prosecution, at the time of the incident, the deceased Asha Ram was accompanied by Baba Ravi Giri, Sohan Lal and Ram Deen and the incident occurred in their presence. The prosecution has examined Ram Deen and Baba Ravi Giri to prove their case. Sohan Lal has not been examined by the prosecution for reasons best known to it. P.W.4 Baba Ravi Giri has not supported the prosecution case and has stated that he could not identify the assailants because of poor vision in his eyes. The witness was declared hostile by the prosecution and in his cross-examination, nothing material has come in support of the prosecution case. Therefore, the evidence of P.W.4 Baba Ravi Giri is of no help for the prosecution. The prosecution have proved the statement of Baba Ravi Giri recorded under Section 161 Cr.P.C. as Ext. Ka-11 during the evidence of the Investigating Officer, but it is settled law that a statement under Section 161 Cr.P.C. is not a substantive piece of evidence and such a statement can be used only for corroboration or contradiction of the witness during his examination before the Court. In the present case, the witness has not supported the prosecution case and said in his cross-examination that he did not give any such statement under Section 161 Cr.P.C., Therefore, the statement of Baba Ravi Giri recorded by the Investigating Officer under Section 161 Cr.P.C. has no evidentiary value.

28. A perusal of statement of P.W.2, Ram Deen shows that his testimony also does not inspire confidence and it is hard to rely upon it. P.W.2, Ram Deen is a cousin of the deceased. Therefore, he is a relative and an interested witness. It is settled law that the testimony of a relative or interested witness has to be examined carefully. P.W.2, Ram Deen, in his examination-in-chief, has said that when he, along with Baba Ravi Giri, Asha Ram and another person, were returning to Village Nadauli, and reached near the hut of Chet Ram under Village Nakara, all the four accused emerged from the Behaya tree, surrounded them and Munender, Suraj Pal and Ram Das shot Asha Ram, as a result of which he died on the spot. Thus, according to P.W.2, Ram Deen, the deceased

Asha Ram was shot after the accused surrounded him. Whereas, in his cross-examination, he has stated that the appellants were carrying country-made pistols in their hands and pounced upon them, and they(the victim party) ran towards west. The appellants chased them and they ran together to save themselves and while running, he (P.W.2) was in the lead with Sohan Lal to his left and, Baba Ravi Giri to his right and the deceased Asha Ram behind him. He has also stated that while on the run, Baba Ravi Giri and Sohan Lal were one step away from him, and Asha Ram was 4-5 steps behind him. He has further said that he heard four shots ring out, and as soon as Asha Ram fell, the accused fled away. All this incident he saw after turning his face back, upon stopping.

29. According to the prosecution, the deceased was shot with a country-made pistol. As per the statement of Ram Deen, he, along with the deceased, Sohan Lal and Baba Ravi Giri, was running when Asha Ram was shot. According to Ram Deen, they were running in close proximity to each other, therefore, one or more of them ought to have sustained injuries from the dispersal of pellets. However, none of the witnesses or the persons accompanying Asha Ram sustained any gunshot injury, which casts doubt on the version of Ram Deen that the deceased was shot while running alongside him.

30. The statement of P.W.2 Ram Deen is also contradictory to the medical evidence on record. According to the post-mortem report of the deceased, Asha Ram sustained five gunshot entry wounds. Out of these, one was on the right side of the neck, another on the right side of the chest, the third was in the scapular region up to the midline, the fourth was over the abdominal cavity and the fifth was deep in the abdominal cavity along the mid-line at the level of the iliac crest. Therefore, except for the gunshot entry wound found in the scapular region up to the mid-line, all other gunshot entry wounds were on the front side of the body. However, according to Ram Deen, the deceased was shot from behind. Thus, the medical evidence does not corroborate the ocular testimony of P.W.2 Ram Deen, which creates a serious doubt about the prosecution case.

31. As the testimony of P.W.2 Ram Deen is found to be not credible and P.W.4, Baba Ravi Giri has not supported the prosecution case, the non-examination of the other eyewitness, Sohan Lal, by the prosecution gives rise to an adverse inference against the prosecution, as held by the Supreme Court in **Hem Raj v. State of Haryana (supra)** that an unexplained omission to examine independent eye-witness would give rise to an adverse inference, particularly, when the eye-witnesses actually produced were not found to be reliable and there were serious doubts about their presence at the spot.

32. In view of the above discussion, we come to the conclusion that the prosecution has not been able to prove its case beyond reasonable doubt. The testimony of P.W.2, Ram Deen, is not trustworthy or consistent. P.W.4, Baba Ravi Giri, has not supported the prosecution case. P.W.3, Ram Ratan, is not an eyewitness to the incident. The ocular evidence is not supported by the medical evidence. The FIR has been lodged belatedly and there is no reasonable explanation for the delay in lodging the FIR.

33. Thus, the prosecution has failed to prove its case beyond reasonable doubt and the Trial Court has appreciated the evidence on record incorrectly and reached the conclusion of guilt for the

appellant, in error, based on conjectures and thus, the conviction and sentence of the appellants is liable to be set aside.

34 . In view of the above, the instant criminal appeal is **allowed**. The impugned judgment and order dated 12.01.1989 passed by the Trial Court is *set aside* and the appellants, Ram Das, Suraj Singh and Munendra are **acquitted**.

35. The appellants, **Ram Das, Suraj Singh and Munendra** are on bail. They need not surrender. Their bail bonds are cancelled and the sureties discharged.

36. The appellants shall each execute a personal bond in the sum of Rs.20,000/- under Section 481 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (corresponding to Section 437-A of the Code of Criminal Procedure, 1973) for their appearance, in the event of an appeal being preferred against their acquittal.

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

(2026) 4 ILRA 1012
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 02.04.2026

BEFORE

THE HON'BLE SANJIV KUMAR, J.

Criminal Appeal No. 205 of 1985

Rameshwar Prasad Gupta

...Appellants

Versus

State of U.P.

...Respondent

Issue for consideration

Matter pertains to legality of conviction order for abatement to suicide.

Headnotes

Abatement to suicide-Indian Penal Code-Sections 306- appellant is the husband of deceased- burden of proof lies upon the prosecution- mere harassment not sufficient to constitute an offence u/s 306 IPC- unless accompanied by deliberate acts of incitement or facilitation -should be proximate to the time of suicide- should have clear connection between the accused's behaviour and the tragic outcome- nowhere been stated by both witnesses- dying declaration could not be recorded- sustained burns about 95 per cent- admitted by her brother-in-law (Jeth)- no smell of kerosene oil was emanating from the body of the deceased- prosecution failed to prove that appellant committed any harassment for want of dowry- conviction and guilt of the appellant was passed on conjunctures-**Appeal allowed.** (E-9)

Case Law Cited

1. Meharaj Singh (L/NK.) v. State of U.P., (1994) 5 SCC 188
2. Jayedepsingh Pravinsingh Chavda & Others V State of Gujarat, 2025 (2) SCC 216

List of Acts

1. The Indian Penal Code, 1860
2. The Code of Criminal Procedure, 1973

List of Keywords

Dying declaration; overt act; act or omission; proximate to the time of suicide; charge; dowry; conjunctures; ablaze; harassment; abetted; commit suicide; annoyed; kerosene oil; cause death.

Appearances of parties

Counsel for Appellant(s) : G.P.Dixit, Kameshwar Singh

Counsel for Respondent(s) : A.G.A.

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

1. This criminal appeal, under Section 374 (2) Code of Criminal Procedure, 1973 (in short □Cr.P.C.□), has been preferred by appellant, Rameshwar Prasad Gupta, against judgment and order dated 31.01.1985 passed by Mr. Badri Niwas, Ist Additional Sessions Judge, Ballia, in Sessions Trial No. 124 of 1983 (State Vs. Lachia Devi and others), arising out of Case Crime No. 259 of 1982, under Sections 306 IPC, Police Station Sukhpura, District Ballia.

2. By the impugned judgment and order, appellant-Rameshwar Prasad Gupta, was convicted and sentenced to undergo rigorous imprisonment for five years and awarded a fine of Rs.1000/- for offence punishable under Section 306 IPC, with default stipulation.

3. Brief facts of the prosecution case are that the first informant Paras Nath Gupta, son of Late Kedarnath Gupta, resident of Dildarnagar, Police Station Dildarnagar, District Ghazipur, filed a written application (Tahrir) dated 13.12.1982, at Police Station Sukhpura, District Ballia, stating therein that his daughter, Manju, was married to Rameshwar Prasad Gupta, son of Awadh Prasad, resident of Hanumanganj, Police Station Sukhpura, District Ballia, about two years ago. After the marriage, his daughter Manju was harassed by her sister-in-law (Jethani) for want of dowry. On 08.11.1982, his daughter wrote a letter to him, in which, she demanded a radio or Rs.2000/- for her in-laws. On 19.11.1982, Jagannath, from Hanumanganj, came and informed him that his (first informant□s) son-in-law, Rameshwar, is seriously ill and asked him to go to Sadar Hospital, Ballia. Thereupon, the first informant went to District Hospital, Ballia and also to the shop of his son-in-law, where he came to know that his daughter had been set ablaze and her last rites have also been performed. Thereafter, he kept inquiring about his daughter□s cause of death and came to know that she was burnt by her husband, mother-in-law and sister-in-law for want of dowry. Upon this information, FIR was registered under Case Crime No. 259 of 1982, under Section 306 IPC against the appellant, Rameshwar Prasad Gupta, co-accused Lallan Prasad Gupta, Smt. Lachia Devi and Smt. Sushila Devi.

4. The investigation of the case was entrusted to S.O. Hari Nath Sharma, Police Station, Sukhpura. The Investigating Officer reached at the place of occurrence and collected some articles and a letter written by deceased Manju Gupta addressed to her mother. He also inspected the place of occurrence and prepared its site-plan (Ext. Ka-6). He recorded statements of the first informant and other witnesses and, after completion of investigation, filed charge-sheet against all the four accused, under Section 306 IPC, before the concerned Magistrate.

5. The learned Magistrate took cognizance of the offence and summoned the accused. They appeared before the Court and were furnished copies of relevant prosecution papers under Section 207 Cr.P.C. and thereafter, the case was committed to the Court of Sessions for trial. The appellant and other co-accused persons appeared before the Trial Court and charge under Section 306 IPC was framed against them to which they pleaded not guilty and claimed to be tried.

6. The prosecution, in order to prove its case, has examined P.W.1 Paras Nath Gupta, (father of the deceased and first informant), P.W.2 Radhika Devi, (mother of the deceased), P.W.3 Kailash Singh, (scribe of FIR), P.W.4 Hari Nath Sharma, (Investigating Officer) and P.W.5, Dr. G.K. Tripathi, (who conducted post-mortem examination of the deceased). Their testimony, in brief, is enumerated as under.

7. P.W.1 Paras Nath Gupta, is the father of the deceased and also the first informant of the case. He has deposed on oath that his daughter Manju Gupta was married to appellant Rameshwar Prasad Gupta. He had given Rs.3000/- in marriage along with some other goods. Only two-in-one radio could not be given, however, he had promised to give it later. After the marriage, his daughter went to her matrimonial house. Whenever, she visited her parental house, she used to tell her mother that her in-laws taunted and harassed her for not bringing a radio. She had told that her mother-in-law Lachia Devi, sister-in-law (Jethani) Sushila Devi, husband Rameshwar Prasad and brother-in-law (Jeth) Lallan, are demanding radio and caused her harassment. P.W.1 further stated that he had promised the appellant and co-accused to give a radio after sometime. His daughter insisted not to go to her in-laws house, however, somehow she was convinced to go to her matrimonial house.

8. It is further deposed by P.W.1 that on 05.11.1982, he received a letter from his daughter Manju (Ext. Ka-1), in which, she wrote to give Rs.2000/- or a radio. The incident occurred on 18.11.1982. Her daughter was living with her husband Rameshwar in village Hanumanganj. The next day of the incident, at about 12 noon, a person named Jagannath Prasad came and informed that his son-in-law Rameshwar is seriously ill and admitted in District Hospital, Ballia. Thereupon, he along with his friend Syed Hasan went to District Hospital, Ballia and came to know that his daughter Manju has died and her last rites have also been performed. Thereafter, he went to Lallan Prasad's shop, where his son-in-law Rameshwar Prasad was also present. He went to the hospital as well. He stayed the entire night with them and in the morning left for his village Dildarnagar. He kept inquiring about the cause of his daughter's death and came to know that her in-laws were taunting her with regard to demand of dowry and had set her ablaze and that they compelled her to such an extent that she committed suicide. It is further stated by P.W. 1 that thereafter he, along with his wife, Radhika met Superintendent of Police, Ballia, who asked him to go to Police Station Sukhpura, where his report was lodged on the basis of his written application (Tehrir), (Ext. Ka-2). P.W.1 has further stated that all the four accused harassed his daughter due to want of radio and his daughter used to say about her harassment with her friends.

9. In cross-examination, P.W.1 has stated that Jagannath Prasad had reached at his house at about 11:00 a.m. or 12 noon. He runs a hotel in Dildarnagar. He has two other daughters and a son. Rameshwar Prasad has a shop of ready-made garments at Meena Bazar Road. The accused also have a bangles shop at Meena Bazar. He has written in his application (Ext. Ka-2) that his daughter

demanded a radio. He further stated that he had written in his application (Tahrir) that his daughter had demanded a radio, however, it was not written that the accused were demanding it. Under pressure, he had promised to give a radio to the accused. After the marriage, the accused did not post any letter demanding radio. Except for letter (Ext. Ka-1), deceased Manju did not write any other letter regarding demand of radio and her harassment by her in-laws, although, earlier, Manju had written many letters. Upon showing him letter dated 15.10.1982, the witness said that this letter is signed and written by his daughter Mala, which the witness has proved as Ext. Kha-1. He has further stated that he went to District Hospital Ballia, but nobody was found there. Thereafter, he went to Meena Bazar at about 06:00 p.m., at the shop of the accused, where Lallan Prasad was present. It is further stated that he does not remember the person, who told him that his daughter was burnt because many persons were present there. He could not ascertain at which place her daughter's cremation took place. He slept with accused Rameshwar Prasad, at the shop, the entire night. In hospital, he could not know that his daughter was brought and admitted in the hospital. He cannot tell name of any person from whom he inquired about the cause of his daughter's death. He has denied the suggestion that deceased Manju had demanded a radio for her own use because she used to live alone at the house and her sister-in-law and mother-in-law worked at the bangles shop. He also denied the suggestion that after the last rites of the deceased, he himself, along with his wife, came to the accused's house and proposed marriage of their another daughter Mala with Rameshwar, to which they refused and thereafter a false case was lodged against them.

10. P.W.2, Radhika Devi, is the mother of the deceased. She has stated on the same lines as stated by P.W.1. She has stated that during the Tilak ceremony, they could not give a two-in-one radio, but promised to give the same later on. Her daughter had written a letter prior to her death, in which she had asked to send a radio or Rs.2000/-. She has said that whenever her daughter came to her parental home, she used to say that her husband, sister-in-law and mother-in-law tease her and caused her harassment and she has belief that radio was the cause of her daughter's harassment, which compelled her to commit suicide. In cross-examination, P.W.2 has stated that they had not promised to give a radio though accused Rameshwar was raising demand for it.

11. P.W.3 Constable Kailash Singh is a formal witness, who scribed the chik FIR on 13.12.1982 and entered its gist in the G.D. at the Police Station. He has said that on the basis of Tahrir (Ext. Ka-2), given by the first informant, he had scribed the chik-FIR, which he has proved as Ext. Ka-3.

12. P.W.4 S.O. Hari Nath Sharma is the Investigating Officer of the case. He has stated about the investigation carried out by him and said that during investigation, he prepared the inquest report and collected post-mortem report and other papers. He recorded statements of the first informant, other witnesses and the accused. The informant had handed over him a letter written by the deceased. He searched accused Rameshwar Prasad's room on 12.12.1982 and found some suspicious articles, which he kept in his possession and prepared its recovery memo (Ext. Ka-4). He inspected the place of occurrence and prepared its site-plan, which he has proved as Ext. Ka-6. After concluding investigation, he filed two charge-sheets before the competent court, which he proved as Exts. Ka-7 and Ka-8. As secondary witness, he has proved inquest and related papers written by S.I. P.N. Singh as Exts. Ka-9 to Ka-14.

13. In cross-examination, he has stated that the deceased was admitted in hospital in a burnt condition on 18.11.1982 at 06:30 p.m. and she died on 19.11.1982 at 08:30 a.m. She was alive when she was admitted in the hospital. He did not deem it necessary to record the statement of the doctor, who treated the deceased in the hospital, as he was provided the post-mortem report and all other papers. She was admitted by her in-laws and other people. He came to know that after her death, a fake proceeding for recording her dying declaration was conducted by the accused, but he did not record it in his case diary. Many people were secretly telling that the deceased was harassed by her in-laws, which compelled her to commit suicide, but he has not recorded their names in the case diary.

14. P.W.5 Dr. G.K. Tripathi, is a formal witness, who has conducted post-mortem of the deceased on 19.11.1982 at 03:45 p.m. in the District Hospital, Ballia. He has stated that the body of the deceased was average built. Rigor mortis was present over upper and lower part of body. Eyes and mouth were closed. There were no sign of decomposition. In the form of ante-mortem injuries, the entire body was burnt right from face, neck, chest, stomach and legs. It was 80-90 degree of burn. Both lungs were found congested and blood was present in all the chambers of heart. The stomach was found empty. There were gas and fecal matter in large intestine. In the opinion of the Doctor, the cause of death was shock, as a result of burn injuries and the death could have occurred on 19.11.1982 at 04:30 a.m. in District Hospital, Ballia. The doctor has proved the post-mortem report as Ext. Ka-15 and has said that there were no other physical injury except for the burn injuries and burn injuries could have been caused on 18.12.1982 at 05:00-06:00 p.m.

15. In cross-examination, he has said that in the ordinary course of nature, at the time of cooking or from the flame of a lantern etc. or due to nervousness, this degree of burn is possible. There was no smell of kerosene oil etc. emanating from the body.

16. After closure of prosecution evidence, statements of accused were recorded under Section 313 Cr.P.C., in which, they denied the prosecution case. It was admitted that deceased Manju was married to appellant Rameshwar Prasad. It was also admitted that after marriage, Manju used to come to her parental house of her own will. It was further stated that witnesses are deposing against them due to enmity and the victim had died due to burn injuries while cooking. At the time of incident, the accused were not present at the home. Actually, informant Paras Nath wanted to solemnize marriage of his second daughter Mala with the appellant, Rameshwar Prasad, to which, the accused were not agreed and as a result, a false case has been lodged against them. It was further stated that at the time of incident, the accused were at the shop.

17. The defence has produced D.W.1, Dr. S.P. Narain as defence witness, who has stated that he was posted as Medical Officer, Ballia on 18.11.1982 and on that day at about 06:30 p.m., Smt. Manju wife of Rameshwar was brought in a burnt condition to the hospital by her brother-in-law (Jeth) Lallan Prasad. He found following ante-mortem injuries:

Superficial burn injuries over face, neck, chest and half of the back. Both arms and lower limbs were burnt. There was erythema and blisters at places over the body. It was about 90 per cent burn and the patient was conscious.

18. D.W.1 has stated that the injuries were kept under observation, which were caused by burn and were fresh in nature. He further said that he had brought accidental register prepared by him at the time of medical examination and proved the same as Ext. Kha-2. He also brought bed head ticket of the deceased prepared by him and other doctors. He has also said that he had sent a memo to S.D.M., Ballia for recording dying declaration of the injured, and in this regard, he had made an endorsement on memo book at Page No. 39, which he has proved as Ext. Kha-3. He has said that he had sent a carbon copy of this memo at 06:40 p.m. to S.D.M., Ballia, but he was not available. He has made endorsement in this regard at 08:00 p.m. He has also said that he has sent information to S.O. Kotwali, regarding this memo.

19. In cross-examination, D.W. 1 has said that S.D.M., Ballia was not available. He did not send memo to any other officer for recording dying declaration of the injured. He himself did not take any statement of the deceased Manju. She was talking and was conscious. She did not tell him, how she got burn injuries. As recording of her dying declaration had to take place, therefore, he did not ask of her burn injuries from herself or her family members. She was crying in pain at the time of admission in the hospital.

20. After hearing arguments of both the parties and perusing the material as well as evidence on record, the Trial Court came to the conclusion that the prosecution has been able to prove its case beyond reasonable doubt. The testimony of prosecution witnesses was found consistent, reliable and trustworthy. It is also held by the Trial Court that ocular evidence is supported by medical evidence and the prosecution has proved that the appellant, Rameshwar Prasad Gupta, had committed offence of abetment to suicide. The Trial Court found that charge under Section 306 IPC is not proved against co-accused Lachia Devi Sushila Devi and Lallan Prasad Gupta, who were acquitted by the impugned judgment and order.

21. Heard Shri Kameshwar Singh, learned counsel for the appellant and Shri Rajesh Kumar Rao, learned Additional Government Advocate for the State and perused the material available on record.

22. Learned counsel for the appellant submits that there is not sufficient evidence to prove the charge against the appellant. It is further submitted that the victim/deceased was not subjected to any cruelty or harassment by the appellant and she demanded a radio or Rs.2000/- from her mother through a letter for her personal use, as she remained alone during the daytime, while other family members had to be present at the shops. It is further submitted that essential ingredients of Section 306 IPC are not proved. It was her brother-in-law (Jeth) Lallan, who had admitted the deceased in District Hospital, Ballia and even the doctor had tried to get her dying declaration recorded, however, unfortunately it could not be recorded. It is also submitted that the first informant himself stayed with the appellant at his house the entire night, when the deceased had died and inquest was prepared and post-mortem was conducted.

23. Learned counsel for the appellant next submits that the death of the victim was accidental, due to burn injuries sustained while cooking and that is the reason, the FIR was not lodged by the first informant promptly and it was after about twenty five days, the FIR was lodged, as the first informant wanted to solemnize marriage of his other daughter Mala with the appellant,

which proposal he had refused. It is further submitted that the alleged letter of the deceased does not disclose that the deceased was being subjected to any harassment or cruelty by the appellant. Therefore, the Trial Court failed to consider the evidence on record correctly and has illegally convicted and sentenced the appellant.

24. Per contra, learned AGA has submitted that the prosecution case is proved beyond reasonable doubt. The deceased was subjected to cruelty and harassment for want of a radio or Rs.2000/- by the appellant, which compelled her to commit suicide. There is consistency in the statement of witnesses, which are reliable and trustworthy. The ocular evidence is supported with medical evidence. Therefore, the appellant was rightly convicted by the Trial Court.

25. It is settled law that in a criminal case, the burden of proof lies upon the prosecution to prove its case beyond reasonable doubt. Here, in the present case, it is not in dispute that the appellant is the husband of deceased, Manju, and the first informant is her father. The first argument of the appellant is that the FIR has been lodged belatedly and there is no reasonable explanation of delay, which raises doubt over the prosecution case. In this regard, the prosecution case is that the incident occurred on 18.11.1982 at about 04:00 or 05:00 p.m. and thereafter, victim Manju was admitted in District Hospital, Ballia in a burnt condition, where on 19.11.1982, at about 04:30 a.m., she succumbed to her injuries. As per P.W.1 Paras Nath Gupta, the father of the deceased, on 19.11.1982, one person named, Jagannath, came to his house from Hanumanganj and informed that his son-in-law, Rameshwar Prasad, is seriously ill and is admitted in District Hospital, Ballia, thereupon, he went to District Hospital, Ballia and then at the shop of his daughter's brother-in-law, he came to know that his daughter was set ablaze by her in-laws and her last rites have also been performed. Then the first informant lodged the FIR on 13.12.1982 at 05.20 p.m. Therefore, the FIR was lodged after a delay of 25 days.

26. From the statement of P.W.1, Paras Nath Gupta, it emerges that on 19.11.1982 itself, he came to know that his daughter was killed, but surprisingly he did not lodge any FIR the same day or soon thereafter and the FIR was lodged belatedly after a gap of 25 days. The explanation of delay, given on behalf of the prosecution is that, in the meantime, the informant kept inquiring about the cause of death of his daughter. This explanation is not very convincing, as the first informant has stated that on the same day i.e.19.11.1982, he came to know that his daughter was killed by the appellant, so there was no reason why he would inquire further and wait for 25 days to lodge the FIR. The first informant has also not disclosed the name of any person(s) from whom he acknowledged that his daughter was set ablaze by the accused. It is also relevant that he stayed the entire night with the appellant, at his shop, and in the morning he left for his home. If he came to know that the appellant and his family had killed his daughter, then there was no reason for him to inquire from others about her death and also stay with the accused the entire night and lodge FIR after so much delay. In view of the above, no proper explanation of delay in lodging the FIR has been given by the prosecution, which raises serious suspicion over the prosecution case.

27. The lodging of FIR belatedly without any reasonable explanation and its effect has been well discussed by the Supreme Court in **Meharaj Singh (L/NK.) v. State of U.P., (1994) 5 SCC 188**, where it has been observed in para 12 as under:

“ FIR in a criminal case and particularly in a murder case is a vital and valuable piece of evidence for the purpose of appreciating the evidence led at the trial. The object of insisting upon prompt lodging of the FIR is to obtain the earliest information regarding the circumstance in which the crime was committed, including the names of the actual culprits and the parts played by them, the weapons, if any, used, as also the names of the eye witnesses, if any. Delay in lodging the FIR often results in embellishment, which is a creature of an after thought. On account of delay, the FIR not only gets bereft of the advantage of spontaneity, danger also creeps in of the introduction of a coloured version or exaggerated story. With a view to determine whether the FIR, was lodged at the time it is alleged to have been recorded, the courts generally look for certain external checks. One of the checks is the receipt of the copy of the FIR, called a special report in a murder case, by the local Magistrate. If this report is received by the Magistrate late it can give rise to an inference that the FIR was not lodged at the time it is alleged to have been recorded, unless, of course the prosecution can offer a satisfactory explanation for the delay in dispatch or receipt of the copy of the FIR by the local Magistrate. Prosecution has led no evidence at all in this behalf. The second external check equally important is the sending of the copy of the FIR along with the dead body and its reference in the inquest report. Even though the inquest report, prepared u/s 174 Cr.P.C. is aimed at serving a statutory function, to lend credence to the prosecution case, the details of the FIR and the gist of statements recorded during inquest proceedings get reflected in the report. The absence of those details is indicative of the fact that the prosecution story was still in embryo and had not been given any shape and that the FIR came to be recorded later on after due deliberations and consultations and was then ante timed to give it the colour of a promptly lodged FIR.”

28. In view of the above discussion and the decision of the Supreme Court in **Maharaj Singh** (supra), the inordinate delay in lodging the FIR in this case, with no proper explanation, raises serious doubt over the prosecution case.

29. Here, it is relevant to mention that the prosecution has examined only two witnesses of fact namely, Paras Nath Gupta (P.W.1) and Smt. Radhika Devi (P.W.2). P.W.1 Paras Nath Gupta is the father and P.W.2 Smt. Radhika is the mother of the deceased. It has come in their evidence that the husband and in-laws of their daughter were demanding a two-in-one radio or Rs.2000/- in dowry and in this connection they harassed the deceased. The appellant has denied any such demand of dowry and harassment. In this regard, the prosecution has produced an original letter (Ext. Ka-1) written by Manju, the deceased, to her mother Radhika Devi and it is submitted by the prosecution that in this letter it is disclosed that the appellant demanded a two-in-one radio or Rs.2000/- from the deceased, which goes to show that it was the appellant, at whose instance, she wrote this letter demanding the aforesaid items from her mother.

30. In this regard, a perusal of letter (Ext. Ka-1) reveals that this letter is written in a very plain and simple language and there is no whisper in it, which can give an impression that the deceased was being harassed by the appellant for want of a radio or Rs.2000/- in dowry. The deceased has simply written to her mother to send a two-in-one radio or Rs.2000/-. It has nowhere been mentioned in the letter that she was being asked to fulfil the said demand by the appellant. There is no content in the letter that the deceased was being harassed by the appellant for demand of these items. Allegedly, this letter was written about 13 days prior to the date of incident. It has

come in evidence that the marriage of the deceased was solemnized with appellant on 10.03.1980 and after about two and a half years, this incident had occurred.

31. The appellant has been charged for offence punishable under Section 306 IPC, which is abetment to suicide. In this regard, in **Jayedepsingh Pravinsingh Chavda & Others V State of Gujarat, 2025 (2) SCC 216**, Hon^{ble} Supreme Court has observed as under:

“21. Section 306 of the IPC provides for punishment for the offence of abetment of suicide. It has to be read with Section 107 of the IPC which defines the act of ‘abetment’. The provisions read as follows: ‘

306. Abetment of suicide.-If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

“107. Abetment of a thing.-A person abets the doing of a thing, who -”

First.-Instigates any person to do that thing; or

Secondly.-Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly.-Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 1.-A person who by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

Explanation 2.- Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitate the commission thereof, is said to aid the doing of that act.”

22. Section 306 of the IPC penalizes those who abet the act of suicide by another. For a person to be charged under this section, the prosecution must establish that the accused contributed to the act of suicide by the deceased. This involvement must satisfy one of the three conditions outlined in Section 107 of the IPC. These conditions include the accused instigated or encouraged the individual to commit suicide, conspiring with others to ensure that the act was carried out, or engaging in conduct (or neglecting to act) that directly led to the person taking his/her own life.

23. For a conviction under Section 306 of the IPC, it is a well- established legal principle that the presence of clear mens rea the intention to abet the act is essential. Mere harassment, by itself, is not sufficient to find an accused guilty of abetting suicide. The prosecution must demonstrate an active or direct action by the accused that led the deceased to take his/her own life.

The element of mens rea cannot simply be presumed or inferred; it must be evident and explicitly discernible. Without this, the foundational requirement for establishing abetment under the law is not satisfied, underscoring the necessity of a deliberate and conspicuous intent to provoke or contribute to the act of suicide.

24. The same position was laid down by this Court in **S.S. Chheena v. Vijay Kumar Mahajan (2010) 12 SCC 190**, wherein it was observed that:

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

25. To bring a conviction under section 306, IPC it is necessary to establish a clear mens rea to instigate or push the deceased to commit suicide. It requires certain such act, omission, creation of circumstances, or words which would incite or provoke another person to commit suicide. This Court in the case of **Ramesh Kumar v. State of Chhattisgarh (2009) 9 SCC 918**, defined the word “instigate” as under:

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

26. The essential ingredients to be fulfilled in order to bring a case under Section 306, IPC are:

(i.) the abetment;

(ii) the intention of the accused to aid or instigate or abet the deceased to commit suicide.

27. Thus, to bring a case under this provision, it is imperative that the accused intended by their act to instigate the deceased to commit suicide. Thus, in cases of death of a wife, the Court must meticulously examine the facts and circumstances of the case, as well as assess the evidence presented. It is necessary to determine whether the cruelty or harassment inflicted on the victim left them with no other option but to end their life. In cases of alleged abetment of suicide, there must be concrete proof of either direct or indirect acts of incitement that led to the suicide. Mere allegations of harassment are insufficient to establish guilt. For a conviction, there must be

evidence of a positive act by the accused, closely linked to the time of the incident, that compelled or drove the victim to commit suicide.

28. It is essential to establish that the death was a result of suicide and that the accused actively abetted its commission. This can involve instigating the victim or engaging in specific actions that facilitated the act. The prosecution must prove beyond doubt that the accused played a definitive role in the abetment. Without clear evidence of an active role in provoking or assisting the suicide, a conviction under Section 306 IPC cannot be sustained”.

29. The act of abetment must be explicitly demonstrated through actions or behaviors of the accused that directly contributed to the victim’s decision to take their own life. Harassment, in itself, does not suffice unless it is accompanied by deliberate acts of incitement or facilitation. Furthermore, these actions must be proximate to the time of the suicide, showcasing a clear connection between the accused’s behavior and the tragic outcome. It is only through the establishment of this direct link that a conviction under Section 306 IPC can be justified. The prosecution bears the burden of proving this active involvement to hold the accused accountable for the alleged abetment of suicide.

32. In view of the above legal position, mere harassment is not sufficient to constitute an offence under Section 306 IPC, unless it is accompanied by deliberate acts of incitement or facilitation and the act or omission of the accused should be proximate to the time of suicide, and should have clear connection between the accused’s behaviour and the tragic outcome.

33. From the evidence of P.W.1 and P.W.2, it is not clear what kind of harassment was caused to the deceased by the appellant. Merely stating that the deceased was being harassed is not sufficient, but the nature and act or omission of the appellant, which constituted the harassment, has also to be disclosed and proved. It has nowhere been stated by both these witnesses regarding any act or omission of the appellant, which amounted to harassment of the deceased and the act or omission of the accused, that was proximate to the time of suicide and had clear connection between the accused’s behaviour and the tragic outcome.

34. Besides this, as per settled law, as discussed above, mere harassment is not sufficient to constitute an offence for abetment to suicide. As per prosecution, soon after marriage, the demand of a radio or Rs.2000/- was raised by the appellant and it continued up to the time of incident. If that was the case, though not proved, then what overt act was committed by the appellant, soon before the incident, which forced or compelled the deceased to take such extreme step to commit suicide, has not been proved.

35. Admittedly, the appellant has two shops out of them one is bangles shop. As per appellant, he runs bangles shop along with his mother and sister-in-law. During the day time the deceased used to live alone in the house and for this reason, the deceased had written a letter to her mother to send a radio or Rs.2000/- so that she could entertain herself in leisure time. It is the case of the appellant that the deceased caught fire while cooking in the house and at that time, the appellant and other family members were at the bangles shop and, after getting the news, they had taken her to the hospital where in the next morning, she died. In the meantime, the treating doctor,

who had medically examined her tried to contact concerned S.D.M., District Ballia, to record dying declaration of the deceased, but unfortunately, the S.D.M. was not available. Therefore, her dying declaration could not be recorded.

36. In this regard, the defence has examined D.W.1 Dr. S.P. Narain, who has prepared injury report of the deceased, when she was taken to District Hospital, Ballia. He has stated that the deceased had sustained burns about 95 per cent burnt but was conscious, so he wrote a letter to S.D.M., District Ballia, to record her dying declaration and sent it twice to S.D.M. The defence has proved letter sent by the doctor to S.D.M. concerned. It has come in evidence that she was admitted by her brother-in-law (Jeth) in District Hospital, Ballia. So it gives force to the contention of the appellant and if the appellant had any design to cause death of the deceased or to abet her to commit suicide, then she would not have been taken to hospital.

37. It has come in the statement of P.W.4, the Investigating Officer, Hari Nath Sharma, that the Doctor did not try to get the dying declaration of the deceased recorded and any such step taken by the doctor is fake, but he has also stated that he has not mentioned any such observation in the case diary. So this is an afterthought statement of the Investigating Officer, without any substance in it. The defence has examined D.W.1, Dr. S.P. Narain, who has proved the injury report of the deceased, when she was admitted to District Hospital, Ballia and also the letter written to S.D.M., Ballia to record her dying declaration. The doctor has also stated that no smell of kerosene oil was emanating from the body of the deceased. All these evidences give weight to the defence version.

38. It is the case of the appellant that after the death of Manju, the first informant and his family came to him and proposed first informant's second daughter Mala's marriage with the appellant, which he refused and as a result, being annoyed, this FIR was lodged on false and concocted facts. The unexplained delay in lodging the FIR gives force to this contention of the appellant.

39. In view of the aforesaid discussion, this Court comes to the conclusion that the prosecution has miserably failed to prove that the appellant caused any harassment of the deceased and soon before the incident he committed any overt act or omission, which abetted the deceased to commit suicide by setting herself ablaze. There is no such evidence that the appellant committed any harassment to the deceased for want of dowry. Therefore, the Trial Court has failed to appreciate the evidence on record, correctly and as a result conviction and guilt of the appellant was passed on conjunctures.

40. In view of the above, the prosecution has not been able to prove charge under Section 306 IPC against the appellant and as a result the impugned judgment and order of conviction and sentence of the appellant for offence punishable under Section 306 IPC is not sustainable.

41. This appeal is, accordingly, **allowed** and impugned judgement and order dated 31.01.1985, convicting and sentencing the appellant, Rameshwar Prasad Gupta, under Section 306 I.P.C. is **set aside** and the appellant is **acquitted** of the charge under Section 306 I.P.C.

42. The appellant is on bail. His bail bonds and personal bonds are cancelled and the sureties discharged. He need not surrender.

43. The appellant shall execute a personal bond in the sum of Rs.25,000/- under Section 481 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (corresponding to Section 437-A of the Code of Criminal Procedure, 1973) for his appearance, in the event of an appeal being preferred against his acquittal.

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

(2026) 4 ILRA 1024
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 29.04.2026

BEFORE

THE HON'BLE SANJIV KUMAR, J.

Criminal Appeal No. 274 of 1985

Dinesh & Ors.

...Appellants

Versus

State

...Respondent

Issue for Consideration

Matter pertains to whether the prosecution proved beyond reasonable doubt the involvement of the surviving appellants in causing the death of the deceased and whether the conviction of appellant Dinesh under S. 304 (Part 2) IPC and appellant Suresh under S. 304 (Part 2) read with S. 34 IPC was sustainable on the basis of ocular and medical evidence. (Paras 29-43)

Headnotes

Criminal Law - Culpable Homicide Not Amounting to Murder - Appreciation of Ocular and Medical Evidence - Indian Penal Code, 1860 - Ss. 304 (Part 2), 34 - Code of Criminal Procedure, 1973 - Legal Principle that prosecution must prove its case beyond reasonable doubt and testimony of chance witnesses requires careful scrutiny - FIR lodged promptly within 45 minutes of occurrence and place of occurrence fully established by recovery of blood stained earth and site-plan - testimony of eye-witnesses examined with caution and corroborated by medical evidence - involvement of appellant Dinesh established beyond reasonable doubt - conviction and sentence upheld. (Paras 29, 30, 31, 36, 38, 39, 40, 42, 46)

Criminal Law - Common Intention - Benefit of Doubt - Indian Penal Code, 1860 - Ss. 304 (Part 2), 34 - Requirement of cogent evidence showing participation and role of co-accused - witnesses failed to assign any overt act to surviving appellant Suresh and his involvement in the crime was not fully established - charge not proved beyond reasonable doubt - appellant entitled to benefit of doubt and acquittal. (Paras 33, 35, 41, 43, 44)

Evidence - Chance Witnesses - Reliability and Identification of Accused - Indian Evidence Act, 1872 - Appreciation of Evidence - testimony of chance witnesses cannot be discarded outrightly but requires careful scrutiny - failure of prosecution to conduct identification of accused through witnesses not previously acquainted with them affected evidentiary value of such testimony

against certain accused - testimony reliable only to the extent supported by identification and corroborative circumstances. (Paras 31, 32, 33, 35)

Criminal Law - Ocular and Medical Evidence - Corroboration - Indian Penal Code, 1860 - S. 304 (Part 2) - doctor found stabbed wound over left thigh and femoral artery cut resulting in excessive blood loss and shock - medical evidence fully corroborated ocular version that appellant Dinesh stabbed the deceased with a knife - prosecution case fully established against appellant Dinesh. (Paras 18, 40)

Held: Prosecution has been able to prove its case beyond reasonable doubt against appellant Dinesh and the FIR has been lodged promptly and there is no inordinate delay in lodging the FIR - place of occurrence is fully established from the evidence on record - testimony of chance witnesses cannot be discarded outrightly but it requires careful scrutiny - testimony of P.W.3 Kailash Chandra fully supports the involvement of appellant Dinesh in the said crime and P.W.4 Hari Om Sharma is reliable and trustworthy and from his testimony the prosecution case is fully established - ocular testimony stands corroborated by the medical evidence and the victim died on account of shock and hemorrhage due to the injury caused by appellant Dinesh - appellant Dinesh is guilty of committing culpable homicide not amounting to murder and has been rightly convicted and sentenced by the learned Trial Court - so far as surviving appellant Suresh is concerned his involvement in the crime is not fully established and no overt act has been assigned to him - prosecution has failed to prove his involvement in the said crime and the charge against him is not proved beyond reasonable doubt and therefore he deserves benefit of doubt and acquittal - Appeal partly allowed. (Paras 29-43, 44, 46) (E-7)

Case Law Cited

None

List of Acts

Indian Penal Code, 1860; Code of Criminal Procedure, 1973; Bharatiya Nagarik Suraksha Sanhita, 2023; Indian Evidence Act, 1872

List of Keywords

culpable homicide not amounting to murder; common intention; chance witnesses; prompt FIR; ocular testimony; medical evidence; stabbed wound; blood stained knife; benefit of doubt; identification of accused; place of occurrence; corroboration; reliable and trustworthy witness; shock and hemorrhage; beyond reasonable doubt; acquittal; conviction

Case Arising From

APPELLATE JURISDICTION: Criminal Appeal filed under S. 374(2) Cr.P.C. against the judgment and order dated 22.01.1985 passed by the 11th Additional Sessions Judge, Agra in Sessions Trial No. 291 of 1984 arising out of Case Crime No. 484 of 1983 whereby appellant Dinesh was convicted under S. 304 (Part 2) IPC and appellants Mahesh, Suresh and Madan Lal were convicted under S. 304 (Part 2) read with S. 34 IPC.

Appearances for Parties

Advs. for the Appellant:

Mr. Vishvendra Singh

Advs. for the Respondents:

Shri Rajeev Pandey, learned Additional Government Advocate for the State.

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

1. This Criminal appeal has been filed under Section 374(2) of Code of Criminal Procedure, 1973 (in short □Cr.P.C.□) against judgment and order dated 22.01.1985 passed by Mr. V. D. Dubey, 11th Additional Sessions Judge, Agra in Sessions Trial No. 291 of 1984 (State Vs. Dinesh

and others), arising out of Case Crime No. 484 of 1983, under sections 307 IPC, Police Station Kotwali, District Agra.

2. By the impugned judgment and order, the learned Trial Court convicted and sentenced appellant Dinesh to undergo three years rigorous imprisonment for offence punishable under Section 304 (Part 2) of Indian Penal Code, 1860, (in short IPC) and appellants Mahesh, Suresh and Madan Lal were convicted and sentenced to undergo rigorous imprisonment for three years for offence punishable under Section 304 (Part 2) read with Section 34 IPC.

3. During the pendency of this appeal, appellants Mahesh and Madan Lal have died and vide order dated 03.08.2022, the appeal stood **abated** against them. Now this appeal survives only against appellant Dinesh and Suresh.

4. Brief facts of the prosecution case are that Hariom Sharma son of Gopal Das Sharma, resident of 30/73, Chitti Khana,, Police Station Kotwali, District Agra, filed a written application (Ext. Ka-1), before In-charge Police Station, Kotwali, District Agra, stating therein that today at about 11:45 a.m., he was having conversation with Nand Kishor @ Nandu, son of late Kullo Baba, resident of Chitti Khana, near Shri Bhawan's Scrap shop. In the meantime, Suresh, Mahesh, Dinesh, all sons of Narayan Das Kaachi, Mohalla Tila Bharon, Heeng Mandi, came and abused Nandu and said that he prevents them from coming to Chitt Khana, therefore, they would teach him a lesson. They caught hold of Nandu and when Nandu tried to escape, Dinesh took out a knife from his pocket and attacked Nandu, who sustained grievous injuries and fell on the ground. The first informant raised alarm, whereupon Raja Babu, son of Bangali Singh, Ramendra Nath son of Rajnath, residents of Chitti Khana and Shiv Kumar son of Jagdish Prasad, resident of Namak Mandi and Kailash Chandra son of Kundan, resident of Chitti Khana, arrived at the spot and witnessed the incident. Other people present there too witnessed the incident. Upon alarm being raised, the accused persons ran away from the spot. The first informant and other people brought Nandu to his house and subsequently he was taken to hospital by his family members.

5. Upon this information, FIR under Case Crime No. 484 of 1983, under Section 307 IPC was registered at Police Station Kotwali, District Agra on 17.12.1983 at 12:30 p.m. and the investigation of the case was entrusted to S.I. Vijendra Singh Yadav. The Investigating Officer commenced investigation and reached at the place of occurrence, from where he collected samples of plain earth and blood stained earth and prepared its recovery memo (Ext. Ka-9). He thereafter recorded the statements of first informant and other witnesses. The collected materials were sent for chemical examination. During treatment, the victim, Nandu, succumbed to his injuries and the case was converted under Section 302 IPC. Thereafter, his inquest was prepared and the body was sent for post-mortem examination. After concluding the investigation, the Investigation Officer filed charge-sheet against the accused persons under Section 302 IPC before learned C.J.M., Agra.

6. The concerned court took cognizance of the offence and summoned the accused persons. They appeared before the court and were furnished with copies of prosecution papers under Section 207 Cr.P.C. and thereafter the case was committed to the Court of Sessions for trial. The accused appeared before the court of Sessions, where charge under Section 302 read with 34 IPC was framed against the accused Suresh, Mahesh and Madan Lal and charge under Section 302 IPC was

framed against accused Dinesh. The said charge was read out and explained to them. The accused abjured the said charge, pleaded not guilty and claimed to be tried.

7. The prosecution has examined eleven witnesses to prove its case, to wit, Ramendra Nath (P.W.1), Raja Babu Chauhan (P.W.2), Kailash Chandra (P.W.3), Hariom Sharma (P.W.4), Dr. Kishor Basantgi (P.W.5), Dr. R.K. Saxena (P.W.6), Shiv Shankar Tripathi (P.W.7), S.I. Shiromani Singh (P.W.8), S.S.I. Vijendra Singh (P.W.9), Inspector Baljeet Singh (P.W.10) and Constable Chandra Pal Singh (P.W.11). Their testimony, in brief, is enumerated as under.

8. P.W.1, Ramendra Nath, is an eye-witness of the alleged incident, who has deposed that on 17.12.1983 at about 11:45 a.m., he was going to Rawatpada to purchase fruits. Near Bhagwan's scrap shop, he saw the accused persons catching hold of Nandu, who were saying that he was trying to prevent them from coming to Chitti Khana and now they would teach him a lesson. In the meantime, accused Dinesh pulled out a knife from his pocket and stabbed, while Nandu was on a run. The knife struck Nandu just below the buttock to the left side. Shiv Kumar, Raja Babu, Kailash Lal, Hari Om and many other persons were present there.

9. In cross-examination, he has said that the scrap shop was 60-70 steps away from his house and there are two roads which go to his house. He heard the noise as soon as he had left his house and witnessed the incident after reaching on a turn. He further said that he had heard that Nandu was stabbed with knife. Nandu was stabbed before him. The shops were closed at the time of incident. It is also stated by him that he had not seen the accused persons prior to the incident and saw them only at the time of incident and thereafter in Court.

10. P.W.2, Raja Babu Chauhan, is also an eye-witness of the incident. He, in his examination-in-chief, has deposed that the incident is dated 17.12.1983, which took place near Shri Bhagwan's scrap shop at about 11:45 a.m. It is stated that at the relevant time, he was proceeding to purchase Khoya (condensed milk) from Khoya Mandi. As soon as he reached the place of occurrence, he heard some noise and, upon turning behind, saw somebody had stabbed someone and four persons were on a run. He further stated that he knows the accused persons, who are present in Court and their names are Dinesh, Suresh, Mahesh and Madan. He further said that Nandu was stabbed by a knife, however, he did not witness any person inflicting the blow of knife to Nandu. Hariom Sharma was shouting that knife has been struck. He further said that he had seen a knife in Dinesh's hand, stained with blood.

11. In cross-examination, P.W.2, Raja Babu Chauhan, said that he had told the Investigating Officer that Dinesh was holding a blood stained knife in his hand. The scrap shop of Shri Bhagwan was 50-60 steps away from Khoya Mandi. He deposed that as soon as, he reached the spot, an argument was taking place between Nandu and the accused. He then proceeded further to purchase Khoya, and thereafter Nandu was stabbed with a knife.

12. P.W.3, Kailash Chandra, is also one of the eye-witness. He, in his examination-in-chief, stated that at the time of incident he was filling water from tap near the scrap shop of Shri Bhawan. He said that he knows name of accused Dinesh, Mahesh, Suresh, but is not acquainted with them. The witness identified the accused persons by their faces and not by their names, but he identified

appellant Dinesh by name also in court and said that he knows him since before. He further said that the appellants had surrounded Nandu and were saying that he was preventing them from coming to Chitti Khana. Nandu replied that they come there to tease girls, so he would, therefore, stop them. Thereupon, Dinesh pulled out a knife from his pocket and inflicted a blow over Nandu's left thigh and thereafter the accused fled away.

13. In cross-examination, P.W.3 has said that he knew only the name of appellant Dinesh, as Dinesh used to visit to Chitti Khana and had friendship with his brother. It is further stated that his house is situated at a distance of about one furlong from the place of occurrence. He further deposed that two shops were open at the time of incident and that after the incident, the shopkeepers left after closing the shops. He also stated that at the relevant time he was filling water near a shop.

14. P.W.4, Hariom Sharma, is the first informant and eye-witness of the incident. He has deposed in his examination-in-chief that at the time of incident, deceased Nand Kishor @ Nadnu was having a conversation with him near Shri Bhagwan's scrap shop, situated in Chitti Khana. In the meantime, all the four accused reached there and said to Nandu that he prevents them from coming to Chitti Khana and today they would teach him a lesson. They pulled Nandu and caught hold of him. The accused grappled with Nandu. When Nandu tried to run away, Dinesh pulled out a knife from his pocket and struck it at Nandu's left thigh. Nandu fell on the ground and blood splattered over the place of occurrence. Thereafter, Nandu was taken to his house and from there his uncle and mother took him to the hospital. P.W.4 himself went to the Police Station Kotwali and lodged the FIR.

15. In cross-examination, P.W.4 said that Nandu was his neighbour. The accused frequented the lane (Gali) since last 6-7 months. He further said that since the accused used to visit his neighbour, Sohan, and would sit there, therefore, he recognizes them. He never had any conversation with them and never asked their names. Nandu was caught hold by Dinesh and Madan and all of them surrounded him and thereafter pulled him down. When Nandu tried to escape, Dinesh pulled out a knife from his pocket and struck it over his thigh, as a result he fell on the ground. He further stated that Khoya Mandi is 20-25 steps away from the place of occurrence. Nobody came in front of Shri Bhagwan's Scrap shop because the shops were not open. The shops in Chitti Khana used to open at 12:00-12:30 p.m. whereas Khoya Mandi opens at 07:00 a.m. in the morning.

16. P.W.5 Doctor Kishor Basantgi is the person, who has furnished information of the death of Nandu to Police Station after he was admitted in S.N. Hospital, Agra.

17. P.W.6, Doctor R.K. Saxena has conducted autopsy of the deceased Nandu on 18.11.1983 at 02:00 p.m. He stated that the body was average built. Rigor mortis had passed through upper limb of the body and was present in the lower limb. He found following ante-mortem injuries:

(i) a stabbed wound 1 inch 4 cm x 1/2 cm x muscle deep over the bak left thigh. 8 and half inches above the knee. The direction of the wound was horizontal and straight and was three and half inches in depth. The margins of wound were cleanly cut.

(ii) stitched wound 1 cm x 1/2 cm in the back and inner lower of both knees.

18. In internal examination, both lungs, spleen and kidneys were pale. Both chambers of heart were empty. Femoral artery of left thigh was cut and a large quantity of blood was found between muscle and fat. Liver was found pale. Spleen and kidneys were pale. The cause of death was excessive blood loss and shock as a result of injury no.1, which was sufficient in the normal course to cause death. The witness has proved the post-mortem report as Ext. Ka-3 and has said that due to excessive bleeding, the lungs and liver were pale and both chambers of heart were empty. Both chambers of heart were empty, because the arteries, which take blood to the heart were severed. It is correct that had the deceased received proper treatment, he could have been saved.

19. P.W.7, Shiv Shankar Tripathi, Assistant Director, FSL Agra, is a formal witness, who has proved FSL report and the articles sent for forensic examination.

20. P.W.8, S.I. Shiromani Singh Chauhan, has prepared inquest of the deceased in the mortuary at S.N. Hospital, Agra along with connecting papers on 17.12.1983 at 03:20 p.m. He has proved inquest report as Ext. Ka-5 and related as papers Exhibits. Ka-6 and Ka-7.

21. P.W.9, S.S.I. Vijendra Singh, is the first Investigating Officer of the case. He has stated about the investigation carried out by him. He deposed that he had reached at the place of occurrence and prepared its site-plan, which he proved as Ext. Ka-8. He also collected blood stained earth and prepared its recovery memo, which he proved as Ext. Ka-9. He has said that accused Suresh was arrested by him. In cross-examination, P.W.9 has said that the blood had splattered in an area of one or two steps, at the place of occurrence. The witness Raja Babu had told him the names of all the accused persons.

22. P.W.10, Inspector Baljeet Singh, has deposed that he is the second Investigating Officer of the case. He stated about the investigation carried out by him and said that he recorded statement of witnesses and sent the recovered articles for forensic examination. In cross-examination, he has said that P.W.3, Kailash Chandra, had not given him the statement that deceased Nandu was surrounded by all the accused.

23. P.W.11, Constable Chandra Pal Singh, is also a formal witness, who has proved chik FIR No. 438 scribed by Head Moharrir, Mahavir Prasad, as secondary witness and its G.D. No. 38 dated 17.12.1983 at 12:30. He has further stated that on 17.12.1983 by G.D. No. 40 at 14:35 p.m., the case was converted from Section 307 to 302 IPC, after the information from S.N. Hospital, Agra was received that the deceased was declared dead by the doctor. In cross-examination, he has said that before or after this case, no case of cognizable offence was reported at the police station.

24. After the closure of prosecution evidence, statement of accused were recorded under section 313 Cr.P.C. in which they denied the prosecution case and stated that the witnesses are

deposing falsely against them. They further said that they were not present at the place of occurrence or committed the offence. The defence has not adduced any evidence in their defence.

25. After hearing arguments of both parties and perusing the evidence on record, the learned Trial Court came to the conclusion that the prosecution has been able to prove its case beyond reasonable doubt, but observed that the case was made out for culpable homicide and not amounting to murder and accordingly, Dinesh was convicted for offence punishable under Section 304 (Part 2) IPC and rest of the appellants Mahesh, Suresh and Madan were convicted for offence punishable under Section 304 (Part 2) read with Section 34 IPC and all of them were sentenced for the terms as indicated above.

26. Heard Mr. Vishvendra Singh, learned counsel for the appellant and Shri Rajeev Pandey, learned Additional Government Advocate on behalf of the State and perused the material available on record.

27. Learned counsel for the appellant submits that the testimony of eye-witnesses is not reliable. It is further submitted that there are major contradictions in the statement of prosecution witnesses. The prosecution has failed to prove motive for the appellant to commit murder of the deceased. There is no evidence that the offence was committed in furtherance of common intention. The ocular testimony is not supported with medical evidence, therefore, the impugned judgment and order is liable to be set aside and the appellant deserves to be acquitted from the offence charged against them.

28. Per contra, learned AGA submits that this is a daylight murder case based on direct evidence. The witnesses examined by the prosecution are consistent, reliable and trustworthy. It is further submitted that there are no major contradictions in their testimony. The ocular testimony is supported by medical evidence. There was motive for the appellant to commit this crime. It is also argued that in a case based on direct evidence, the motive loses its significance, therefore, the appellants were rightly convicted and sentenced and this appeal has no force, which is liable to be dismissed.

29. It is well settled law that in a criminal case, the burden of proof lies upon the prosecution to prove its case beyond reasonable doubt. According to the prosecution, the incident occurred on 17.12.1981 at 11:45 a.m. and the FIR was lodged on 17.12.1983 at 12:30 p.m. itself, which means that within 45 minutes the FIR was lodged. The distance from the place of occurrence to the Police Station, according to the chik-FIR, is three furlong, therefore, the FIR has been lodged promptly and there is no inordinate delay in lodging the FIR. Learned counsel for the appellants has also not disputed the fact of prompt lodging of the FIR.

30. The appellants are named in the FIR and, according to the prosecution, the incident occurred near Shri Bhagwan's scrap shop in Chitti Khana, under Police Station Kotwali, District Agra. According to the prosecution, the deceased Nandu was caught hold of by the other accused, and when he attempted to escape, he was stabbed by appellant Dinesh. According to the prosecution, Nandu sustained one stabbed wound in the back side of left thigh 8.50 inches above from the knee. It has come in evidence that after sustaining injuries, Nandu fell on the ground and

thereafter he was taken to his house and subsequently to the hospital. The Investigating Officer has collected samples of blood stained earth and plain earth from the place of occurrence and shown the above place of occurrence in the site-plan (Ext. Ka-8). The appellants have not alleged any other alternative place of occurrence, therefore, from the evidence on record, the place of occurrence is fully established.

31. To prove its case, the prosecution has examined four witnesses of fact namely, P.W.1 Ramendra, P.W.2 Raj Babu Chauhan, P.W.3 Kailash Chandra, P.W.4 Hariom Sharma. A close scrutiny of statement of all the above four witnesses goes to show that P.W.1 Ramendra Nath happened to be at the place of occurrence, while going from his house to Rawatpada to purchase fruits. P.W.2, Raja Babu Chauhan, happened to be there while going to purchase Khoya from Khoya Mandi. P.W.3, Kailash Chandra, happened to be there while filling water from the tap for his shop. Therefore, all the aforesaid three witnesses are chance witnesses. Their testimony, however, cannot be discarded outrightly, but it requires careful scrutiny.

32. On careful examination of the testimony of P.W.1, Ramendra Nath, it appears that in his examination-in-chief, he has supported the prosecution case by stating that the incident happened before him, while he was on his way to purchase fruits. However, in his cross-examination, he has said that he does not know the accused persons since before the incident. He happened to see them for the first time, at the time of incident and thereafter in the Court. Therefore, P.W.1 was not acquainted with the appellants prior to the incident or thereafter. Therefore, it was the duty of the prosecution to get the appellants identified from him before the Court. The prosecution did not conduct dock identification of the appellants through this witness. Therefore, his testimony is not reliable to establish that it was the appellants, who committed the offence.

33. So far as the testimony of P.W.2, Raja Babu Chauhan, is concerned, he has stated in his examination-in-chief that he knew all the four accused since before the incident. However, he has said that he did not see who stabbed knife to Nandu. He said that it was Hariom Sharma, who was shouting that □chaaku maar diya□. He has said that he saw accused fleeing from the spot and also saw the blood stained knife in Dinesh□s hand. This witness has been thoroughly cross-examined, but he remained consistent thorough out his testimony. Therefore, the statement of P.W.2, Raja Babu Chauhan, supports the prosecution case to the extent that it was appellant Dinesh, who was seen having a blood stained knife in his hand, while running away from the spot, just after the incident. So far as rest of the appellants are concerned, the testimony of this witness does not rope them in committing the said crime and he has not said anything else against rest of the appellants.

34. P.W.3, Kailash Chandra, happens to be the person, who has a shop nearby the place of occurrence. According to the prosecution, at the relevant time he was filling water from a tap for his shop and witnessed the incident. He has identified appellant, Dinesh, by name and face and rest of the appellants by face in court. He has also said that he knew appellant Dinesh since before the incident. He has said that all the appellants had surrounded Nandu and were saying that he stops them from coming to Chitti Khana. Nandu was saying that they come there to tease the girls, therefore, he would prevent them. Thereupon, appellant Dinesh pulled out a knife from his pocket and hit it on the left thigh of Nandu and subsequently all the appellants fled from the spot. This

witness has not specifically stated what other appellants were doing at the time of incident. He has not assigned any role to other appellants. In cross-examination, he has said that he knows only accused Dinesh, out of all the accused persons, who used to come to his brother's house and with whom he had family terms.

35. In view of the above, if P.W.3 was neither acquainted with other appellants except Dinesh nor knew their names, then it was the duty of the prosecution to have the remaining appellants identified through him in Court and should have also asked him the specific roles played by other three appellants. The prosecution did not conduct any dock identification of the other appellants through this witness, therefore, so far as the other appellants are concerned, their involvement in the said crime is not corroborated by the testimony of P.W.3 Kailash Chandra.

36. So far as appellant Dinesh is concerned, this witness has been thoroughly cross-examined and he has remained consistent through out his testimony supporting the prosecution case that it was Dinesh, who had stabbed Nandu at the time of incident. There is nothing in his statement to indicate that he has been on inimical terms with the appellants or there was any other reason for him to depose falsely against the appellant. Therefore, the testimony of P.W.3, Kailash Chandra, fully supports the involvement of appellant Dinesh in the said crime.

37. Now, the statement of P.W.4, Hariom Sharma, remains to be examined, who happens to be the first informant also. He has supported the prosecution case in his statement and has said that he was present at the place of occurrence and was talking to Nand Kishor @ Nandu near Shri Bhagwan's Scrap shop. In the meantime, all the four accused namely, Dinesh, Mahesh, Suresh and Madan reached there and said to Nandu that he prevents them from coming to Chitti Khana and that today they would teach him a lesson. They caught hold of Nandu and grappled with him and when Nandu tried to escape, appellant Dinesh pulled out a knife from his pocket and hit it over his left thigh. Nandu fell on the ground and blood started oozing out from the wound. Thereafter, Nandu was taken to his house and subsequently to the hospital. He himself went to the Police Station Kotwali and lodged the FIR.

38. P.W.4, Hariom Sharma, has been cross-examined at length, but nothing material has emerged to discredit his testimony. This witness has been consistent through out and is thus, reliable and trustworthy. P.W.4, Hari Om Sharma, is a neighbour of the deceased. He has said that the accused used to come in his lane for the last six-seven months at his neighbour Sohan's house, thus, he knew him by his name. He himself had not conversed with Sohan. He has said that Dinesh and Madan had caught hold Nandu and rest of the accused were standing there. Then they thrashed Nandu to the ground. As soon as Nandu tried to escape, Dinesh pulled out a knife from his pocket and inflicted a blow to Nandu's left thigh, as a result he fell on the ground. He specifically said that he had seen knife in Dinesh's hand.

39. It has been submitted on behalf of learned counsel for the appellant that it has come in evidence that the shops were not open at the time of incident, therefore, there was no occasion for P.W.4 to remain present at his shop. This submission has no force, as the witness has specifically said that he was Nandu's neighbour and was talking to him at the place of occurrence, when the accused arrived there and attacked Nandu. Therefore, P.W. 4's presence at the place of occurrence

had no connection with the opening of shop. There is nothing on record to show that this witness had any enmity against the appellants or there was any other reason that could prompt him to depose falsely against the appellants. Therefore, from the testimony of P.W.4, Hari Om Sharma, the prosecution case is fully established.

40. So far as the medical evidence is concerned, it fully corroborates the ocular testimony. It has come in evidence that the deceased was struck with knife by appellant Dinesh over the back side of his left thigh and the doctor has found the stabbed wound over on that part of the body. The artery was found cut and due to excessive bleeding from injury no.1, the victim died on account of shock and hemorrhage and the above injury, in the normal course, was sufficient to cause death. Both blood vessels supplying blood to the heart were found cut. In view of the above, the ocular testimony stands corroborated by the medical evidence.

41. As per prosecution, there was motive for the appellants to commit the crime, as it has come in evidence that deceased Nandu used to prevent them from coming to Mohalla Chitti Khana on account of their teasing girls, to which he objected. At the time of incident, the appellants reached at the place of occurrence to teach him a lesson and in the process Dinesh stabbed Nandu with a knife and Madan had caught hold of him. Mahesh and Madan Lal have died during the pendency of this appeal and the appeal has abated against them. So far as the surviving appellant, Suresh is concerned, from the testimony of all the four witnesses of fact as discussed above, it emerges that his involvement in the crime is not fully established. No overt act has been assigned to him, therefore, appellant Suresh deserves benefit of doubt.

42. As it has come in evidence that the appellants had reached at the place of occurrence together and they caught hold of Nandu and when he tried to escape, appellant Dinesh attacked him with a knife and that injury was fatal causing his death, therefore, the above said act of appellant Dinesh with other co-accused Madan Lal (since deceased) goes to show that they arrived at the place of incident pre-planned sharing common intention, but as there is no evidence against co-appellant Suresh and Mahesh (since deceased) and the evidence is only against appellant Dinesh and Madan Lal (since deceased), therefore, from the above discussion, this Court comes to the conclusion that the appellant Dinesh is guilty of committing culpable homicide not amounting to murder, therefore, he has been rightly convicted and sentenced by the learned Trial Court.

43. So far as surviving appellant Suresh is concerned, the prosecution has failed to prove his involvement in the said crime and the charge against him is not proved beyond reasonable doubt, therefore, he deserves to be acquitted of the offence under Section 304(2) read with 34 IPC.

44. In view of the above discussion, this appeal is **allowed** in part, and impugned judgement and order dated 22.01.1985, convicting and sentencing appellant, **Suresh**, under Section 304 (Part 2) read with Section 34 IPC is **set aside** and the said appellant is **acquitted** of the charge under Section 304 (Part 2) read with Section 34 IPC. He is on bail. His bail bonds and personal bonds are cancelled and the sureties discharged. He need not surrender.

45. The appellant **Suresh** shall execute a personal bond in the sum of Rs.25,000/- under Section 481 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (corresponding to Section 437-A of

the Code of Criminal Procedure, 1973) for his appearance, in the event of an appeal being preferred against his acquittal.

46. In so far as appellant **Dinesh** is concerned, this appeal is **dismissed** on his behalf. He is found guilty of the offence punishable under Section 304 (Part 2) IPC and his conviction and sentence passed by the Trial Court is **upheld**. Appellant Dinesh is on bail. His bail bonds and personal bonds are cancelled and the sureties discharged. He is directed to **surrender** before the learned Trial Court within four weeks from today to undergo the remaining part of his sentence, failing which, the Trial Court is directed to adopt coercive measures for securing his presence.

47. Let a copy of this order be forwarded to the Trial Court concerned along with the Trial Court record for information and necessary compliance.

(2026) 4 ILRA 1034
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 15.04.2026

BEFORE

THE HON'BLE AVNISH SAXENA, J.

Criminal Appeal No. 348 of 1986

Kanhaiya & Ors.

...Appellants

Versus

State

...Respondent

Issue for consideration

Matter pertains to legality of judgment of conviction under Sections 147, 148, 149, 307, 324, 323, 452 IPC.

Headnotes

Law of punishment-Six named accused-appellants-five have already passed away -appeal is abated against them-Appellant -Chhotoo is sole surviving appellant- conviction recorded- as part of unlawful assembly- having the common object of inflicting injuries-established beyond the shadow of doubt-Conviction confirmed-incident occurred 42 years back-nothing on record to show that the accused was a habitual criminal- sentence awarded to surviving Appellant -reduced to the period already undergone by him- sentence modified. **Appeal dismissed.** (E-9)

Case Law Cited

1. State of Madhya Pradesh Vs. Bablu, (2014) 9 SCC 2811
2. Abdul Waheed Vs. State of Uttar Pradesh, (2016) 1 SCC 583
3. Labh Singh and Others v. State of Haryana, 2012 LawSuit (SC) 255
4. State of U.P. v. Sita Ram and Another, 2010 LawSuit (SC) 897
5. George Pon Paul v. Kanagalet and Others, 2009 LawSuit (SC) 795
6. Manjappa State of Karnataka, 2007 LawSuit (SC) 706

List of Acts

The Indian Penal Code, 1860

List of Keywords

Reformative; corporeal in nature; law of punishment; habitual criminal; period of incarceration.

Appearances of parties

Counsel for Appellant (s) : A.D. Giri, Devendra Yadav, Mahesh Prasad Yadav;

Counsel for Respondent(s) : A.G.A.

(Delivered by Hon'ble Avnish Saxena, J.)

1. The present appeal under Section 374(2) CrPC is on judgment after 40 years. Out of six named accused-appellants, five have already passed away and the appeal is abated against them. The sole surviving appellant is appellant no.6, Chhotoo, who is presently 64 years of age.

2. The above particulars are mentioned at the threshold owing to the reason that the learned counsel for the appellant has not only argued the appeal solely on this aspect but has also laid before the court and relied on plethora of rulings on this aspect, which will be discussed at later part of the judgment.

3. The trial court while recording judgment of conviction dated 28.01.1986 against all the six accused-appellants in Sessions Trial No.82 of 1985 (State Vs. Kanhaiya and five others), arising out of Case Crime No.204 of 1984, Police Station Rani Ki Sarai, District Azamgarh, for offence under Sections 147, 148, 149, 307, 324, 323, 452 IPC has sentenced all the accused-appellants. As this Court is concerned about the appeal filed by the Chhotoo, who was shown in the F.I.R. carrying the lathi, danda (cane and stick) along with the co-accused Ramdev and Sudama was sentenced to two years rigorous imprisonment for offence under Section 147 IPC, one year rigorous imprisonment for offence under Section 323 IPC, two years rigorous imprisonment for offence under Section 452 IPC, four years rigorous imprisonment for offence under Section 307 read with 149 IPC and two years rigorous imprisonment for offence under Section 324 read with 149 IPC. All the sentences were directed to run concurrently.

4. The prosecution case set out from the first information report dated 21.12.1984 lodged at 1:30 a.m. for the incident carried out on 20.12.1984 at 11:30 p.m. lodged by the Ramnath s/o Ram Prasad that he has one month old property dispute with the accused-appellants, particularly, Ramdev Pasi. In the night of 20.12.1984, while the informant was sleeping in his house along with his family, there was a knock at the door. The informant's wife Asharfi Devi has opened the door, on which, Phool Chand carrying country made pistol, Kanhaiya having knife in his hand, Shobha carrying ballam (a traditional Indian short spear with broad iron blade), Ramdev, Sudama and Chhotoo having lathi and danda (cane and stick) in their hands barged into the house of informant, started beating Asharfi Devi, wife of informant, Shyamli, Belawati, daughters of informant and Sukendar son of informant. Hearing the cry of his family members, the informant came out of the room, on which, Phool Chandra has opened fire at him with the intention to kill. He suffered gunshot injuries on his neck and right thigh. He ran outside the house for rescue. The villagers including Dubri s/o Ram Saran, Sombaru s/o Ram Charan, reached at the place with torch in their hands. The accused-appellants then sprinted away. The accused-appellants were identified in the light of lantern, burning in the house of informant and in the torch light of the villagers.

5. The five members of the informant's family including the informant were badly injured and taken to the police station from where they were taken to Primary Health Center, Rani Ki Sarai, Azamgarh, where the injuries sustained by all the five family members were examined by Dr. C.P. Singh P.W.-5, from 2:10 a.m. to 3:30 a.m. on 21.12.1984.

6. The investigation was carried out by P.W.-4, the Inspector, Amar Shankar Chaubey, who has submitted the charge sheet, invoking the provisions of unlawful assembly and the offences carried in furtherance of common object by the unlawful assembly, in which Chhotoo was stated having being present with lathi in his hand.

7. After framing of charge on 24.05.1985, the trial began.

8. The prosecution has produced three witnesses of fact and the three formal witnesses. P.W.-1 Ram Nath and P.W.-2 Asharfi Devi were produced as injured eye witnesses and informant. P.W.-3 Dubri was produced as an independent eye witness, who came to the place of incident. The three formal witnesses are P.W.-4 Amar Shankar Chaubey, the Investigating Officer, P.W.-5 Dr. C.P. Singh, the doctor, who has carried out medico-legal examination of the injured and prepared the report and Dr. S.D.P. Gupta, the Radiologist, P.W.-6, who has taken X-ray and gave the report.

9. It is argued by the learned counsel for the sole surviving appellant that specific role of each accused has not been reflected from the testimonies of injured witnesses. The role of Chhotoo was of wielding lathi blows, but there is no specific statement that to whom Chhotoo has wielded lathi. The source of light is not proved because neither the lantern nor the torch was produced before the court. There is an admitted fact about the previous enmity of accused-appellants with the informant. The main accused Phool Singh was shown carrying the fire arm. The accused-appellant, who was having lathi in his hands, could only be assigned the role of causing voluntary hurt. Further submits that the sole surviving accused is 64 years of age old and ailing and therefore, the appeal should be decided accordingly. Learned counsel has relied on the cases of Labh Singh and Others v. State of Haryana¹, State of U.P. v. Sita Ram and Another², George Pon Paul v. Kanagalet and Others³, Manjappa State of Karnataka⁴ and Ramesh v. State of Uttar.

10. Per contra, learned A.G.A. for the State has submitted that the first information report is lodged without delay. The four members of the family of informant were brutally beaten and the informant suffered gunshot injury on the vital part of his body, which is dangerous to life. The role assigned to accused-appellant is having lathi in his hand in furtherance of common object for committing the offence. It is proved in the trial that the accused-appellants had entered into the house of informant to commit offence having weapons in their hands. This shows the common object of the unlawful assembly of six accused persons of the same family. The trial court has rightly appreciated the entire evidences on record and convicted the accused-appellants invoking the provisions of unlawful assembly having a common object. The nature of the injuries on the person of the entire family members of informant including ten years old son of informant and 16 years old daughter of informant clearly shows the brutality. Hence, submitted that the appeal is devoid of merit and liable to be dismissed. Subsequently, submitted that the cases cited by the learned counsel for the appellants are the cases decided by Hon^{ble} the Supreme Court in Special

Leave to Appeal, wherein invoking the inherent powers of the Supreme Court under Article 142 of the Constitution of India, which is not available to this Court.

11. This Court has taken into consideration the rival submissions made by the parties and perused the record.

12. Following are the points of determination before this Court:-

(i) Whether the learned trial Judge has rightly appreciated the facts, circumstances, documents and evidences on record to reach the conclusion of conviction of six appellants for committing offence in furtherance of common object?

(ii) Whether the role of sole surviving accused-appellant has rightly been considered by the trial Judge in convicting him and sentencing him in consonance to the offences committed by him?

(iii) Whether the appellate court should show leniency in affirming the sentence if the conviction found to be just and proper outcome of appreciation of evidence, merely because the matters taken up for hearing after 40 years of pendency of appeal?

13. It would be apposite to consider the first two point of determination prior to the third.

14. The incident is stated to be of 20.12.1984 occurred at 11:30 p.m. The place of incident is the residence of prosecution witness-1, namely, Ram Nath. The allegation in the written information Exhibit Ka-7 reveals that informant, his wife, two daughters and a son were sleeping in their house, when there was a knock at the door. The informant's wife Asarfi Devi (P.W.-2) has opened the door. Six accused persons armed with different weapons barged into the house, started beating P.W.-2 Asarfi Devi and her children, who were sleeping with her. Hearing the cry of the family members, the informant came out from the room, who was confronted by the accused Phool Chandra. He was having countrymade pistol in his hand, challenged the informant and fired a shot. The informant, who came to rescue his family on being hurt with gunshot injury, ran outside his house for help. It is then, that the villagers including Dubri (P.W.-3) came to the spot. Then the accused-appellants sprinted away.

15. The police station is situated at a distance of 2 km from the place of incident. The informant and injured wife and children were taken to the police station, where the F.I.R. was lodged on 21.12.1984 at 1:30 a.m. on the written information of the informant Ram Nath, scribed by Rajaram.

16. Aman Shankar Chaubey (P.W.-4) has proved the chik F.I.R. as secondary witness, as this witness had worked with Head Constable Ram Dular Rai and identified his hand writing in the F.I.R. and letters (Exhibit Ka-9 to 13) for getting the medico-legal examination of the injured. The injured had been taken to PHC (Public Health Centre), Rani Ki Sarai, Azamgarh, where the medico-legal examination of five injured persons was carried out from 2:10 a.m. to 3:30 a.m.

17. In the written information, six persons were named, with specific mention about the weapons, they were carrying. Phool Chandra was with country-made pistol, Kanhaiya with knife, Sobha with ballam, Ramdev, Sudama and Chhotoo with lathi and danda in their hands.

18. P.W.-1 Ram Nath and P.W.-2 Asafri Devi, in their examination-in-chief, had made specific statements with precision about the weapons, the accused were carrying. They have also stated about the motive behind committing the offence, which was a property dispute, arose a month back, though in the cross-examination, the endeavour of accused-appellant was to show that the incident was committed by the dacoits, who were operating in the area, as the informant had sold his land and was having a huge cash in his home, which was the reason for the dacoity and inflicting of injuries on person of family members of P.W.-1. The suggestion of dacoity was denied by P.W.-1 & P.W.-2 with the statement that there were no jewellerys, articles or money looted in the incident.

19. In the cross-examination of P.W.-1 Ram Nath, it is revealed that after suffering the gunshot injuries, he became unconscious and regain consciousness in the hospital, but soon thereafter, he has released and stated himself that he regained consciousness at the Police Station and remained at the Police Station for one and half hours. The two injured witnesses, namely, Ram Nath and Asarfi Devi (P.W.1 and P.W.-2) were also questioned about the relationship of independent witness Dubri (P.W.-3) and Sombaru, who are the persons named as witnesses in the F.I.R., being independent witnesses Sombaru, is the son of Ram Charan and Dubri is the son of Ram Saran. Ram Charan and Ram Saran are real brothers.

20. The accused-applicants have tried to distract the witnesses in suggestive questions in their cross-examination to came out with the inference of false implication appellants in the case because of enmity, but the injured witnesses remained intact about the role of accused-appellants in the incident. The chain of incident and events are so inter-twined and pragmatic that there seems to be no chance of false implication or concoction of story to falsely implicate the accused. This evinces from the facts that at 11:30 a.m. on 20.12.1984, the incident took place. The police station is 2 km away from the place of incident. The injured were taken to the police station with the help of villagers, as all the five family members were badly injured. From the police station, the injured were taken to the Primary Health Centre before 2:10 a.m. on 21.12.1984. The trial court has rightly appreciated the evidences on the point of prompt lodging of F.I.R. reflects that the names of accused-appellants was rightly taken to be miscreants in committing the offence, without any chance of false implication.

21. As this Court as well as the trial court did not find any exaggeration in depicting the incidence, hence, the false implication in the F.I.R. is ruled out. The medico-legal examination reports of five injured family members including the informant further substantiates the stand, which are required to be reiterated:-

(I) Injury Report of Belawati aged 20 years D/o Ram Nath Pasi dated 21.12.1984 at 02:10 a.m. :-

Injuries:

1. Incised wound 3 cm x 0.5 cm x bone deep on the anterior surface of scalp 6.5 cm above mid of right eyebrow bleeding.

2. Incised wound, 2.5 cm x 0.5 cm x bone deep on the mid of scalp 10.5 cm above upper base of left ear bleeding.

3. Contusion 4.5 cm x 1.5 cm on the posterior surface of left forearm 6 cm below elbow joint with red colour and swelling.

4. Complains of pain in posterior aspect of left shoulder joint with no apparent mark of injuries.

Inference:

Injuries are simple in nature No 1 and 2 caused by sharp edged object and No 3 by blunt object. Nothing can be said about No 4.

Duration:

Fresh injuries.

(II) Injury Report of Smt Shyamli aged about 16 years D/o Ram Nath Pasi dated 21.12.1984 at 02:30 a.m. :-

Injuries:

1. Traumatic swelling 2 cm x 1.5 cm on the posterior aspect of scalp with red colour.

2. Abraded contusion 3.5 cm x 1.5 cm on the posterior aspect of left forearm 8 cm below elbow joint with red colour and swelling with oozing from abraded area.

3. Punctured wound 1 cm x 0.5 cm x 1 cm directing downwards medially on left side of abdomen 3 cm above and medially to left anterior iliac spine, bleeding.

Inference:

Injuries are simple in nature. No 1, 2 caused by blunt object and No 3 by sharp and pointed object.

Duration:

Fresh injuries.

(III) Injury Report of Sukendar aged about 10 years S/o Ram Nath Pasi dated 21.12.1984 at 02:50 a.m.:-

Injuries:

1. Incised wound 2 cm x 0.5 cm x bone deep on the left side of scalp 9.5 cm above upper base of left ear bleeding.

2. Lacerated wound 0.5 cm x 0.5 cm x muscle deep on the medial aspect of left ring finger at its tip bleeding.

3. Confusion 3 cm x 2 cm on the left maxillary prominence just below lower eyelid with red colour and swelling.

Inference:

Injuries are simple in nature. No. 1 caused by sharp edged object and rest by blunt object.

Duration:

Fresh injuries.

(IV) Injury Report of Ram Nath Pasi aged about 55 years (informant) dated 21.12.1984 at 03:00 a.m.:-

Injuries:

1. Multiple wounds of entry on the posterior surface of neck including posterior aspect of scalp with palpable pillets inside and a few are apparent. Advised X-ray.

2. Wound of entry 9 cm x 6 cm on the outer aspect Right thigh with irregular edges 24 cm above knee joint with scorching and tattooing of local skin bleeding profusely. Advised X-ray.

3. Multiple wounds of exits and abrasions on the medial aspect of Right thigh of various sizes, bleeding profusely.

Inference:

Injuries are dangerous life caused by some firearm. No. 1 from distant range and No. 2 from near range.

Duration:

Fresh injuries.

(V) Injury Report of Asharfi Devi aged about 50 years dated 21.12.1984 at 03:30 a.m.:-

Injuries:

1. Punctured wound 1.5 cm □ 0.5 cm □ bone deep directing backwards on the left side of the forehead 2.5 cm above outer border of left eyebrow. Bleeding.

2. Punctured wound 1.5 cm □ 0.5 cm □ bone deep on the outer end of Right eyebrow bleeding, directing backwards upwards.

3. Punctured wound 2 cm □ 0.75 cm □ muscle deep, directing backwards on the front of right upper arm, 4 cm above right axillary fold bleeding profusely.

4. Incised wound 2.5 cm □ 0.75 cm □ muscle deep on the posterior aspect of right upper arm 13 cm above elbow joint. Bleeding.

5. Incised wound 1.5 cm □ 0.25 cm □ skin deep just of posterior aspect of right elbow joint.

6. Punctured wound 1 cm □ 0.5 cm □ 1 cm directing backwards on the right side of abdomen 7.5 cm above & lateral to umbilicus bleeding.

7. Complains of pain in front of chest with no apparent injuries.

8. Abrasions on front of both ankle joints with oozing.

Inference:

Injuries are simple in nature. No. 1, 2, 3 and 6 caused by some sharp and pointed object. No. 4 and 5 by hsrp edged object and No. 8 by friction. Nothing can be said about No. 7

Duration:

Fresh injuries.

22. P.W.-5 Dr. C.P. Singh has examined the above injuries, entered medico-legal report and proved the same in court as P.W.-5. In his cross-examination, he has stated that the injured suffered the injuries by knife and ballam, it could be both or either of the two. The injury on the person of Ram Nath was of fire arm injury, which could be from a distance of 12 feet. There is nothing reflected from the cross-examination of this witness, which created doubt as to the injuries suffered by the injured person.

23. P.W.-6 Dr. S.D.P. Gupta, who is the radiologist, has proved the X-ray report and X-ray plate pertaining to the gunshot injury, suffered by Ram Nath. He has not been cross-examined by the accused-appellants.

24. The injuries on the person of injured shows that Belawati, daughter of informant, suffered injuries by sharp and blunt object; Shyamli suffered injuries by sharp and blunt object; Sukendar Singh s/o informant also suffered injuries from sharp and blunt object; Ram Nath

suffered fire arm injuries and Asarfi Devi suffered injuries by the weapon of sharp and point object. The cluster of injuries suffered by the injured clearly shows the weapons being used by the accused and rightly stated by P.W.-1 and P.W.-2 in their statements, which cannot be doubted.

25. So far as, the testimony of independent witness, Dubri (PW.-3) is concerned, he has stated in his examination-in-chief that he has seen the incident and identified the accused-appellants in the light of torch, which he has provided to the Investigating Officer and the Investigating Officer has returned the same to him on the same day. He has also stated to have taken the injured to the police station and thereafter to the hospital. In his cross-examination, the accused-appellants had tried to establish that this witness is inimical to the accused and in relation with the injured due to the reason, his testimony is false. He has produced the torch during his examination and even the trial Judge has asked specific question, about the torch, to this witness. This witness further stated that he has not seen Ram Nath being injured due to fire arm injury, because he came thereafter on the cry of Ram Nath. Nothing inconsistent is revealed from the statement of this witness and was rightly considered to be the independent eye witness, who has seen the accused-appellant exiting the house of informant and subsequently taken the injured to the police station and hospital.

26. The prosecution through the testimonies of witnesses have established the guilt of all the accused, who were provided with the role of committing the offence in furtherance of common object, being the family members, having property dispute with the injured.

27. So far as the role of sole surviving appellants Chhotoo is concerned, the witnesses of fact P.W.-1 Ram Nath, P.W.-2 Asarfi Devi and P.W.-3 Dubri have stated that Chhotoo was having lathi and danda along with Ramdev and Sudama. The sons and daughters of Ramnath suffered two injuries each by the blunt object, which is lathi and danda and Chhotoo, who was part of unlawful assembly, his role cannot be ignored even if he has not inflicted any injury.

28. P.W.-1 Ram Nath and P.W.-2 Asarfi Devi as well as P.W.-3 Dubri have specifically stated in their statements about the role of accused Chhotoo having lathi in his hand and becoming a member of the unlawful assembly, who had barged into the house of injured at night with deadly weapon in their hands. Hence, the conviction recorded by the trial court considering the sole surviving appellant is part of unlawful assembly, having the common object of inflicting injuries on the person of injured and eliminate P.W.-1 Ram Nath, who suffered gunshot injury, is established beyond the shadow of doubt. Therefore, conviction is affirmed.

29. So far as, the third point of consideration is concerned, it would be expedient to quote the judgment cited by the accused.

30. In the case of *Labh Singh v. State of Haryana* (supra), Hon'ble the Supreme Court has taken the view, while considering the sentence awarded in the old case of 1985, wherein, all the accused are senior citizen by then, that no useful purpose would be served in sending the accused to jail. The relevant paragraph numbers 3 to 6 are reiterated underneath:

“ 3. According to the impugned judgment passed by the High Court, Appellant 1 is more than 82 years of age and Appellants 2 and 3 are 72 and 62 years of age respectively.

4. This is an incident of 1985. The appellants have already undergone part of the sentence. Sending them to jail after a lapse of about 27 years, in the facts and circumstances of this case, would not be justified.

5. On a consideration of the totality of the facts and circumstances of this case, we are of the opinion that ends of justice would meet if we direct each of the appellants to pay Rs 1 lakh to the complainant/injured persons. We direct accordingly. Let the amount be deposited before the trial court within two weeks from today and after the amount is deposited, the trial court shall disburse the amount equally among the injured persons.

6. Consequently, the sentence of the appellants is reduced to the period already undergone by them, the impugned judgment is modified to the aforementioned extent and the appeal is partly allowed.”

31. In the case of *State of U.P. v. Siyaram* (supra), Hon^{ble} the Supreme Court has considered the old case and propensity to false implication, took the view to compensate than to further incarceration. The relevant paragraph number 4 is reiterated underneath:-

“4. We have heard the learned counsel for the parties and have gone through the record. We are not inclined to interfere in the acquittal of Siyaram for the reasons recorded by the High Court, as the propensity to implicate falsely is not uncommon in India. We, however, do agree with Mr Dash that the reduction in the sentence in case of Jiya Lal to already undergone was somewhat inadequate but as the prosecution had been initiated in the year 1988, we are not inclined to interfere on the term of imprisonment. We, however, direct that the fine be increased to Rs 25,000 in all and in default of payment of fine the appellant Jiya Lal shall undergo 2 years' RI. The fine will be paid within three months from now to Banshi Lal, the injured and if Banshi Lal is not available, to his legal representatives.”

32. In the case of *George Pon Paul v. Kanagalet* (supra), Hon^{ble} the Supreme Court considered the passage of time, as a relevant factor to consider. The relevant paragraph numbers 4 to 6 are reiterated underneath:-

“4. The only question that remains is whether the custodial sentence as was imposed by the trial court was adequate or not i.e. confinement till rising of the court.

5. It appears from record that the fine amount has been deposited and the amount which was directed to be paid to PW 2 has already been paid.

6. Considering this fact and the long passage of time, it would be appropriate to restrict the period of sentence to the period already undergone. The appeals stand disposed of.”

33. In the case of *Manjappa v. State of Karnataka* (supra), Hon^{ble} the Supreme Court considered the long pendency of case and opined the adequate punishment would be the period of incarceration already undergone but enhanced the fine to be paid as compensation. The relevant paragraph numbers 14 to 16 are reiterated underneath:-

“14. At the same time, however, the fact remains that the High Court has reduced substantive sentence to a month and a half. It is also not in dispute that the appellant has undergone and has remained in custody for about fifteen days. Moreover, as on today, he is on bail. Hence, even though we are of the view that in the facts and circumstances of the case, provisions of Section 360 read with Section 361 of the Code are not attracted and Om Prakash [(2001) 10 SCC 477 : 2003 SCC (Cri) 799] does not help the appellant, it would not be appropriate now to direct the appellant to surrender and to suffer the remaining sentence for about a month. The incident is of 1997 and about 10 years have passed.

15. Keeping in view all the facts and circumstances, in our opinion, ends of justice would be met, if we order that the substantive sentence which the appellant has already undergone is held sufficient. We are also of the view that it would be appropriate if over and above the amount which the appellant herein has paid towards fine and also towards compensation to the injured victim, the appellant is ordered to pay an additional amount of Rs 10,000 (Rupees ten thousand only), to the complainant by way of compensation.

16. For the foregoing reasons, the appeal is partly allowed by holding that the sentence already undergone by the appellant is held sufficient and adequate in the facts and circumstances of the case. It is, however, ordered that the appellant will pay an additional amount of Rs 10,000 (Rupees ten thousand only) to the injured complainant within a period of one month from today over and above the amount of fine and compensation ordered to be paid by the courts below.”

34. In the case of *Ramesh v. State of U.P.* (supra), Hon^{ble} the Supreme Court has converted the offence of attempt to murder to the voluntary causing of grievous hurt in view of single injury and awarded punishment accordingly. The relevant paragraph numbers 3 and 4 are reiterated underneath:-

“3. The learned counsel for appellant has assailed the finding recorded by the High Court and the trial Judge and has urged that the appellant was implicated due to enmity. He urged that even though the High Court held that in the FIR the main part was specifically assigned to the appellant and one Jagat Singh but in the evidence it was confined to the appellant as the relations between the two were strained. The learned counsel further urged that the case of the prosecution was that the complainant was bitten by Jagat Singh and there being no injury of biting, the High Court committed an error in maintaining the conviction. We are not impressed by the argument. The learned counsel then urged that the High Court committed an error in convicting the appellant under Section 307, Penal Code, 1860. We do not propose to decide it as a matter of law. But we agree with the learned counsel for the appellant that in peculiar circumstances of the case it being a case of single injury in the back of neck the conviction can be altered to be under Section 324, Penal Code, 1860.

4. In the result the appeal succeeds and is allowed in part. The conviction under Section 307/34, IPC is converted to under Section 324, IPC and the sentence is reduced to the period already undergone. The appellant shall deposit a sum of Rs 3000 as fine within six months which shall be paid to the complainant. In default of payment he shall serve out the entire sentence. On deposit of fine the bail bond shall stand discharged.”

35. There is judicial discretion attached to reasoned sentencing. In the cases of **State of Madhya Pradesh Vs. Bablu⁵ and Abdul Waheed Vs. State of Uttar Pradesh⁶**, Hon'ble the Supreme Court observed solemn duty of the Courts while imposing sentence that the same would be just, adequate and proportionate to the gravity of offence. Further observed that undue sympathy to impose inadequate sentence would do more harm to the justice system and undermine the public confidence in the efficacy of system. Considering those principles the trial court rightly evaluated the role of the sole surviving appellant and adequately sentenced him on 28.01.1986 with just and adequate punishment. This Court in appeal has granted bail on 30.01.1986 and since then the sole surviving appellant is enlarged on bail. Now the point of concern is whether it would be rightful decision by appellate court to send the accused to serve the remaining sentence after elapse of 40 years.

36. In the case in hand, the accused-appellant was youngest in all the family members, carrying lathi or danda in his hand along with other two co-accused. The incident occurred 42 years back. There is nothing on record to show that the accused was a habitual criminal. Sending the sole surviving appellant to jail will not serve the purpose of basic principles of the law of punishment, which in India is not corporeal in nature but reformatory in its form. The intention of legislature in considering the act, conduct and behavior of convict for remission also evinces the same principle.

37. Therefore considering, the dictums of Hon'ble the Supreme Court; the analogy drawn up from the facts of the case; and involvement of the sole surviving appellant, his role in the occurrence vis-a-vis his age at the time of incident and as on date, this Court is of the view that the judicious and purposeful punishment would be to modify the punishment as below:-

37.1. The sentence awarded to Chhotoo son of Badan Pasi r/o Village Chuharapura, Police Station Rani Ki Sarai, Azamgarh is reduced to the period already undergone by him in Case Crime No.204/1984, under Sections 147, 323, 452, 324 read with 147 and 307 read with 147 of Indian Penal Code (S.T. No.82 of 1985, State Vs. Kanhaiya and 5 others, decided on 28.01.1986).

37.2. The sole surviving appellant Chhotoo shall deposit a fine of Rs.75,000/- (Seventy Five Thousand Rupees Only) with the trial court within 60 days from the date of this judgment.

37.3. The trial court shall disburse this amount as compensation to be paid equally to the surviving injured, after registering a miscellaneous case.

37.4. The sole surviving appellant shall assist the trial court during continuance of Miscellaneous Case, which will last till the compensation is paid off either to the surviving injured Ram Nath Pasi, Asarfi Devi, Belawati, Shyamli and Sukendar equally. If no injured survives, the same shall be credited to State Exchequer as fine and the entry in the fine register shall accordingly be modified.

37.5. If the fine is not deposited within stipulated period, the sole surviving appellant shall serve the remaining period of sentence.

38. The appeal is therefore **dismissed**, but sentence is modified.

39. The material exhibit shall accordingly be dealt with as per law.

40. The sole surviving appellant is on bail. His bail bonds and sureties are discharged.

41. A copy of this judgment shall be sent to learned District Judge for effecting compliance.

(2026) 4 ILRA 1046
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 29.04.2026

BEFORE

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

Criminal Appeal No. 370 of 1985

Ram Swarup @ Chhotey Chela

...Appellant
Versus

State

...Respondent

Issue for Consideration

Matter pertains to whether the appellant was one of the miscreants who committed the offence, whether the identification of the appellant in test identification parade and in Court was proper, reliable and trustworthy, and whether the prosecution proved beyond reasonable doubt that the appellant participated in the crime. (Paras 34- 49)

Headnotes

Criminal Law - Murder - Identification of accused - Indian Evidence Act, 1872 - S. 9 - Test Identification Parade (TIP) and dock identification - Legal principle that TIP is not substantive evidence and can be used only for corroboration of identification in Court - Identification in Court alone constitutes substantive evidence - Application to facts - Witnesses identified accused in jail during TIP but did not state in Court that the appellant was present at the time of incident, did not disclose his role in the crime and merely stated that they had identified him in jail and that he was present in Court - Long delay of about ten months in holding TIP and more than seven months thereafter in recording testimony in Court - Dock identification held not proper, reliable and trustworthy - Prosecution failed to prove participation of appellant in crime beyond reasonable doubt - Conviction set aside and appellant acquitted. (Paras 39, 40, 41, 45, 46, 47, 48, 49, 50)

Criminal Law - Evidence - Identification evidence - Evidentiary value of Test Identification Parade - Indian Evidence Act, 1872 - S. 9 - TIP only corroborative and not substantive evidence - Requirement that accused must be properly identified in Court and linked to the role played in the occurrence - Application to facts - Though witnesses correctly identified appellant during TIP and prosecution proved that appellant was kept baparda after arrest, prosecution failed to establish substantive identification in Court - Mere statement that witness identified appellant in jail and that he was present in Court held insufficient - Benefit of doubt extended. (Paras 36, 38, 39, 40, 41, 44, 48, 49)

Criminal Law - Burden of proof - Conviction based on identification evidence - Prosecution must establish guilt beyond reasonable doubt - Application to facts - Place of occurrence, prompt FIR

and homicidal death of deceased proved - However, no reliable evidence connecting appellant with commission of offence and no evidence that offence was committed by Fakkad dacoit gang or that appellant was member thereof - Trial Court failed to appreciate evidence correctly - Acquittal. (Paras 32, 33, 35, 48, 49, 50)

Held: TIP is not substantive evidence; it can only corroborate identification made in Court - The identifying witnesses only stated that they had identified the accused in jail and that he was present in Court; they did not state that he was one of the assailants or specify any role played by him in the occurrence - The TIP was conducted about ten months after the incident and the witnesses were examined in Court more than seven months thereafter. The dock identification was held not proper, reliable and trustworthy - The prosecution failed to prove the appellant's participation in the crime or connect him with the offence beyond reasonable doubt - Conviction and sentence under S. 302/34 IPC and S. 14 of U.P. Dacoity Affected Areas Act No.31 of 1983 was set aside and the appellant was acquitted – appeal allowed. (Paras 39, 41, 48- 50) (E-7)

Case Law Cited

Ashrafi and Ram Dhani v. State, **AIR (1961) ALL 153**; *State of Madhya Pradesh v. Manka*, **1980 MFC 216**; *Tukesh Singh and Others v State of Chhatisgarh*, **2025 INSC 683**; *Jayan v State of Kerala*, **LL 2021 SC 582**, **AIR ONLINE 2021 SC 920**; *Kattavellai v. State of Tamil Nadu*, **2025 SCC Online SC 1439**.

List of Acts

Indian Penal Code, 1860; Code of Criminal Procedure, 1973; Indian Evidence Act, 1872; U.P. Dacoity Affected Areas Act No. 31 of 1983; U.P. Ordinance No. 2 of 1983; Bharatiya Nagarik Suraksha Sanhita, 2023.

List of Keywords

Test Identification Parade; TIP; dock identification; identification evidence; substantive evidence; corroborative evidence; baparda; identification in Court; burden of proof; beyond reasonable doubt; gunshot injury; murder; miscreants; Fakkad dacoit gang; prompt FIR; place of occurrence; acquittal; benefit of doubt

Case Arising From

APPELLATE JURISDICTION: Arising out of the judgment and order dated 08.01.1985 passed in Sessions Trial No.37 of 1983, State v Ram Swaroop, arising out of Case Crime No.503 of 1982, under S. 302 read with 34 IPC and S. 14 of U.P. Dacoity Affected Areas Act No.31 of 1983, Police Station Konch, District Jalaun, whereby the appellant was convicted under S. 302 read with 34 IPC and S. 14 of U.P. Dacoity Affected Areas Act No.31 of 1983.

Appearances for Parties

Advs. for the Appellant:

Mr. Laxmi Narayan Rathour, learned counsel for appellant.

Advs. for the Respondents:

Mr. Ghanshyam Kumar, Learned Additional Government Advocate- I, on behalf of State.

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

1. This appeal is directed by appellant Ram Swarup alias Chhotey Chela alias Mehtab Singh against the judgment and order of Mr. R.C. Gupta, the then Special Judge (Anti-Dacoity), Jalaun at Orai, dated 08.01.1985 passed in Sessions Trial No.37 of 1983, State v Ram Swaroop, arising out of Case Crime No.503 of 1982, under Section 302 read with 34 Indian Penal Code (in short IPC) and Section 14 of U.P. Dacoity Affected Areas Act No.31 of 1983, Police Station- Konch, District- Jalaun.

2. By the impugned judgment and order the appellant Ram Swarup has been held guilty and convicted under Section 302 read with 34 IPC and sentenced to undergo imprisonment for life, for the offence punishable under Section 302 read with 34 IPC and Section 14 of U.P. Dacoity Affected Areas Act No. 31 of 1983. The appellant was however, not found guilty for offences punishable under Section 365 read with 511 IPC and Section 10/12 of U.P. Ordinance No.2 of 1983 and was accordingly, acquitted of the said offences.

3. Brief facts of the prosecution case are that the first informant, Ram Prakash son of Ram Ratan Gupta, a resident of Village- Kanausi, Police Station- Konch, District- Jalaun, filed a written application (tehrir) dated 17.12.1982 (Ext. Ka-3), before Incharge Police Station- Konch, District- Jalaun, stating therein that today i.e. on 17.12.1982 he was at his shop alongwith his mother Smt. Ram Pyari and servant Ram Singh son of Badri Kacchi. Kachare son of Teejan Kacchi and some persons, to wit, Prabhu son of Sewak Nai and Mahaveer Singh son of Manohar Singh were also present, as customers, in the first informant's shop. A light was there in and outside the shop. At about 06:15 p.m., four miscreants climbed up on the shop's platform (chabutara) wearing khakhi clothes. Out of them, two miscreants entered the shop, caught hold of his hand and tried to drag him outside. The first informant became nervous and shouted why he would go outside and pulled down one miscreant, by twisting his leg. Two miscreants, who were standing outside the shop opened fire employing their firearms, causing injuries to his mother, who fell down onto the floor of the shop. Upon their hue and cry and hearing the shots rang out, people rushed towards the shop. This led all the four miscreants too flee towards the North. None of those present, could apprehend the miscreants fearing for their lives. His mother died instantly and he had seen all the four miscreants clearly in the light, whom he can identify if they were produced before him. All the miscreants were young, and one of them was tall.

4. Upon this information, an FIR under Section 302 IPC in Case Crime No.503 of 1982 was lodged at Police Station- Konch on 17.12.1983 at about 09:30 p.m. against four unknown men. After lodging the FIR, the investigation was commenced by S.P. Singh the Station House Officer, Police Station- Konch, who reached the place of occurrence and collected blood stained and plain earth; blood stained clothes of the first informant; empty cartridges and missed cartridges; and a shoe of one of the miscreants from the place of occurrence. He prepared fard baramadagi Ext. Ka-8 to Ext. Ka-11, respectively. After recording the statement of first informant, the SHO inspected the place of occurrence and prepared a site plan, Ext. Ka-12.

5. During investigation the name of the appellants and others came to light and their test identification parade (TIP) was conducted. The appellant was identified by the witnesses. Earlier, the inquest of the dead body of deceased Ram Pyari was held, and thereafter, the body was sent for autopsy, where post-mortem was conducted. The blood stained earth and clothes etc., recovered from the place of occurrence, were sent for chemical examination. In the chemical examination report human blood was found on the blood stained earth and clothes. After investigation a charge-sheet was filed against the appellant under Section- 302 read with 34 IPC, 365 read with 511 IPC and 10/12 of Uttar Pradesh Dacoity Affected Areas Act No.31 of 1983.

6. The concerned court took cognizance and summoned the accused and furnished him copies of relevant prosecution papers under Section 207 Cr.P.C. and thereafter, charges were

framed against him under Section 302 read with 34 IPC and Section 10/12 of Uttar Pradesh U.P. Ordinance No.2 of 1983 and also under Section 365 read with 511 IPC and Section 10/12 of U.P. Dacoity Affected Areas No.31 of 1983. The accused pleaded not guilty and claimed to be tried.

7. The prosecution examined ten witnesses in support of their case, to wit, P.W.1 Dr. E.A.K. Tiwari; P.W.2 SDM Bhagwan Das; P.W. 3 informant Ram Prakash; P.W.4 Ram Singh; P.W. 5 Constable Babu Lal; P.W.6 Constable Chandra Shekhar Tripathi; P.W. 7 Constable Siya Ram; P.W. 8 S.O. S.P. Singh; P.W.9 S.I. Bardani Singh and P.W.10 Constable Shiv Paras Singh.

8. P.W. 1 Dr. E.A.K. Tiwari, has conducted autopsy of the deceased Smt. Ram Pyari on 18.12.1982 at 02:30 p.m. while posted as a surgeon in the male Hospital, Konch. He has stated that, she was aged about 65 years, body average built and had grey hair. Rigor mortis was present all over the body. The body had not decomposed and some grains of sago (sabudana) were sticking over the body. He found following ante-mortem injuries over the body of the deceased:-

(i) Gunshot wound of entry 1.25 cm x muscle deep, circular in shape. The margins were clear cut inverted below pomum adami, almost in the middle of the body and there was no blackening or scorching present around the wound.

(ii) Gunshot wound of exit 1.5 cm x 1.5 cm x muscle deep below the left scapula, the margins were lacerated and everted.

Both these injuries were corresponding to each other and the direction was downwards, backward and everted.

Upon internal examination of injury no.1, the bullet had entered the thoracic inlet and after entering the upper left lung passed through it from back side after causing fracture to 7th rib in its course and it exists in the line of injury no.2.

In examination of throat there was blood around cord over injury no.1.

The 7th rib under injury no.1 was fractured and three pieces of cork were found and taken out. The left pleura was open having three milliliters blood, left lung was open at two spots. Large blood vessel was also lacerated in pieces under injury no.2. The death could have occurred about one day ago and the cause of death of was shock and hemorrhage as a result of ante-mortem gunshot injury. The doctor has proved the post-mortem report as Ext. Ka-1 and stated that these injuries could have been caused on 17.12.1982 at about 06-06:15 or 06-06:30 p.m.

9. In cross-examination he disagreed, that in all the gunshot wounds there has to be blackening, scorching and tattooing present. He also does not agree that because the bullet had passed through the body, and pieces of cork were found in the body, then on this basis alone, it could be observed that the victim must have been shot from a close range. He has said that as no blackening or tattooing was present around injury no.1, it could have been caused from a distance of more than three feet. Since, the pieces of cork were found, the assailants might have been at a distance of two yards from the deceased.

10. P.W. 2 S.D.M. Bhagwan Das is a formal witness before whom the test identification parade (TIP) of the appellant Ram Swarup @ Chhotey Chela @ Mehtab Singh was held in District-Jalaun at Orai. He has stated that he recorded the statement of appellant in column no.1, of the memo and his specific mark of identification was mentioned in column no.4. The steps taken to conceal them is also mentioned therein. He has stated that all the witnesses were produced one by one for the purpose of test identification, and thereafter, each witness was taken at a place so that he could not gesticulate to other witness. He has stated that witnesses Ram Prakash and Ram Singh had correctly identified the appellant not committing any mistake. The witness has proved the test identification memo as Ext. Ka-2. He has also proved an application of the counsel for the accused given in jail as Ext. Kha-1 and other applications as Exts. Kha-2, 3 and 4.

11. P.W.3 Ram Prakash is the first informant of the case. He has stated that at the time of the incident he was sitting in his shop alongwith his mother, Khachere, Prabhu Nai, Mahaveer and Ram Singh. The bulb was lit. In the meantime, four miscreants came carrying rifles/ guns and tried to pull him out of the shop. He lay down in the shop to foil their attempt. In the meantime, his mother came to his rescue. The miscreants standing outside the shop, opened fire as a result his mother sustained injuries and fell to the ground dead. The villagers came running, carrying guns, to save them and upon return fire by the villagers, all the miscreants escaped towards the North. He had identified all the miscreants in the light produced by the bulb, and thereafter, he lodged the FIR at Police Station- Konch. He has proved tehrir Ext.Ka-3 and stated that a shoe of one of the miscreants was left back in his shop. He has also stated that he had gone to the jail to identify the miscreants and identified one of the them, who is present in Court. The witness has testified that he identified the appellant Ram Swarup @ Chhotey Chela @ Mehtab Singh in jail at Orai. He had seen the appellant at the time of the incident in his shop, and, thereafter, at the time of identification in jail, and in between he had not seen him nor knew him since before. The witness has identified one shoe of the miscreants, which was left behind in the shop as material Ext.1.

12. In his cross-examination, the witness has said that his shop is inside his house with an area of 10 feet x 10 feet. There is a platform (chabutara) outside the shop with a height of about 4 feet from the ground. His mother was sitting inside the shop, when the miscreants arrived. His servant was also sitting inside the shop and tried to rescue and his mother also clung to him, the customers also tried to rescue him. The miscreants who were outside the shop, fired in the air, as a result whereof the customers fled away from the spot and his servant also moved away and stood still. His mother kept clinging to him. Then the miscreants fired three rounds at him inside the shop, but it hit his mother. At the time of firing the other two miscreants had left him and his mother alone was clinging to him. Three pellets hit the wall of the shop and the fourth shot hit his mother. The gun was discharged from a distance of about 3 feet. His shop is at the end of the village. The incident took place for about five minutes. The miscreants were young. He could not notice any kind of mark of identification on the miscreants. After about 6 months from the date of the incident, one constable came to him and said that the miscreants had been arrested and he would have to go to jail to identify them. He was not shown the miscreants at the police station. He identified the miscreants in jail. The miscreants did not cover their faces at the time of the incident. Their faces were open and they were wearing police uniforms. In Jail 10 people were standing in a queue, wearing the same kind of kurtas. All the 10 persons were pale black colour, having the same

height with no mustaches. The miscreants had come to kidnap him for ransom. The witness has denied the suggestion that the appellant was shown to him at the police station.

13. P.W. 4 Ram Singh, is the servant of the informant. He has said that at the time of incident, he himself, the first informant and first informant's mother were present. Four miscreants carrying guns arrived. Two of the miscreants entered inside the shop and commenced dragging the first informant Ram Prakash out of his shop and the rest of the miscreants opened fire. Ram Prakash's mother was clinging to him. Therefore, when the miscreants opened fire to shot him, the bullet hit his mother. Upon the hue and cry the miscreants ran away. He had identified the faces of miscreants in electric light from the bulb and had gone to the District Jail to identify the miscreants. He had identified one of the miscreants and after gesturing towards the appellant in Court, the witness has said that he had identified him in jail. He had seen the appellant at the time of the incident, and thereafter, during the test identification in jail. In between he had not seen the appellant elsewhere and also did not knew him earlier.

14. In his cross-examination he has said that, he was a servant at the first informant's shop since a year and a half last. The electricity supply remains uninterrupted round the clock in village Kanausi. He was sitting one step away from the first informant. When the miscreants tried to drag Ram Prakash out of the shop then he, Prabhu Nai and Ram Prakash's mother tried to save him. Ram Prakash twisted the leg of one of the miscreants and pulled him down. The miscreants emerged from the shop and started shooting. The witness ran into the house whereas Prabhu Nai ran inside the shop. After the miscreants ran away, he returned. The entire incident took place within five minutes. After first round of fire he ran inside the house. He had seen the faces of the miscreants. The miscreants did not try to destroy the bulb. All the persons whose test identification was conducted were standing in a line in jail. They were wrapped in blanket upto the chest, their kurta and shirt was not visible. All the four miscreants were pale, black in complexion. He did not pay any attention to marks of identification. All of them were of the same height and were aged about 28 years. The witness has stated that the appellant was not brought to village and neither he nor Ram Prakash were taken to police station. The witness has denied the suggestion that the appellant was identified at the police station and he was not present at the time of incident.

15. P.W. 5 Constable Babu Lal, is a formal witness who has stated that on 20.08.1983 he was posted as a Constable at Police Station- Madhaogarh and was on sentry duty at the station. During this period of time the appellant Ram Swarup was lodged in the lockup. He did not give any person opportunity to see or talk to him. The appellant was kept masked in a lockup.

16. P.W. 6 Constable Chandra Shekhar Tripathi, is also a formal witness, who has said that on 20.08.1983 at Police Station- Madhaogarh at 06:45 a.m. he and Constable Ravi Paras Singh brought the appellant Ram Swarup @ Chhotey Chela, masked, from police station- Madhaogarh to Court and from the Court to the District Jail- Orai. The appellant was kept masked and nobody was given an opportunity to see or talk to him.

17. P.W. 7 Constable Siya Ram is also a formal witness who has said that on 20.08.1983 he was posted at Police Station- Madhaogarh and was on duty on 20.08.1983 from 03:00 a.m. to 06:00

a.m. He was on sentry duty at the lockup, where the appellant Ram Swarup @ Chhotey Chela was kept masked (baparda). He did not give any person opportunity to see or talk to him.

18. P.W. 8 S.O. S.P. Singh, has proved the check FIR scribed by Constable Heera Lal and G.D. No. 39 dated 17.12.1982 at 07:30 p.m. He has stated that he commenced investigation in the case and recorded statements of the informant Ram Prakash and Constable Heera Lal at the police station. He searched for the accused and reached the place of occurrence by night. On 18.12.1982, the inquest of the deceased Ram Pyari was held before the Panch witnesses and a report prepared, which he proved as Ext. Ka-5. He has also proved related papers as Exts. Ka-6 and 7. He has stated that the dead body was sealed and handed over to Constables Dharmendra Kumar and Surendra Singh, alongwith related papers for the purpose of autopsy. He has stated that he inspected the place of occurrence and collected blood stained earth and plain earth and sealed them in separate boxes which he has proved as Exts. 2 and 3 and stated that he prepared a fard baramadagi, which he proved as Ext. Ka-8. The witness has further proved blood stained clothes, four empty cartridges, one missed cartridge of .12 bore and its memo of recovery. He has also said that he collected the shoe found at the place of occurrence and prepared a fard baramadagi, thereof.

19. During investigation it was found that incident was caused by a gang of Fakkad dacoits. The appellant Ram Swarup was brought to jail from Police Station- Madhaogarh, where his test identification was conducted on 22.08.1983 and upon result of the test identification, charge-sheet Ext. Ka-3 was filed in Court. He has also stated that blood stained clothes and blood stained earth were sent for chemical examination.

20. In his cross-examination he has said that in the site-plan, he has not shown the place from where the fire opened. He has shown place K and K-1 where the miscreants were standing and from where they had shot. The empty cartridges were recovered from under the platform (chabutara) and the wad was found from a place □O□ inside the shop. The distance of place K and K-1 from the place where the dead body was lying was about 2- 3 steps. The distance of Konch from Madhaogarh is about 55-60 kms. He has denied the suggestion that the accused was shown to the witnesses before identification.

21. P.W. 9 S.I. Bardani Singh, has said that on 18.08.1983, he alongwith S.I. Shankar Dayal Tripathi, and six constables, was busy in search of the members of Fakkad dacoit gang, when at about 09:00 p.m. upon a secret information he reached near the well on Jogi Bagh at 10:00 p.m. and arrested accused Ram Swarup and Krishna from there. Upon their search a country-made pistol (tamancha) and two cartridges were recovered from the possession of Ram Swarup and one country-made pistol and a cartridge from the possession of Krishna, which was sealed at the place of recovery. They confessed to committing dacoity and murder elsewhere. Therefore, they were kept masked (baparda) and brought to the police station Madhaogarh and lodged there on 20.08.1983. The appellant was kept masked since arrest, until he was taken to the police station. Nobody was given an opportunity to see or talk to him.

22. P.W. 10 Constable Shiv Paras Singh, is again a formal witness who has said that on 20.08.1983 he was on sentry duty from 06:00 a.m. to 03:00 p.m. at Police Station- Madhaogarh and the accused and another were kept there in lockup, masked. The same day at about 06:45 a.m. he

and other constable brought accused and another, before the Magistrate for remand, duly masked and thereafter, they were lodged in jail. During the entire period the accused was kept masked and nobody was given opportunity to identify or see him.

23. After closure of prosecution evidence, the statement of the appellant was recorded under Section 313 CrPC, where he has denied the prosecution case and stated that the police had got him identified from witnesses at the police station and the witnesses are deposing against him due to enmity. He has further said that on 16.08.1983 he was arrested from his house by the police.

24. In defence the appellant had examined two witnesses, to wit, D.W. 1 Mahendra Singh and D.W. 2 Jagdish Prasad.

25. D.W. 1 Mahendra Singh has stated that his cousin Vijay Singh is Pradhan of village- Kanheri. He knows the appellant Ram Swarup since the last 4-5 years and about 4-5 years ago the appellant lived at his maternal uncle's (mama) house in village- Kanheri.

26. D.W. 2 Jagdish Prasad has stated that he is the Gram Pradhan of Gopalpur and he knows accused Ram Swarup, who was arrested from his house about one year and three months ago by the police and after keeping him at the police station for 3-4 days he was challaned in this case.

27. In his cross-examination he has said that after arresting the accused three more persons were arrested by the police after 5-6 days.

28. The Trial Court after hearing the argument and upon a perusal of the evidence on record, came to the conclusion that the prosecution has been able to prove its case beyond reasonable doubt, and, accordingly, convicted the appellant and sentenced him for the offences punishable under Section 302 read with 34 IPC and Section 14 of U.P. Dacoity Affected Areas Act No.31 of 1983, as indicated above. The appellant was, however, acquitted of the offence punishable under Section 365 read with 511 IPC and Section 10/12 of U.P. Ordinance No.2 of 1983.

29. We have heard Mr. Laxmi Narayan Rathour, learned counsel for appellant and Mr. Ghanshyam Kumar, Learned Additional Government Advocate-I, on behalf of State, and perused the evidence on record.

30. It is submitted on behalf of the appellant, that the prosecution could not establish that the appellant was connected with members of Fakkad Dacoit Gang. It is also submitted that the evidence against the appellant is not reliable and actually the appellant was arrested from his house by the police on 16.08.1983 and after keeping him at the Police Station for two days, he was lodged in District Jail- Orai. It is also submitted that the appellant belongs to a poor family and is currently aged about 65 years.

31. The learned A.G.A on the hand, has submitted that the prosecution case is proved beyond reasonable doubt. There is evidence that the appellant is one of the miscreants who committed the said offence. It is also submitted that the first informant and his servant Ram Singh

have identified the assailants at the time of commission of the offence and, thereafter, they identified the appellant in the District Jail during TIP. The evidence of the prosecution is consistent, reliable and trustworthy. Therefore, the appellant was rightly convicted and sentenced. Hence, this appeal has no force and is liable to be dismissed.

32. In a criminal trial, the burden of proof always lies upon the prosecution to prove its case beyond reasonable doubt. In the present case, according to the prosecution on 17.12.1982 at about 06:15 p.m. The informant Ram Prakash alongwith his mother Smt. Ram Pyari, servant Ram Singh and some customers were present in his shop, when four unknown miscreants alighted to his shop. Two of them tried to drag the first informant out and the two others, who kept standing outside the shop, fired at him. The shots hit his mother. As a result she died on the spot. It is the case of the prosecution that there was a electricity bulb illuminating his shop and the first informant had identified the miscreants in the light sourced from the bulb. The FIR was lodged the same day at about 19:30 which means the FIR was lodged after one hour and 15 minutes of the incident. The distance of the place of occurrence from the police station according to check FIR (Ext. Ka-4), is 12 kilometers. Therefore, the FIR was lodged promptly and there is no delay in lodging the FIR. The appellant has also not raised any objection with regard to the promptness of the FIR, which was lodged against four unknown men.

33. The place of occurrence is the shop of the first informant in Village- Kanausi under Police Station- Konch, District- Jalaun. The Investigating Officer has collected blood stained earth and plain earth from the place of occurrence, which is the shop of the first informant. He also collected empty cartridges, missed cartridges, a bullet and a wad from the place of occurrence. A shoe was also recovered from there belonging to one of the miscreants, which was left there while the miscreants were on the run. The Investigation Officer has prepared a site-plan and the place of occurrence is shown inside the shop of the first informant. Beside this, the first informant in his testimony has said that the incident occurred in his shop. The servant of the first informant i.e. Ram Singh has also testified likewise. Therefore, from the above evidence, the place of occurrence is fully established. The appellants have not raised any objection with regard to the place of occurrence and also not suggested any other place of occurrence. Therefore, in the present case, the place of occurrence is fully established.

34. According to the prosecution, the offence was committed by four unknown miscreants. The FIR was lodged against four unknown men. According to the prosecution, the first informant identified by the light of an electric bulb. During investigation, the Investigation Officer arrested some persons, upon suspicion and a Test Identification Parade (TIP) was held inside the jail. Out of them one of the persons was the appellant Ram Swarup @ Chhotey Chela and the first informant Ram Prakash and his servant Ram Singh correctly identified him during the TIP. Thereafter, the Investigation Officer has submitted a charge-sheet before in Court.

35. Let us see whether the appellant is one of the miscreants, who committed the said offence. Before proceeding further, it is also relevant to mention that the inquest of the deceased Ram Pyari, the mother of the first informant was held and post-mortem examination also conducted alongwith other connecting papers. According to the post-mortem report, Ram Pyari sustained two gunshot wounds and (one entry wound and other exit wound) and both the injuries were inter-

connected each other. It was also found that some of the internal organs were lacerated due to the above injuries and the cause of death was shock and hemorrhage as a result of ante-mortem gunshot injuries. Therefore, it is established that deceased Ram Pyari was shot dead at the place of occurrence.

36. Here, in the present case, the prosecution has examined P.W.2 Bhagwan Das, S.D.M. Kannauj, District- Jalaun who conducted test identification parade in jail. He has proved test identification memo as Ext. Ka-2 and has said that Ram Prakash and Ram Singh correctly identified accused Ram Swarup @ Chhota Chela. Nothing material has come in his cross-examination to raise any doubt over the TIP conducted inside the jail. Beside this, according to the prosecution the appellant was arrested on 18.08.1983 by S.I. Bardani Singh (P.W.9) and his companion policemen, upon prior information and the accused confessed to committing this crime. Therefore, he was kept masked (baparda). The prosecution has examined P.W.10 Shiv Paras Singh; P.W.5 Constable Babu Lal; P.W.6 Constable Chandra Shekhar Tripathi; P.W. 7 Constable Siya Ram, and from their evidence, it comes out that the appellant was kept masked (baparda), after his arrest till he was lodged in the lockup of the Police Station- Madhaogarh and also upto the time he was lodged in jail. Nobody was given a chance to see and identify him.

37. It is argued on behalf of the appellant that he was shown to the witnesses in the police station prior to the TIP, but in this regard, no evidence of any kind has been adduced on behalf of the defence nor any material thing has come out from the statement of prosecution witnesses which could support his contention.

38. In view of the above evidence, prosecution has proved that after his arrest upto the time the appellant was lodged in jail, nobody was given a chance to see him. Here, in the present case, the incident occurred on 17.12.1982. The appellant was arrested on 18.08.1983, his test identification was carried out in jail on 09.09.1983. He was lodged in Madhaogarh jail on 20.08.1983. P.W. 10 brought him from Orai on 20.08.1983 at 11:00 p.m. and he was lodged in jail at 04:00 p.m. on the same day. Here, it is also relevant to note that after about 10 months of the incident, the TIP of the appellant was conducted in jail. In support of the prosecution case the first informant and his servant were examined in Court after more than seven months from the date when the TIP was conducted in jail.

39. It is settled law that TIP is not a substantive piece of evidence and it could be used only for corroboration and contradiction, with regard to the statement given by the witness produced in Court during trial. The substantive evidence is that, which is given on oath by a witness in Court.

40. Here, in the present case, according to the prosecution P.W. 3 Ram Prakash, the first informant and P.W. 4, his servant Ram Singh, have correctly identified the appellant in jail. Looking into the testimony of P.W. 3 Ram Prakash, at the time of incident, four unknown miscreants came at his shop with guns. Two of the miscreants tried to drag him outside the shop but he resisted and lay on the ground so that they could not drag him out, but when his mother came to his rescue. Then the miscreants standing outside the shop opened firing which hit his mother and she died at the spot. The first informant, in his testimony in Court, has said that he had identified all the four miscreants in the light of bulb and has said that he had gone to District Jail- Orai to

identify the miscreants and had identified one of them who is present in Court. He has said that he had identified the appellant Ram Swarup @ Chhotey Chela in jail. P.W. 4 Ram Singh has also testified to the same effect and said that he had identified the faces of the miscreants in electric light from the bulb. He had gone to jail to identify them and had identified Ram Swarup @ Chhotey Chela in jail.

41. It is relevant to mention that both these witnesses have not said in Court, that appellant Ram Swarup @ Chhotey Chela was present at the time of incident and was one of the miscreants who had committed the offence. They have also not stated what role the appellant played at the time the crime was committed, and if he was one of the two miscreants, who were standing outside the shop or one of two who opened fire at the first informant or was he one of two miscreants who entered inside the shop and tried to drag the first informant out. They have simply said that they went to the District Jail and had identified him there and he is present in Court.

42. In view of the above evidence adduced by the prosecution, it has to be examined what is the evidentiary value of this evidence and whether it is proper and sufficient in regard to test identification of the appellant. In this regard a Division Bench of this Court in the case of **Ashrafi and Ram Dhani v. State**, AIR (1961) ALL 153, has discussed, in detail, about the evidentiary value of test identification parade during investigation and also dock identification of accused in Court, the relevant part of the holding in **Ashrafi and Ram Dhani** (supra) is as follows:

“33. CONDITIONS NECESSARY FOR ACCEPTABLE IDENTIFICATION EVIDENCE: *The Court is bound to follow the rule that evidence as to the identification of an accused person must be such as to exclude with reasonable certainty the possibility of an innocent person being identified. In the very recent case of State of Madhya Pradesh v. Manka, 1980 MFC 216, a Division Bench of the Madhya Pradesh High Court, after examining some Indian English and American rulings, held:*

"The evidence of identity must be thoroughly scrutinized, giving benefit of all doubt to the accused; but if after a thorough scrutiny there appears to be nothing on the record to suspect the testimony of the identification witnesses, the Court ought not to fight shy of basing a conviction on such evidence alone, because of the bare possibility that there could be honest though mistaken identification."

With great respect we agree with their Lordships.

The following twelve questions are apt to arise and must be answered by the Court to its satisfaction before it can accept the evidence:--

(1) Did the identifier know the accused from before?

(2) Did he see him between the crime and the test identification?

(3) Was there unnecessary delay in the holding of the test?

- (4) *Did the Magistrate take sufficient precautions to ensure that the test was a fair one?*
- (5) *What was the state of the prevailing light?*
- (6) *What was the condition of the eye-sight of the identifier?*
- (7) *What was the state of his mind?*
- (8) *What opportunity did he have of seeing; the offenders?*
- (9) *What were the errors committed by him?*
- (10) *Was there anything outstanding in the, features or conduct of the accused which impressed him?*
- (11) *How did the identifier fare at other test identifications held in respect of the same offence?*
- (12) *Was the quantum of identification evidence sufficient?"*

43. In the above decision, the Division Bench has discussed these points in detail with regard to their importance, precautions to be taken and their effect while conducting the identification, and, thereafter, the appreciation of evidence in this regard.

44. In view of the above, for reaching a satisfaction about the evidence of identification of the accused, we are of the considered view that every Trial Court has to be, further, careful during dock identification of an accused by a witness, in Court, by at least observing following precautions :

(1) Essentials of Valid Dock Identification:

>Direct Physical Pointing:

☐ *The witness must clearly and unambiguously point to the accused in the dock from among the persons kept there.*

☐ *This ensures recognition is directed at the actual person present, not merely a name or rank number from the charge sheet.*

☐ *The actual role played by the accused, in the crime committed.*

(2) Precise Descriptive Recording

☐ *The Trial Judge should record the identification with specific noting:*

> *Position: e.g. □second from the left.□*

> *Distinct features: attire, height, facial hair, or other marks used by the witness.*

> *Such detail prevents perfunctory or omnibus identification and strengthens evidentiary reliability.*

(3) Judicial Certification of Exactitude

(i) *The judge has a proactive duty to endorse in the deposition that identification was made.*

(ii) *This includes:*

□ *A note that the accused in the dock was identified*

□ *The manner of identification (e.g., □witness pointed towards the second accused□)*

□ *A statement of judicial satisfaction that the person identified is the same accused.*

(4) Individualization in Group Offences

(i) *In cases of unlawful assembly or multiple accused, identification must not be generic.*

(ii) *Witnesses must link each accused's identity in the dock to a specific physical act/role, to prove their active participation.*

(5) Prosecutorial Initiation

(i) *It specifies that the Public Prosecutor must actively ask the witness to identify the accused in the dock.*

(ii) *This is a procedural duty of the prosecution, and failure to do so □cuts at the root□ of the case.*

45. Beside the above, in **Tukesh Singh and Others v State of Chhatisgarh, 2025 INSC 683**, the Supreme Court had held:-

“21. In a case where there are eyewitnesses, one situation can be that the eyewitness knew the accused before the incident. The eyewitnesses must identify the accused sitting in the dock as the same accused whom they had seen committing the crime. Another situation can be that the eyewitness did not know the accused before the incident. In the normal course, in case of the second situation, it is necessary to hold a Test Identification Parade. If it is not held and if the evidence of the eyewitness is recorded after a few years, the identification of such an accused by the eyewitness in the Court becomes vulnerable. Identification of the accused sitting in the Court by

the eyewitness is of utmost importance. For example, if an eyewitness states in his deposition that □he had seen A, B and C killing X and he knew A, B and C□. Such a statement in the examination-in-chief is not sufficient to link the same to the accused. The eye witness must identify the accused A, B and C in the Court. Unless this is done, the prosecution cannot establish that the accused are the same persons who are named by the eyewitness in his deposition. If an eyewitness states that “he had seen one accused assaulting the deceased with a sword, another accused assaulting the deceased with a stick and another accused holding the deceased to enable other accused to assault the deceased.” In such a case, the eyewitness must identify the accused in the open Court who, according to him, had assaulted the accused with a stick, who had assaulted the deceased with a sword and who was holding the deceased. Unless the eyewitnesses identify the accused present in the Court, it cannot be said that, based on the testimony of the eyewitnesses, the guilt of the accused has been proved.”

46. In **Jayan v State of Kerala, LL 2021 SC 582, AIR ONLINE 2021 SC 920**, the Supreme Court held :

“18. It is well settled that T.I Parade is a part of investigation and it is not a substantive evidence. The question of holding T.I Parade arises when the accused is not known to the witness earlier. The identification by a witness of the accused in the Court who has for the first time seen the accused in the incident of offence is a weak piece of evidence especially when there is a large time gap between the date of the incident and the date of recording of his evidence. In such a case, T.I Parade may make the identification of the accused by the witness before the Court trustworthy.

47. In **Kattavellai v. State of Tamil Nadu, 2025 SCC Online SC 1439**, the Supreme Court has held:

“no provision of law casts an obligation upon the investigating authorities to conduct a test identification parade. If it is conducted, the provision that governs is Section 162, Cr.P.C. The onus to show that the T.I.P. has been conducted in accordance with law lies on the prosecution, and only after this burden stands prima facie discharged, does the question of considering objections in this regard arise. It is not a substantive piece of evidence. Its only purpose is for the investigating authorities to analyse the correctness, or lack thereof, of the direction in which they are steering the investigation. The prosecution must establish that prior to the test identification parade being conducted, the witness had no opportunity to see the accused. In other words, the accused must be kept □baparda□. If the above has not been ensured, the evidence of the T.I.P. becomes inadmissible. It has also been held that if, prior to the T.I.P. the witness has the opportunity to see even the photograph of the accused person, such process becomes inconsequential”.

48. In view of the above legal position, it is clear that Section 9 of the Indian Evidence Act, 1872 makes the identification of accused admissible as □relevant fact□ in a Court of Law. It is only the identification of an accused in Court, which is substantive evidence. Whereas, evidence of identification in test identification parade is not substantive one and the same can be used only to corroborate the identification of the accused by the witness in Court. After about 10 months from the incident, TIP of accused in jail was conducted and more than 07 months thereafter, the

statements of P.W.3 and P.W.4 were recorded in the Court. Such a long delay, coupled with non disclosure of presence of appellant and role played by him at the time of crime and other necessary details shows that the dock identification conducted by the prosecution during testimony of P.W.3 and P.W.4 in Court, was not proper, reliable and trustworthy. Thus the prosecution has failed to prove that the appellant participated in the crime. There is no other evidence adduced by the prosecution connecting the appellant to the crime.

49. In view of the above, we come to the conclusion that prosecution have failed to prove its case beyond reasonable doubt, that the appellant was one of the assailants involved in the commission of the offence. There is also no evidence that the offence was committed by Fakkad dacoit gang and the appellant was one of the members of that gang. Therefore, the prosecution has failed to prove its case beyond reasonable doubt. Thus, the learned Trial Judge has failed to appreciate the evidence on record, correctly and thereby came to the wrong conclusion of guilt of the appellant.

50. In view of the above, the instant criminal appeal is, accordingly, **allowed**. We **set aside** the impugned judgment and order dated 08.01.1985 passed in Sessions Trial No.37 of 1983 and appellant **Ram Swarup @ Chhotey Chela** is **acquitted** of the offence under Section 302 read with 34 IPC and Section 14 of U.P. Dacoity Affected Areas Act No.31 of 1983.

51. The appellant **Ram Swarup @ Chhotey Chela** is on bail. His bail bonds and personal bonds are cancelled and the sureties discharged. The appellant Ram Swarup @ Chhotey Chela, need not surrender.

52. The appellant **Ram Swarup @ Chhotey Chela** shall execute a personal bond to the sum of Rs. 25,000/- under Section 481 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (corresponding to Section 437-A of the Cr.P.C.) for his appearance, before the appellate court, in the event of an appeal being preferred against his acquittal.

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

(2026) 4 ILRA 1060
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 02.04.2026

BEFORE

THE HON'BLE SUBHASH VIDYARTHI, J.

Criminal Appeal No. 452 of 1998

Ram Narain Mehrotra & Ors.

...Appellants

Versus

State of U.P.

...Respondent

Issue for consideration

Matter pertains to applicability of sec 18 of the Probation of Offenders Act, 1958.

Headnotes

Probation of Offenders Act, 1958-sec 18-Appellant Nos.1, 2 and 4 have died -appeal survives only in respect of the appellant Nos.3 and 5-Section 18- the benefit of the Probation Act- would not be available to a person guilty of committing offences under Section 5 of the Prevention of Corruption Act, 1947-the appellants have been convicted for the offence of criminal conspiracy for committing an offence under Section 5(2) read with Section 5(1)(d) of the Act, 1947-not been held guilty of committing the substantive offences under Section 5(2) read with Section 5(1)(d) of the Act, 1947-Appellants are not public servants-they could not be held guilty of the offences under Section 5(2) read with Section 5(1)(d) - bar contained in Section 18 of the Probation Act will not apply to the present case- upholding the conviction of the appellant No. 3 and 5 and granting them the benefit of Probation of Offenders Act, 1958-period of almost four decades stands elapsed since the appellants were sentenced- during which the appellants have not committed any other offence-no need to place them under probation for any further period. (E-9)

Case Law Cited

1. Lakhvir Singh v. State of Punjab, (2021) 2 SCC 763
2. Tarak Nath Keshari v. State of W.B.: (2024) 13 SCC 384
3. Sunita Devi v. State of Bihar: 2024 SCC OnLine SC 984
4. Chellammal v. State, 2025 SCC OnLine SC 870

List of Acts

1. The Probation of Offenders Act, 1958
2. The Prevention of Corruption Act, 1947

List of Keywords

Substantive offences; public servants; criminal conspiracy; benefit of Probation

Appearances of parties

Counsel for Appellant(s) : H.D.Srivastava, Abhinav Srivastava, Abhishek Bhasin, Anurag Verma, Nadeem Murtaza, P Chakrawarti, Suresh Chandra Srivastava, Virendra K Shukla

Counsel for Respondent(s) : Govt. Advocate, A S Rakhra, Anurag Kumar Singh, S.B.Pandey

(Delivered by Hon'ble Subhash Vidyarthi, J.)

1. Heard Shri Abhinav Srivastava, the learned counsel for the appellant and Shri Anurag Kumar Singh, the learned counsel for the respondent- C.B.I.

2. The instant appeal was filed in the year 1998 by five appellants, namely, (i) Ram Narain Mehrotra, (ii) Jageshwar Prasad Mehrotra, (iii) Onkar Nath Mehrotra (iv) Nirankar Nath Mehrotra and (v) Smt. Neera Mehrotra, challenging the validity of a judgment and order dated 30.07.1998 passed by the Special Judge, Anti Corruption (West), U.P., Lucknow in Criminal Case No.02 of 1979, whereby the appellants have been convicted for the offence under Section 120-B I.P.C. read with Section 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act, 1947 and have been sentenced to undergo rigorous imprisonment for a period of one year and to pay Rs.4,00,000/- as fine.

3. The appeal was admitted by means of an order dated 12.09.1998, the appellants were ordered to be released on bail and the payment of fine was also stayed pending disposal of the appeal.

4. During pendency of the appeal, appellant Nos.1, 2 and 4 have died and the appeal survives only in respect of the appellant Nos.3 and 5.

5. Briefly stated, the prosecution case arises out of alleged banking frauds committed by three firms during the year 1972 to 1975. One of the three firms- M/s Guru Prasad Ram Prasad, Kanpur, was reconstituted in the year 1965 and its partners were Ram Narain Mehrotra, Guru Prasad Mehrotra, Jageshwar Prasad Mehrotra and Nirankar Nath Mehrotra. The second firm- M/s MT and Company was constituted on 08.01.1972 and its active partners were Ram Narain Mehrotra and Anil Kumar Tandon, Onkar Nath Mehrotra was Manager of this firm. The third firm was M/s MT Agencies, Lucknow. Ram Narain Mehrotra, Anil Kumar Tandon, Smt. Prem Kumari Mehrotra and Smt. Neera Mehrotra were active partners of this firm and the aforesaid Onkar Nath Mehrotra was the Manager of this firm also.

6. Another accused B. N. Tandon was working as a Head Clerk in State Bank of India, Main Branch during the year 1973 to 1975. Yet another accused M. L. Agarwal was working as a Head Clerk in DDRR Section of the Main Branch, State Bank of India during the period October 1968 to January 1973 and thereafter he was promoted to the post of Officer Grade-II, but he continued to work on the same post till April 1973 and he also used to perform duties similar to that of co-accused B. N. Tandon.

7. Some fraudulent transactions came to light during an inspection of the bank made by an Officer on Special Duty, on the basis whereof three FIRs were lodged. During investigation, it came to light that out of 35 lost cheques, 8 cheques had been made to disappear by co-accused persons B. N. Tandon and M. L. Agarwal. 3 cheques related to firm M/s Guru Prasad Ram Prasad and M/s MT Agencies, 10 of the 25 lost cheques were received in branches of State Bank of India at Kanpur. It was alleged that co-accused B. N. Tandon had misplaced the cheques under conspiracy with other co-accused persons and B. N. Tandon had been seen going to meet Ram Narain Mehrotra in firm- M/s Guru Prasad Ram Prasad, Chowk, Kanpur.

8. The trial Court held that sanction for prosecution of co-accused M. L. Agarwal was valid but the sanction for prosecution of B. N. Tandon was not valid. Regarding the offence of criminal conspiracy alleged against the partners of the three firms, it was established that they had issued the cheques which establish that they were active partners of the firms. The amount for which the cheques had been issued were not available in the accounts of the firms. The accused persons made interpolations and forgery in the cheques and made them disappear from the bank by sending same to the other banks. By the time the cheques could return to the bank, enough time had elapsed.

9. Signature of the appellant no. 5 Smt. Neera Mehrotra have been proved by prosecution witness 12- S. N. Kakkar. This was done under the criminal Conspiracy with the accused persons- partners and Manager of the firms.

10. After a detailed analysis of the entire prosecution material, the trial court held that the appellants Nos.3 and 5 are guilty of entering into a criminal conspiracy for commission of offences under Section 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act, 1947, and convicted them for the offence. The accused persons- appellants No.3 and 5 have been sentenced to undergo rigorous imprisonment for one year.

11. The learned counsel for the appellants has not assailed the correctness of the findings of guilt and conviction recorded by the trial court and he has only submitted that appellant No.3 is presently aged about 90 years and appellant No.5 is a woman aged about 88 years. Both appellants have no previous criminal history.

12. The learned counsel for the appellants has further submitted that both the appellants are suffering from old age ailments and it would not be justified to keep them incarcerated at this stage of their life for an offence allegedly committed more than a half century ago. Therefore, they should be granted the benefit under the Probation of Offenders Act.

13. Although the learned counsel for the respondent- CBI has advanced submissions in opposition of the appeal and supporting the order of conviction, he did not oppose the Court taking a lenient view, so far as sentencing is concerned, keeping in view the advanced age of the appellants.

14. Before proceeding to decide the request for granting the benefit of the Probation of Offenders Act, 1958, it would be appropriate to have a look at the relevant provisions of the Probation Act, which are being reproduced below: -

"4. Power of court to release certain offenders on probation of good conduct.-(1) *When any person is found guilty of having committed an offence not punishable with death or imprisonment for life and the court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it is expedient to release him on probation of good conduct, then, notwithstanding anything contained in any other law for the time being in force, the court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period, not exceeding three years, as the court may direct, and in the meantime to keep the peace and be of good behaviour:*

Provided that the court shall not direct such release of an offender unless it is satisfied that the offender or his surety, if any, has a fixed place of abode or regular occupation in the place over which the court exercises jurisdiction or in which the offender is likely to live during the period for which he enters into the bond.

(2) Before making any order under sub-section (1) is made, the court shall take into consideration the report, if any, of the probation officer concerned in relation to the case.

(3) *When an order under sub-section (1), the court may, if it is of opinion that in the interests of the offender and of the public it is expedient so to do, in addition pass a supervision order directing that the offender shall remain under the supervision of a probation officer named in the order during such period, not being less than one year, as may be specified therein, and may in such supervision order or impose such conditions as it deems necessary for the due supervision of the offender.*

(4) *The court making a supervision order under sub-section (3) shall require the offender, before he is released, to enter into a bond, with or without sureties, to observe the conditions specified in such order and such additional conditions with respect to residence, abstention from intoxicants or any other matter as the court may, having regard to the particular circumstances, consider fit to impose for preventing a repetition of the same offence or a commission of other offences by the offender.*

(5) *The court making a supervision order under sub-section (3) shall explain to the offender the terms and conditions of the order and shall forthwith furnish one copy of the supervision order to each of the offenders, the sureties, if any, and the probation officer concerned.*

11. Courts competent to make order under the Act, appeal and revision and powers of courts in appeal and revision.-(1) *Notwithstanding anything contained in the Code or any other law, an order under this Act may be made by any court empowered to try and sentence the offender to imprisonment and also by the High Court or any other court when the case comes before it on appeal or in revision.*

(2) *Notwithstanding anything contained in the Code, where an order under Section 3 or Section 4 is made by any court trying the offender (other than a High Court), an appeal shall lie to the court to which appeals ordinarily lie from the sentences of the former court.*

(3) *In any case where any person under twenty-one years of age is found guilty of having committed an offence and the court by which he is found guilty declines to deal with him under Section 3 or Section 4, and passes against him any sentence of imprisonment with or without fine from which no appeal lies or is preferred, then, notwithstanding anything contained in the Code or any other law, the court to which appeals ordinarily lie from the sentences of the former court may, either of its own motion or on an application made to it by the convicted person or the probation officer, call for the examine the record of the case and pass such order thereon as it thinks fit.*

(4) *When an order has been made under Section 3 or Section 4 in respect of an offender, the Appellate Court or the High Court in the exercise of its power of revision may set aside such order and in lieu thereof pass sentence on such offender according to law:*

Provided that the Appellate Court or the High Court in revision shall not inflict a greater punishment than might have been inflicted by the court by which the offender was found guilty.

* * *

18. Saving of operation of certain enactments.-*Nothing in this Act shall affect the provisions of Section 31 of the Reformatory Schools Act, 1897 (8 of 1897), or sub-section (2) of Section 5 of the Prevention of Corruption Act, 1947 (2 of 1947) 3[* * *] or of any law in force in any State relating to juvenile offenders or borstal schools.*

15. As per Section 18, the benefit of the Probation Act would not be available to a person guilty of committing offences under Section 5 of the Prevention of Corruption Act, 1947. However, the appellants have been convicted for the offence of criminal conspiracy for committing an offence under Section 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act, 1947, and they have not been held guilty of committing the substantive offences under Section 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act, 1947. The appellants are not public servants and they could not be held guilty of the offences under Section 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act, 1947. Therefore, I am of the view that the bar contained in Section 18 of the Probation Act will not apply to the present case.

16. In **Lakhvir Singh v. State of Punjab**, (2021) 2 SCC 763, the Hon'ble Supreme Court granted the benefit of the Probation Act to persons accused of offences under Section 307 IPC., on the following considerations: -

"17. The facts of the present case are that the appellants have not served out the minimum sentence of 7 years though they have served about half the sentences. They were aged under 19 and 21 years of age as on the date of offence but not on the date of sentence. The redeeming feature in their case is that the person who suffered, appears to have forgiven them, possibly with the passage of time. There is no adverse report against them about their conduct in jail otherwise the same would have been brought to our notice by the learned counsel for the State. Faced with the aforesaid legal position, this is a fit case that the benefit of probation can be extended to the appellants under the said Act in view of the provisions of Section 4 of the said Act on completion of half the sentence."

17. In **Tarak Nath Keshari v. State of W.B.:** (2024) 13 SCC 384, the Hon'ble Supreme Court followed the decision in the case of **Lakhvir Singh** (supra) and granted benefit of the Probation Act to the appellant, who was convicted of the offence punishable under Section 7 of the Essential Commodities Act, which provides a minimum sentence for the offence, on consideration of the facts that the offence was committed more than 37 years back and it was not pointed out at the time of hearing that the appellant was involved in any other offence. Before all the courts below, the appellant remained on bail. While entertaining his appeal, even this Court had granted him exemption from surrendering.

18. In **Sunita Devi v. State of Bihar:** 2024 SCC OnLine SC 984, the Hon'ble Supreme Court held that: -

"28. Before passing the sentence on a convict, after rendering conviction, the Judge shall consider the feasibility of proceeding in accordance with the provisions of Section 360 of the CrPC, 1973 which speaks of releasing a convict on probation of good conduct or after admonition. Being a beneficial provision dealing with a reformatory aspect, it is the bounden duty of the Judge

to consider the application of this provision before proceeding to hear the accused on sentence. While doing so, the Judge has to hear the accused and the prosecution. Similarly, the Court has to apply the salient provisions contained under Sections 3, 4 and 6 of the Probation of Offenders Act, 1958 (hereinafter referred to as "**Act, 1958**"). If an offence is considered as an act against the society, the resultant action cannot be retributive alone, as equal importance is required, if not more, to be given to the reformatory part. **The ultimate goal is to bring the accused back on the rails, to once again be a part of society. Any attempt to ignore either Section 360 of the CrPC, 1973 or the provisions as mandated in the Act, 1958 would make their purpose redundant. It looks as if these laudable provisions have been lost sight of while rendering a sentence. The ultimate objective is to prevent the commission of such offences in future. It can never be done by a retributive measure alone, as a change of heart at the behest of the accused is the best way to prevent an act of crime. Therefore, we have absolute clarity in our mind, that a trial court is duty bound to comply with the mandate of Section 360 of the CrPC, 1973 read with Sections 3, 4 and 6 of the Act, 1958 before embarking into the question of sentence.** In this connection, we may note that sub-section (10) of Section 360 of the CrPC, 1973 makes a conscious effort to remind the Judge of the rigour of the beneficial provisions contained in the Act, 1958.

29. Hearing the accused on sentence is a valuable right conferred on the accused. The real importance lies only with the sentence, as against the conviction. Unfortunately, we do not have a clear policy or legislation when it comes to sentencing. Over the years, it has become judge-centric and there are admitted disparities in awarding a sentence.

30. In a country like ours, sentencing accused persons pursuant to a conviction, on a uniform pattern, would also be prejudicial. **When it comes to sentencing, there are various factors such as age, sex, education, home life, social background, emotional and mental conditions, caste, religion and community that constitute aggravating and mitigating circumstances.**

31. There is a distinction between knowledge and character. Knowledge is acquired, while character is formed. The formation of a person's character depends upon various factors. More often than not, a convict does not have control over the formation of his character. This leads to certain groups of people inheriting crime. In this connection, we can draw an analogy from nature itself. Before falling on the ground, rainwater remains the same. It is the soil which changes the character of the water. Rainwater partakes in the character of the soil, over which it does not have any control. The issues are extremely complex.

32. A decision of a Judge in sentencing, would vary from person to person. This will also vary from stage to stage. It is controlled by the mind. The environment and the upbringing of a Judge would become the ultimate arbiter in deciding the sentence. A Judge from an affluent background might have a different mindset as against a Judge from a humble one. A female Judge might look at it differently, when compared to her male counterpart. **An Appellate Court might tinker with the sentence due to its experience, and the external factors like institutional constraints might come into play.** Certainly, there is a crying need for a clear sentencing policy, which should never be judge-centric as the society has to know the basis of a sentence.

33. *Sentencing shall not be a mere lottery. It shall also not be an outcome of a knee-jerk reaction. This is a very important part of the Fundamental Rights conferred under Articles 14 and 21 of the Constitution of India. Any unwarranted disparity would be against the very concept of a fair trial and, therefore, against justice.*

34. ***Various elements such as deterrence, incapacitation and reformation should form part of sentencing.*** *There is a compelling need for a studied scrutiny of sentencing, to address in particular the reformatory aspect, while maintaining equality between different groups. Perhaps, much study is also required on the occurrence of repeat offences, which could be attributable to certain groups. The nexus between particular types of offences and the offenders forming their own groups has to be taken note of and addressed.*

35. *The concept of intuitive sentencing is against the rule of law. A Judge can never have unrestrictive and unbridled discretion, based upon his conscience formed through his understanding of the society, without there being any guidelines in awarding a sentence. The need for adequate guidelines for exercising sentencing discretion, avoiding unwanted disparity, is of utmost importance."*

19. In **Chellammal v. State**, 2025 SCC OnLine SC 870, it has been held that: -

"28. Summing up the legal position, it can be said that while an offender cannot seek an order for grant of probation as a matter of right but having noticed the object that the statutory provisions seek to achieve by grant of probation and the several decisions of this Court on the point of applicability of Section 4 of the Probation Act, we hold that, unless applicability is excluded, in a case where the circumstances stated in sub-section (1) of Section 4 of the Probation Act are attracted, the court has no discretion to omit from its consideration release of the offender on probation; on the contrary, a mandatory duty is cast upon the court to consider whether the case before it warrants releasing the offender upon fulfilment of the stated circumstances. The question of grant of probation could be decided either way. In the event, the court in its discretion decides to extend the benefit of probation, it may upon considering the report of the probation officer impose such conditions as deemed just and proper. However, if the answer be in the negative, it would only be just and proper for the court to record the reasons therefor.

29. *For the foregoing reasons and in the light of the factual matrix, we are unhesitatingly of the opinion that the Sessions Judge and the High Court by omitting to consider whether the appellants were entitled to the benefit of probation, occasioned a failure of justice. Consequently, there was no worthy consideration as to whether the appellants could be extended the benefit of probation."*

20. In light of the law laid down by the Hon'ble Supreme Court in the judgments noted above, no purpose will be achieved by placing the appellant Nos.3 and 5 aged 90 years and 88 years respectively, under incarceration and recovery of fine at this stage after expiry of more than half a century since commission of the offence. It will neither be reformatory, nor preventive, nor deterrent to place them in custody.

21. Accordingly, the appeal is **disposed off** by upholding the conviction of the appellant No. 3 and 5 and granting them the benefit of Probation of Offenders Act, 1958. As a period of almost four decades stands elapsed since the appellants were sentenced during which the appellants have not said to have committed any other offence, there is no need to place them under probation for any further period.

(2026) 4 ILRA 1068
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 22.04.2026

BEFORE

THE HON'BLE SUBHASH VIDYARTHI, J.

Criminal Appeal No. 801 of 2012

Anant Ram & Anr.

...Appellant

Versus

State of U.P.

...Respondent

Issue for Consideration

Matter pertains to whether the conviction under Ss. 364, 307/34 and 323/34 IPC could be sustained when the Trial Court proceeded on the basis that the accused was required to prove his innocence, discarded defence evidence on conjectures, and whether the prosecution had proved beyond reasonable doubt the intention to kill so as to attract Ss. 364 and 307 IPC.

Headnotes

Criminal Law - Appreciation of Evidence - Burden of Proof - Indian Penal Code, 1860 - Ss. 364, 307/34 and 323/34 - Probation of Offenders Act, 1958 - Prosecution required to prove guilt beyond reasonable doubt and accused required only to create a doubt about the prosecution case and the probability of its defence - Trial Court acted under an impression that it is the accused who is required to prove his innocence rather than the prosecution being required to prove the guilt of the accused and convicted on the basis that preponderance of probabilities tilted against the accused - Such approach held unsustainable. (Paras 24-28)

Criminal Law - Defence Evidence - Appreciation of Defence Witnesses - Indian Penal Code, 1860 - Ss. 364, 307/34 and 323/34 - Statements of defence witnesses regarding presence of accused at workplace discarded on conjecture that employees tend to save co-employees - Trial Court found no discrepancy in their statements and cross-examination - Conviction cannot be based on conjectures - Rejection of defence evidence held manifestly erroneous. (Paras 22, 25, 26)

Criminal Law - Appreciation of Evidence - Non-examination of Material Witnesses - Indian Penal Code, 1860 - Ss. 364, 307/34 and 323/34 - Informant stated that named witnesses had seen the victim being taken away and had participated in search of victim - Such witnesses not examined and no witness involved in search examined - Serious doubt raised against prosecution case. (Paras 29, 30)

Criminal Law - Medical Evidence vis-a-vis Ocular Testimony - Indian Penal Code, 1860 - Ss. 364, 307/34 and 323/34 - Victim stated that he had fallen unconscious and regained consciousness in hospital - Medical records and doctor did not support such version - Trial Court supplied a creative explanation and altered the meaning of testimony to sustain conviction - Liability of guilt fastened on conjectures and surmises held impermissible under law. (Para 31)

Criminal Law - Attempt to Murder and Kidnapping or Abducting in Order to Murder - Indian Penal Code, 1860 - Ss. 307 and 364 - Requirement of intention to kill - Presence of only two assailants established though prosecution alleged four assailants - Numerous injuries caused but all simple in nature and no lethal weapon alleged to have been used - Facts indicated that intention was not to kill the victim and intention appeared to be to give a good beating - Offences under Ss. 364 and 307 not made out. (Paras 33-36)

Criminal Law - Abduction and Hurt - Indian Penal Code, 1860 - Ss. 362 and 323 - When prosecution failed to establish intention of killing the victim, allegations at the most made out offence of abduction punishable under S. 365 and offence under S. 323 - Appellant No. 1 held guilty for committing offences under Ss. 362 and 323 IPC and granted benefit of S. 4 of the Probation of Offenders Act - Appellant No. 2 acquitted of all charges. (Paras 37-40)

Held: The trial court was acting under an impression that it is the accused who is required to prove his innocence rather than the prosecution being required to prove the guilt of the accused and after examination of the defense evidence the trial Court concluded that the preponderance of probabilities tilted against the accused and convicted the accused persons on this basis - the trial court committed a manifest error in discarding the statements of defence witnesses even when it found no discrepancy in their statements and even in their cross-examinations and its conclusion was based on mere conjecture - non-examination of named witnesses and of any witness involved in carrying out a search for the victim raises a serious doubt against the prosecution case - the trial court itself invited a creative explanation regarding the victim having fallen unconscious and fastened the liability of guilt on the accused persons purely on conjectures and surmises which is impermissible under law - in order to uphold a conviction under Ss. 307 and 364 it is necessary for the prosecution to prove that the accused persons intended to kill the victim and although numerous injuries have been caused to the victim all the injuries are simple in nature and no lethal weapon is alleged to have been used - the aforesaid facts indicate that the intention of the accused persons was not to kill the victim and the intention appears to be to give a good beating to the victim - the offences under Ss. 364 and 307 IPC are not made out against the appellants - appellant no. 2 entitled to acquittal and appellant no. 1 held guilty for committing offences under Ss. 362 and 323 IPC and granted benefit of S. 4 of the Probation of Offenders Act - Appeal partly allowed. (Paras 24-40) (E-7)

Case Law Cited

Anand Ramachandra Chougule v. Sidarai Laxman Chougala, (2019) 8 SCC 50; *Vaibhav v. State of Maharashtra*, (2025) 8 SCC 315; *Sivamani v. State*, 2023 SCC OnLine SC 1581; *State of Madhya Pradesh v. Saleem*, (2005) 5 SCC 554; *Jage Ram v. State of Haryana*, (2015) 11 SCC 366; *State of Madhya Pradesh v. Kanha*, (2019) 3 SCC 605.

List of Acts

Indian Penal Code, 1860; Code of Criminal Procedure, 1973; Probation of Offenders Act, 1958; Dowry Prohibition Act, 1961.

List of Keywords

Burden of proof; prosecution case; reasonable doubt; preponderance of probabilities; defence evidence; conjectures and surmises; appreciation of evidence; non-examination of witnesses; medical evidence; ocular testimony; intention to kill; attempt to murder; kidnapping or abducting in order to murder; abduction; voluntarily causing hurt; acquittal; benefit of probation.

Case Arising From

APPELLATE JURISDICTION: Criminal Appeal arising from the judgment and order dated 31.05.2012 passed by the Additional Sessions Judge, Court No. 4, Barabanki in Sessions Trial No. 741 of 2004 arising out of Case Crime No. 176 of 2000 under Ss. 364, 324/34 and 307/34 IPC, Police Station Ram Nagar, District Barabanki.

Appearances for Parties

Adv. for the Appellant:

Sri Farooq Ayoob.

Advs. for the Respondents:

Sri Rajiv Kumar Verma, learned AGA-I for the State of U.P.

(Delivered by Hon'ble Subhash Vidyarthi, J.)

1. Heard Sri Farooq Ayoob, the learned counsel for the appellants and Sri Rajiv Kumar Verma, the learned AGA-I for the State of U.P.

2. By means of the instant appeal, the appellants have challenged the validity of a judgment and order dated 31.05.2012 passed by Additional Sessions Judge, Court No. 4, Barabanki in Sessions Trial number 741 of 2004, arising out of Case Crime Number 176 of 2000, under Sections 364, 324/34 & 307/34 IPC, Police Station Ram Nagar, District Barabanki.

3. The aforesaid case was instituted on the basis of an FIR lodged on 30.07.2000 at 20:15 hours against the appellants and two unnamed persons for committing offences under Sections 342, 323 & 324 IPC, stating that while the complainant Ashok Kumar was going from Rani Bazar to Chandpur along with his father Bhagauti Prasad and they had reached a culvert of village Narainipur, the accused persons came there on a jeep number UGO 6158. They forcibly made the informant's father Bhagauti Prasad sit in the jeep and took him away towards Masauli. The incident was witnessed by Hukum Chand, son of Sohan Lal and Shobha Lal, son of Vishesar, residents of Village Chandpur, Police Station Ram Nagar, District Barabanki. The informant gave this information to the persons present nearby and in his village. Several persons started searching for the informant's father and they came to know that the accused persons had beaten him up and kept him in a jungle near Gurela village. When the first informant and other persons reached the jungle, the accused persons ran away. The informant found his father in the jungle. There were injuries on his body, he took his father to the police station and lodged the FIR.

4. The victim was medically examined on 00:30 hours on 31.07.2000. There were as many as 12 injuries on his body, including a few burn injuries, but all the injuries were simple in nature and the X-ray examination report did not reveal any fracture. Though some teeth were found to be loose, the doctor opined that the teeth were loose naturally and the victim was suffering from pyorrhea. After investigation, the Investigating Officer submitted a charge-sheet for the offences under Sections 364, 323/34, 307/34 against the appellants Anant Kumar and Awdhesh Kumar.

5. The trial court framed charges for offences under Sections 364, 323/34 and 307/34. After examination of the injured and the informant, another person Munawwar was summoned under Section 319 Cr.P.C. to face the trial.

6. In the statement recorded under Section 313 Cr.P.C., the accused persons denied the charges. The appellant no. 1-Anant Ram stated that persons from the accused side had killed his sister. He had lodged an FIR in this regard. The appellant no. 2 Awadhesh Kumar stated that on 30/01/2000 i.e. the date of the incident, he was working as a daily wage labourer in Jaidpur Nursery of Forest Department since 8 a.m. till 5 p.m. The co-accused Munnavar stated that he had been falsely implicated.

7. The trial Court acquitted Munnavar but the appellants have been convicted.

8. Strangely, before dealing with the prosecution case, the trial court proceeded to examine the defense. It is recorded in the judgment that the learned counsel for the appellants has submitted that the prosecution story is false. Sister of the appellant no. 1-Anant Ram had been killed by her husband and his family members for demanding dowry on 23.07.2000. Father of the appellant no. 1 had filed an FIR in Police Station Ram Nagar, District Barabanki on 26.07.2000 for offences under Section 498A, 304-B IPC and Sections 3/4 Dowry Prohibition Act and the injured victim Bhagauti Prasad and his wife were also made accused in that case. In order to put undue pressure on the informants, a false story had been cooked up and the FIR has been lodged on the basis thereof. It was submitted on behalf of the appellants that FIR has been lodged after a considerable delay. It does not disclose any motive for commission of the offense. The prosecution witnesses have stated about a motive but there are contradictions in their statements. The informants have got a reason to falsely implicate the appellants. There was no evidence to establish that Bhagauti had been abducted with intent to kill him.

9. It was further submitted on behalf of the appellants that there are serious discrepancies in the statements of PW-1-Bhagauti Prasad and PW-2-Ashok Kumar, the statement of the Investigation Officer and the medical evidence, which creates doubt against the prosecution case. As per the prosecution case, two other persons, Hukum Chand and Shobha Lal, were present at the time of the incident and they have not been examined.

10. After narrating the defense case, the learned trial court proceeded to examine the prosecution case as per which the appellants and two other persons Munnavar and Shamsheer had abducted Bhagauti Prasad with intention of committing his murder. They took him to a jungle. They wanted to kill him by making him suffer a lot. They tied his hands, disrobed him and beat him up with kicks, fists, and sticks. They collected dried leaves, etc., and put him on fire. Besides that they burnt his eye. The appellant no. 1-Anant Ram suspected that his sister had been killed by the family members of her husband for demanding dowry. Bhagauti Prasad was uncle of the deceased's husband and he was also an accused. While the accused persons were assaulting the victim, they felt that the police was reaching the spot and, therefore, they fled.

11. The victim was examined as PW-1. He stated that while he and his son Ashok (the informant) were going from Rani Bazar to village Chandpur, the accused persons forcibly took him away in a Jeep, they gagged his mouth and took him towards Masauli. All four accused persons were beating him saying that he should be killed in the same manner as the sister of the appellant no. 1 was killed. He stated that they took him to Gurela jungle, disrobed him, tied his hands, beaten him up with kicks, fists and sticks and burnt him after collecting dried leaves etc. They had burnt his eye with a lighter. He stated that as his mouth was gagged, he had fallen unconscious. He regained consciousness in District Hospital Barabanki.

12. The informant was examined as PW-2 and he reiterated the aforesaid version. He stated that Hukum Chand and Shobha Lal were with them when the accused persons had taken away his father. Those persons were also accompanying them when a search was being made for his father. His father was found in Gurela jungle, from where he was taken to the police station.

13. The doctor who had examined the victim was examined as PW-5. He proved the Medico Legal examination report which states that the victim had suffered 12 injuries and he stated that the injuries were simple in nature. PW-7 was a dentist who stated that three upper teeth and four lower teeth were fake. The rest of the teeth were weak. The victim was suffering from Pyorrhea.

14. It is relevant to note that the victim was sent for Medico Legal Examination along with a letter of SHO and it does not mention that the victim was unconscious. The Medico Legal examination report mentions 12 simple injuries suffered by the victim and it also does not state that the victim had been brought in an unconscious condition.

15. The trial court concluded that although the victim had not suffered any grievous hurt, 5 out of 12 injuries suffered by him were burn injuries. The trial court has held that although only the appellants were named in the FIR and the charge-sheet was submitted against the appellants only, another person, Munnavar was summoned upon an application under Section 319 Cr.P.C. filed by the prosecution, but his involvement in commission of the offence could not be proved and he has been acquitted.

16. The trial court commenced the discussion by dealing with the submission advanced on behalf of the accused persons that the incident took place on 30.07.2000 at about 2 p.m. whereas the FIR had been lodged at about 08:15 p.m. In case the victim had been abducted for committing his murder, the informant would have lodged the FIR without any delay. Instead of lodging the FIR, the informant set on a search for the victim without involving the police and he found out the victim and thereafter lodged the FIR, which raises doubt against the prosecution story. The trial court turned down this submission by observing that it has generally been observed that police avoids to register an FIR. In these circumstances, if the informant did not involve the police and instead he set out to search his father with the help of other persons and became successful in it, it does not create a doubt against the prosecution case and there is no unreasonable delay in lodging the FIR.

17. Regarding the second submission raised on behalf of the defense that the FIR does not disclose any motive for commission of the offense, the trial court held that in the statement under Section 161 Cr.P.C., the victim Bhagauti Prasad has stated that the accused persons were saying that he had killed his sister and, therefore, he should be killed. This statement discloses the motive.

18. Next, the trial court dealt with the submission made on behalf of the defense that even if it be assumed that Bhagauti Prasad was abducted, there is no evidence to establish that he had been abducted with the intention of committing his murder. The trial court held that the mere fact that Bhagauti Prasad did not suffer any grievous hurt, cannot lead to a conclusion that he had not been abducted with the intention to kill him. Bhagauti Prasad has stated that the appellant no. 1 was stating while beating him that the victim had to be killed. Bhagauti Prasad has also stated that when the accused persons got information that the police was reaching at the spot, they escaped. Although the police had not reached there, the victim's son Ashok Kumar and the other persons had reached there. The accused persons would have taken those persons as police officials and would have escaped.

19. The trial court dealt with the submission of the victim that there were discrepancies in the statements of the informant Ashok Kumar and the victim Bhagauti Prasad but the trial court held that there were no serious discrepancies in their statements. The minor discrepancies like the statement of the informant that doctor had given his father only powdered medicine whereas the victim had stated that the doctor had given him tablets, tonic and mixture, do not affect their testimony adversely.

20. Regarding the statement of the victim Bhagauti Prasad that he had fallen unconscious and regained consciousness in the district hospital, the trial court held that it should not be taken that Bhagauti Prasad had fallen unconscious with a medical point of view and the statement only indicates that the manner in which Bhagauti Prasad had been assaulted, had frightened him to that extent that he was not in a condition of understanding anything. He recovered from such a condition only on the following day in the hospital.

21. Regarding non-examination by Hukum Chand and Shobha Lal, the trial court held that nowadays a common man avoids appearing as a witness in criminal cases and, therefore, non-examination of Hukum Chand and Shobha Lal does not create a doubt against the prosecution case.

22. After dealing with the submissions made on behalf of the defense, the trial court proceeded to examine the defense evidence. It referred to the statement of DW-1-Gurudeen, who had stated that the appellant no. 2-Awadhesh Kumar had worked in Jaidpur Nursery with him since 8:00 a.m. till 5:00 p.m. on 30.07.2000 and during the entire duty period on the aforesaid date he had not gone away anywhere. A similar statement was given by DW-2, Premnath Tiwari, Forest Daroga. The trial court disbelieved their statements on the ground that normally there is a tendency in employees to save their co-employees and DW-1 and DW-2 had given evidence because of this tendency. It is recorded in the judgment that in the court's view, it is very easy that a daily wage laborer may go anywhere without taking leave.

23. As per the trial court, the preponderance of probability tilted in favor of the fact that the appellant no. 2 was involved in the incident and yet he showed his presence in Jaidpur Nursery. The trial court held that the aforesaid facts are sufficient for holding the appellants guilty of the offense under Sections 364, 307/34 and 323/34 I.P.C.

24. The judgment does not at all deal with the statements of prosecution witnesses and the submissions of Public Prosecutor. The trial court has merely dealt with the submissions of the defense counsel and has turned down all of them and has dealt with the defense evidence and has discarded the same. It shows that the trial court was acting under an impression that it is the accused who is required to prove his innocence rather than the prosecution being required to prove the guilt of the accused. After examination of the defense evidence, the trial Court concluded that the preponderance of probabilities tilted against the accused and convicted the accused persons on this basis. This is not the manner in which a trial court should proceed to decide a case.

25. DW-1-Gurudeen and DW-2 Premnath had stated that the appellant no. 2-Awadhesh Kumar had worked in Jaidpur Nursery with him since 8:00 a.m. till 5:00 p.m. on 30.07.2000 and during the entire duty period on the aforesaid date he had not gone away anywhere. The trial court

has committed a manifest error in discarding their statements on the ground that normally there is a tendency in employees to save their co-employees and DW-1 and DW-2 had given evidence because of this tendency, even when it found no discrepancy in their statements and even in their cross-examinations. The trial Court has held that it is very easy that a daily wage laborer may go anywhere without taking leave but this is a mere conjecture and no conviction can be based on conjectures.

26. The trial court has held that the preponderance of probability tilted in favor of the fact that the appellant no. 2 was involved in the incident and yet he showed his presence in Jaidpur Nursery. The trial court held that the aforesaid facts are sufficient for holding the appellants guilty of the offense under Sections 364, 307/34 and 323/34 I.P.C.

27. In **Anand Ramachandra Chougule v. Sidarai Laxman Chougala**, (2019) 8 SCC 50, the Hon'ble Supreme Court held that: -

"10. The burden lies on the prosecution to prove the allegations beyond all reasonable doubt. In contradistinction to the same, the accused has only to create a doubt about the prosecution case and the probability of its defence. An accused is not required to establish or prove his defence beyond all reasonable doubt, unlike the prosecution. If the accused takes a defence, which is not improbable and appears likely, there is material in support of such defence, the accused is not required to prove anything further. The benefit of doubt must follow unless the prosecution is able to prove its case beyond all reasonable doubt."

28. In **Vaibhav v. State of Maharashtra**, (2025) 8 SCC 315, the Hon'ble Supreme Court held that: -

"29. In criminal jurisprudence, it is a time-tested proposition that the primary burden falls upon the shoulders of the prosecution and it is only if the prosecution succeeds in discharging its burden beyond reasonable doubt that the burden shifts upon the accused to explain the evidence against him or to present a defence. In the present case, the version of the prosecution suffers from inherent inconsistencies and doubts, as discussed above, and in such a scenario, the inability of the appellant to explain certain circumstances could not be made the basis to relieve the prosecution from discharging its primary burden."

30. The High Court fell in a grave error in doing so, as it placed greater reliance on the loopholes in the appellant's version without first determining whether the chain of circumstances sought to be proved by the prosecution was complete or not. Pertinently, the inability of an accused to offer plausible explanation on certain aspects would not automatically absolve the prosecution of its evidentiary burden, which must be discharged first and beyond doubt."

31. In law, there is a significant difference in the evidentiary burden to be discharged by the prosecution and the accused. Whereas, the former is expected to discharge its burden beyond reasonable doubt, the latter is only required to prove a defence on the anvil of preponderance of probabilities. If the accused leads defence evidence in the course of a criminal trial, the same ought to be tested as probable or improbable in the facts and circumstances of the case."

29. Having referred to the prosecution evidence, it appears that the informant Ashok Kumar had stated that Hukum Chand and Shobha Lal had seen the victim being taken away by the accused persons and those persons were accompanying him while a search was made for the victim and he was found in a jungle. The victim Bhagauti Prasad did not state that Hukum Chand and Shobha Lal were accompanying him when he was abducted. This is not a minor discrepancy regarding description of the incident. It shows that Hukum Chand and Shobha Lal had not witnessed the incident and that is the reason that Hukum Chand and Shobha Lal have not been examined by the trial court although their names were mentioned as witnesses in the charge sheet.

30. Although the informant has stated that several persons were involved in carrying out a search for the victim, not a single witness has been examined by the prosecution who was involved in carrying out a search for the victim. This also raises a serious doubt against the prosecution case.

31. The victim stated that he had fallen unconscious and he regained consciousness in the district hospital on the following day. The letter sent by Station House Officer to the doctor for conducting medical examination of the victim mentions some injuries suffered by the victim, but it does not mention that the victim was unconscious. The medico-legal examination report also does not state that the victim was unconscious. The doctor has been examined before the trial court as PW5 and he has also not made any such statement. Strangely, the trial court itself invited a creative explanation that the statement made by the victim that he had fallen unconscious and regained consciousness the following day means that he had got frightened and he was not in a position to understand the things. This depicts that the Trial Court has fastened the liability of guilt on the accused persons purely on conjectures and surmises which is impermissible under law. The trial court is not expected to twist and turn the testimony of a prosecution witness to such a great extent as to change the statement altogether and override the medical evidence to the contrary in order to anyhow convict an accused person.

32. The trial court has held the appellants guilty of commission of offenses under Sections 323/34, 307/34, and 364 IPC. As has already been discussed above, the appellant no. 2 has been convicted merely on the basis of preponderance of probabilities and even the trial Court has not held that the prosecution could prove his guilt beyond reasonable doubt. Therefore, the conviction of the appellant no. 2 is not sustainable in law and he is entitled to be acquitted.

33. Sections 307 and 323, 364 IPC read as follows: -

“307. Attempt to murder.-Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life, or to such punishment as is hereinbefore mentioned.

Attempts by Life Convicts.-When any person offending under this section is under sentence of imprisonment for life, he may, if hurt is caused, be punished with death. * * *

323. Punishment for voluntarily causing hurt.-Whoever, except in the case provided for by section 334, voluntarily causes hurt, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both. * * *

364. Kidnapping or abducting in order to murder.-Whoever kidnaps or abducts any person in order that such person may be murdered or may be so disposed of as to be put in danger of being murdered, shall be punished with imprisonment for life or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

34. In **Sivamani v. State**, 2023 SCC OnLine SC 1581, the Hon'ble Supreme Court discussed some precedents on the point of relevance of injuries while examining a case under Section 307 IPC and held that: -

*"9. In State of Madhya Pradesh v. Saleem, (2005) 5 SCC 554, the Court held that to sustain a conviction under Section 307, IPC, it was not necessary that a bodily injury capable of resulting in death should have been inflicted. As such, non-conviction under Section 307, IPC on the premise only that simple injury was inflicted does not follow as a matter of course. In the same judgment, it was pointed out that ??The court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section.?"The position that because a fatal injury was not sustained alone does not dislodge Section 307, IPC conviction has been reiterated in Jage Ram v. State of Haryana, (2015) 11 SCC 366 and State of Madhya Pradesh v. Kanha, (2019) 3 SCC 605. Yet, in Jage Ram (supra) and Kanha (supra), it was observed that while grievous or life-threatening injury was not necessary to maintain a conviction under Section 307, IPC, **The intention of the accused can be ascertained from the actual injury, if any, as well as from surrounding circumstances. Among other things, the nature of the weapon used and the severity of the blows inflicted can be considered to infer intent.**"*

(emphasis added)

35. In order to uphold a conviction under Sections 307 and 364, it is necessary for the prosecution to prove that the accused persons intended to kill the victim. As per the prosecution case, there were four assailants. They had the freedom to deal with the victim for a period of about six hours. The presence of only two assailants could be established and the prosecution could not prove the involvement of two other persons. Although numerous injuries have been caused to the victim, all the injuries are simple in nature. No lethal weapon is alleged to have been used in committing the offense. The aforesaid facts indicate that the intention of the accused persons was not to kill the victim. There was an animosity between the parties and the intention appears to be to give a good beating to the victim.

36. When the prosecution has failed to make out the intention of killing the victim, the offenses under sections 364 IPC and 307 IPC are not made out. The allegations, at the most, make out the offense of abduction, which is defined in Section 362 IPC and which is punishable under Section 365 IPC for imprisonment which may extend to seven years. For the offense under Section 323 IPC, the appellants have been sentenced to undergo rigorous imprisonment for one year.

37. In view of the foregoing discussion, I am of the view that the offenses under sections 364 and 307 IPC are not made out against the appellants. Instead, the appellant no. 1 is held guilty for committing offenses under sections 362 and 323 IPC.

38. Although both the appellants have filed an application for giving them the benefit of Section 4 of the Probation of Offenders Act, I have already held that the prosecution could not prove the guilt of the appellant no. 2 beyond reasonable doubt and have acquitted him of all the charges. The appellant no. 2 was accused in a case under section 307 IPC lodged from the victim's side, in which he already stands acquitted in that case. The learned AGA-I does not oppose the request for grant of the benefit of the Probation of Offenders Act.

39. Accordingly, the application for benefit of the Probation of Offenders Act to the appellant no. 1 Anant Kumar is allowed and he is granted benefit of Section 4 of the Probation of Offenders Act. As the appellant no. 1 was convicted in the year 2012 and during the past about 14 years, he has not committed any offense, the good conduct of the appellant no. 1 during the aforesaid period does not warrant keeping him on probation for any further period.

40. Accordingly, the appeal is partly *allowed* in the aforesaid terms.

(2026) 4 ILRA 1077
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 30.04.2026

BEFORE

THE HON'BLE SUBHASH VIDYARTHI, J.

Criminal Appeal No. 815 of 2012

Manoj Kumar
State of U.P.

...Appellant
Versus
...Respondent

Issue for Consideration

Matter pertains to whether, after acquittal of the accused of the charges under Ss. 498-A, 304-B, 302/34 IPC and Ss. 3/4 Dowry Prohibition Act, there was sufficient material to establish that the appellant had abetted his wife to commit suicide so as to sustain conviction under S. 306 IPC and whether S. 106 of the Evidence Act could be invoked to shift the burden upon the accused. (Paras 16, 25-38)

Headnotes

Criminal Law - Abetment of Suicide - Indian Penal Code, 1860 - Ss. 306 and 107 - Ingredients of abetment - Requirement of instigation, intentional aid, active act or direct act and clear mens rea - Conviction under S. 306 IPC cannot be sustained without evidence that the accused had abetted the deceased to commit suicide - In the present case, there was no allegation of commission of any act which may amount to instigating the deceased to commit suicide and there was no evidence that any incident took place in close proximity of time when the deceased committed suicide or that the quarrels were intended to induce the victim to commit suicide - Prosecution failed to establish that the appellant had abetted the deceased to commit suicide -

Offence under S. 306 IPC not made out - Conviction and sentence set aside. (Paras 17-27, 36-39)

Evidence - Burden of Proof - Indian Evidence Act, 1872 - S. 106 - Scope and applicability - S. 106 does not relieve the prosecution to prove its case beyond all reasonable doubt and cannot be used to shift the burden of proving the offence from the prosecution to the accused - Applicability arises only when the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding existence of certain other facts - In the present case, there was no evidence to even prima facie establish that the appellant had abetted the deceased to commit suicide - Trial Court erred in holding the appellant guilty merely because he could not explain the reason due to which his wife committed suicide - Conviction unsustainable. (Paras 28-37)

Held: The appellant as well as all the accused persons stand acquitted of the charge under S. 498-A IPC as it could not be established that they had subjected the deceased to cruelty - there is no allegation of commission of any act which may amount to instigating the deceased to commit suicide - the only evidence is the evidence of PW-2 that the appellant used to consume liquor and if the deceased objected against it he used to beat her in an inebriated condition - there was no evidence that any such incident took place in close proximity of time when the deceased committed suicide - there is no evidence that the quarrels were intended to induce the victim to commit suicide and there is no evidence that the quarrel had left the deceased with no option except to commit suicide - even if the victim committed suicide being aggrieved by the aforesaid conduct of the appellant there is no evidence to even prima facie establish that the appellant had abetted the deceased to commit suicide - the prosecution has not been able to discharge its burden of establishing beyond reasonable doubt that the appellant had abetted his wife to commit suicide - the trial court could not have held the appellant guilty just because the appellant could not explain the reason due to which his wife committed suicide - the prosecution failed to establish that the appellant had abetted the deceased to commit suicide - the offence under S. 306 IPC is not made out - the order of conviction and sentence is not sustainable in law and the appellant is entitled to acquittal - Appeal allowed. (Paras 25-38) (E-7)

Case Law Cited

Ramesh Kumar v. State of Chhattisgarh: (2001) 9 SCC 618; State of W.B. v. Orilal Jaiswal: (1994) 1 SCC 73; Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi): (2009) 16 SCC 605; M. Mohan v. State: (2011) 3 SCC 626; Prabhat Kumar Mishra v. State of U.P.: (2024) 3 SCC 665; Nipun Aneja v. State of U.P., 2024 SCC OnLine SC 4091; Vikramjit Singh v. State of Punjab: (2006) 12 SCC 306; Joydeb Patra v. State of W.B., (2014) 12 SCC 444; Sucha Singh v. State of Punjab [(2001) 4 SCC 375]; Balvir Singh v. State of Uttarakhand, (2023) 16 SCC 575; State of W.B. v. Mir Mohammad Omar, (2000) 8 SCC 382 : 2000 SCC (Cri) 1516; M. Vijayakumar v. State of T.N.: (2024) 4 SCC 633; Sawal Das v. State of Bihar: (1974) 4 SCC 193; Upendra @ Balveer versus State of U.P.: Neutral Citation No. - 2024:AHC:172173-DB.

List of Acts

Indian Penal Code, 1860; Indian Evidence Act, 1872; Dowry Prohibition Act, 1961; Code of Criminal Procedure, 1973

List of Keywords

Abetment of suicide; instigation; intentional aid; mens rea; cruelty; dowry demand; suicide; burden of proof; fact especially within knowledge; S. 106 Evidence Act; prima facie case; conviction; acquittal; prosecution burden; quarrel; consumption of liquor; burn injuries; suicide by burning.

Case Arising From

APPELLATE JURISDICTION: Criminal Appeal under S. 374(2) Cr.P.C. against the judgment and order dated 06.04.2012 passed by the learned Special Judge, E.C. Act, Gonda in Session Trial No. 217 of 2008 arising out of Case Crime No. 127 of 2008 under Ss. 498-A, 304-B (alternative S. 302/34 IPC) and Ss. 3/4 Dowry Prohibition Act, Police Station Kaudiya, District Gonda.

Appearances for Parties**Advs. for the Appellant:**

Sri Pawan Kumar Mishra

Advs. for the Respondents:

Sri Mohd. Asif Khan, learned A.G.A.-I. for the State of U.P.

(Delivered by Hon'ble Subhash Vidyarthi, J.)

1. Heard Sri Pawan Kumar Mishra, the learned counsel for the appellant and Sri Mohd. Asif Khan, the learned A.G.A.-I.

2. By means of the instant appeal filed under Section 374 (2) Cr.P.C, the appellant has challenged the validity of a judgment and order dated 06.04.2012 passed by the learned Special Judge, E.C. Act, Gonda in Session Trial No. 217 of 2008, arising out of Case Crime No. 127 of 2008, under Sections 498-A, 304-B (alternative Section 302/34 IPC) and 3/4 Dowry Prohibition Act, Police Station Kaudiya, District Gonda.

3. The aforesaid case was instituted on the basis of an FIR lodged against four persons - the appellant Manoj Kumar, his father Faujdar, mother Maya Devi and brother Pawan Kumar, stating that the informant had got his daughter married to the appellant Manoj Kumar about six years ago. Gauna ceremony was performed three years after the marriage. About one year after the Gauna, the accused persons started demanding Rs. 30,000/- as additional dowry. The informant had paid Rs. 10,000 and had committed to pay the balance amount soon. The appellant had taken the informant's daughter with him about 8 days ago and had stated that unless the balance amount of Rs. 20,000/- was paid within 10 days, his daughter would be set ablaze. His daughter was set ablaze on 10.04.2008, the FIR was lodged on 09.05.2008, i.e. after one month since the incident.

4. The victim was admitted to the District Hospital, Gonda at about 7:55 p.m. on 11.04.2008 and she died at 7:50 a.m. on 12.04.2008. An inquest report was prepared and postmortem examination report was prepared.

5. Charge-sheets were submitted against the appellant and his parents. The involvement of the appellant's brother Pawan Kumar could not be established during the investigation and he was exonerated.

6. The informant Goli Ojha (father of the deceased) was examined as PW-1. The mother of the deceased was examined as PW-2. The informant's brother was examined as PW-9. The other witnesses were police officials and the doctor who had conducted the postmortem examination of the dead body. The appellant denied the allegations in his statement recorded under Section 313 CrPC and he examined two witnesses: DW-1-Parmatma Prasad and DW-2-Lakshmi Narayan.

7. The informant PW-1 stated that his daughter's husband (the appellant) had taken her to the District Hospital, Gonda and she died in the Hospital. He did not know that his elder brother Mathura Prasad (PW-9) was present at the time of preparation of the inquest report. The FIR was lodged 28-29 days after the incident. He or any of his family members had not witnessed the

incident. He denied the suggestion that the victim had set herself ablaze being disturbed by her ailment.

8. Mother of the victim (PW-2) stated that information of death of her daughter was received from her sasural (matrimonial home). Her daughter had been admitted to the hospital by her husband and his family members. She had gone to the District Hospital along with the elder brother of her husband. She stated that the elder brother of her husband was present at the time of preparation of the inquest report. She stated that the FIR was lodged about a month after the incident. She denied that the victim had opposed her husband from consuming liquor, an altercation followed between them and that she had suffered injuries in this incident.

9. The elder brother of the informant was examined as PW-9. He stated that the appellant's father had sent information by making a telephone call to a neighbour stating that the victim was not well, there was no hope of her survival and in case anyone wanted to see her, he should reach the hospital. He had gone to the District Hospital, Gonda along with the informant's wife (PW-2) after receiving the information. When he reached the hospital, the victim had already died. PW-9 stated that after death of the victim, his brother Goli (father of the victim) had given an information to the police. The police had come, the dead body was seen by the mother of the victim and an inquest report was prepared.

10. The post-mortem examination report mentions the cause of death to be shock and the doctor examined as PW-4 has proved that the victim had died due to burn injuries. There was no mark of injury on the dead body.

11. PW-1 stated that he could not tell the date, month and year of his daughter's wedding. He stated that at the time of marriage his daughter was aged 19 years. The Gauna ceremony was performed 3 years after the marriage. A similar statement was given by PW-2 also. PW-9 stated that the deceased got married about five-six-years ago. Five-six days after the marriage, the informant had brought her back home. She stayed in the house of her father for about five-six months and thereafter her gauna was performed.

12. Therefore, there was a discrepancy in the statements of PW-1 & PW-2 who stated that gauna was performed three years after the marriage and the statement of PW-9, who stated that it was performed five-six months after the marriage. PW-9 stated that the victim died six years after her marriage.

13. DW-1 Parmatma Prasad stated that the deceased had got married nine years prior to her death and he denied that she got married six years prior to her death. He also denied that gauna was performed three years after the marriage. DW-2 Lakshmi Narayan also gave a similar statement and he stated that the appellant got married in the year 2001, nine years prior to her death.

14. The trial court held that the prosecution could not establish the demand of dowry and harassment for this reason. The trial Court further held that although the PW-2 and PW-9 had reached the hospital, the informant PW-1 had falsely stated that he received information of the incident after one month and there is no explanation for the delay of one month in lodging the FIR.

However, as the victim has died of burning in the house of her husband, the reason for death was to be proved by her husband and his family members as per the provisions contained in Section 106 of the Evidence Act. The accused persons have failed to adduce evidence regarding reasons of the suicide committed by the victim. PW-2 has stated that the appellant used to consume liquor and if the deceased objected against it, he used to beat her in inebriated condition. The trial Court held that it indicates that the victim committed suicide being aggrieved by the aforesaid conduct of the appellant and, therefore, the appellant is liable to be convicted for the offence under Section 306 IPC. The trial court stated that as charges were framed under Sections 304B, 498A (alternatively Section 304/34) IPC. Section 306 IPC being an offence of lesser seriousness, the appellant can be convicted for the aforesaid offence without framing a charge.

15. The trial court has acquitted the other accused persons of all the charges.

16. As the trial court has acquitted the appellant of the charges under Sections 498A, 304B, 302/34 IPC and 3/4 Dowry Prohibition Act, this Court has to examine whether there was sufficient material to establish that the appellant had abetted his wife to commit suicide.

17. Section 306 of the Code deals with 'abetment of suicide' which reads as under: -

"306. Abetment of suicide.-If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

18. "Abetment of a thing" has been defined under Section 107 of the Code in the following words:-

"107. Abetment of a thing--A person abets the doing of a thing, who?

First.-Instigates any person to do that thing; or

Secondly.-Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly.-Intentionally aids, by any act or illegal omission, the doing of that thing.?

Explanation 2 which has been inserted along with Section 107 reads as under:

'Explanation 2.-Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act.'

19. In **Ramesh Kumar v. State of Chhattisgarh**: (2001) 9 SCC 618, the Hon'ble Supreme Court held that: -

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

20. In **State of W.B. v. Orilal Jaiswal**: (1994) 1 SCC 73, the Hon’ble Supreme Court has cautioned that: -

17. ...the Court should be extremely careful in assessing the facts and circumstances of each case and the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end the life by committing suicide. If it transpires to the Court that a victim committing suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to the society to which the victim belonged and such petulance, discord and differences were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the Court should not be satisfied for basing a finding that the accused charged of abetting the offence of suicide should be found guilty...”

(Emphasis added)

21. In **Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi)**: (2009) 16 SCC 605, the Hon’ble Supreme Court held that there should be intention to provoke, incite or encourage the doing of an act by the latter. Each person’s suicidability pattern is different from the others. Each person has his own idea of self-esteem and self-respect. Therefore, it is impossible to lay down any straitjacket formula in dealing with such cases. Each case has to be decided on the basis of its own facts and circumstances.

22. In **M. Mohan v. State**: (2011) 3 SCC 626, the Hon’ble Supreme Court held that: -

“44. Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained.

45. The intention of the legislature and the ratio of the cases decided by this Court are clear that in order to convict a person under Section 306 IPC there has to be a clear mens rea to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and this act must have been intended to push the deceased into such a position that he/she committed suicide.”

23. The aforesaid ratio has been followed in **Prabhat Kumar Mishra v. State of U.P.:** (2024) 3 SCC 665.

24. The learned counsel for the appellant has placed reliance on decision of the Hon'ble Supreme Court in the case of **Nipun Aneja v. State of U.P.**, 2024 SCC OnLine SC 4091, in which the Hon'ble Supreme Court referred to numerous precedents on the point of what would constitute abetment to commit suicide and concluded that: -

*“21. The ingredients to constitute an offence under Section 306 of the IPC (abetment of suicide) would stand fulfilled if the suicide is committed by the deceased due to direct and alarming encouragement/incitement by the accused leaving no option but to commit suicide... **The problem is that the courts just look into the factum of suicide and nothing more. We believe that such understanding on the part of the courts is wrong. It all depends on the nature of the offence & accusation. ...**”*

25. In the present case, the appellant as well as all the accused persons stand acquitted of the charge under Section 498-A IPC as it could not be established that they had subjected the deceased to cruelty. There is no allegation of commission of any act which may amount to instigating the deceased to commit suicide.

26. The only evidence is the evidence of PW-2, who stated that the appellant used to consume liquor and if the deceased objected against it, he used to beat her in an inebriated condition. There was no evidence that any such incident took place in close proximity of time when the deceased committed suicide. There is no evidence that the quarrels were intended to induce the victim to commit suicide. There is no evidence that the quarrel had left the deceased with no option except to commit suicide.

27. Even if the trial Court came to the conclusion that the victim committed suicide being aggrieved by the aforesaid conduct of the appellant, it would only indicate that the victim was hypersensitive and she over reacted. It has not been shown that consuming liquor and quarrels were not common to the society to which the victim and the appellant belonged. The prosecution has failed to show that the appellant's intention behind consuming liquor was to provoke or incite the victim to commit suicide and that the deceased committed due to direct and alarming encouragement/incitement by the accused leaving no option but to commit suicide. The trial Court just looked into the factum of suicide and nothing more, and held the appellant guilty of the offence under Section 306 IPC without there being any evidence to prove that the appellant had abetted the deceased to commit suicide.

28. The trial Court has held that as the victim has died of burning in the house of her husband, the reason for death was to be proved by her husband and his family members as per the provisions contained in Section 106 of the Evidence Act.

29. Section 106 of the Evidence Act provides as follows: -

“106. Burden of proving fact especially within knowledge.-When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.

Illustrations

(a) *When a person does an act with some intention other than that which the character and circumstances of the act suggest, the burden of proving that intention is upon him.*

(b) *A is charged with travelling on a railway without a ticket. The burden of proving that he had a ticket is on him.”*

30. The trial Court held that PW-2 has stated that the appellant used to consume liquor and if the deceased objected against it, he used to beat her in an inebriated condition. The accused persons have failed to adduce evidence regarding reasons of the suicide committed by the victim. The trial Court held that it indicates that the victim committed suicide being aggrieved by the aforesaid conduct of the appellant and, therefore, the appellant is liable to be convicted for the offence under Section 306 IPC.

31. In **Vikramjit Singh v. State of Punjab**: (2006) 12 SCC 306, the Hon’ble Supreme Court held that: -

“14. Section 106 of the Evidence Act does not relieve the prosecution to prove its case beyond all reasonable doubt. Only when the prosecution case has been proved the burden in regard to such facts which was within the special knowledge of the accused may be shifted to the accused for explaining the same. Of course, there are certain exceptions to the said rule e.g. where burden of proof may be imposed upon the accused by reason of a statute.”

32. In **Joydeb Patra v. State of W.B.**, (2014) 12 SCC 444, the Hon’ble Supreme Court reiterated that: -

“10.....This Court has repeatedly held that the burden to prove the guilt of the accused beyond reasonable doubt is on the prosecution and it is only when this burden is discharged that the accused could prove any fact within his special knowledge under Section 106 of the Evidence Act to establish that he was not guilty. In Sucha Singh v. State of Punjab [(2001) 4 SCC 375] this Court held: (SCC p. 381, para 19)

“19. We pointed out that Section 106 of the Evidence Act is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt, but the Section would apply to cases where the prosecution has succeeded in proving facts for which a reasonable inference can be drawn regarding the existence of certain other facts, unless the accused by virtue of special knowledge regarding such facts failed to offer any explanation which might drive the court to draw a different inference.”

33. In **Balvir Singh v. State of Uttarakhand**, (2023) 16 SCC 575, the Hon^{ble} Supreme Court has elaborated upon the principles for invocation of Section 106 against an accused, in the following words: -

*“35. Section 106 of the Evidence Act referred to above provides that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. The word “especially” means facts that are pre-eminently or exceptionally within the knowledge of the accused. **The ordinary rule that applies to the criminal trials that the onus lies on the prosecution to prove the guilt of the accused is not in any way modified by the rule of facts embodied in Section 106 of the Evidence Act.** Section 106 of the Evidence Act is an exception to Section 101 of the Evidence Act. Section 101 with its Illustration (a) lays down the general rule that in a criminal case the burden of proof is on the prosecution and Section 106 is certainly not intended to relieve it of that duty. On the contrary, it is designed to meet certain exceptional cases in which it would be impossible or at any rate disproportionately difficult for the prosecution to establish the facts which are, especially within the knowledge of the accused and which, he can prove without difficulty or inconvenience*

* * *

*45. To recapitulate the foregoing : What lies at the bottom of the various rules shifting the evidential burden or burden of introducing evidence in proof of one's case as opposed to the persuasive burden or burden of proof i.e. of proving all the issues remaining with the prosecution and which never shift is the idea that it is impossible for the prosecution to give wholly convincing evidence on certain issues from its own hand and it is therefore for the accused to give evidence on them if he wishes to escape. Positive facts must always be proved by the prosecution. But the same rule cannot always apply to negative facts. It is not for the prosecution to anticipate and eliminate all possible defences or circumstances which may exonerate an accused. Again, when a person does not act with some intention other than that which the character and circumstances of the act suggest, it is not for the prosecution to eliminate all the other possible intentions. If the accused had a different intention that is a fact especially within his knowledge and which he must prove (see Professor Glanville Williams? *The Proof of Guilt : A Study of the English Criminal Trial*, Ch. 7, p. 127 and following) and the interesting discussion?para 527 negative averments and para 528??require affirmative counter-evidence? at p. 438 and foil, of Kenny's *Outlines of Criminal Law*, 17th Edn. 1958.*

* * *

49. Section 106 of the Evidence Act would apply to cases where the prosecution could be said to have succeeded in proving facts from which a reasonable inference can be drawn regarding death.

* * *

*51. To explain what constitutes a prima facie case to make Section 106 of the Evidence Act applicable, we should refer to the decision of this Court in *Mir Mohammad [State of W.B. v.**

Mir Mohammad Omar, (2000) 8 SCC 382 : 2000 SCC (Cri) 1516] , wherein this Court has observed in paras 36 and 37, respectively, as under : (SCC p. 393)

“36. In this context we may profitably utilise the legal principle embodied in Section 106 of the Evidence Act which reads as follows: ‘When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.’”

37. The section is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt. But the section would apply to cases where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding the existence of certain other facts, unless the accused by virtue of his special knowledge regarding such facts, failed to offer any explanation which might drive the court to draw a different inference.”

(emphasis added)

34. In *M. Vijayakumar v. State of T.N.*: (2024) 4 SCC 633, the Hon'ble Supreme Court has held as under: -

“25. We are at a loss to understand as to how Section 106 of the Evidence Act could be applied in the case on hand against the appellant in view with facts narrated above. This section is an exception to the general rule laid down in Section 101 which casts burden of proving a fact on the party who substantially asserts the affirmative of the issue. Section 106 is not intended to relieve any person of that duty or burden. On the contrary, it says that when a fact to be proved, either affirmatively or negatively, is especially within the knowledge of a person, it is for him to prove it. This section, in its application to criminal cases, applies where the defence of the accused depends on his proving a fact especially within his knowledge and of nobody else.

26. In short, Section 106 of the Evidence Act cannot be used to shift the burden of proving the offence from the prosecution to the accused. It can only when the prosecution led evidence, which, if believed, will sustain a conviction or which makes out a prima facie case, that the question of shifting the onus to prove such fact(s) on the accused would arise. (See the decision in Sawal Das v. State of Bihar [Sawal Das v. State of Bihar: (1974) 4 SCC 193]”

35. **Upendra @ Balveer versus State of U.P.**: Neutral Citation No. ? 2024:AHC:172173-DB is a judgment rendered by the Division Bench of this Court where the appellant was charged under Sections 498-A, 304-B , 316 IPC and □ of D.P. Act, but the trial court found the charges under Sections 498-A, 304-B and □ of D.P. Act not proved against the appellant and convicted the appellant for offences under Section 302 and 316 IPC on the basis of a presumption drawn against him under Section 106 of the Evidence Act. The Division Bench held that such an interpretation of Section 106 was in fact a misreading of the aforesaid Section and the initial burden of establishing a prima facie case would still lie on the prosecution. It was observed that: -

“21. As far as the concept of Section 106 of Indian Evidence Act is concerned, that is misread by the learned trial Judge because when the offence like murder is committed in secrecy

inside the house, the initial burden to establish the case would undoubtedly be upon the prosecution. In view of Section 106 Indian Evidence Act, there will be a corresponding burden on the inmates of the house to give cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quite and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution. Initial burden of proving that, as on the date of the alleged incident, the accused was present in the house or lastly seen with the deceased or that he was lastly in the company of the deceased at the time of the incident would be primarily upon the prosecution.

* * *

23. *In our case, it is established fact that the appellant and his deceased wife used to reside in same house. Hence, the burden to prove factum of the death of the deceased cannot be shifted on the shoulders of the appellant unless the prosecution first of all discharged its burden by proving the fact that at the time of alleged occurrence or at the time when the deceased was put on fire, the appellant was also inside the house. Learned AGA, in this regard, has contended that appellant has not taken the plea that he was not in the house when the incident took place but this was the negative burden on the appellant accused. The prosecution has not brought forward any evidence which could at least establish the fact that the time of occurrence, the appellant was inside the house. Hence, there is no applicability of Section 106 of Indian Evidence Act in this case."*

36. Apart from the statement of PW-2, that the appellant used to consume liquor and if the deceased objected against it, he used to beat her in an inebriated condition, there was no evidence that any such incident took place in close proximity of time when the deceased committed suicide and that the quarrels were intended to induce the victim to commit suicide. There is no evidence that the quarrel had left the deceased with no option except to commit suicide. Even if the trial Court came to the conclusion that the victim committed suicide being aggrieved by the aforesaid conduct of the appellant, there is no evidence to even prima facie establish that the appellant had abetted the deceased to commit suicide.

37. As the prosecution has not been able to discharge its burden of establishing beyond reasonable doubt that the appellant had abetted his wife to commit suicide, the trial court could not have held the appellants guilty just because the appellant could not explain the reason due to which his wife committed suicide.

38. In view of the foregoing discussion, I am of the view that the prosecution failed to establish that the appellant had abetted the deceased to commit suicide. The offence under Section 306 IPC is not made out. The order of conviction and sentence of the appellant passed by the trial court is not sustainable in law.

39. The appeal is allowed. The judgment and order dated 06.04.2012 passed by the learned Special Judge (EC Act), Gonda in Sessions Trial No. 217 of 2008 arising out of Case Crime No. 127 of 2008, under Sections 498-A, 304-B (alternative Section 302/34 IPC) and 3/4 Dowry Prohibition Act, Police Station Kaudiya, District Gonda, is set aside. The appellant is acquitted of

the charges. The appeal was admitted by means of an order dated 12.06.2012 and the appellant was enlarged on interim bail by means of an order dated 27.09.2012 and he was required to deposit 50% of the amount of fine. This amount of fine should be refunded to the appellant.

40. The appellant is directed to comply with the provision of Section 437-A Cr.P.C. and execute bail bonds with sureties within a period of two weeks, to appear before the Hon'ble Supreme Court in case any appeal is filed against this order and the Hon'ble Supreme Court issues notice of the appeal and such bail bonds shall be in force for six months.

(2026) 4 ILRA 1088
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 07.04.2026

BEFORE

THE HON'BLE RAM MANOHAR NARAYAN MISHRA, J.

Criminal Appeal No. 964 of 2026

Fahimuddin Ansari

**...Appellant
Versus**

State of U.P. & Anr.

...Respondents

Issue for consideration

Whether order passed u/s 173(4) BNSS is amenable to Appeal / Revision?

Headnotes

Appeal/Revision against interlocutory order u/s 173 (4) BNSS-provisions of Section 156(3) CrPC- which is replaced by Section 173(4) BNSS, are invoked by the complainant-the learned court below directed the SHO to register FIR and investigate -compliance to be ensured within 10 days-impugned-impugned order being interlocutory in nature- prospective accused is debarred from challenging the said order by way of filing a criminal revision or statutory appeal under Section 14-A(1) of the Act 1989-appeal not maintainable-**Appeal dismissed.** (E-9)

Case Law Cited

1. Om Prakash Ambadkar vs. The State of Maharashtra and others, Criminal Appeal No.352 of 2020
2. Kamlesh Meena and others vs. State of U.P. and Others, reported in 2025 (5) ALJ 578
3. Babu Venkatesh v. The State Of Karnataka reported in (2022) 5 SCC 639
4. Amar Nath v. State of Haryana, AIR 1977 SC 2185
5. Father Thomas versus State of UP and Others, 2011 (72) ACC 564
6. Jagannath Verma and Others versus State of UP and Another, reported in 2014 (8) ADJ 439

List of Acts

1. Code of Criminal Procedure, 1973
2. Bharatiya Nagarik Suraksha Sanhita, 2023
3. The scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989

List of Keywords

Appearances of parties

Counsel for Appellant(s) : Narendra Gupta
Counsel for Respondent(s) : G.A.

(Delivered by Hon'ble Ram Manohar Narayan Mishra, J.)

1. Heard learned counsel for the appellant, learned AGA for the State, responded no.1 and perused the record.

2. Instant criminal appeal, under Section 14-A(1) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, has been preferred against the order dated 26/03/2026 passed by Special Judge, SC/ST Act, Sitapur in Criminal Miscellaneous Case No.75 of 2026, CIS No.127 of 2026, Smt. Sushila versus Fahimuddin Ansari, on application under Section 173(4) BNSS filed by defacto complainant respondent no.2, whereby the learned Special Judge, SC/ST Act has directed the SHO, Tambour, District, Sitapur, to register FIR under the appropriate sections and investigate the case according to the law. Compliance to be ensured within 10 days.

3. Learned counsel for the appellant submitted that there are various discrepancies in the impugned order passed by learned Special Judge on the application under section 173(4) BNSS. The complainant has stated in said application under Section 173(4) BNSS that she had gone to get photocopies of her Aadhar card on 14.12.26 at the shop of the opposite party (appellant), where he tried to get her proximity and asked her address and on pretext of showing his second shop, he took her to his shop of fertilizer and seeds and brought her back to the photocopying shop. He asked her to sit there and engaged in obscene conversation with her and molested her. She anyhow rescued herself from his clutches. On reaching at her home, she narrated the incident to her family members. On the next day i.e. 15/02/2026, she moved an application at police station concerned and also made a complaint through the IGRS portal, but no action was taken. She also filed a complaint against the appellant by registered post to the Superintendent of Police, Sitapur and other higher officers, but no action was taken. Therefore, she was compelled to move the application before the court.

4. He next submitted that there is a distance of 90 kilometers between the "Jan Seva Kendra" operated by the appellant and the residence of the complainant. It is quite unnatural that she would have come to get Photocopies at his Graahak Seva Kendra. The procedural requirements of Section 173(4) BNSS, were not complied with by the complainant. She hatched a conspiracy to falsely implicate the appellant with ulterior motive to get compensation from the government due to her caste factor. She did not visit the police station on asking of higher authority regarding her complaint on the IGRS portal, the learned court below, while passing the impugned order, did not consider the submissions of the police station, wherein, it is stated that no such incident as alleged by the complainant had occurred. It is also stated therein that the appellant had come for her treatment at Kasba, Tambaur, and visited the Jan Seva Kendra operated by the opposite party where some hot talk occurred between them on the question of charges of photocopying. None of the neighbouring shop owners corroborated the incident on interrogation. The learned court below has made wrong observation that on the basis of the averments in the application filed by the applicant and from the report of the police station, it appears that the opposite party had misbehaved and molested the applicant. He also submitted that the applicant had also lodged another FIR vide Case

Crime No.141 of 2025 on 13/06/2025 against Deepak Shukla and Sushil Shukla in which she made allegation of molestation, use of criminal force, marpit and criminal intimidation. During the police investigation, the case was found false and final report was submitted.

5. Learned counsel for the appellant prayed for interim relief to stay the operation of the impugned order and submitted that on lodging of the FIR pursuant to the impugned order, the purpose of filing the present revision shall frustrate.

6. Per contra, learned AGA has submitted that the appeal is not maintainable against impugned order which is interlocutory as such in terms of Full Bench judgment of this Court in **Father Thomas versus State of UP and Others, reported in 2011 (72) ACC 564, and Jagannath Verma and Others versus State of UP and Another, reported in 2014 (8) ADJ 439.** The prospective accused in an order passed on application u/s 156(3) Cr.P.C. (173(4), BNSS. can not prefer an appeal or Revision against an order directing registration of FIR and investigation by police.

7. Learned AGA has also placed reliance on a recent judgment of single bench of this Court in **Kamlesh Meena and Others versus State of UP and Others, reported in 2025 (5) ALJ 578** in support of his contentions. He submitted that in the impugned order, learned Special Judge has issued a direction to the Station House Officer concerned to register an FIR and investigate the case under appropriate sections in the light of applications under Section 173(4) BNSS. This is an interlocutory order and revision is not maintainable against such order.

8. Per contra, learned counsel for the appellant placed reliance on an interim order passed by this by Single Bench in Matters Under Article 227 No.1268 of 2026, dated 10/2/2026, wherein, an interim stay was granted against the impugned order passed by the learned CJM, Chandausi, District Sambhal on an application under Section 173(4) of BNSS, whereby learned CJM has issued direction to lodge an FIR and register the case against the petitioners who happen to be Additional Superintendent of Police, North, District Sambhal; being a public servant, before issuing directions under Section 174(3) BNSS, it was incumbent on learned CJM to comply with the provisions of Section 175(4) BNSS before issuing such an order. He also submitted that this is statutory appeal u/s 14(A)(1) of the Act and this Court has ample power to examine the impugned order and set it aside in an appropriate case.

9. I have gone through the judgments cited by learned counsel for the parties, as well as a recent judgment of the Hon?ble Supreme Court in **Criminal Appeal No.352 of 2020, Om Prakash Ambadkar versus State of Maharashtra and Others** in light of facts and circumstances of the case.

10. Ordinarily, provisions of Section 156(3) CrPC, which is replaced by Section 173(4) BNSS, are invoked by the complainant when the police authorities decline to register an FIR. In such circumstances, a private complaint may be made in the court of the magistrate or Special Judge, as the case may be, and the complainant may pray that police investigation be ordered under Section 156(3) of the CrPC or Section 173(4) of BNSS, as the case may be.

11. The Hon'ble Supreme Court discussed both the provisions, which are essentially *pari materia* in **Om Prakash Ambadkar vs. The State of Maharashtra and others** and observed in paragraphs 29, 30, 31, 32, 33, and 34, which are extracted as under:

"29. Section 175 of the BNSS corresponds to Section 156 of the Cr.P.C. Sub-section (1) of Section 175 of the BNSS is in *pari materia* with sub-section 156(1) of the Cr.P.C. except for the proviso which empowers the Superintendent of Police to direct the Deputy Superintendent of Police to investigate a case if the nature or gravity of the case so requires. Sub-section (2) of Section 175 the BNSS is identical to Section 156(2) of the Cr.P.C. Section 175(3) of the BNSS empowers any Magistrate who is empowered to take cognizance under Section 210 to order investigation in accordance with Section 175(1) and to this extent is in *pari materia* with Section 156(3) of Cr.P.C. However, unlike Section 156(3) of the Cr.P.C., any Magistrate, before ordering investigation under Section 175(3) of the BNSS, is required to :

a. Consider the application, supported by an affidavit, made by the complainant to the Superintendent of Police under Section 173(4) of the BNSS;

b. Conduct such inquiry as he thinks necessary; and

c. Consider the submissions made by the police officer.

30. Sub-section (4) of Section 175 of the BNSS is a new addition to the scheme of investigation of cognizable cases when compared with the scheme previously existing in Section 156 of the Cr.P.C. It provides an additional safeguard to a public servant against whom an accusation of committing a cognizable offence arising in the course of discharge of his official duty is made. The provision stipulates that any Magistrate who is empowered to take cognizance under Section 210 of the BNSS may order investigation against a public servant upon receiving a complaint arising in course of the discharge of his official duty, only after complying with the following procedure: a. Receiving a report containing facts and circumstances of the incident from the officer superior to the accused public servant; and

b. Considering the assertions made by the accused public servant as regards the situation that led to the occurrence of the alleged incident.

31. A comparison of Section 175(3) of the BNSS with Section 156(3) of the Cr.P.C. indicates three prominent changes that have been introduced by the enactment of BNSS as follows: a. First, the requirement of making an application to the Superintendent of Police upon refusal by the officer in charge of a police station to lodge the FIR has been made mandatory, and the applicant making an application under Section 175(3) is required to furnish a copy of the application made to the Superintendent of Police under Section 173(4), supported by an affidavit, while making the application to the Magistrate under Section 175(3). b. Secondly, the Magistrate has been empowered to conduct such enquiry as he deems necessary before making an order directing registration of FIR. c. Thirdly, the Magistrate is required to consider the submissions of the officer in charge of the police station as regards the refusal to register an FIR before issuing any directions under Section 175(3).

32. The introduction of these changes by the legislature can be attributed to the judicial evolution of Section 156 of the Cr.P.C. undertaken by a number of decisions of this Court. In the case of *Priyanka Srivastava v. State of U.P. reported in (2015) 6 SCC 287*, this Court held that prior to making an application to the Magistrate under Section 156(3) of the Cr.P.C., the applicant must necessarily make applications under Sections 154(1) and 154(3). It was further observed by the Court that applications made under Section 156(3) of the Cr.P.C. must necessarily be supported by an affidavit sworn by the applicant. The reason given by the Court for introducing such a requirement was that applications under Section 156(3) of the Cr.P.C. were being made in a routine manner and in a number of cases only with a view to cause harassment to the accused by registration of FIR. It was further observed that the requirement of supporting the complaint with an affidavit would ensure that the person making the application is conscious and also to see that no false affidavit is made. Once an affidavit is found to be false, the applicant would be liable for prosecution in accordance with law. This would deter him from casually invoking the authority of the Magistrate under Section 156(3). The relevant observations made by the Court are reproduced hereinbelow: ?

27. Regard being had to the aforesaid enunciation of law, it needs to be reiterated that *the learned Magistrate has to remain vigilant with regard to the allegations made and the nature of allegations and not to issue directions without proper application of mind. He has also to bear in mind that sending the matter would be conducive to justice and then he may pass the requisite order.* The present is a case where the accused persons are serving in high positions in the Bank. We are absolutely conscious that the position does not matter, for nobody is above the law. But, the learned Magistrate should take note of the allegations in entirety, the date of incident and whether any cognizable case is remotely made out. It is also to be noted that when a borrower of the financial institution covered under the Sarfaesi Act, invokes the jurisdiction under Section 156(3) Cr.P.C. and also there is a separate procedure under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, an attitude of more care, caution and circumspection has to be adhered to.

28. *Issuing a direction stating ?as per the application? to lodge an FIR creates a very unhealthy situation in society and also reflects the erroneous approach of the learned Magistrate. It also encourages unscrupulous and unprincipled litigants, like Respondent 3, namely, Prakash Kumar Bajaj, to take adventurous steps with courts to bring the financial institutions on their knees.* As the factual exposition would reveal, Respondent 3 had prosecuted the earlier authorities and after the matter is dealt with by the High Court in a writ petition recording a settlement, he does not withdraw the criminal case and waits for some kind of situation where he can take vengeance as if he is the emperor of all he surveys. It is interesting to note that during the tenure of Appellant 1, who is presently occupying the position of Vice- President, neither was the loan taken, nor was the default made, nor was any action under the SARFAESI Act taken. However, the action under the SARFAESI Act was taken on the second time at the instance of the present Appellant 1. We are only stating about the devilish design of Respondent 3 to harass the appellants with the sole intent to avoid the payment of loan. When a citizen avails a loan from a financial institution, it is his obligation to pay back and not play truant or for that matter play possum. *As we have noticed, he has been able to do such adventurous acts as he has the embedded conviction that he will not be taken to task because an application under Section 156(3) Cr.P.C. is a simple application to the*

court for issue of a direction to the investigating agency. We have been apprised that a carbon copy of a document is filed to show the compliance with Section 154(3), indicating it has been sent to the Superintendent of Police concerned.

29. At this stage it is seemly to state that power under Section 156(3) warrants application of judicial mind. A court of law is involved. It is not the police taking steps at the stage of Section 154 of the Code. A litigant at his own whim cannot invoke the authority of the Magistrate. A principled and really grieved citizen with clean hands must have free access to invoke the said power. It protects the citizens but when pervert litigations takes this route to harass their fellow citizens, efforts are to be made to scuttle and curb the same.

30. In our considered opinion, a stage has come in this country where Section 156(3) Cr.P.C. applications are to be supported by an affidavit duly sworn by the applicant who seeks the invocation of the jurisdiction of the Magistrate. That apart, in an appropriate case, the learned Magistrate would be well advised to verify the truth and also can verify the veracity of the allegations. This affidavit can make the applicant more responsible. We are compelled to say so as such kind of applications are being filed in a routine manner without taking any responsibility whatsoever only to harass certain persons. That apart, it becomes more disturbing and alarming when one tries to pick up people who are passing orders under a statutory provision which can be challenged under the framework of the said Act or under Article 226 of the Constitution of India. But it cannot be done to take undue advantage in a criminal court as if somebody is determined to settle the scores.

31. We have already indicated that there has to be prior applications under Sections 154(1) and 154(3) while filing a petition under Section 156(3). Both the aspects should be clearly spelt out in the application and necessary documents to that effect shall be filed. The warrant for giving a direction that an application under Section 156(3) be supported by an affidavit is so that the person making the application should be conscious and also endeavour to see that no false affidavit is made. It is because once an affidavit is found to be false, he will be liable for prosecution in accordance with law. This will deter him to casually invoke the authority of the Magistrate under Section 156(3). That apart, we have already stated that the veracity of the same can also be verified by the learned Magistrate, regard being had to the nature of allegations of the case. We are compelled to say so as a number of cases pertaining to fiscal sphere, matrimonial dispute/family disputes, commercial offences, medical negligence cases, corruption cases and the cases where there is abnormal delay/laches in initiating criminal prosecution, as are illustrated in *Lalita Kumari [(2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524]* are being filed. That apart, the learned Magistrate would also be aware of the delay in lodging of the FIR.?

(Emphasis supplied)

33. In a recent pronouncement of this Court in the case of **Babu Venkatesh v. The State Of Karnataka reported in (2022) 5 SCC 639**, the observations made in *Priyanka Srivastava (supra)* were referred to and it was held as follows: :

24. This Court has clearly held that, a stage has come where applications under Section 156(3)Cr.P.C. are to be supported by an affidavit duly sworn by the complainant who seeks the invocation of the jurisdiction of the Magistrate.

25. This Court further held that, in an appropriate case, the learned Magistrate would be well advised to verify the truth and also verify the veracity of the allegations. The Court has noted that, applications under Section 156(3)Cr.P.C. are filed in a routine manner without taking any responsibility only to harass certain persons.

26. This Court has further held that, prior to the filing of a petition under Section 156(3)Cr.P.C., there have to be applications under Sections 154(1) and 154(3)Cr.P.C.. This Court emphasises the necessity to file an affidavit so that the persons making the application should be conscious and not make false affidavit. With such a requirement, the persons would be deterred from causally invoking authority of the Magistrate, under Section 156(3)Cr.P.C.. Inasmuch as if the affidavit is found to be false, the person would be liable for prosecution in accordance with law.?

(Emphasis supplied)

34. In light of the judicial interpretation and evolution of Section 156(3) of the Cr.P.C. by various decisions of this Court as discussed above, it becomes clear that the changes introduced by Section 175(3) of the BNSS to the existing scheme of Section 156(3) merely codify the procedural practices and safeguards which have been introduced by judicial decisions aimed at curbing the misuse of invocation of powers of a Magistrate by unscrupulous litigants for achieving ulterior motives.?

12. With the above observation, the Supreme Court set aside the impugned order passed by the Magistrate, directing police investigation under Section 156(3) CrPC in a criminal appeal filed against the rejection of an application filed by the accused appellant in a case under Sections 323, 294, 500, 504 and 506 IPC against the appellant, who was a practicing advocate, and set aside the order of the High Court, passed under Section 482 CrPC, whereby the petition of the appellant for setting aside the impugned order passed by the trial court was dismissed.

13. This Court, in a recent judgment in **Kamlesh Meena and others vs. State of U.P. and others**, placing reliance on Full Bench judgment of this Court in **Father Thomas vs. State of U.P. and Others** also citing the judgment of the Hon'ble Apex Court in **Om Prakash Ambedkar versus the State of Maharashtra and others** and other leading cases on ambit and scope of the order on application under Section 156(3) CrPC, considered it in detail. This Court observed that in the latter part. Paragraphs 18 and 21 are extracted of as under:-

“ 18. In the latter part of Section 173(4) of B.N.S.S., it is provided that "failing which such aggrieved person may make an application to the Magistrate". Aforesaid phrase used in Section 173(4) of B.N.S.S., in my opinion, clearly denotes that in case all the remedies as mentioned under sub-section 1, sub-section 3 and initial part of sub-section 4 of Section 173 B.N.S.S. are exhausted, applicant/aggrieved person has a right to move an appropriate application

before the Magistrate, who, in turn, either proceed on the aforesaid application and issue a direction for police investigation after registering the F.I.R., or treat it as a complaint and proceed accordingly, or reject the same on merits. In the instant matter, learned Magistrate came to conclusion that the cognizable offence is made out against the opposite parties in the complaint, thus, it would be justified to issue a direction for registration of an F.I.R. and investigation of the matter.

21. In this conspectus, as above, I am of the considered view that the present applicants, who are the prospective accused, have no locus standi to assail the direction for investigation under Section 173(4) read with 175 (3) B.N.S.S. before the summoning/cognizance stage. There is neither any abuse of process of court nor any ground made out to pass an order to interfere with the complaint u/s 173(4) for securing the ends of justice, in exercise of the inherent jurisdiction of this Court under Section 528 B.N.S.S."

14. In **Father Thomas versus State of UP and others**, the Full Bench of this Court held that the initial order of the Magistrate under Section 156(3) CrPC peremptorily reminds the police to perform its duty and investigate a cognizable offence. The orders for investigation under Section 156(3) CrPC, are only ancillary step in aid of the investigation or trial and are clearly interlocutory in nature and are not amenable to challenge in a criminal revision in view of the bar contained in Section 397(2) of the Code. An order under Section 156(3) CrPC, issuing a direction to police to register a case and investigate, is not amenable to challenge in a criminal revision or an application under Section 482 CrPC. It is not necessary for this Court to go into further questions, whether the said order is administrative in nature as urged by counsel for the revisionist and the learned Government Advocate. The Full Bench further held that the order of Magistrate in exercise of power under Section 156(3) of the Code of Criminal Procedure directing the police to register and investigate is not open to revision at the instance of a person against whom neither cognizance has been taken nor any process issued.

15. Subsequently, a full bench of this court in **Jagannath Verma and Others (supra)** considered the judgment of **Father Thomas (supra)**, and held that before the Full Bench in **Father Thomas (supra)**, the controversy was whether a direction to the police to register a first information report in regard to a case involving a cognizable offense and for investigation is open to revision at the instance of a person suspected of having committed a crime, against whom neither cognizance has been taken nor any process issued. Such an order was held to be interlocutory in nature and, therefore, attracts the bar under subsection (2) of Section 397. An order of a Magistrate rejecting an application under Section 156(3) of the Court for the registration of the case by the police and for investigation is not an interlocutory order. Such an order is amenable to the remedy of a criminal revision under Section 397.

16. **Amar Nath v. State of Haryana, AIR 1977 SC 2185** is a landmark judgement defining interlocutory orders. It has been defined in paragraph 6 as the term 'interlocutory order' in Section 397 (2) of the 1973 Code has been used in a restricted sense and not in any broad or artistic sense. It merely denotes orders of a purely interim or temporary nature which do not decide or touch the important rights or the liabilities of the parties. Any order which substantially affects the rights of the accused, or decides certain rights of the parties cannot be said to be an interlocutory order so as to bar a revision to the High Court against that order, because that would be against the very object which formed the basis for insertion of this

particular provision in S. 397 of the 1973 Code. Thus, for instance, orders summoning witnesses, adjourning cases, passing orders for bail, calling for reports and such other steps in aid of the pending proceeding, may no doubt amount to interlocutory orders against which no revision would lie under Section 397 (2) of the 1973 Code. But orders which are matters of moment and which affect or adjudicate the rights of the accused or a particular aspect of the trial cannot be said to be interlocutory order so as to be outside the purview of the revisional jurisdiction of the High Court.

17. In **Amar Nath's case**, the order summoning the appellants in a mechanical manner after the police had submitted a final report against them leading to their release by the Judicial Magistrate, and the revision petition against the order of the Magistrate preferred before the Additional Sessions Judge by the complainant had also failed. Even the subsequent complaint by the complainant had been dismissed on merits. Against the dismissal of the latter complaint, the complainant preferred a revision. The Sessions Judge set aside the order of the Judicial Magistrate and remanded the case for further inquiry, whereupon the Magistrate straightaway summoned the appellants for trial. The High Court dismissed the revision of the complainant on premise that the judicial Magistrate's order being an interlocutory revision to the High Court was barred under Section 397(2). Since the Revision to the High Court was barred by Section 397(2), the High Court could not take up the case under Section 482 of the Cr.P.C. In Appeal, Hon' ble Supreme Court held that the order which appeared to infringe substantial rights acquired by the appellants was considered an order of moment and not a mere interlocutory order, which would invite the bar to entertaining the revision under S. 397(2) of the Code.

18. The scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, Section 14A of the SC/SC Act provides as under:

"14A. Appeals (1) *Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), an appeal shall lie, from any judgment, sentence or order, not being an interlocutory order, of a Special Court or an Exclusive Special Court, to the High Court both on facts and on law.*

(2) *Notwithstanding anything contained in sub-section (3) of section 378 of the Code of Criminal Procedure, 1973 (2 of 1974), an appeal shall lie to the High Court against an order of the Special Court or the Exclusive Special Court granting or refusing bail.*

(3) *Notwithstanding anything contained in any other law for the time being in force, every appeal under this section shall be preferred within a period of ninety days from the date of the judgment, sentence or order appealed from:*

Provided that the High Court may entertain an appeal after the expiry of the said period of ninety days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of ninety days:

Provided further that no appeal shall be entertained after the expiry of the period of one hundred and eighty days.

(4) *Every appeal preferred under sub-section (1) shall, as far as possible, be disposed of within a period of three months from the date of admission of the appeal.]"*

19. Thus, on a bare perusal of aforesaid statutory provision for appeals under which present appeal has been preferred by the prospective accused against whom an order on application under Section 173 (4) BNSS for registration of case and investigation has been issued by learned Special Judge. It is obvious that appeal shall not lie from any interlocutory order. This provision corresponds to the provisions of Section 397(2) CrPC, which provides that the powers of revision conferred by sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.

20. From perusal of judgment of Hon'ble Supreme Court in **Om Prakash Ambadkar vs. The State of Maharashtra and others** an inference may be drawn that High Court can quash an order passed on application under Section 173(4) BNSS, in appropriate and exceptional cases, moved by a person aggrieved by inaction of police officer or refusal on their part to record the information referred in sub-section (1) of section 173, whereon, an order for registration of FIR and investigation by police is directed by filing a petition under Section 482 CrP.C. or 528 BNSS on ground that the procedural requirements provided under Section 173(4) and Section 175 (3) BNSS are not complied or on averments in the application, no cognizable offense is made out as stated in para 31 of the judgment (supra) as said procedure, practices and safeguards are introduced in aforesaid sections of BNSS to curb the misuse of invocation of powers of Magistrate by unscrupulous litigants for achieving ulterior motives and Hon'ble Court has also enjoined a duty of Magistrate to apply his mind judicially by considering both the complaints and submissions of police officer thereby ensuring that requirement of passing reasoned order on application under Section 173(4) BNSS is complied with in a more effective and comprehensive manner.

21. However, in the light of Full Bench pronouncements of this Court in **Father Thomas (supra) and Jagannath Verma and others (supra)**, the impugned order being interlocutory in nature, the prospective accused is debarred from challenging the said order by way of filing a criminal revision or statutory appeal under Section 14-A(1) of the Act 1989. Consequently, the appeal preferred against impugned order by prospective accused/appellant is not maintainable and deserves to be dismissed at the stage of admission.

22. Appeal is hereby **dismissed**.

(2026) 4 ILRA 1097
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 09.04.2026

BEFORE

THE HON'BLE SIDDHARTH, J.
THE HON'BLE VINAI KUMAR DWIVEDI, J.

Criminal Appeal No. 1062 of 1989

Brijendra Singh & Ors.

...Appellants

Versus

State of U.P.

...Respondent

Issue for consideration

Matter pertains to legality of order of conviction u/s 302/34 if only ornamental role is assigned to the accused concerned.

Headnotes

Common Intention-Indian Penal Code-Section 302/34--only surviving accused Appellant- assigned only an ornamental role of exhortation-neither had any motive nor his participation been proved- dispute between prosecution witness PW-3 and appellant no.1- Brijendra Singh (now deceased)- regarding the agricultural land of deceased Bhuri Singh-for convicting u/s 302 IPC with the help of Section 34 IPC- there must be a clear and definite finding based on cogent evidence. **Appeal allowed.** (E-9)

Case Law Cited

Krishna Govind Patil v. State of Maharashtra, 1963 SCC Online SC 29

List of Acts

Indian Penal Code, 1860

List of Keywords

Common intention; prior concert; pre-planning; premeditation; presence; prior concert; afterthought.

Appearances of parties

Counsel for Appellant(s) : Raghuvansh Misra, Rahul Misra

Counsel for Respondent(s) :A.G.A.

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

1. Heard Sri Raghuvansh Misra, learned counsel for surviving appellant no. 2; Sri. G.N. Kanaujiya, learned A.G.A.-I on behalf of the State; perused the judgment and the Trial Court record.

2. The instant criminal appeal has been preferred by the appellants, namely, Brijendra Singh and Brij Raj Singh, against the judgment and order dated 29.04.1989 passed by the learned Special Additional Sessions Judge, Pilibhit, in Sessions Trial No. 282 of 1985 (State vs. Brijendra Singh and another), arising out of Case Crime No. 127 of 1985, under Section 302/34 IPC, Police Station Bilsanda, District Pilibhit.

3. By the impugned judgment and order dated 29.04.1989, the learned Special Additional Sessions Judge, Pilibhit convicted the appellants and sentenced them to life imprisonment under Section 302/34 IPC. Aggrieved by the impugned judgment and order, the appellants have preferred the present criminal appeal.

4. On the basis of a written report (Exhibit Ka-1) dated 24.06.1985, a first information report (Exhibit Ka-14) was registered at Police Station Bilsanda, District Pilibhit, on 24.06.1985 at 6:30 A.M., as Case Crime No. 127 of 1985, under Section 302 IPC, against the appellants, namely, Brijendra Singh and Brij Raj Singh.

5. The brief facts of the prosecution case revealed from the written report (Exhibit Ka-1) are that informant Surat Singh (PW-1) stated in his *tahreeer* that in my village, Bhuri Singh, son of Umray Singh, had no children. His nephew (sister's son), Brijendra Singh, son of Kadher Singh,

resident of Nagariya, Police Station Sindhauli, whose in-laws (*sasuarl*) reside at Chhote Singh's house in our village, had been looking after Bhuri Singh's farming for a long time. Brijendra Singh repeatedly pressured his maternal uncle (Bhuri Singh) to transfer the land and property to his name. However, Bhuri Singh executed a sale deed for his house in my name. Due to this, Brijendra regarded grudge against me. He had stated several times that the land could only be acquired by killing Bhuri Singh. Based on this enmity, the incident occurred at approximately 1:00 A.M. at night. Bhuri Singh, my son Rishi Pal Singh, and I were lying in the courtyard talking amongst themselves. There was light from a lantern. Suddenly, Brijendra Singh and his friend Brij Raj Singh, son of Hanumant Singh, entered the house armed with guns from the north side. Brij Raj Singh is a resident of our village. Brij Raj Singh aimed his weapon at me and shouted, 'Kill them quickly, this is a good opportunity.' I raised an alarm, shouting "Save me! Save me!" Hearing the noise, Bhagwant Singh, son of Jangi Singh and Jagannath Singh, son of Bhudar Singh, arrived while flashing their torches. Right then, Brijendra Singh fired at Bhuri Singh with his illegal firearm. The bullet hit Bhuri Singh. After the shooting, Brijendra Singh and Brij Raj Singh fled toward the north. Bhuri Singh passed away on the spot, his body is currently at the house.

6. After registration of the first information report (Exhibit Ka-14), and upon receiving information about the alleged murder, the Investigating Officer, S.O. Rahat Singh (PW-7), reached the place of occurrence with the police party. PW-7 took the investigation of the case in his hands. PW-7 inspected the place of occurrence. He got the necessary police papers prepared and the panchayatnama of the deceased prepared by S.I. Dan Singh. He also got the dead body of the deceased Bhuri Singh sealed and sent it for postmortem examination. PW-7 recorded the statements of the informant and other prosecution witnesses under Section 161 CrPC. He also prepared the recovery memo of the torch and lantern as Exhibit Ka-2 in the presence of witnesses and returned the same to them upon taking an undertaking that, when required, they would produce the above articles.

7. The Investigating Officer, S.O. Rahat Singh (PW-7), collected blood-stained soil and plain soil from the place of the incident. He also seized pellets, a blood-stained kathri (blanket) and a charpai (cot), and prepared a recovery memo for these items, marked as Exhibit Ka-11. He then conducted a raid at the house of the accused, Brij Raj Singh, son of Hanumant Singh, in an attempt to recover the murder weapon (gun). However, the weapon was not found, and no other incriminating items were recovered. A memo of these proceedings was prepared and marked as Exhibit Ka-12.

8. The Investigating Officer, S.O. Rahat Singh (PW-7), prepared the site plan of the place of occurrence. However, he was subsequently transferred from Police Station Bilsanda to another location. Consequently, the charge sheet was filed by Sub-Inspector Lakhan Singh, which was marked as Exhibit Ka-13, against the appellants, namely Brijendra Singh and Brij Raj Singh.

9. Prosecution witness Dr. A.K. Srivastava (PW-4) conducted the postmortem examination of the deceased, Bhuri Singh and prepared the postmortem report, which was marked as Exhibit Ka-3. According to the report, the following ante-mortem injuries were found on the body of the deceased:-

"(i) A gunshot wound of entry 4 cm x 4 cm x chest cavity deep in left side of chest, 3 cm from left nipple. Blackening & Tattooing present. Margins inverted. Oval in shape. Injury present at 6'o clock position.

(ii) Multiple gunshot wounds of exist in an area of 11cm x 6 cm in back of left side of chest. It was situated 4 cm below the angle of the Scapula (shoulder blade), where semi-clotted blood was present. This injury was related to injury number 1."

According to the opinion of the Dr. A.K. Srivastava (PW-4), cause of death was shock and hemorrhage as a result of ante-mortem injuries.

10. Since the case was exclusively triable by the Court of Session, learned Magistrate committed the case to the Sessions Court for trial. Charges were framed against the appellants by the Trial Court on 14.07.1987, under section 302/34 IPC. Appellants denied from the charges and claimed trial.

11. To substantiate its case, the prosecution examined a total of seven witnesses, namely, the informant Surat Singh (PW-1), Bhagwant Singh (PW-2), Jagannath Singh (PW-3), Dr. A.K. Srivastava (PW-4), Omhari (PW-5), Rishi Pal Singh (PW-6), and Rahat Singh (PW-7). In addition to the oral testimony, the prosecution also relied on documentary evidence marked as Exhibit Ka-1 to Exhibit Ka-14.

12. After the evidence of all prosecution witnesses was recorded, the appellants were examined under Section 313 Cr.P.C. The appellants denied the allegations levelled against them and stated that they had been falsely implicated in the case due to prior enmity and at the instigation and influence of Jagannath Singh (PW-3).□The appellants further stated that the informant Surat Singh (PW-1), was interested in acquiring the house of the deceased, Bhuri Singh, while Jagannath Singh, the Pradhan, intended to acquire five acres of agricultural land belonging to the deceased, situated in the same village. It was also contended that Brijendra Singh, being the sole heir of Bhuri Singh, had been falsely implicated in the present case.

13. After hearing the arguments of both the prosecution and the defence, the learned Trial Court, vide order dated 29.04.1989, held the appellants guilty of the alleged offence and convicted and sentenced them to life imprisonment under Section 302/34 IPC. Aggrieved by the said judgment, the appellants have preferred the present criminal appeal before this Court.

14. During the pendency of the present criminal appeal, the appellant no. 1, Brijendra Singh, has died. Accordingly, vide order of this Court dated 06.02.2026, the present criminal appeal in respect of appellant no. 1, Brijendra Singh, stands abated. Hence, we are adjudicating the present criminal appeal solely in respect of the surviving appellant no. 2, Brij Raj Singh.

15. We have heard the arguments of the learned counsel appearing for the surviving appellant no. 2, Brij Raj Singh as well as the learned AGA appearing on behalf of the State-respondent. We have also perused the impugned judgment and order of conviction and sentence

dated 29.04.1989 passed by the learned Trial Court and have also gone through the entire oral and documentary evidence available on record.

16. The main thrust of the arguments advanced by learned counsel for the surviving appellant no. 2, Brij Raj Singh, is that the prosecution has assigned to him only an ornamental role of exhortation. Brij Raj Singh neither had any motive nor has his participation been proved, inasmuch as, appellant no. 1, Brijendra Singh (now deceased) belonged to a different village and the prosecution evidence is inconsistent regarding his relationship with Brij Raj Singh. In the F.I.R., it is stated that Brij Raj Singh and Brijendra Singh were friends, whereas the informant (PW-1) has alleged that they were brothers. In any event, Brijendra Singh, who allegedly had a motive to eliminate the deceased, did not require any exhortation from Brij Raj Singh to commit the crime. It is further alleged that Brij Raj Singh kept PW-1 at gunpoint. If there was any motive, it was stronger against PW-1, and had he been at gunpoint, he would not have been spared. There is no evidence of any prior concert between Brijendra Singh and Brij Raj Singh so as to establish the participation of Brij Raj Singh in the commission of the crime. Even if the prosecution evidence is accepted at face value, the only allegation against the surviving appellant is that he exclaimed that the opportunity was good. From the words allegedly uttered by Brij Raj Singh, it cannot be inferred that his intention was to have the deceased murdered. Thus, the conviction of Brij Raj Singh with the aid of Section 34 of the IPC is not sustainable in the eyes of law. Therefore, the impugned judgment and order dated 29.04.1989 passed by the Trial Court is liable to be set aside, and the instant criminal appeal deserves to be allowed.

17. Per contra, learned AGA on behalf of the State-respondent submitted that the name of the surviving appellant, Brij Raj Singh, was mentioned in the written report (Exhibit Ka-1) by the informant, Surat Singh (PW-1). He also submitted that, from the evidence of the prosecution witnesses, including informant Surat Singh (PW-1), the presence of surviving appellant no. 2, Brij Raj Singh, at the place of occurrence is clearly proved. Appellant no. 2, Brij Raj Singh exhorted appellant no. 1, Brijendra Singh (now deceased), to utilize the opportunity by killing Bhuri Singh. Upon this exhortation, appellant no. 1, Brijendra Singh (now deceased), fired a gunshot at Bhuri Singh, who died on the spot. The Trial Court, after appreciating the prosecution evidence, found ample role and evidence against the surviving appellant no. 2, Brij Raj Singh, justifying his conviction under Section 302/34 IPC. The Trial Court properly appreciated the evidence, and there is no illegality or perversity in the reasoning and findings given in the impugned judgment and order dated 29.04.1989. Hence, the instant criminal appeal by the appellant lacks merit and is liable to be dismissed.

18. In the light of the above arguments and counter arguments of both sides, we find that in the written report (Exhibit Ka-1), the only role assigned to the surviving appellant no. 2, Brij Raj Singh, was that he pointed a gun towards informant Surat Singh (PW-1) and exhorted appellant no. 1, Brijendra Singh (now deceased), to kill Bhuri Singh.

19. From a perusal of the evidence of the informant Surat Singh (PW-1), we find that PW-1 stated that appellants, Brijendra Singh and Brij Raj Singh had illegal guns in their hands. Upon seeing them, he raised an alarm. Bhagwan Singh and Jagannath Singh arrived at the scene and lit their torches. Thereupon, Brij Raj Singh stated that it was a good opportunity to utilize, following

which Brijendra Singh fired a shot at Bhuri Singh. The shot hit him in the chest, and after receiving the injury, he fell down. The accused then fled towards the north. From a perusal of the evidence of informant Surat Singh (PW1), we further find that this witness testified regarding the enmity of the appellant no. 1, Brijendra Singh (now deceased), towards the deceased, Bhuri Singh. This was because the deceased, Bhuri Singh, owned 50-60 bighas of agricultural land and was issueless. The appellant no. 1, Brijendra Singh (now deceased), wanted to take the land of the deceased, Bhuri Singh, but Bhuri Singh did not want to give his land to him. Two years prior to this murder, Bhuri Singh had executed a sale deed for his house in favour of the informant, PW-1. Due to which, appellant no. 1, Brijendra Singh (now deceased), regarded enmity with the deceased, Bhuri Singh.

20. From an overall appreciation and perusal of the evidence of informant Surat Singh (PW-1), it is apparent that there is not a single word stated in respect of the surviving appellant no. 2, Brij Raj Singh, suggesting any motive that would have impelled or forced him to assist and exhort appellant no. 1, Brijendra Singh (now deceased), to kill the deceased, Bhuri Singh. We find that the only reference, in simple words, which appears to be an afterthought and concocted with a view to implicate the surviving appellant no. 2, Brij Raj Singh, regarding his presence at the place of occurrence along with appellant no. 1, Brijendra Singh (now deceased), appears to be false, fabricated, and artificial.

21. It is also a notable fact that, according to the informant, the surviving appellant no. 2, Brij Raj Singh, pointed a gun at him, however, he spared the informant's life and did not fire a single shot, either in the air or at any person present at the place of occurrence. We find it difficult to understand this peculiar circumstance as to why the surviving appellant no. 2, Brij Raj Singh, would point a gun at the informant, Surat Singh (PW-1), and yet leave him unharmed, thereby allowing him to remain a witness capable of deposing against him before the Court. In other words, it appears improbable that the surviving accused, Brij Raj Singh, or any other accused person, would intentionally spare an individual without causing harm, knowing well that such a person could later testify against him in relation to the alleged offence.

22. Thus, upon a perusal of the evidence of the informant, Surat Singh (PW-1), it emerges that there is no statement from which it can be inferred that the surviving appellant no. 2, Brij Raj Singh, was present at the place of occurrence with premeditation, pursuant to a prearranged plan, or with any criminal intent at the time of the commission of the offence by appellant no. 1, Brijendra Singh. Further, from the testimony of this witness, we find no material on record to establish that the surviving appellant no. 2, Brij Raj Singh, had prior concert with appellant no. 1, Brijendra Singh, for the commission of the alleged offence.

23. In the evidence of PW-1, there is not a single statement showing any intention or motive that would have caused the surviving appellant no. 2, Brij Raj Singh, to assist appellant no. 1, Brijendra Singh (now deceased), or to be present at the place of occurrence with him. It is a settled principle of law that, without a motive or reason, no person would take part in a heinous crime like murder. A perusal of the entire evidence of informant Surat Singh (PW-1) shows that there is no evidence oral or documentary that Brij Raj Singh, by his own motive or desire, participated in the crime or was present at the place of occurrence.

24. Further, it is also clearly established that there was a dispute between prosecution witness Jagannath Singh (PW-3) and appellant no. 1, Brijendra Singh (now deceased), regarding the agricultural land of deceased Bhuri Singh. It is further revealed that a case was pending between Jagannath Singh (PW-3) and appellant no. 1, Brijendra Singh (now deceased), in respect of the agricultural land of the deceased Bhuri Singh. It is also revealed that Jagannath Singh (PW-3) has got executed a will from deceased Bhuri Singh in respect of his whole agricultural land in his favor. Thus, surviving appellant no. 2, Brij Raj Singh had no enmity either from informant Surat Singh (PW-1) or from the deceased Bhuri Singh. Enmity was found to be established from the prosecution evidence between the appellant no. 1, Brijendra Singh (now deceased) and Jagannath Singh (PW-3). Jagannath Singh (PW-3), after the death of the deceased Bhuri Singh, forcibly took possession of all the agricultural land of the deceased and began to cultivate the whole land.

25. Thus, from the above discussion and perusal of the evidence of informant Surat Singh (PW-1), we are of the considered opinion that the presence of the surviving appellant no. 2, Brij Raj Singh, at the place of occurrence and also his involvement, in the commission of the alleged crime is found to be highly suspicious and doubtful.

26. From a perusal of the evidence of prosecution witnesses, namely, Bhagwant Singh (PW-2) and Jagannath Singh (PW-3), it is evident that both witnesses turned hostile and did not support the prosecution case. Bhagwant Singh (PW-2) only stated that he had seen the appellants, Brijendra Singh and Brij Raj Singh, running away. However, during cross-examination, the hostile witness Bhagwant Singh (PW-2) admitted that Jagannath Singh is forcibly cultivating 50□60 bighas of the deceased Bhuri Singh's agricultural land. Jagannath Singh (PW-3) clearly stated that he did not witness the murder of Bhuri Singh and did not see the appellants committing the crime.

27. From a perusal of the evidence of Rishi Pal Singh (PW-6), it is revealed that this witness is the son of informant, Surat Singh (PW-1). In his examination-in-chief, PW-6 reiterated the same facts previously deposed by his father. During cross-examination, Rishi Pal Singh (PW-6) stated that after Bhuri Singh's death, appellant no. 1, Brijendra Singh (now deceased), would be the heir to the land, as Bhuri Singh had no issue. He further stated that following Bhuri Singh's death, Jagannath Singh (PW-3) forcibly took possession of all of the deceased's land.

28. Thus, from a perusal of the evidence of Rishi Pal Singh (PW-6), it is apparent that there is no statement in respect of the surviving appellant no. 2, Brij Raj Singh, explaining the reasons or motive behind his participation or presence at the place of occurrence. It is further clear that as his father, informant Surat Singh (PW-1), stated regarding the presence of surviving appellant no. 2, Brij Raj Singh at the place of occurrence, PW-6 has also stated about the presence of the surviving appellant no. 2, Brij Raj Singh at the place of occurrence, in the same manner.

29. Further, no pre-planned act, pre-concert plan, or criminal act has been revealed within the evidence of Rishi Pal Singh (PW-6). Hence, it is apparent that with due consideration and afterthought, the name of the surviving appellant no. 2, Brij Raj Singh, was added in the written report (Exhibit Ka-1) by informant Surat Singh (PW-1). We have examined the findings and reasoning given by the Trial Court in this regard and find that, without properly discussing the

essential elements of Section 34 of the IPC, namely, pre-planning, premeditation, presence, and prior concert with appellant no. 1, Brijendra Singh (now deceased), the Trial Court convicted the surviving appellant no. 2, Brij Raj Singh, under Section 34 IPC solely on the basis of the statements of Surat Singh (PW-1) and Rishi Pal Singh (PW-6).

30. The Hon'ble Supreme Court in ***Krishna Govind Patil v. State of Maharashtra, 1963 SCC Online SC 29***, has held in paragraph- 6 that:

"..... It is well settled that common intention within the meaning of the section implied a pre-arranged plan and the criminal act was done pursuant to the prearranged plan. The said plan may also develop on the spot during the course of the commission of the offence; but the crucial circumstance is that the said plan must precede the act constituting the offence. If that be so, before a court can convict a person under Section 302, read with Section 34, of the Indian Penal Code, it should come to a definite conclusion that the said person had a prior concert with one or more other persons, named or unnamed, for committing the said offence."

31. Thus, in the light of the above legal principle as laid down by the Hon'ble Supreme Court, it is clear that for convicting any person under Section 302 IPC with the help of Section 34 IPC, there must be a clear and definite finding based on cogent evidence available on record that appellant no. 2, Brij Raj Singh had prior concert with appellant no. 1, Brijendra Singh for commission of the crime. This finding must establish that the accused person had a prior concert with one or other persons for the commission of the crime. In the present case at hand, it is clear from a perusal of the findings and reasoning as given by the Trial Court that there are no discussion or findings about the fact that surviving appellant no. 2, Brij Raj Singh had prior concert with appellant no. 1, Brijendra Singh (now deceased) for the commission of the alleged crime.

32. The Trial Court solely on the basis of the evidence of informant Surat Singh (PW-1) and his son, Rishi Pal Singh (PW-6), incorrectly held that surviving appellant no. 2, Brij Raj Singh was guilty of the alleged offence. Both witnesses had only made statements that the surviving appellant no. 2, Brij Raj Singh pointed a gun towards informant Surat Singh (PW-1), but did not fire any shot at him or towards any other person present at the place of the incident. The Trial Court, without keeping in mind this material fact and the ingredients of Section 34 IPC and without giving any finding on this point, has wrongly held the surviving appellant no. 2, Brij Raj Singh guilty for the commission of the alleged crime. Thus, we find force in the argument of learned counsel for surviving appellant no. 2, Brij Raj Singh in this respect.

33. In view of the above discussions, we find that the conviction of the surviving appellant no. 2, Brij Raj Singh, in the present case is not supported by any reliable evidence. The involvement of Brij Raj Singh in the commission of the alleged crime is, therefore, highly doubtful and suspicious. We also find that his presence at the place of occurrence is very uncertain, as there is no evidence showing any motive or reason for him to be there with appellant no. 1, Brijendra Singh (now deceased).

34. Thus, we find that the impugned judgment and order of conviction and sentence dated 29.04.1989, passed by the learned Special Additional Sessions Judge, Pilibhit, in respect of the surviving appellant no. 2, Brij Raj Singh, is not supported by any cogent evidence and is contrary to the law laid down by the Hon'ble Supreme Court in *Krishna Govind Patil (supra)*. In light of the above discussions, we hold that the impugned judgment and order of conviction and sentence dated 29.04.1989, insofar as it relates to the surviving appellant no. 2, Brij Raj Singh, is not sustainable in the eyes of law and is liable to be set aside.

35. In view of the above, we set aside the impugned judgment and order of conviction and sentence dated 29.04.1989, passed by the learned Special Additional Sessions Judge, Pilibhit, in Sessions Trial No. 282 of 1985 (State vs. Brijendra Singh and another), arising out of Case Crime No. 127 of 1985, under Section 302/34 IPC, Police Station Bilsanda, District Pilibhit, in respect of surviving appellant no. 2, Brij Raj Singh. Consequently, the present criminal appeal is *allowed*.

36. The surviving appellant no. 2, Brij Raj Singh, is on bail and he need not surrender. His bail bonds are cancelled, and the sureties are discharged from their liabilities.

37. Let a copy of this judgment be transmitted to the Trial Court along with the lower court record forthwith for necessary compliance.

(2026) 4 ILRA 1105
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 24.04.2026

BEFORE

THE HON'BLE ABDUL SHAHID, J.

Criminal Appeal No. 1235 of 1988

Pitambar Das

State of U.P.

...Appellant
Versus
...Respondent

Issue for Consideration

Matter pertains to whether conviction of the appellant under Ss. 3/7 of the Essential Commodities Act, 1955 could be sustained in absence of proof of violation of any control order or any provision of S. 3 of the Act, 1955 and whether there was compliance of S. 7(1)(b) of the Act. (Paras 26-31)

Headnotes

Criminal Law - Essential Commodities Act, 1955 - Conviction under Ss. 3/7 - Requirement of contravention of control order - Essential Commodities Act, 1955 - Ss. 3 and 7 - S. 3 is an enabling provision and penalty under S. 7 is attracted only when there is violation of a control order or any provision made under S. 3 - Prosecution failed to mention any control order alleged to have been violated and failed to establish contravention by the appellant - Conviction unsustainable and liable to be set aside. (Paras 26-31)

Criminal Law - Essential Commodities Act, 1955 - Mens rea - Essential Commodities Act, 1955 - Ss. 3 and 7 - Mens rea is an essential ingredient and prosecution must establish intentional

contravention - Appellant was merely In-charge of the Purchasing Centre and not a dealer and prosecution failed to prove requisite ingredients of offence - Benefit of doubt available to appellant. (Paras 26-30)

Criminal Trial - Appreciation of Evidence - Contradictions and lapses in prosecution case - Essential Commodities Act, 1955 - Ss. 3/7 - Serious contradictions in testimony of prosecution witnesses, doubtful inspection, absence of evidence regarding nature and grade of wheat and defective investigation - Prosecution failed to prove case beyond reasonable doubt - Acquittal justified. (Paras 17, 19, 22, 23, 30, 31)

Criminal Law - Forfeiture - Non-compliance with statutory requirement - Essential Commodities Act, 1955 - S. 7(1)(b) - Prosecution neither specified any control order nor produced material showing compliance with S. 7(1)(b) - Mandatory statutory requirement not satisfied - Penalty under S. 7 could not be imposed. (Paras 8, 29, 30)

Held: The prosecution has failed to mention basic requirement of the violation of any control order or the violation of Section 3 of the Act - the appellant who was the mere In-charge of the Purchasing Centre and he is not a dealer hence the question of any violation of the control order prima-facie does not arise or come into existence - it is obligatory duty for initiation of the prosecution against any person that there must be act committed by accused in contravention of any control order or any violation of provision of Section 3 of the Act - there are serious contradictions in the story of the prosecution - there is no compliance of Section 7(1)(b) of the Act, 1955 - the prosecution has miserably failed to prove its case beyond reasonable doubt - the impugned judgment and order is liable to be set aside and the appellant is entitled to acquittal of the charges under Sections 3/7 of the Essential Commodities Act, 1955 - Appeal allowed. (Paras 17, 19, 23, 26-31) (E-7)

Case Law Cited

Nathulal vs State Of Madhya Pradesh AIR 1966 SC 43; Shambhu Dayal v. State of West Bengal (1990), 1990 LawSuit (SC) 287

List of Acts

Essential Commodities Act, 1955; Code of Criminal Procedure, 1973

List of Keywords

Essential Commodities Act; control order; contravention; mens rea; Purchasing Centre; excess wheat; dealer; In-charge; prosecution; inspection; contradiction; forfeiture; Section 7(1)(b); beyond reasonable doubt; acquittal.

Case Arising From

APPELLATE JURISDICTION: Criminal Appeal arising from the judgment and order dated 20.05.1988 passed by the learned Special Judge, E.C. Act, Budaun, in Special Trial Case No. 8 of 1987 convicting the appellant under Ss. 3/7 of the Essential Commodities Act, 1955 and sentencing him to two years' rigorous imprisonment with fine of Rs. 2,000/-.

Appearances for Parties

Advs. for the Appellant:

Sri Amrendra Pratap Singh

Advs. for the Respondents:

Learned A.G.A. for the State.

(Delivered by Hon'ble Abdul Shahid, J.)

1. Heard Sri Amrendra Pratap Singh, learned counsel for the appellant, and the learned A.G.A. for the State. The record has been perused.

2. The present criminal appeal has been filed on behalf of the appellant, Pitambar Das, against the impugned judgment and order dated 20.05.1988 passed by the learned Special Judge, E.C. Act, Budaun, in Special Trial Case No. 8 of 1987 (State vs. Pitambar Das), whereby he has been convicted and sentenced to undergo two years' rigorous imprisonment and to pay a fine of Rs. 2,000/- under Sections 3/7 of the Essential Commodities Act, 1955.

3. The basic prosecution case is that the accused, Pitambar Das, was challenged by the police of Bisauli to stand trial for the offence punishable under Sections 3/7 of the Essential Commodities Act, 1955 (hereinafter referred to, for the sake of convenience, as the 'Act, 1955'), on the allegation that he was storing 12 quintals of wheat for illegal purposes. This was detected during an inspection conducted by Sri S.P. Dasmana, Sub-Divisional Magistrate, Bisauli, on 30.05.1984 at the Purchasing Centre of the U.P. Food Corporation of India (hereinafter referred to as the 'Purchasing Centre').

4. Learned counsel for the appellant has placed reliance on Section 3 of the Act, 1955, which reads as follows:

“3. Powers to control production, supply, distribution, etc., of essential commodities.?(1) If the Central Government is of the opinion that it is necessary or expedient so to do for maintaining or increasing supplies of any essential commodity or for securing their equitable distribution and availability at fair prices, or for securing any essential commodity for the defence of India or the efficient conduct of military operations, it may, by order, provide for regulating or prohibiting the production, supply, and distribution thereof and trade and commerce therein.”

4. Learned counsel for the appellant has vehemently submitted that the aforesaid provision is merely an enabling provision and there must be a control order in force. It is argued that only in the event of a violation of such control order can any person be arraigned as an accused. However, in the present case, the prosecution has neither referred to any control order nor provided details of any alleged violation thereof by the appellant/accused. It is further submitted that it is an admitted position that the appellant was only the in-charge of the purchasing centre and was not a licence holder; therefore, the question of violation of any control order does not arise.

5. Learned counsel for the appellant has further submitted that there is no reference to any control order or its violation either in the prosecution case or in the judgment passed by the learned trial court. He has next submitted that it is the duty of the prosecution to prove its case beyond reasonable doubt, whereas in the present case, the prosecution has miserably failed to do so.

6. Learned counsel for the appellant has also relied upon Section 7 of the Act, 1955, which provides for penalties in cases of contravention of any order made under Section 3.

7. It is contended that Section 7 is attracted only when there is a violation of a control order or any provision made under Section 3 of the Act, 1955. In the present case, no such violation has been established against the appellant/accused; therefore, the question of invoking Section 7 does not arise.

8. It has further been argued that the prosecution has failed to prove, even prima facie, that any contravention was committed by the appellant so as to attract Section 7(1)(b) of the Act, 1955. Even assuming, for the sake of argument, that any violation had occurred, no action in accordance with Section 7(1)(b) has been demonstrated. The prosecution has neither specified any control order allegedly violated by the appellant nor produced any document to show forfeiture of the alleged excess 12 quintals of wheat said to have been recovered from the appellant for illegal purposes.

9. It is thus submitted that the impugned judgment and order are wholly illegal and unsustainable in the eyes of law, as no offence has been made out against the appellant/accused. Accordingly, the same are liable to be set aside, and the appellant/accused deserves to be acquitted.

10. Per contra, learned A.G.A. has submitted that the judgment and order passed by the learned trial court is strictly in accordance with law and does not suffer from any illegality or perversity. Therefore, the present criminal appeal is liable to be dismissed.

11. S.P. Dasmana, who deposed as P.W.-1, stated in his examination-in-chief that on 21.08.1987 he was posted as Sub-Divisional Magistrate (SDM), Bisauli, in May 1984. On 30.05.1984, in the afternoon, upon receiving complaints from farmers, he inspected the wheat procurement centre of the State Food and Essential Commodities Corporation Ltd., situated at Dahar Khakha, Bisauli, along with Shri Basant Ram Bisaria, N.T., Bisauli; Shri S.N. Srivastava, Supply Inspector; and Ashok Kumar.

12. He further deposed that as per the records, 1251 quintals of wheat ought to have been in stock; however, upon physical verification, 1263 quintals were found. Thus, 12 quintals of wheat were found in excess of the recorded stock. The inspection was conducted in the presence of the accused, Pitambar Das, who was the in-charge of the centre at that time. When questioned about the excess quantity, he failed to give any satisfactory explanation. The accused, Pitambar Das, along with the centre's accountant, Shri Kuldeep Kumar, sought time to examine the records, which was granted.

13. He further stated that on the next day, i.e., 31.05.1984, he again visited the said procurement centre; however, even on that day, after examining the relevant records, the accused could not provide any explanation for the excess quantity of wheat. In this regard, on 31.05.1984 itself, the accused wrote a statement in his presence, signed it, and handed it over to him. He also signed the same. The handwritten and signed statement of the accused is on record and has been marked as Ex. 1.

14. He further deposed that on the same day, he also got the filled wheat bags lying in stock at the procurement centre counted, prepared a statement thereof, and obtained the signatures of the Supply Inspector, Shri M.S. Srivastava, and the accused, Pitambar Das, on it. The said document has been marked as Ex. 2. From the procurement centre, he also took into possession the following documents relating to the purchase of wheat: one stock register, one food grain bill book, food grain bill books Nos. 48 and 49, food grain bill book No. 483, ledger book No. 704, ledger book No. 710, and ledger book No. 711. The written report (tehrir) of the incident was dictated by

him at the spot, reduced into writing, read over, and signed by him. The same has been marked as Ex. Ka-3.

15. He further deposed that on the same day, at about 2:30 PM, he got the case registered at Police Station Bisauli. The accused produced the recovered excess wheat and related documents at the police station. The documents were later produced before the Court in sealed cover and marked as Exhibits 1 to 6. The seized registers, ledgers, and bill books bear his signatures as well as those of other staff members and the accused.

16. He further stated that one day prior to lodging the report, he had visited the centre and had taken the stock register with him. Wheat bags are stored at the procurement centre, and their grading is determined by FCI. Rejected wheat is also kept there. At the spot, he got the total stock counted and also conducted separate counts of Grade-1 and Grade-2 wheat. He did not obtain any information from FCI regarding grading.

17. He further stated that in Material Ex. 1, it is mentioned that entries of Grade-1 wheat commence from page 30 and entries of Grade-2 wheat from page 40. His signatures appear on page 4. He stated that he had examined the entire record and signed it after verification. However, he did not sign pages 40 and 41 and admitted that those entries were neither seen nor produced before him at that time. From the above testimony, it appears that P.W.-1 did not completely and carefully inspect the entire record and appears to have acted in haste. There is no specific mention of violation of any control order or any provision under Section 3 of the Act, 1955.

18. M.S. Srivastava, who deposed as P.W.-2, stated that he was posted as Supply Inspector, Bisauli. He deposed that on 30.05.1984, Shri S.P. Dasmana, SDM, Bisauli, inspected the wheat procurement centre in his presence, along with Shri Basant Ram Bisaria and Ashok Kumar Saxena. The accused, Pitambar Das, was present, and the inspection was conducted in his presence.

19. He stated that upon comparison of records and physical verification, 12 quintals of wheat were found in excess, for which the accused could not provide any explanation. One day's time was granted. On the next day, i.e., 31.05.1984, they again visited the centre, but the situation remained unchanged. The accused gave a written statement (Ex. Ka-1), which bears his signatures. A weighing statement (Ex. Ka-2) was also prepared. The written report (Ex. Ka-3) was prepared at the spot on the dictation of the SDM and signed by him. Relevant documents were seized and marked as Exhibits 1 to 7. In cross-examination, he admitted that no movement register was maintained and that he had not signed any document on 30.05.1984. He further admitted that he examined only the page of the register that was open and that he could not specify the grade of the alleged excess wheat. Thus, his presence at the time of inspection on 30.05.1984 becomes doubtful, which is a serious lacuna in the prosecution case. There are material contradictions between the statements of P.W.-1 and P.W.-2, particularly regarding inspection and verification.

20. P.W.-3, Ajay Pal Singh, is a formal witness who proved the check FIR (Ex. Ka-11) and General Diary entry (Ex. Ka-12). His testimony does not materially advance the prosecution case. Mere production of formal documents is not sufficient to prove the case beyond reasonable doubt.

21. P.W.-4, Prem Narain, proved the sanction for prosecution dated 04.02.1987 (Ex. Ka-13).

22. P.W.-5, Maharaj Singh, the Investigating Officer, deposed regarding the steps taken during investigation and proved the site plan (Ex. Ka-14) and charge-sheet (Ex. Ka-15). However, in cross-examination, he admitted that he did not personally verify records from FCI, had no knowledge of grading of wheat, and verified only a limited number of bags. He also admitted that certain facts were not entered in the General Diary.

23. Thus, the investigation suffers from serious lapses. There is no clear evidence regarding the nature, grade, or illegality of the alleged excess wheat.

24. In his statement under Section 313 Cr.P.C., the accused denied all allegations.

25. In defence, the appellant examined D.W.-1 Kuldeep Kumar, D.W.-2 Raja Babu Singh, and himself as D.W.-3.

26. Learned counsel for the appellant has relied on the law laid down by the Hon'ble Supreme Court in *Nathulal vs State Of Madhya Pradesh* AIR 1966 SC 43 that in the matter of the criminal proceeding mens rea is essential ingredients of criminal offence only where it is absolutely clear that implementation of the object of the statute would otherwise be defeated that mens rea may be necessary implementation be excluded from the statute.

27. Learned counsel for the appellant has further submitted that, as per Section 7 of the Essential Commodities Act, an offence under Section 3 requires mens rea as an essential ingredient. The storage of food grains, as per Section 3(2) of the Madhya Pradesh Food Grains Dealers Licensing Order, 1958, was undertaken after applying for the requisite permit. The accused was not informed about the rejection of his application, and the storage of food grains was done under a bona fide belief that it would be legal to do so. Therefore, intentional contravention of Section 7 of the Act cannot be inferred.?

28. He has vehemently relied that there was no mention of any licensing order which has been violated by the appellant. He is not a dealer. There has been mens rea it has to proved by the prosecution. The story of the prosecution is consistently contrary and not corroborative to each other. In absence of the violation of any control order or any violation of provisions of Section 3 of the Act, no penalty could be imposed upon the appellant under Section 7 of the Act. There is also no compliance of Section 7(1)(b) of the Act.

29. Learned counsel has placed reliance on the law laid down by the Hon'ble Supreme Court in ***Shambhu Dayal v. State of West Bengal* (1990), reported in 1990 LawSuit (SC) 287**, wherein it has been observed that while conferring wide powers as above on the Collector, the legislature has also protected the dealer's interest by providing, that in the event, it is ultimately found that he was not guilty of contravention of any order made under section 3, he shall be paid the price realised with reasonable interest. But if the prosecution ends in a conviction, section 7(1)(b) enjoins that the property in respect of which the order was contravened 'shall be forfeited' to

the Government. The language of this clause is clearly mandatory and leaves no option to the Court but to order forfeiture. This becomes clear if we read this clause in juxtaposition with clause (c) which confers a discretion on the Court to order forfeiture of any packing, covering or receptacle in which the essential commodity was found or any animal, E vehicle, vessel or any other conveyance which was used to carry the same.

30. There are serious contradictions in the story of the prosecution. The prosecution has failed to mention basic requirement of the violation of any control order or the violation of Section 3 of the Act. The prosecution has also failed to comply the provisions of Section 7(1)(b) of the Act. The appellant who was the mere In-charge of the Purchasing Centre and he is not a dealer hence the question of any violation of the control order prima-facie does not arise or come into existence. The alleged competent person who inspected the Purchasing Centre of the Food Corporation of India which is a Government Undertaking and even he fails to mention what kind of grade of the wheat was recovered in excess alleged to be 12 quintals of wheat from the wheat procurement centre, of F.C.1(Food Corporation of India) where the accused appellant was stated to be incharge. It is obligatory duty for initiation of the prosecution against any person that there must be act committed by accused in contravention of any control order or any violation of provision of Section 3 of the Act. There is no compliance of Section 7(1)(b) of the Act, 1955. Therefore, the prosecution has miserably failed to prove its case beyond reasonable doubt.

31. In view of the foregoing discussion and the law laid down, the impugned judgment and order dated 20.05.1988 is hereby set aside. The appellant is acquitted of the charges under Sections 3/7 of the Essential Commodities Act, 1955. Consequently, his bail bonds and sureties stand discharged.

32. The criminal appeal is accordingly **allowed**.

(2026) 4 ILRA 1111
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 10.04.2026

BEFORE

THE HON'BLE CHANDRA DHARI SINGH, J.
THE HON'BLE DEVENDRA SINGH-I, J.

Criminal Appeal No. 1441 of 1987

Rammu & Ors.

...Appellants

Versus

State of U.P.

...Respondent

Issue for consideration

Matter pertains to legality of judgment and order of conviction u/s302/34 IPC.

Headnotes

Indian Penal Code, 1860-Sec. 302/34 and 323/34- Cross-case- One-sided investigation-misreading of defence under S. 313 CrPC- non-consideration of injuries on accused-delayed FIR -Investigating Officer admitted that no investigation was conducted on the earlier report lodged by the accused - no steps were taken to get the accused medically examined after arrest -Investigation found to be "tainted and one sided"- Prosecution explanation for delay of more than fifteen hours in lodging the FIR found to be "too hard to swallow"-Conviction and sentence set aside. **Appeal allowed.** (E-9)

Case Law Cited

Nil

List of Acts

Indian Penal Code, 1860

List of Keywords

Cross-case; Earlier NCR; One-sided investigation; Misreading of S. 313 statement; Injuries on accused; Delayed FIR; Acquittal.

Appearances of parties

Counsel for Appellant(s) : Amar Chandra, Chandra Bhushan Verma, P.N. Mishra, Rajesh Kumar Verma, Ran Jeet Singh, Sunil Kumar 6

Counsel for Respondent(s) : A.G.A.

(Delivered by Hon'ble Chandra Dhari Singh, J)

1. This Criminal Appeal has been filed against a judgement and order dated 29.4.1987 passed by the learned Sessions Judge, Shahjahanpur in Sessions Trial No. 403 of 1986 whereby the learned Judge convicted and sentenced the appellants to life imprisonment under Sections 302/34 IPC and six months □ rigorous imprisonment under Section 323/34 IPC.

2. However, both the sentences were directed to run concurrently.

3. Pursuant to the order of this Court dated 08.09.2025, appeal filed on behalf of appellant Nos. 1 and 4 namely Rammu and Misri has been disposed of as abated. We are only concerned with the appeal filed on behalf of appellant Nos. 2 and 3 namely Chet Ram and Rameshwar.

Facts of the case

4. The facts that formed the bedrock of the present criminal appeal are that a written report was given by Bhikhari Lal (hereinafter referred to as the first informant) at the police station Khudaganj, district Shahjahanpur on 19.08.1986 with the allegations inter alia that Rajpal and Babu Ram lived in village Kapsenda, but started living in village Baraura for the last five or six years. They had constructed a house in this village. Rajpal had advanced a sum of Rs. 220/- (rupees two hundred twenty only) as loan to Rameshwar and Rameshwar had given his one and a half bigha of land to Rajpal in lieu of interest. It was agreed between the parties that whenever Rameshwar pays the amount, Rajpal would free the field. The first information report further recounts that Rameshwar took possession of the land, but did not return the money. A day before the occurrence Rajpal went to Rameshwar to demand the money, whereupon Rameshwar had said that he will give it. On the date of occurrence, at about 05:00 PM, Rameshwar, Chet Ram, Rammu and Misri armed

with lathis went to the door of Rajpal and started beating him with lathis. At that time, Babu Ram and his wife Somwati were inside the house. The first informant was also inside the house of Rajpal. He and Babu Ram tried to save Rajpal, whereupon they also assaulted Babu Ram with lathis. Babu Ram and the first informant also plied lathis in self defence, due to which accused persons have also received injuries. Thinking Rajpal dead, they left him and fled. While the first informant was taking Rajpal (hereinafter referred to as the deceased) and Babu Ram (hereinafter referred to as the injured) to the police station on bullock-cart for lodging the report, on the way near village Sara at about 12:00 in the night, Rajpal succumbed to the injuries. Thereafter, the first informant returned to the village. Due to excessive rain, the first informant could not go to the police station to lodge the report. At the home, he got the report scribed (Ext. Kha-1) by Jaivir Singh and put his thumb impression after hearing it and handed over at the police station in the morning.

5. On the basis of the aforesaid report, a case was registered at case crime No. 84 of 1986, under Sections 302/323 IPC, police station Khudaganj, district Shahjahanpur at 08:15 AM on 19.08.2026.

6. After the registration of the case, the investigation of the case was entrusted to PW-4, SI Girish Kumar, who recorded the statement of the first informant Bhikhari and the Head Muharrir at the police station and then went to the spot with necessary papers. On the way there were two rivers, which were flooded at that time and there was excessive rain. He reached the spot, prepared inquest report, photo lash, challan lash, sample seal, letter to the Chief Medical Officer, Ext. Ka 5 to Ka-9. He recorded the statement of PW-2, Babu Ram, the injured and other witnesses. On the pointing out of the first informant and the witnesses, he prepared site plan Ext. Ka-10. He further deposed that on his return, he arrested accused Misri, Chet Ram and Rameshwar. However, accused Rammu surrendered in Court. After culmination of investigation and completing necessary formalities, the investigating officer submitted charge sheet against the accused Misri, Chet Ram and Rameshwar on 06.9.1986, Ext. Ka-12 and against accused Rammu on 22.09.1986, Ext. Ka-13.

7. As the case was exclusively triable by the Court of Sessions, the learned Magistrate committed the case to the Court of Sessions, where case was registered as Sessions Trial No. 403 of 1986 and learned Sessions Judge, Shahjahanpur vide order dated 05.12.1986 framed the charges against the appellants Rammu, Chet Ram, Rameshwar and Misri under Sections 302/34 and 323/34, which were read over and explained to the accused in Hindi. The accused pleaded not guilty and claimed to be tried.

8. To bring home guilt of the appellant beyond the hilt, the prosecution has examined as many as five witnesses, out of which PW-1, Bhikhari Lal and PW-2, Baburam were the witnesses of facts and remaining are formal witnesses.

9. PW-1, Bhikhari Lal is the first informant of the case. In his examination-in-chief, he stated that he knows the accused Rameshwar, Chet Ram, Rammu and Misri. They are the resident of his village. Accused Rajeshwar had taken a sum of Rs. 220/- as loan from his brother Rajpal (deceased) a year before the occurrence. It was agreed that so long as he did not pay back the amount, deceased will cultivate the land and when the amount is paid, he will leave the land. A

month before the occurrence, Rameshwar forcibly cultivated the land without repaying the amount, whereupon deceased made a demand of his money. Thereupon Rameshwar said that he would pay the money after roping the paddy. The talk took place in the morning of date of occurrence. The occurrence took place in the evening at about 05:00 PM. At that time, Rameshwar, Chet Ram, Rammu and Misri armed with lathis went to the door of Rajpal and started beating him with lathis, thereupon Rajpal fell down. At that time, he also reached there armed with lathi and plied lathi due to which accused persons have also received injuries. First of all the accused persons have assaulted Rajpal and thereafter Baburam. He also deposed that when the accused were assaulting the deceased, they were witnessing the same from inside the house. After the occurrence, accused fled.

10. PW-2, Babu Ram in his examination-in-chief has stated that at about 05:00 PM, on the date of occurrence, he was present at his house. He along with Raj Pal (deceased) lives in the same house. He along with his wife and maternal uncle-Bhikhari Lal were inside the house. Everything of outside was visible from the place where he was sitting inside the house. Rameshwar, Misri, Chet Ram and Rammu armed with lathis reached there and started beating the deceased. He further stated that he along with Bhikhari came out of the house and also plied lathis. He also received injuries. The accused persons went towards north after beating. Accused Rajeshwar had taken a sum of Rs. 220/- as loan from his brother Rajpal (deceased) a year before the occurrence. It was agreed that so long as he did not pay back the amount, deceased will cultivate the land and when the amount be paid, he will leave the land. A month before the occurrence, Rameshwar forcibly cultivated the land without repaying the amount, whereupon deceased made a demand of his money. Thereupon Rameshwar said that he would pay the money. The talk took place in the morning of date of occurrence and in the evening the incident in question took place.

11. PW-3, Dr. Santosh Kumar Medical Officer examined the injured Santosh Kumar at the District Hospital, Shahjahanpur at 10:00 AM on 20.3.1986 and found the following injuries:

1. Lacerated wound on scalp 2.5 cm x 0.5 cm muscle deep, 7 cm from left eyebrow and 11 cm from left year with moderate infection. Thin yellowish pus coming out.

1. Abraded contusion red, 3 cm x 1 cm over outer aspect of left arm, 4 cm above left elbow covered by dry scab.

3. Lacerated wound 3 cm x 4 cm muscle deep over dorsum of proximal inter phalangeal joint of 2nd toe with mild infection.

4. Tenderness over the right knee outer side. X-ray advised.

12. In the opinion of the doctor the injuries were two days old and were caused by blunt object. Injury No. 1 to 3 were simple in nature and for injury No. 4, x-ray was advised.

13. In his evidence, which was recorded on 03.2.1987, PW-3, Dr. Santosh Kumar opined that till date x-ray report has not been produced before him. In his cross-examination, doctor further opined that injuries received by the injured could have been received at 08:00 PM on 18.8.1986.

14. Evidence of PW-4, SI Girish Kumar Sharma has already been discussed above.

15. PW-5, Dr. P.K. Gupta, who conducted the autopsy on the cadaver of the deceased, found the following ante-mortem injuries:

“1. Contusion 8 cm x 4.5 cm on the left side 6 cm above the ear.

2. Contusion 9.5 cm x 4 cm on the left side of skull and temple 2 cm upward and above the left ear.

3. Contusion 4.5 cm x 3.5 cm on the left eyebrow.

4. Contusion 8.5 cm x 4 cm on the right shoulder posteriorly.

5. Contusion 7.5 cm x 3.5 cm on the right upper arm posteriorly 6 cm below the right shoulder joint.

(6) Contusion 5.5 cm x 4 cm on the neck posteriorly middle part.

7. Contusion 5.5 cm c 3 cm on the uppermost part of right side neck.”

16. In the opinion of the doctor, the cause of death was due to coma as a result of ante-mortem injuries.

17. In addition to the aforesaid prosecution witnesses, Constable Sushil Chandra Tripathi and Constable Girija Shankar Dixit have filed their affidavit stating therein that they took the dead body and got the post mortem conducted

18. After the closure of the prosecution evidence, the statement of the accused-appellants were recorded under Section 313 Cr.P.C., in which they denied the charges.

19. Appellant-Rammu further stated that he was not present at the time of occurrence.

20. Appellant-Rameshwar in his statement under Section 313 Cr.P.C. further stated that at about 08:00 PM he had gone to attend the call of nature and when he returned, he found Rajpal at his house. On being challenged, Babu Ram and Bhikhari also arrived. This happened at the north of Chaupal of Chet Ram, outside the room of Shri Ram. Thereafter, Rajpal, Babu Ram and Bhikhari assaulted him. On his cries, his brother Chet Ram and father Misri Lal also arrived.

21. Appellant-Chet Ram in his statement under Section 313 Cr.P.C. further stated that on the date of occurrence at about 08:00 PM, Rajpal, Babu Ram and Bhikhari were abusing Rameshwar out side his house. Raj Pal, Babu and Bhikhari were assaulting Rameshwar. On the shrieks of Rameshwar, he also reached there and enquired as to why they were making noise, then Rameshwar told him that Rajpal had entered his house. Thereafter, they started plying lathi. He also plied lathi in self defence. He also received injury. Thereafter, he along with Misri and

Rameshwar went to police station Khudaganj to get the report lodged. At 12:00 in the night, he got the report lodged. Thereafter, they went to the doctor to get himself treated. They stayed in the hospital throughout the night and in the morning at about 8-9 AM, police arrested them.

22. Appellant-Misri in his statement under Section 313 Cr.P.C. stated that on the date of occurrence Rameshwar was not at home and when he returned, he found Rajpal in his house. Rameshwar tried to apprehend Rajpal, but in vain. Thereafter, Babu, Bhikhari and Rajpal came and started assaulting Rameshwar. On hearing the noise, he along with Chet Ram also reached there. All the three Babu, Bhikhari and Rajpal plied lathis. He also plied lathi in self defence. Thereafter, he went to police station Khudaganj at 10:00 PM to get the report lodged at 11:00 PM, he lodged the report. Thereafter, they went to hospital and stayed in the hospital throughout the night and in the morning, Daroga Ji arrested them.

23. Dr. S.C. Shukla has been produced as DW-1. He stated that on 18.8.1986, he was posted as Medical Officer as Primary Health Centre. In the night intervening 18/19.08.1986 at 1:00 AM, he examined Chet Ram, son of Ram Lal, resident of village Barora, police station Khudaganj, district Shahjahanpur and found the following injuries:

1. Lacerated wound 6 cm x 4 cm x muscle deep on the back of neck on the left side of mid posterior line, fresh blood clot present in the wound, Direction of the wound is oblique with its anterior and lying left lateral.

2. Contusion 4 cm x 2 cm on the right side of right calf muscle, colour red.

The injuries were simple, fresh and caused by blunt object.

24. On the same day at 01:30 AM, DW-1, Dr. S.C. Shukla also examined Misri, aged about 55 years, son of Shri Shobhi, resident of village Barora, police station Khudaganj, district Shahjahanpur and found the following injuries:

1. Lacerated wound 0.5 cm x 0.5 cm skin deep on the front of upper fifth of left leg at the level of left tibial tubersity. Fresh blood clot present in the wound.

2. Contusion 3 cm x 2 cm on the outer aspect of upper end of right FA, colour red."

The injuries were simple, fresh and caused by blunt object.

25. On the same day (18/19.8.1986) at 01:45 AM, DW-1, Dr. S.C. Shukla also examined Rameshwar, aged about 25 years, son of Shri Misra lal, resident of village Barora, police station Khudaganj, district Shahjahanpur and found the following injuries:

1. Lacerated wound 1 cm x 0.5 cm x skin deep on the left side of forehead above the left eyebrow, fresh blood clot.

2. Contusion 3 cm x 2 cm, on the outer aspect of lower end of right forearm, colour red."

The injuries were simple, fresh and caused by blunt object.

26. Accused-Rameshwar has examined himself as DW-2. He stated that on the date of occurrence at about 08:00 PM he had gone to attend the call of nature and when he returned, he found Rajpal at his house. On enquiry by Rameshwar about his (Rajpal) presence in his house, Rajpal left the house. Thereafter, Rajpal started abusing him. At that time Bhikhari and Babu Ram also arrived there armed with lathis. He also reached there and asked Rajpal as to why he is abusing. Bhikhari and Raj Pal took side of Rajpal. At that time, his brother Chet Ram, father Misri, Raj Kumar and Shanker also arrived. They were having lathis. Thereafter Bhikhari, Babu and Raj Pal started assaulting him with lathis due to which he along with Chet Ram, Misri received injuries. They assaulted in self defence. He also plied lathi in self defence. It is further stated that assault was made by Bhikhari, Babu and Raj Pal first and thereafter in self defence he along with Chet Ram and Misri assaulted them in self defence. After the incident, Rameshwar, Chet Ram and Misri went to police station and got the report lodged, which he proved as Ext. Kha-1. From the police station, they went to the hospital where they were medically examined. In the morning at about 08:00 police arrested them from the gate of the hospital.

27. Learned Sessions Judge, Shahjahanpur after hearing the learned counsel for the parties and assessing, evaluating and scrutinizing the evidence on record, convicted and sentenced the accused-appellants as indicated herein above.

28. Hence this appeal.

Submission on behalf of the appellants

29. Shri Amar Chandra, learned counsel for the appellants submits that it was a cross case and the accused-appellants have plied lathis in self defence and that the investigation has been carried out one sided.

30. Learned counsel for the appellants further submits that the learned Trial Court committed a manifest error of law by failing to consider the accused's defence, ignoring material evidence and skipping mandatory procedures, which violates principles of fair trial.

Submission on behalf of the State

31. On the other hand Shri S.K. Ojha, learned Additional Government Advocate-I supported the findings of the learned trial court by stating that the learned trial court has correctly martialled the evidence and considered each and every aspect of the case while convicting the appellants.

Analysis and conclusion

32. Admittedly, there are two versions of the case. Report from the side of the accused was lodged at 00:15 AM on 18/19.08.1986 at the police station Khudaganj, district Shahjahanpur under Section 323/504 IPC by the appellant Rameshwar. In the report the time of incident has been

shown as 08:00 PM on 18.08.1986 in which Raj Pal (deceased), Babu (injured) and Bhikhari (PW-1) have been nominated as accused. The report is reproduced as under:

"वादी ने बयान किया कि मैं टट्टी करने गया था राजपाल जो मेरे गांव का है मेरे घर आ गया जब मैं वापस आया तो मैंने पूछा कि रात में मेरे घर क्यू घुस आए तभी अभियुक्त घर से उठकर गांव में पश्चिम में पड़ी आबादी के पास खड़ा हो गया और मुझे गालियां देने लगा की साले मालदार बहुत बनता है मैंने कहा कि गालियां क्यू देता हैं इसी वक्त बाबू और भिखारी भी आ गए या मुझे लाठियों से मारने लगे मैंने शोर मचाया तो मेरे पिता मिश्री और मेरे भाई चेताराम आ गया उसे भी लाठियों से मारा इसी बीच शोर सुनकर गावाहन आ गई और ललकारने पर अभियुक्त भाग गए मैं अपने पिताजी और भाई के साथ रिपोर्ट लिखवाने आया हूं"

33. The aforesaid report has been marked as Ext. Kha-1.

34. From the side of the first informant the report has been lodged 08:15 AM on 19.08.1986 at police station Khudaganj, district Shahjahanpur under Section 302/323 IPC by Bhikhari Lal. In the report the time has been shown at about 05:00 PM on 18.08.1986 in which appellants Rameshwar, Chet Ram, Rammu and Misri have been nominated as accused. The report is reproduced as under:

"सेवा मे श्रीमान दरोगा जी थाना खुदागंज श्रीमान जी निवेदन है कि मेरे भान्जे राजपाल और बाबूराम मेरे गांव मे ही 6 साल से रह रहे है और यहीं मकान भी बना लिया है। मेरे भान्जे ने पिछले साल जेठ के महीना मे 220 रू रामेश्वर को उधार दिये थे और रामेश्वर ने ब्याज के बदले में अपनी डेढ बीघा जमीन राजपाल को दे दी थी और यह तय हुआ कि जब रामेश्वर पैसा दे देगा तभी राजपाल जमीन छोड़ देगा परन्तु अब रामेश्वर ने जमीन पर कब्जा कर लिया और राजपाल के पैसा भी नहीं दिये। कल राजपाल ने रामेश्वर से पैसे मांगे कि अभी तुझे पैसे देते है। कल समय करीब 5 बजे शाम लाठड्यां लेकर रामेश्वर पुत्र मिश्री, चेताराम पुत्र रम्मू, रम्मू पुत्र शोभी, मिश्री पुत्र शोभी जाटव हमारे गांव के राजपाल के दरवाजे पर आये और वही राजपाल को लाठियों से मारने लगे उस समय राजपाल के घर पर मै मेरा भान्जा बाबूराम और बाबूराम की घरवाली सोमवती मौजूद थे। मै और बाबूराम राजपाल को बचाने लगे तो वह लोग बाबूराम को भी लाठियो से मारने लगे बाबूराम और मैने अपने बचाव मे लाठी चलाई जिसमे उनके भी मामूली चोटे आई है। तब वह राजपाल को मरा समझ कर छोड़ कर भाग गये। मै बैलगाड़ी से अपने दोनो भान्जो को लेकर निगोही थाना रपट को जा रहा थी तभी रास्ते मे संडा गांव के पास रात को 12 बजे करीब राजपाल ने दम तोड़ दिया। तब मै वापस गांव आ गया। नदियो मे ज्यादा पानी होने के कारण रात मे मै रपट लिखाना थाना नहीं आ सका। तथा चुटैल भान्जे बाबूराम और मरे हुए राजपाल को गांव मे ही छोड़कर आया हूं। यह घटना गांव के लोगो ने भी देखी। मेरी रपट लिखकर कार्यवाही की जाये। प्रार्थी भिखारी लाल पुत्र कोमिल राम जाटव थाना खुदागंज निवासी वरौरा निशानी अंगूठा भिखारी लाल लेखक जयवीर सिंह s/o श्री सुन्दर सिंह नि० वरौरा थाना खुदागंज जि० शाहजहापुर 19.8.86 ई०"

35. PW-4, SI Girish Kumar Sharma, who is the investigating officer of the case, in his evidence has stated that accused-Rameshwar had lodged the report, which was NCR, which was entered vide report No. 2 at 00:15 AM on 19.08.1986 by Constable Clerk Shri Krishna, which was marked as Ext. Ka-11. He, however, admitted that the aforesaid report (NCR) lodged by the accused-appellant Rameshwar has not been investigated by him. In his cross-examination, PW-4, SI Girish Kumar Sharma was confronted with the report lodged of appellant-Rameshwar. The

relevant part of cross-examination of PW-4, SI Girish Kumar Sharma is reproduced herein under for ready reference:

"गवाह को रपट N.C.R. दिखाई थी तो गवाह के कहा कि यह रपट मुल्जिम रामेश्वर ने लिखी थी। नकल रपट दाखिल की गई जिसपर Ext ख-1 डाला गया। जब मुल्जिम ने रपट लिखाई थी तो मैं थाने पर मौजूद था। जब तफतीश शुरू की तो मैंने मुल्जिम वाली रिपोर्ट नहीं देखी थी। और न ही तफतीश के दौरान उसे देखी थी। मुझे यह बात पता नहीं लगी थी रपट मुल्जिम ने इसी घटना के बारे में लिखाई थी। मुझे आज पता चला कि यह रपट इसी घटना से संबंधित थी। शंकर व राम कुमार के मैंने बयान नहीं लिये थे। ग्रीश सिंह व साधू सिंह पड़ोसियों के बयान लिये थे। यह गलत है कि उनके मकान चार पांच सौ कदम की दूरी पर हों। मुझे बाबूराम ने बताया था कि यह घटना गांव के और लोगो ने भी देखी। वादी के दरवाजे के सामने बाहर की तरफ एक छोटा सा छप्पर पड़ा है। इस छप्पर के नीचे मुझे कोई खून नहीं मिला। लाश मुझे इस छप्पर से दो तीन कदम बाहर मिली थी। नकशे में 'A' स्थान के पास पश्चिम में C लिखा मालूम होता है लेकिन मैंने लिखा नहीं है डाट पैन लीख करने के कारण बन गया हो। यह कहना गलत है कि मैंने मुकदमे को तरतीब देने के लिये ऐसा कह रहा हूँ। बाहर वाले C के पास लाइन बनाकर चार कदम मैंने लिखा है। यह गलत है कि जगाह तबदील करने के लिये ऐसी बात कह रहा हूँ। लाश जो कपड़े पहने हुए था वह भीगे हुये थे। लाश के ऊपर मोमजामा पड़ा हुआ था। उस मोमजामा को कबजे में नहीं लिया। मैंने यह नहीं नोट किया कि कपड़े भीगे हुये थे। यह कहना गलत है कि मुल्जिमानो को अस्पताल भेजा गया हो तथा डाक्टरी मुआयना हुआ हो। मुल्जिमान जाटव है। जब मुल्जिमानो को गिरफ्तार किया तब इनके पट्टी बंधी थी। चोटे पुरानी थी इसलिये डाक्टरी जांच नहीं कराई। मैंने पट्टी खोलकर चोटे नहीं देखी। चूंकि पट्टी बंधी थी इसलिये मैंने समझा चोटे पुरानी है। यह कहना गलत है कि मैंने जान बूझकर मुल्जिमान की चोटो का डाक्टरी मुआयना नहीं कराया और उनकी रिपोर्ट की तफतीश नहीं की।"

36. From the perusal of the evidence of PW-4, SI Girish Kumar Sharma, it is clear that no investigation was conducted by him on the report lodged by appellant-Rameshwar. It is also clear that he has not taken any steps to get the medical examination of the accused done after the arrest of the accused. In sum and substance, the investigation in this case is tainted and one sided. The investigating officer has not taken care to investigate the report lodged from the side of the appellant, which was on earlier point of time than the report lodged by the first informant of the case

37. Learned Trial Court while discussing the cross case set up from the side of the appellants has recorded the following finding:

"No specific enmity has been alleged by the accused persons in their statements under Section 313 Cr.P.C.. They have simply said that they have been implicated due to enmity. The defence has claimed that Rajpal had gone to the house of Rameshwar at about 08:00 PM when he had gone to ease himself and when he returned, he enquired as to why he had gone at that hour whereupon he went away and started abusing. If we peruse the statement under Section 313 Cr.P.C. of the accused Rameshwar, we find that Bhikhari and Babu Ram reached there. This means that they reached at his house. He immediately stated that this took place in the northern corner of Chet Ram's Chaupal. The statement appears to be confused. When he appeared as a witness, he deposed on oath that Rajpal went away. Rajpal started abusing in the north-west

corner of Chet Ram's Chaupal where Gram Samaj land was lying. At that place Bhikhari and Babu Ram reached there with lathis. They too reached there and said as to why he was abusing. Chet Ram, his father Misri, Ram Kumar and Shankar reached there. All had lathis. When he forbade Rajpal from abusing, Bhikhari was siding with Rajpal. Thereafter, Bhikhari, Babu and Rajpal plied lathis at him. He, Rameshwar, Chet Ram and Misri received injuries. He further deposed "in logon ne bachao men choten mari thin" This means that he had admitted in a sense the prosecution case that the injury to the accused was caused in self-defence. Soon after he deposed that he caused injuries in defence. First they plied lathi and then, he plied lathi in defence. It is significant to note here that the case taken up by the defence in the statement of Rameshwar on oath was not taken at the earliest opportunity. It is not disputed that an FIR was also lodged from the side of the accused persons which is Ext. Kha1. If it was a fact that the accused persons had plied lathis in self defence, it was the earliest opportunity when they could have said so but it was not said. It appears to me as argued by the learned counsel for the State that this case has been developed later on when legal opinion was available. In this view of the matter, I am of the opinion that it cannot be said that the case taken up by the defence is even probable."

38. Before analysing the finding recorded by the learned Trial Court, it would be apposite to refer the relevant portion of statement of the accused-appellants under Section 313 Cr.P.C.

39. Appellant-Rameshwar in his statement under Section 313 Cr.P.C. stated that at about 08:00 PM he had gone to attend the call of nature and when he returned, he found Rajpal at his house. On being challenged, Babu Ram and Bhikhari also arrived there. At that time, Rajpal, Babu Ram and Bhikhari started assaulting him. On his cries, his brother Chet Ram and father Misri Lal also arrived.

40. Appellant-Chet Ram in his statement under Section 313 Cr.P.C. further stated that on the date of occurrence at about 08:00 PM, Rajpal, Babu Ram and Bhikhari were abusing Rameshwar out side his house. Raj Pal, Babu and Bhikhari were assaulting Rameshwar. On the shrieks of Rameshwar, he also reached there and enquired as to why they were making noise, then Rameshwar told him that Rajpal had entered his house. Thereafter, they started plying lathis. He also plied lathis in self defence.

41. Appellant-Misri in his statement under Section 313 Cr.P.C. further stated that on the date of occurrence Rameshwar was not at home and when he returned, he found Rajpal in his house. Rameshwar tried to apprehend Rajpal, but in vain. Thereafter, Babu, Bhikhari and Rajpal came and started assaulting Rameshwar. On hearing the noise, he along with Chet Ram also reached there. All the three Babu, Bhikhari and Rajpal plied lathis. He also plied lathi in self defence.

42. From the perusal of statements of accused-appellants Rameshwar, Chet Ram and Misri, it is crystal clear that it was Babu, Bhikhari and Rajpal, who assaulted accused-appellant-Rameshwar and in self defence lathis were plied by the appellants Rameshwar, Chet Ram and Misri. It appears that the learned Trial Court while discussing the cross-case has misread the statement of the accused-appellants under Section 313 Cr.P.C. to hold the appellants aggressor and that the first informant and others have plied lathis in self defence.

43. Learned Trial Court at paragraph No. 10 of the impugned judgement has held that "the accused persons have also entered upon their defence and have examined DW-1, Dr. S.C. Shukla who had medically examined one of the accused persons."

44. It appears that the learned Trial Court has incorporated a wrong facts in the impugned judgement inasmuch as DW-1, Dr. S.C. Shukla has medically examined three accused persons (instead of one as held by the learned Trial Court), whose injuries have already been discussed above and at the cost of repetition, the same are reproduced below:

45. Injuries of accused-Chet Ram examined at 01:00 AM on 19.08.1986 examined by DW-1 Dr. S.C. Shukla:

1. *Lacerated wound 6 cm x 4 cm x muscle deep on the back of neck on the left side of mid posterior line, fresh blood clot present in the wound, Direction of the wound is oblique with its anterior and lying left lateral.*

2. *Contusion 4 cm x 2 cm on the right side of right calf muscle, colour red.* □

The injuries are simple, fresh and caused by blunt object.

46. Injuries of accused-Misri examined at 01:30 AM on 19.08.1986 examined by DW-1 Dr. S.C. Shukla

1. *Lacerated wound 0.5 cm x 0.5 cm skin deep on the front of upper fifth of left leg at the level of left tibial tubersity. Fresh blood clot present in the wound.*

2. *Contusion 3 cm x 2 cm on the outer aspect of upper end of right FA, colour red.*

The injuries are simple, fresh and caused by blunt object.

47. Injuries of accused-Rameshwar examined at 01:45 AM on 19.08.1986 examined by DW-1 Dr. S.C. Shukla

1. *Lacerated wound 1 cm x 0.5 cm x skin deep on the left side of forehead above the left eyebrow, fresh blood clot.*

2. *Contusion 3 cm x 2 cm, on the outer aspect of lower end of right forearm, colour red.*

The injuries are simple, fresh and caused by blunt object.

48. From the above, it is apparent that the learned Trial Court has also not considered the injuries of the accused-appellants namely Rameshwar, Chet Ram and Misri.

49. We also find that report from the side of the appellants was lodged at 00:15 AM in the night intervening 18/19.08.1986 in which the incident was alleged to have taken place at 08:00 PM, whereas from

the side of the first informant, the report was lodged at 08:15 AM on 19.08.1986, in which the incident was alleged to have taken place at 05:00 PM on 18.08.1986. The first information is delayed by more than 15 hours. Explanation tendered by the prosecution for the delay in lodging the first information report is that after the incident the first informant while going to the police station along with injured Raj Pal and Babu Ram to lodge the first information and when he reached near village Sanda at about 12:00 in the night, injured-Raj Pal (deceased) succumbed to the injuries. Thereafter, he returned back to village and could not go to the police station to lodge the first information report on account of flood in the river. The distance between the police station Khudaganj and the place of occurrence is 07 Kms. As per evidence of PW-1, Bhikhari, after the occurrence at 05:00 PM, he along with Raj Pal and Babu Ram left for the police station, which was about 07 Kms. and when he reached near village Sanda at about 12:00 in the night, injured-Raj Pal died and thereafter he returned to village. The explanation tendered by the prosecution is too hard to swallow inasmuch as the first informant could not cover the distance of 7 kms. in seven hours. Whereas as per version of the accused-appellants, the incident in question took place at 08:00 PM and their report has been lodged at 00:15 AM, i.e. in four hours and fifteen minutes.

50. Further the injury of the injured Babu Ram was examined at 10:00 AM on 20.3.1986, which was allegedly sustained at 05:00 PM on 18.03.1986, whereas the injuries of the accused-appellants were examined at 01:00 AM on 18/19.3.1986.

51. In view of the above, we are of the view that the learned Trial Court has failed to examine the case of the accused-appellants in respect of cross case in corrective perspective.
52. Accordingly, the order dated 29.4.1987 passed by the learned Sessions Judge, Shahjahanpur in Sessions Trial No. 403 of 1986 is set aside.

53. Consequently, the appeal is allowed.

54. Appellants Chet Ram and Rameshwar are on bail. Their bail bonds are cancelled and sureties are discharged.

55. Office is directed to send a copy of this order to the court concerned along with necessary documents for compliance and compliance report be submitted to this Court within two months.

(2026) 4 ILRA 1122
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 20.04.2026

BEFORE

THE HON'BLE SIDDHARTHA VARMA, J.
THE HON'BLE JAI KRISHNA UPADHYAY, J.

Criminal Appeal No. 1548 of 2026

Rizwan

...Appellant

Versus

State of U.P.

...Respondent

Issue for Consideration

Matter pertains to whether, for the purposes of suspension of sentence and release on bail pending appeal under S. 389 Cr.P.C., the appellant's contention that he had no intention or motive to commit the murder of the deceased and that the shot intended for the informant accidentally hit the deceased excluded the applicability of S. 302 IPC and brought the case within S. 304 IPC, or whether S. 301 IPC embodying the Doctrine of Transfer of Malice rendered the offence punishable under S. 302 IPC. (Paras 2, 4 and 7-10)

Headnotes

Criminal Law - Suspension of Sentence Pending Appeal - Murder - Indian Penal Code, 1860 - Ss. 301, 302, 307, 506 - Arms Act, 1959 - Ss. 3/25 - Doctrine of Transfer of Malice or Transmigration of Motive - Accused intending to cause death of one person but shot hitting and killing another person - Whether offence falls under S. 302 IPC or S. 304 IPC - Held, by virtue of S. 301 IPC, intention stands transferred to the actual victim and the offender would still be guilty of causing death - Submission that there was no intention to kill the deceased rejected - Bail declined. (Paras 7-10)

Criminal Law - Suspension of Sentence Pending Appeal - Consideration of Criminal Antecedents - Code of Criminal Procedure, 1973 - S. 389 - Extensive criminal history involving offences like murder, attempt to murder and dacoity with murder brought on record by the State - Criminal history not sufficiently explained in supplementary affidavit - Held, appellant was a man of criminal character and had been involved in commission of serious offences - No case for grant of bail made out. (Paras 9, 10)

Held: It is settled law that if a person has an intention to commit an offence or cause death of any person but kills one whose death he never intended to cause, he would still be guilty of causing death - the Doctrine of Transfer of Malice or Transmigration of Motive provides that where there is mens rea of committing an offence, it can be transferred to another - if a person has an intention to commit an offence or cause death of any person but kills one whose death he never intended to cause, he would still be guilty of causing death - a composite reading and understanding of S. 301 IPC, Doctrine of Transfer of Malice or Transmigration of Motive and the cases on the subject makes it quite implicit that the appellant is guilty of committing an offence of culpable homicide amounting to murder punishable under S. 302 IPC and that the intention to kill some other person is not material inasmuch as he had the intention of committing the aforesaid offence though accidentally he might have killed another person - the submission that he had no intention to cause death of the deceased is not acceptable - the appellant had been engaged in commission of offence like murder, attempt to murder and dacoity with murder and the criminal history was not sufficiently explained - taking into account that the appellant is a man of criminal character and had been involved in commission of offences like murder, attempt to murder and dacoity with murder etc. and the law laid down in *Nanhe* (supra), the appellant has not made out a case of bail and the bail application is liable to be rejected - bail application is accordingly rejected. (Paras 7-10) (E-7)

Case Law Cited

Nanhe vs. State of Uttar Pradesh, (2024) 13 SCC 765; *Shankerlal Kacharabhai v. State of Gujarat*, 1964 SCC OnLine SC 131; AIR 1965 SC 1260; *Rajbir Singh v. State of U.P.*, (2006) 4 SCC 51; (2006) 2 SCC (Cri) 209; *Jagpal Singh v. State of Punjab*, 1991 Supp (1) SCC 549; 1991 SCC (Cri) 721; AIR 1991 SC 982.

List of Acts

Code of Criminal Procedure, 1973; Indian Penal Code, 1860; Arms Act, 1959

List of Keywords

Suspension of Sentence; Bail Pending Appeal; Doctrine of Transfer of Malice; Transmigration of Motive; Mens Rea; Culpable Homicide Amounting to Murder; Intention to Cause Death; Accidental Killing; Criminal History; Criminal Character; Murder; Attempt to Murder; Dacoity with Murder; Conviction; Bail Rejection.

Case Arising From

APPELLATE JURISDICTION: Application under S. 389 Cr.P.C. seeking suspension of sentence of conviction and release on bail pending appeal in Session Trial No. 658 of 2019 arising out of Case Crime No. 250 of 2019 under Ss. 307, 302, 506 IPC and Ss. 3/25 Arms Act, Police Station Baniyather, District Sambhal.

Appearances for Parties

Advs. for the Appellant:

Shri Irshad Mohammad.

Advs. for the Respondents:

Learned A.G.A. for the State.

(Delivered by Hon'ble Jai Krishna Upadhyay, J.)

Criminal Misc. Bail Application / (Suspension of Sentence) Application

1. Heard Shri Irshad Mohammad, learned counsel for the applicant, learned A.G.A. for the State and perused the record.

2. The instant application has been filed under Section 389 of Cr.P.C. to suspend the sentence of conviction and to release the applicant on bail in Session Trial No. 658 of 2019 (State of U.P. versus Rizwan) arising out of Case Crime No. 250 of 2019, under Sections 307, 302, 506 (part-2) of I.P.C. and 3/25 Arms Act, Police Station - Baniyather, District ? Sambhal.

3. As per the prosecution case, on 27.8.2019 at about 6:00 PM, while the informant was at his shop and was paying wages to labourers, Rizwan arrived at the scene and demanded money from the informant and when he refused to give the money to him, he drew a pistol from his pocket and fired at him with intent to kill, which was missed. However, when he fired second time, the bullet struck Shakir, who was working nearby and as a result, a large crowd gathered there and Rizwan was apprehended and beaten, consequently he sustained injuries. Injured Shakir succumbed to his injuries during treatment.

4. Contention of the learned counsel for the applicant is that the applicant is innocent and has been falsely implicated. It has been further submitted that the appellant had no intention or motive to commit the murder of the deceased rather he wanted to cause death of the informant and by mistake it hit the deceased. Hence, offence under Section 302 IPC is not made out and the case cannot travel beyond the purview of Section 304 IPC. In paragraph no. 28 of the affidavit it has been mentioned that neither the appellant is previous convict nor has any criminal history to his credit. It has further been submitted that the appellant has served out more than five years and six months sentence. It has also been submitted that the conviction and sentence imposed by the learned trial Judge is against the weight of evidence on record. Recovery of murder weapon on the pointing out of the appellant is false and planted. The trial court has misread the evidence on record and convicted the appellant. The prosecution has not been able to prove its case beyond reasonable doubt. Since there is no likelihood of early hearing of the appeal in near future, the appellant may be released on bail pending appeal.

5. In rebuttal, learned A.G.A. has opposed the bail application and submitted that the appellant has been rightly convicted by the trial court. Cogent and reliable evidence has been

collected by the I.O. against him during investigation. The trial court has appreciated the evidence in right perspective. Lastly, it has been submitted that the Appellant is a man of criminal character and in this regard a list of cases lodged against him has been annexed with the counter affidavit which is as under :

- “1. मु०अ०सं० 250/2019 धारा 302,307,506 भादिव० व 3/25 आयुध अधि० थाना बिनयाद्वारे र जनपद सम्भ ल (आरोप पत्र)
2. मु०अ०सं० 86/2015 धारा 307 भादिव० व 25 आयुध अधि० थाना चन् दौ सी जनपद सम्भ ल (आरोप पत्र)
3. मु०अ०सं० 307/2015 धारा 174-ए भादिव० थाना चन् दौ सी जनपद सम्भ ल (आरोप पत्र)
4. मु०अ०सं० 669/2008 धारा 384,504,506, भादिव० थाना चन् दौ सी जनपद सम्भ ल (आरोप पत्र)
5. मु०अ०सं० 883/2007 धारा 3(1) गैगस्ट र एक्ट थाना चन्दौ सी जनपद सम्भ ल (आरोप पत्र)
6. मु०अ०सं० 35/2009 धारा 307 भादिव० थाना चन् दौ सी जनपद सम्भ ल (आरोप पत्र)
7. मु०अ०सं० 36/2009 धारा 25 आयुध अधि० थाना चन् दौ सी जनपद सम्भ ल (आरोप पत्र)
8. मु०अ०सं० 86/2009 धारा 323,504,506 भादिव० थाना चन् दौ सी जनपद सम्भ ल (आरोप पत्र)
9. मु०अ०सं० 104/2011 धारा 394,397 भादिव० थाना चन् दौ सी जनपद सम्भ ल (आरोप पत्र)
10. मु०अ०सं० 176/2011 धारा 302,34 भादिव० थाना चन् दौ सी जनपद सम्भ ल (आरोप पत्र)
11. मु०अ०सं० 179/2011 धारा 147,323,504,506 भादिव० थाना चन् दौ सी जनपद सम्भ ल (आरोप पत्र)
12. मु०अ०सं० 449/2011 धारा 3(1) गैगस्ट र एक्ट थाना चन्दौ सी जनपद सम्भ ल (आरोप पत्र)
13. मु०अ०सं० 665/2008 धारा 394 भादिव० थाना चन् दौ सी जनपद सम्भ ल (आरोप पत्र)
14. मु०अ०सं० 669/2008 धारा 384,504,506 भादिव० थाना चन् दौ सी जनपद सम्भ ल (आरोप पत्र)
15. मु०अ०सं० 689/2005 धारा 307 भादिव० थाना चन् दौ सी जनपद सम्भ ल (आरोप पत्र)
16. मु०अ०सं० 798/2007 धारा 356,323 भादिव० थाना चन् दौ सी जनपद सम्भ ल (आरोप पत्र)
17. मु०अ०सं० 799/2007 धारा 302 भादिव० व 4/25/27 आयुध अधि० थाना चन् दौ सी जनपद सम्भ ल (आरोप पत्र)
18. मु०अ०सं० 807/2008 धारा 380 भादिव० थाना चन् दौ सी जनपद सम्भ ल (आरोप पत्र)
19. मु०अ०सं० 883/2007 धारा 3(1) गैगस्ट र एक्ट थाना चन्दौ सी जनपद सम्भ ल (आरोप पत्र)
20. मु०अ०सं० 910/2007 धारा 323,504,506 भादिव० थाना चन् दौ सी जनपद सम्भ ल (आरोप पत्र)
21. मु०अ०सं० 260/2005 धारा 147,148,149,307,452,302,323 भादिव० थाना कोतवाली सम्भ ल जनपद सम्भ ल (आरोप पत्र)
22. मु०अ०सं० 1352/2005 धारा 147,148,149,307 भादिव० थाना कोतवाली सम्भ ल जनपद सम्भ ल (आरोप पत्र)
23. मु०अ०सं० 175/2011 धारा 394 भादिव० थाना चन्दौ सी जनपद सम्भ ल (आरोप पत्र)
24. मु०अ०सं० 469/2013 धारा 279,337,338,304 बी, 427 भादिव० थाना चन्दौ सी जनपद सम्भ ल (आरोप पत्र)

25. मु0अ0सं0 569/2013 धारा 10 उत्तर प्रदेश गुण्डा अधि० थाना चन् दौ सी जनपद सम्मल (सीआर)
26. मु0अ0सं0 537/2015 धारा 3/4 गुण्डा अधि० थाना चन् दौ सी जनपद सम्मल (सीआर)
27. मु0अ0सं0 1353/2005 धारा 25 आयुध अधि० थाना कोतवाली सम्मल जनपद सम्मल (आरोप पत्र)”

6. We have perused the judgment of the Trial Court with the assistance of the learned counsel for the parties and have considered the submissions made by the learned counsel for the parties.

7. So far as the submission that appellant had no intention or motive to commit the murder of the deceased rather he wanted to cause death of the informant and by mistake it hit the deceased is concerned, it is settled law that if a person has an intention to commit an offence or cause death of any person but kills one whose death he never intended to cause, he would still be guilty of causing death. The Hon'ble Apex Court in **Nanhe vs. State of Uttar Pradesh, (2024) 13 SCC 765** has held as under :

“10. In context with the argument that the appellant had no intention to kill the deceased and that he was accidentally killed though in fact he had fired the shot upon Mahendra with whom he had a quarrel/altercation a little earlier, it is relevant to refer to Section 301 IPC which reads as under:

“301. Culpable homicide by causing death of person other than person whose death was intended.-If a person, by doing anything which he intends or knows to be likely to cause death, commits culpable homicide by causing the death of any person, whose death he neither intends nor knows himself to be likely to cause, the culpable homicide committed by the offender is of the description of which it would have been if he had caused the death of the person whose death he intended or knew himself to be likely to cause.”

11. The aforesaid provision is based up on the ?Doctrine of Transfer of Malice or Transmigration of Motive? which provides that where there is ?mens rea? of committing an offence, it can be transferred to another. To illustrate the said doctrine, an example could be given of a person who had intention to kill a person but by mistake kills another person, then he would still be held guilty of committing murder even in the absence of intention to kill that particular person. In simpler words, if a person has an intention to commit an offence or cause death of any person but kills one whose death he never intended to cause, he would still be guilty of causing death.

12. In **Shankerlal Kacharabhai v. State of Gujarat [Shankerlal Kacharabhai v. State of Gujarat, 1964 SCC OnLine SC 131 : AIR 1965 SC 1260]**, this Court while discussing the scope of Section 301 IPC held as under: (SCC OnLine SC para 10)

“10. ? It embodies what the English authors describe as the doctrine of transfer of malice or the transmigration of motive. Under the Section if A intends to kill B, but kills C whose death he

neither intends nor knows himself to be likely to cause, the intention to kill C is by law attributed to him. If A aims his shot at B, but it misses B either because B moves out of the range of the shot or because the shot misses the mark and hits some other person C, whether within sight or out of sight, under Section 301, A is deemed to have hit C with the intention to kill him. What is to be noticed is that to invoke Section 301 of the Penal Code, 1860A shall not have any intention to cause the death or the knowledge that he is likely to cause the death of C.”

13. In a similar case where also, the victim was accidentally shot though the firing was intended to cause injuries to some other person, this Court in **Rajbir Singh v. State of U.P. [Rajbir Singh v. State of U.P., (2006) 4 SCC 51 : (2006) 2 SCC (Cri) 209]** held that the approach of the High Court in setting aside the order passed by the Special Judge solely on the ground that the firing was not aimed at the victim and that he was accidentally injured is completely in ignorance of the provision of Section 301IPC. The Supreme Court observed as under: (SCC p. 54, paras 5 & 7)

“5. We have heard the learned counsel for the appellant (the complainant), the learned counsel for Akhilesh Chauhan (Respondent 2) and have perused the records. The only reason given by the High Court for setting aside the order passed by the learned Special Judge framing charges against Respondent 2 is that the firing was not aimed at Pooja Balmiki but she accidentally received the injuries as she was passing through that way and was hit. The High Court completely ignored the provisions of Section 301IPC.”

The aforesaid provision clearly shows that if the killing took place in the course of doing an act which a person intends or knows to be likely to cause death, it ought to be treated as if the real intention of the killer had been actually carried out.

7. The fact that there was no intention to cause injury to Pooja Balmiki and she was accidentally hit can make no difference as according to the version of the prosecution, the accused intended to cause injuries by firearm to Hoti Lal and in attempting to carry out the same, also caused injuries to her. The reasons given by the High Court for quashing the charges are, therefore, wholly erroneous in law and cannot be sustained.”

14. In another case of similar nature i.e. **Jagpal Singh v. State of Punjab [Jagpal Singh v. State of Punjab, 1991 Supp (1) SCC 549 : 1991 SCC (Cri) 721 : AIR 1991 SC 982]**, this Court held that under the ?Doctrine of Transfer of Malice or Transmigration of Motive? as per Section 301IPC, the accused has made himself punishable under Section 302IPC (simpliciter) as he accidentally shot a particular person, though, in fact he might have intended to kill another person and may have aimed the shot at that another person only.

15. A composite reading and understanding of the aforesaid provision of Section 301IPC, ?Doctrine of Transfer of Malice or Transmigration of Motive? and above cases on the subject, it is quite implicit that the appellant herein is guilty of committing an offence of culpable homicide amounting to murder punishable under Section 302 IPC and that the intention to kill some other person is not material inasmuch as he had the intention of committing the aforesaid offence though accidentally he might have killed another person.”

8. In view of the law laid down by the Hon'ble Apex Court in the case of **Nanhe** (*supra*), the submission made by the learned counsel for the appellant that he had no intention to cause death of the appellant is not acceptable.

9. Further, though the learned counsel for the appellant has mentioned in the affidavit that neither he is previous convict nor has any criminal history to his credit yet the learned AGA has brought on record a list of criminal cases lodged against the appellant which shows that the appellant had been engaged in commission of offence like murder, attempt to murder and dacoity with murder etc. In the supplementary affidavit filed on 16.4.2026 the learned counsel for the appellant has not sufficiently explained the criminal history of the appellant.

10. In view of the above discussions and taking into account the fact that the appellant is a man of criminal character and had been involved in commission of offences like murder, attempt to murder and dacoity with murder etc. and the law laid down by the Hon'ble Apex Court in the case of **Nanhe** (*supra*), we are of the view that the appellant has not made out a case of bail. The bail application is accordingly **rejected**.

Order on appeal

11. Office to prepare the paper book.

12. List this appeal on 6.7.2026 for hearing.

(2026) 4 ILRA 1128
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 30.04.2026

BEFORE

THE HON'BLE SUBHASH VIDYARTHI, J.

Criminal Appeal No. 1613 of 2012

Shanu

...Appellant

Versus

State of U.P.

...Respondent

Issue for Consideration

Matter pertains to whether it is safe to convict the accused solely on the solitary statement of the prosecutrix which is sought to be corroborated by the evidence of her father and whether the evidence of the prosecutrix inspires confidence and appears to be absolutely trustworthy, unblemished and is of sterling quality. (Paras 20-23)

Headnotes

Criminal Law - Rape and Gang Rape - Appreciation of Evidence - Indian Penal Code, 1860 - Ss. 376(g), 342, 506, 120-B - Conviction based on solitary testimony of prosecutrix - Requirement that evidence must inspire confidence and be of sterling quality - Court required to examine

whether testimony is absolutely trustworthy, unblemished and consistent with supporting material - Application to facts where prosecution version suffered from material discrepancies, absence of injuries, absence of medical corroboration, non-recovery of alleged weapons, unnatural conduct attributed to parties and failure to support prosecution case through material evidence - Held, evidence of victim not of sterling quality and could not form sole basis of conviction - Conviction and sentence set aside and appellants acquitted. (Paras 17-24)

Criminal Trial - Appreciation of Testimony of Prosecutrix - Sole Basis of Conviction - Indian Penal Code, 1860 - Ss. 376(g), 342, 506, 120-B - Statement of prosecutrix can sustain conviction if it inspires confidence and appears to be absolutely trustworthy and of sterling quality - Material discrepancies raising serious doubt against prosecution version require corroboration - Application to facts where allegation of gang rape was not supported by medical evidence and several circumstances rendered prosecution story highly unlikely and unnatural - Held, trial court erred in treating uncorroborated statement of victim as gospel truth. (Paras 17-23)

Criminal Evidence - Medical and Scientific Evidence - Effect of Absence of Injuries and Forensic Support - Indian Penal Code, 1860 - Ss. 376(g), 342, 506, 120-B - Though injury is not a sine qua non for deciding whether rape has been committed, factual matrix of each case must be considered - Application to facts where no mark of injury or sign of use of force was found, no sperms or gonococci were detected and alleged semen-stained salwar was not scientifically proved - Held, cumulative discrepancies raised serious doubt regarding prosecution case. (Paras 17, 22-23)

Held: The prosecution evidence revealed material discrepancies inasmuch as it was highly unlikely that a woman residing in the neighborhood will call a girl to her home abruptly in the afternoon and get her raped by her husband and another person while the woman will continue to sit outside the room where the rape was being committed - two persons are said to have raped the victim who was aged between 20-25 years and yet no mark of injury or sign of use of force was found on any part of her body - the victim said that the rapists had threatened with a knife and a pistol but no weapon has been recovered from any of the appellants - it is highly unnatural that the victim did not tell about the incident to her mother on the same day - the victim's mother has not been produced as a prosecution witness - the salwar alleged to contain semen stains was not scientifically proved - the allegation of commission of gang-rape is not supported by medical evidence - the aforesaid discrepancies are material discrepancies which raise serious doubt against the victim's statement and show that the evidence of the victim is not of sterling quality which may form the sole basis of conviction - the trial Court held the appellants guilty without taking into consideration the aforesaid relevant aspects of the matter and by treating the uncorroborated statement of the victim as gospel truth which vitiates the judgment of the trial Court - consequently the judgment and order convicting and sentencing the appellants was set aside and the appellants were acquitted of all the charges - (Paras 20-24) (E-7)

Case Law Cited

Lalliram v. State of M.P., (2008) 10 SCC 69; *Pratap Misra v. State of Orissa* [(1977) 3 SCC 41]; *Aman Kumar v. State of Haryana* [(2004) 4 SCC 379]; *Rajesh Patel v. State of Jharkhand*: (2013) 3 SCC 791; *Santosh Prasad v. State of Bihar*: (2020) 3 SCC 443; *Raju v. State of M.P.*, (2008) 15 SCC 133; *State of Punjab v. Gurmit Singh*, (1996) 2 SCC 384; *Rai Sandeep v. State (NCT of Delhi)*, (2012) 8 SCC 21; *Krishan Kumar Malik v. State of Haryana* [(2011) 7 SCC 130].

List of Acts

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

List of Keywords

Gang rape; prosecutrix; solitary testimony; sterling quality; material discrepancies; medical evidence; pathological examination; vaginal swab; semen stains; absence of injuries; sign of use of force; corroboration; uncorroborated statement; gospel truth; appreciation of evidence; credibility of witness; acquittal; conviction set aside.

Case Arising From

APPELLATE JURISDICTION: Criminal Appeals arising from the judgment and order dated 31.10.2012 passed by the Additional Session Judge (T.E.C.P.-5), Lucknow in Session Trial No. 1237 of 2008 arising out of Case Crime No. 92/07 under Ss. 342/376/506 I.P.C., P.S. Mall, Lucknow convicting and sentencing the appellants.

Appearances for Parties

Advs. for the Appellant:

Shri Kunwar Rudra Pratap Singh.

Advs. for the Respondents:

Shri Mohd. Asif Khan, learned A.G.A.-I for the State of U.P.

(Delivered by Hon'ble Subhash Vidyarthi, J.)

1. Heard Shri Kunwar Rudra Pratap Singh, the learned counsel for the appellants and Shri Mohd. Asif Khan, the learned A.G.A.-I for the State of U.P. Vakalatnama of Shri Kunwar Rudra Pratap Singh is already there in Criminal Appeal Nos.1613 of 2012 and 1652 of 2012 and he has filed his vakalatnama in Criminal Appeal No.1625 of 2012, which is taken on record

2. All the three appellants in the aforesaid three appeals are present in person and they stated that they have already submitted bail bonds and sureties in furtherance of the order dated 01.04.2026 passed by this Court.

3. The learned counsel for the appellant has submitted that the allegation in the present case is that Smt. Alia called the victim from her home, locked her inside a room along with Shakeel (husband of Smt. Alia) and Shanu and both of them raped the victim while Smt. Alia was sitting outside the room. He has submitted that it is highly improbable that a lady would call another young lady to her home, lock her inside with her husband and another person and get her raped while she would keep on sitting outside.

4. This was the entire submission advanced by the learned counsel for the appellants and upon request of the Court to elaborate the submissions and support the same with the material on record, the learned counsel for the appellant states that he has not brought his paper book. Therefore, the Court proceeds to examine the record and decide the appeal on its own, virtually without any assistance from the learned Counsel for the appellants.

5. All the aforesaid three appeals have been filed challenging the validity of the judgment and order dated 31.10.2012 passed by the learned Additional Session Judge (T.E.C.P.-5) Lucknow in Session Trial No. 1237 of 2008 arising out of Case Crime No. 92/07 under Sections 342/376/506 I.P.C., P.S. Mall, Lucknow whereby Shakeel (the appellant in Crl. Appeal No.1652/2012) and Shanu (the appellant in Crl. Appeal No.1613/2012) have been convicted for the offences under Section 376(g), 342 and 306 IPC and have been sentenced them for rigorous imprisonment for 10 years and payment of Rs.5,000/- each as fine for the offence under Section 376 (g) IPC, rigorous imprisonment for three months and payment of Rs.500/- each as fine for the offence under Section 342 IPC and three years rigorous imprisonment and payment of Rs.1,000/- as fine for the offence under Section 506 IPC. The trial Court has convicted Smt. Alia Begum (the appellant in Criminal Appeal No. 1625 of 2012) for the offence under Section 376/120-B IPC and Section 342 IPC and has sentenced her to rigorous imprisonment for five years and payment of Rs.3,000/- fine for the

offence under Section 376/120-B and rigorous imprisonment for three months and payment of Rs.500/- as fine for the offence under Section 342 IPC.

6. The record reveals that the FIR was lodged on the basis of a written complaint given by the complainant on 10.06.2007 at 14:10 hours stating that while the informant's daughter was working inside her home at about 03:00-04:00 pm on 06.06.2007, Alia wife of Shakeel, who resides in the neighborhood, called the victim's daughter on the pretext of making embroidery on a Kurta. When the informant's daughter reached the home of the appellants Alia, Shakeel and Shanu were present there under a plan. Both of them caught hold of the victim and took her inside a Kothri. Alia locked the kothri from the outside and kept on sitting there. Both the accused persons raped the victim. One of them threatened her with a knife and the other threatened her with the pistol. After reaching home, the victim did not tell anything to her mother in spite of being asked. Her father had gone somewhere outside. When he reached home, the victim gave information about the incident. Thereupon, the FIR was lodged.

7. The medico-legal examination report of the victim did not reveal any mark of injury on any part of her body, including her private parts. The hymen was old, torn and healed. The pathological examination report of vaginal swab slides did not reveal the presence of spermatozoa or gonococci. As per the X-ray examination report, the victim was over 18 years of age.

8. The informant was examined as PW-1 and he reiterated the FIR version. He stated that her daughter came back home weeping after the incident. Because of fear, she did not tell anything to her mother. When he made a phone call on 09.06.2007, the mother of the victim told him about the incident on the phone and thereafter he returned home in the night and lodged the First Information Report on 10.06.2007. The salwar worn by the victim at the time of the incident had stains of semen and it was deposited in the police station.

9. The victim was examined as PW-2. She stated that the incident took place at about 3-4 PM on 06.06.2007. She was making a kurta inside her home. Alia came there and asked her to accompany her to her home and make a kurta there. When she refused to go, Alia insisted. The victim went with her. The other appellants Shanu and Shakeel were present there. Shakeel pulled her inside. Alia locked the door from outside. Shakeel and Shanu threatened her with a knife and a pistol. Shakeel raped her first while Shanu was keeping her mouth shut and thereafter Shanu did the same thing while Shakeel kept her mouth shut. Thereafter both of them threatened her, Alia opened the door and she went home crying. She did not tell about the incident to her mother on the same day and told her about it later. Her father had gone to Delhi and he made a phone call on the same night. Her mother called her father home. When her father made a phone call on 09.06.2007, her mother told him all the things and thereafter her father returned home in the morning and she went to the police station to lodge a report. She also stated that her salwar was deposited in the police station.

10. The doctor who had medically examined the victim was examined as PW-5. She proved the medical examination report and she stated that there was no injury mark on any part of the body of the victim, including her private parts. The hymen was old torn. She had prepared vaginal swab slides for pathological examination and had referred the victim to a radiologist. She

stated that although the hymen was old torn, she could not say with certainty that the victim was habitual of sexual intercourse. As per the X-ray examination report, the age of the victim could be about 20 years or at the most 25 years.

11. The doctor who had conducted the pathological examination report stated that no sperms or gonococci were found in the pathological examination of vaginal swabs.

12. In the statement recorded under Section 313 Cr.P.C, the accused Shakeel stated that Bakrid festival occurred a few days prior to the incident. The fair price shop owner had given him one sack full of sugar for being distributed. He was distributing sugar. Mukhtar Ahmed (father of the victim) forcefully tried to take him to his home. An altercation had taken place at that time due to which reason Mukhtar Ahmed had falsely implicated him. However, the accused persons did not adduce any evidence.

13. The trial Court held that the informant was not present on the date of the incident. He was in Delhi. Upon coming to know about the incident, he came back and lodged the FIR. Therefore, the delay in lodging the FIR has sufficiently been explained.

14. On behalf of the accused persons, some discrepancies in the statement were highlighted like at page-8 of the statement, the victim had stated that as soon as she reached the door of the house of Alia, Shakeel caught hold of her hand and Alia locked the door. When Shakeel had pulled her, two-three bangles in her hand had got broken but she did not suffer any injury. The defense claimed that this statement has not been given in the statement recorded under Section 161 Cr.P.C. or in the examination-in-chief. The trial Court held that this statement was made in response to a question put during cross examination and it cannot be said to be an improvement in the statement.

15. The defense counsel had contended that in case the victim had resisted commission of gang-rape, some marks of resistance would certainly be visible on her body but the medico-legal examination report reveals no mark of injury or sign of use of force and no evidence of intercourse. The trial Court rejected this submission on the ground that mere penetration is sufficient to make out the offence of rape and nothing more is required. The trial Court stated that the absence of sperm or gonococci in pathological examination report does not disprove commission of rape. The trial Court further held that although salwar of the victim is said to be having stains of semen and it was deposited with the police, it has not been sent for forensic examination, but this defect in prosecution would not give any benefit to the accused as the statement of the victim is sufficient to establish the guilt of the accused persons.

16. The trial Court further observed that there was a question in its mind that it appears to be quite unnatural that a lady will call any girl to her house and get her raped by her husband. The trial Court held that although it appears to be unnatural but it is not impossible. When the victim's statement describes the incident, the evidence would override the mere probabilities. The trial Court accordingly held the appellants Shakeel and Shanu guilty of the offences under Sections 376(g), 342 and 306 IPC and Smt. Alia for the offences under Section 120-B read with Section 376 IPC and 342 IPC.

17. In **Lalliram v. State of M.P.**, (2008) 10 SCC 69, the Hon'ble Supreme Court held that:

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“11.It is true that injury is not a sine qua non for deciding whether rape has been committed. But it has to be decided on the factual matrix of each case. As was observed by this Court in Pratap Misra v. State of Orissa [(1977) 3 SCC 41] where allegation is of rape by many persons and several times but no injury is noticed that certainly is an important factor and if the prosecutrix's version is credible, then no corroboration is necessary. But if the prosecutrix's version is not credible then there would be need for corroboration. (See Aman Kumar v. State of Haryana [(2004) 4 SCC 379].)”

(Emphasis added)

18. In **Rajesh Patel v. State of Jharkhand**: (2013) 3 SCC 791, the Hon'ble Supreme Court held that: -

*“14.The prosecution case is that the appellant has committed the offence of rape on the prosecutrix on 14-2-1993. She is the solitary witness to prove the charge. The same is sought to be corroborated by her mother, PW 2 who has supported the prosecution case on the basis of narration of the alleged offence by the prosecutrix to her. It is an undisputed fact that both the appellant and the prosecutrix are classmates and had good acquaintance with each other as they were exchanging books. The case of the prosecution is that she had given her book to the appellant. She asked him to return the same and he asked her to go to his house on 14-2-1993 to take back the book. Accordingly, she went to the house of the appellant. When she entered the house he locked the door of the house from inside. At that time she had not raised an alarm, except stating that she insisted not to lock the door of the house as there were no other inmates in the house at that point of time. The version of the prosecutrix is that she could not raise alarm as the appellant had threatened her with a knife. Further case of the prosecution is that he had then committed the offence of rape on her. Further, she has stated that while the appellant was committing rape on her she got pain in her private part and at that point of time also she wanted to raise alarm, but he had shown the knife to her not to raise alarm. Thus, **the prosecution story as narrated by the prosecutrix is most improbable and unnatural.***

* * *

*22. For the aforesaid reasons **the prosecution case is not natural, consistent and probable to believe to sustain the conviction and sentence of the appellant for the alleged offence said to have been committed by him.**”*

(Emphasis added)

19. In **Santosh Prasad v. State of Bihar**: (2020) 3 SCC 443, the Hon'ble Supreme Court referred to certain precedents in the following paragraphs: -

“5.4.1. In *Raju v. State of M.P.*, (2008) 15 SCC 133], it is observed and held by this Court in paras 11 and 12 as under: (SCC p. 141)

“11. It cannot be lost sight of that rape causes the greatest distress and humiliation to the victim but at the same time a false allegation of rape can cause equal distress, humiliation and damage to the accused as well. The accused must also be protected against the possibility of false implication, particularly where a large number of accused are involved. It must, further, be borne in mind that the broad principle is that an injured witness was present at the time when the incident happened and that ordinarily such a witness would not tell a lie as to the actual assailants, but there is no presumption or any basis for assuming that the statement of such a witness is always correct or without any embellishment or exaggeration.

12. Reference has been made in *Gurmit Singh case* [*State of Punjab v. Gurmit Singh*, (1996) 2 SCC 384] to the amendments in 1983 to Sections 375 and 376 of the Penal Code making the penal provisions relating to rape more stringent, and also to Section 114-A of the Evidence Act with respect to a presumption to be raised with regard to allegations of consensual sex in a case of alleged rape. **It is however significant that Sections 113-A and 113-B too were inserted in the Evidence Act by the same amendment by which certain presumptions in cases of abetment of suicide and dowry death have been raised against the accused. These two sections, thus, raise a clear presumption in favour of the prosecution but no similar presumption with respect to rape is visualised as the presumption under Section 114-A is extremely restricted in its applicability. This clearly shows that insofar as allegations of rape are concerned, the evidence of a prosecutrix must be examined as that of an injured witness whose presence at the spot is probable but it can never be presumed that her statement should, without exception, be taken as the gospel truth. Additionally, her statement can, at best, be adjudged on the principle that ordinarily no injured witness would tell a lie or implicate a person falsely. We believe that it is under these principles that this case, and others such as this one, need to be examined.”**

5.4.2. In *Rai Sandeep v. State (NCT of Delhi)*, (2012) 8 SCC 21], this Court had an occasion to consider who can be said to be a “sterling witness”. In para 22, it is observed and held as under: (SCC p. 29)

“22. In our considered opinion, the “sterling witness” should be of a very high quality and calibre whose version should, therefore, be unassailable. The court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as the sequence of it. Such a version should have co-relation with each and every one of other supporting material such as the recoveries made, the weapons used, the manner of offence

committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other such similar tests to be applied, can it be held that such a witness can be called as a "sterling witness" whose version can be accepted by the court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged."

5.4.3. *In Krishan Kumar Malik v. State of Haryana [(2011) 7 SCC 130], it is observed and held by this Court that no doubt, it is true that to hold an accused guilty for commission of an offence of rape, the solitary evidence of the prosecutrix is sufficient provided the same inspires confidence and appears to be absolutely trustworthy, unblemished and should be of sterling quality.*

20. With the aforesaid decisions in mind, it is required to be considered, whether it is safe to convict the accused solely on the solitary statement of the prosecutrix which is sought to be corroborated by the evidence of her father (PW-1). Whether the evidence of the prosecutrix inspires confidence and appears to be absolutely trustworthy, unblemished and is of sterling quality?

21. The victim (PW-2) stated that while she was making a kurta at her home, Alia came there at about 3-4 pm on 06.06.2007 and asked her to accompany her to her home and make a kurta there. Initially she did not agree, but when Alia insisted, the victim went with her. The other appellants Shanu and Shakeel were present there. Shakeel pulled her inside. Alia locked the door from outside. Shakeel and Shanu threatened her with a knife and a pistol. Shakeel raped her first while Shanu was keeping her mouth shut and thereafter Shanu did the same thing while Shakeel kept her mouth shut. Thereafter, both of them threatened her, Alia opened the door and she went home crying.

22. A scrutiny of the prosecution evidence reveals the following discrepancies: -

(i) Firstly, it is highly unlikely that a woman residing in the neighborhood will call a girl to her home abruptly in the afternoon and get her raped by her husband and another person while the woman will continue to sit outside the room where the rape was being committed.

(ii) Secondly, two persons are said to have raped the victim, who was aged between 20-25 years and yet no mark of injury or sign of use of force was found on any part of her body.

(iii) Thirdly, the victim said that the rapists had threatened with a knife and a pistol, but no weapon has been recovered from any of the appellants.

(iv) Fourthly, it is highly unnatural that the victim did not tell about the incident to her mother on the same day. The victim said that she told about the incident to her mother later, but she did not specify as to when did she tell it to her mother.

(v) Fifthly, the victim's father had gone to Delhi and he made a phone call on the same night, her mother called her father home without knowing about the incident. From the aforesaid statement it appears that the victim firstly told about the incident to her mother, but the victim's mother has not been produced as a prosecution witness.

(vi) Sixthly, the victim stated that her salwar was deposited in the police station. The informant PW-1 stated that the salwar worn by the victim at the time of the incident has stains of semen on it. The salwar was produced before the trial Court as material exhibit no. 2 and it was proved by the PW-4 constable Kamta Ram, but he did not state that the salwar had any stain on it and no semen stains were shown to the Court. During cross-examination, PW-4 stated that he could not tell as to whether the salwar had any stains and what was the cause of the stains.

(vii) Seventhly, PW-5 - the doctor who had medically examined the victim, stated that there was no injury mark on any part of the victim's body of the victim, including her private parts. The hymen was old torn. PW- 7 the pathologist, stated that no sperms or gonococci were found in the pathological examination of vaginal swabs. Therefore, the allegation of commission of gang-rape is not supported by medical evidence.

23. The aforesaid discrepancies are material discrepancies which raise serious doubt against the victim's statement and the aforesaid discrepancies show that the evidence of the victim is not of sterling quality, which may form the sole basis of conviction. The trial Court has held the appellants guilty without taking into consideration the aforesaid relevant aspects of the matter and by treating the uncorroborated statement of the victim as gospel truth, which vitiates the judgment of the trial Court.

24. In view of the foregoing discussion, all the three appeals are **allowed**. The judgment and order dated 31.10.2012 passed by the Additional Session Judge (T.E.C.P.-5) Lucknow in Session Trial No. 1237 of 2008 arising out of Case Crime No. 92/07 under Sections 342/376/506 I.P.C., P.S. Mall, Lucknow convicting and sentencing the appellants is set aside. The appellants are acquitted of all the charges.

25. The appellants are directed to comply with the provision of Section 437-A Cr.P.C. and execute bail bonds with sureties within a period of two weeks, to appear before the Hon'ble Supreme Court in case any appeal is filed against this order and the Hon'ble Supreme Court issues notice of the appeal and such bail bonds shall be in force for six months.

26. Before parting with the case, I am constrained to observe that normally about 100 old Criminal Appeals are listed before this Bench on any single day, besides the fresh cases and criminal cases related to M.Ps., M.L.As., M.L.Cs., C.B.I., E.D. and acid attack victims. Although it is the duty of the Court to decide the case, the Court is entitled to receive assistance from the Advocates in deciding cases. More often than not, the Court has to deal with poor assistance or no

assistance provided by the Advocate and at times, the Court has to deal with matters where the Advocates place incorrect facts or law before the Court. This creates a big obstacle in expeditious dispensation of justice and lack of proper assistance by the Advocates is a major cause of delay in decision of cases. The present bunch of three appeals has been decided by me practically without any assistance by the learned Counsel for the appellants, which resulted in consumption of much more time in deciding these appeals than was justifiable.

27. The Advocates are an integral part of justice dispensation. I have time and again been requesting the Advocates to provide better assistance to the Courts. I once again request the members of the bar to realize the importance of their role in justice dispensation, respect their professional duty and provide assistance to the Courts in dispensation of justice by advancing precise and concise submissions with the help of relevant law, to the best of their ability. Hope this request will not go in vain, like numerous previous requests.

(2026) 4 ILRA 1137
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 27.04.2026

BEFORE

THE HON'BLE AVNISH SAXENA, J.

Criminal Appeal No. 1735 of 1987

Brijbasi Lal & Anr.

...Appellant

Versus

State of U.P.

...Respondent

Issue for Consideration

Matter pertains to whether the trial court has rightly appreciated the testimonies of witnesses of fact and reached to the right conclusion of convicting the accused appellant? (Para 16)

Headnotes

Criminal Law — Appeal against conviction — appreciation of chance witnesses — Code of Criminal Procedure, 1973 - S. 374(2) — Indian Penal Code, 1860 - S. 307 — evidence of chance witness requires a very cautious and close scrutiny and must adequately explain presence at place of occurrence, but cannot be discarded merely because the witness happened to be present by chance — where the two chance witnesses were inconsistent inter se, in conflict with the informant, and failed to explain their presence, their testimony was not inspiring confidence — conviction set aside and benefit of doubt granted. (Paras 17 to 27)

Criminal Law — attempt to murder — evaluation of ocular and medical evidence — Indian Penal Code, 1860 - S. 307 — medico legal evidence proved gunshot injuries on a vital part of the body and injuries were sufficient to cause death though simple in nature, but inconsistent ocular version, doubtful presence of chance witnesses, and defective investigation created reasonable doubt — accused entitled to benefit of doubt. (Paras 22 to 27)

Criminal Law — defective investigation — non-recovery of blood stained clothes, earth and weapon — Indian Penal Code, 1860 - S. 307 — faulty investigation by itself is not a ground for acquittal if the prosecution evidence is consistent, reliable, trustworthy and cogent, but where

the prosecution version itself is infirm and the evidence of witnesses is not reliable, investigative lapses reinforce doubt — prosecution case failed. (Paras 24 to 27)

Criminal Law — recovery of weapon — failure to seize licensed gun and send it for ballistic examination — Indian Penal Code, 1860 -S. 307 — absence of weapon recovery and ballistic report, though not decisive by itself, became material in the facts of the case because the prosecution otherwise failed to establish a clinching chain of evidence connecting the accused with the offence — Hence the accused is entitled for benefit of doubt and shall be acquitted. (Paras 26 to 27)

Held: The two chance witnesses, Shiv Kumar Singh and Sughar Singh, were not only inconsistent in their statements regarding the occurrence but were also in conflict with the statement of the informant, Rajendra Singh - The prosecution failed to establish any reason for their presence at the place of occurrence - The prosecution version, as gathered from the testimonies of the three witnesses of fact, does not inspire confidence regarding the truthfulness of the prosecution case - The site plan, non-collection of blood-stained clothes, blood-stained earth, and the alleged weapon further weaken the prosecution case - The injured witness and the informant assigned different roles to the accused, Brijbasi and Keshav - The fact that the injured person was taken from District Mainpuri to District Etawah for treatment also creates doubt about the prosecution story - The prosecution failed to establish that the licensed gun of Subedar Singh was used in the incident - There are material discrepancies regarding the allegation of two shots being fired and the claim that one shot caused injuries to two persons - Consequently, there is no clinching evidence against the accused to sustain a conviction for the offence of attempt to murder - The accused is therefore entitled to the benefit of doubt and deserves to be acquitted – Appeal allowed.(Paras 24 to 31) (E-7)

Case Law Cited

Subal Ghorai Vs. State of West Bengal, (2013) 4 SCC 607; *Thangaiya v. State of T.N.*, (2005) 9 SCC 650; *Sarvesh Narain Shukla v. Daroga Singh*, (2007) 13 SCC 360; *Jarnail Singh v. State of Punjab*, (2009) 9 SCC 719; *Harbeer Singh v. Sheeshpal*, (2016) 16 SCC 418; *Suresh v. State of Haryana*, (2018) 18 SCC 654; *Dhanaj Singh v. State of Punjab*, (2004) 3 SCC 654; *Motilal v. State of Rajasthan*, (2009) 7 SCC 454; *State of U.P. v. Wasif Haider*, (2019) 2 SCC 303; *Madan v. State of U.P.*, (2023) 15 SCC 701 (3 Judges); *Edakkandi Dineshan v. State of Karhala*, (2025) 3 SCC 273; *Mano v. State of T.N.*, (2007) 13 SCC 795; *Abdulwahab Abdulmajid Baloch v. State of Gujarat*, (2009) 11 SCC 625 (3- Judges); *Jagroop Singh v. State of Punjab*, (2012) 11 SCC 768; *Ram Singh v. State of U.P.*, (2024) 4 SCC 208; *Jitendra Kumar Mishra alias Jittu Vs. State of Madhya Pradesh*, (2024) 2 SCC 666.

List of Acts

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

List of Keywords

investigation; trial court; conviction; abated; fine; possession of land; chance witness; licensed gun; FSL report; FIR; foundation; spade; fire arm; bullet; site plan; discrepancy; blood stained clothes; benefit of doubt; acquitted; ocular testimonies; medical report; weapon; ballistic report; appellate court; reasonable doubt.

Case Arising From

APPELLATE JURISDICTION: Appeal against the judgment of conviction and sentence dated 26.06.1987 passed by IIIrd Additional Sessions Judge, Mainpuri in Session Trial No. 165 of 1986, State Vs. Brijbasi Lal and another, P.S.- Karhal, District- Mainpuri, under S. 307 IPC.

Appearances for Parties

Advs. for the Appellant:

Sri Aftab Alam

Advs. for the Respondents:

Sri Chandra Badan, learned AGA

(Delivered by Hon'ble Avnish Saxena, J.)

1. Heard Sri Aftab Alam, learned counsel for the appellants and Sri Chandra Badan, learned AGA for the State.

2. Before proceeding with the case a parting observation of the Hon'ble Supreme Court in the case of ***Subal Ghorai Vs. State of West Bengal***, is worth quoting wherein investigative agency and the trial court were advised to be careful and responsive while investigation and conducting trial. The quote is reiterated underneath:-

“59. we must express that the investigation of this case is far from satisfactory and recording of evidence is done in a casual manner. Justice is done only because of the inherent strength of the prosecution case and credible evidence of the honest rustic witnesses. Sessions cases involve the rights of the victims and rights of the accused. Even the society has a great stake in the proper conduct of sessions cases because they have relevance to the maintenance of law and order. Investigation of criminal cases must, therefore, be done very carefully and trials must be conducted with a sense of responsibility.”

THE APPEAL:-

3. This criminal appeal under Section 374(2) CrPC challenging the judgment of conviction has been preferred by two accused i.e. appellant no. 1 Brijbasi Lal S/o Chhote Singh (**Father**) and appellant no. 2- Keshav Singh @ Kallu S/o Brijbasi Lal (**Son**). During the pendency of appeal, father passed away and the criminal appeal abated against appellant no. 1- Brijbasi Lal. During the argument, the learned counsel for appellant submits that the sole surviving appellant Keshav Singh @ Kallu is also 78 years of age. The incident is of 04.12.1980, wherein the allegation against the sole surviving appellant is of opening fire at informant Rajendra Singh wherein Shiv Kumar Singh suffered gun shot injury. The role of exhortation is on the deceased. The trial court in judgment of conviction dated 26.06.1987 in Sessions Trial No. 165 of 1986 (State Vs. Brijbasi Lal and another) has awarded punishment of rigorous imprisonment of three years and Rs. 5000/- fine against the sole surviving appellant. In default of payment of fine, he was directed to undergo further one year rigorous imprisonment. There is no point of mentioning the punishment awarded on Brijbasi Lal (deceased).

INSIGHTFUL FACTS:-

4. Prior to disclosure of prosecution case certain glaring facts need to be mentioned at the threshold, reiterated underneath:-

4.1 Accused appellant Keshav Singh @ Kallu and the informant Rajendra Singh are neighbours and residents of Village- Mahalerpur, P.S.- Karhal, District- Mainpuri.

4.2 There is dispute regarding of possession of land between informant Rajendra Singh and deceased Brijbasi Lal, a proceeding under Section 145 CrPC was pending.

4.3 The injured witness Shiv Kumar Singh, who is a chance witness is resident of Village- Vikrampur, Civil Lines Etawah.

4.4 Eye Witness Sughar Singh is resident of Kausari Khera, P.S.- Nagla Kangar, Mainpuri, who is also a chance witness.

4.5 The father of informant, namely, Mulaim Singh also allegedly suffered gun shot injuries; but there is neither the medico legal examination report nor he is being produced as a witness in the court, hence the trial court has not relied the witness on the point of Keshav opened fire at Mulaim Singh on his injuries.

4.6 The licensed gun which was used by accused appellant Keshav Singh belongs to his grand father Subedar which has not been taken into custody by the police and no FSL report is obtained.

4.7 The incident is occurred at District Mainpuri whereas the FIR is registered at P.S.- Jaswant Nagar, District- Etawah.

5. The above facts are kept in mind while going through the record and necessary for appreciation of evidence.

THE PROSECUTION CASE AND TRIAL:-

6. The FIR got registered on 04.12.1980 at 19:30 hours, at P.S.- Jaswant Nagar, District- Etawah by Rajendra Singh-informant. The chik FIR registered as Case Crime No. 242 under Sections 307/34 IPC. exhibit Ka-4 does not disclose the distance of place of incident to the police station but mentioned that the incident is of Village- Mahalerpur, P.S.- Karhal. It is disclosed in the FIR that in front of the southern door of the informant house, there was a disputed land. The case under Section 145 CrPC was pending before the court of Sub Divisional Magistrate, Karhal between the informant and accused Brijbasi Lal S/o Chhote Lal Yadav. On the disputed plot the informant had already dugged the foundation. The Magistrate invoking Section 145 CrPC directed the parties not to use this land. Brijbasi Lal and his son due to the said dispute, became inimical to informant and family. On 04.12.1980 at about 5:00 p.m., Keshav Singh @ Kallu came to the disputed property with spade (Fawda) in his hand and started levelling the foundation. The informant has stopped him on account of pendency of the case. Accused Keshav Singh @ Kallu became infuriated and started hurling abuses. The informant stopped him for slang, on which Keshav Singh @ Kallu came with the licensed gun of his grand father (Chote Baba) Subedar. Brijbasi Lal then exhorted □मार साले को गोली से ,आज मौका है ' (to fire shot at him, its opportune time), Keshav Singh @ Kallu fired a shot with the intention to kill informant, Shiv Kumar Singh S/o Hakim Singh, Shyam Singh S/o Lal Singh, Putte Singh S/o Hajuri Singh of his village, Thakur Sughar Singh and Lal Ji S/o Chhote Lal of Village Kausari Khera were standing. Shiv Kumar Singh suffered gun shot injury and fell on ground, on which Brijbasi Lal and Keshav sprinted away. The informant with the help of his brother Kubhal Pal Singh taken the injured to the police station, where the FIR got registered by PW-6 Constable Atma Singh and investigation was entrusted on Sub Inspector Surendra Singh Sengar. The injured Shiv Kumar Singh was taken to

district hospital Etawah, where his medico legal examination was carried out by Dr. C.L. Katiyar on 04.12.1980 at 10:25 p.m. After investigation the Investigating Officer has submitted charge sheet against the Brijbasi Lal for offence under Section 324 IPC. The trial commenced before the court of Magistrate initially against Brijbasi Lal for offence under Section 324 IPC. Witnesses have been recorded and in order dated 28.04.1983, Keshav Singh @ Kallu was summoned to face trial invoking Section 319 CrPC. Thereafter, the prosecution has moved an application that the offence is of attempt to murder and the Magistrate has no jurisdiction. In order dated 05.12.1983, the application of the prosecution was rejected. The prosecution went in Criminal Revision No. 286 of 1983 (State of U.P. Vs. Brijbasi Lal and another). The revisional court in order dated 18.08.1984 has allowed the revision directing the Magistrate to commit the case to the court of Sessions.

7. In pursuance to the direction of the revisional court, the case was committed to the Court of Sessions in order dated 01.07.1986 of Chief Judicial Magistrate, Mainpuri.

8. Fresh charges against both the accused have been framed before the Court of Sessions on 04.08.1986. The sole surviving accused was charged for offence under Section 307 IPC.

9. The prosecution has produced in all seven witnesses. Three witnesses of fact and four formal witnesses.

10. Rajendra Singh, the informant is produced as PW-1; Shiv Kumar Singh, the injured is produced as PW-2 and Sughar Singh, eye witness is produced as PW-3; Dr. C.L. Katiyar, who has conducted medico legal examination of Shiv Kumar Singh (injured), was produced as PW-4; Hasin Akhtar, x-ray technician, who has taken out x-ray, was produced as PW-5; Constable Atma Singh, the scribe of Chik FIR and G.D., was produced as PW-6; and Sub Inspector Surendra Singh Sengar, the Investigating Officer was produced as PW-7.

11. The accused have not produced any witness in defence after recording of statement under Section 313 CrPC, wherein the accused appellant has denied having committed any offence as alleged and stated that he has been falsely implicated in the case.

THE JUDGMENT OF TRIAL COURT:-

12. The trial court has considered documentary evidence and ocular testimonies of the prosecution witnesses and held that the incident occurred at the southern door of the informant's house on 04.12.1980 at 5:00 p.m. The accused Keshav Singh @ Kallu has opened fire on the informant Rajendra Singh but Shiv Kumar Singh suffered gun shot injury, who was standing beside Rajendra Singh. The trial court did not found accused Keshav guilty of inflicting gun shot injury on Mulaim Singh, because he was neither produced before the court for his deposition nor his injury report was placed. The trial judge further held that Brijbasi Lal was instrumental in instigating and exhorting him to open fire. The trial court found consistency in the statement of informant, injured witness and eye witness and has denied their being chance witness, though it is dealt with in the judgment that injured witness and eye witness are residents of different places. There is not even an iota of discussion as to how and why the injured and eye witness were there at the house of informant Rajendra Singh. The only statement is that they often visit the house of Rajendra Singh

and have no enmity with the accused. The learned trial court further found that the medico legal examination carried out by doctor is sufficient to establish that the Shiv Kumar Singh suffered gun shot injury. He found that the gun shot injury though simple in nature but suffered at the head of the injured, could be fatal to life. The learned trial court has found that the Investigating Officer has not carried out the investigation in fair and impartial manner and issued advisory to him to conduct future investigation in impartial and fair manner.

ARGUMENTS IN APPEAL:-

13. Learned counsel for appellant on being aggrieved by the observation made by the trial court in its judgment of conviction, has submitted that the incident is of District Mainpuri whereas the FIR is registered at Police Station of District Etawah. The injured Shiv Kumar Singh suffered injuries at his native place at Etawah wherein the accused appellant has been falsely implicated. The father of injured Shiv Kumar Singh, has not lodged any FIR. His statement is nowhere recorded during investigation. The incident was of winter month and according to injured, the incident occurred between 5:30 to 6:00 p.m. on 04.12.1980. It is the time of dusk. The statement of witnesses of fact is not conformity to the site plan, which has been prepared by the Investigating Officer at the instance of informant. The site plan does not show any wall in between the assailants and victim which is stated to be standing between two. There is discrepancy in the statement of witnesses pertaining to firing of two shots by Keshav Singh @ Kallu. There is no recovery of licensed gun which is stated to be used by accused in firing the detrimental shot. There is no injury report of Mulaim Singh. There is no witness from the same village, though their presence was mentioned in the FIR. It is mentioned in the FIR that the injured Shiv Kumar Singh is the resident of the same village. There is enmity between the accused appellant and informant which was a reason for false implication. The statement of eye witness and injured witness has not been recorded under Section 164 CrPC. There is no blood stained clothes recovered by the Investigating Officer. The distance between the place of incident and the place where FIR is lodged, is not mentioned. Incident is stated to be of 5:00 p.m. The injured was taken inside the house and thereafter with help of bullock cart, he was taken to Etawah from Mainpuri, despite that the FIR is lodged at 7:30 p.m. Further submits that the trial court has not rightly evaluated and appreciated the evidence on record and therefore, the accused shall be given benefit of doubt and acquitted.

14. **Per contra**, learned AGA submits that the incident is of attempt to murder wherein the accused appellant is held guilty for firing detrimental shot at Shiv Kumar Singh, who was present along with the informant Rajendra Singh at the southern door of his house. The prosecution has produced three witnesses of fact including the injured witness. Their statements are consistent and corroborative to each other as well as medico legal report. The trial court has rightly appreciated the testimonies of witnesses and reached to the conclusion that the detrimental shot was fired by the accused appellant. Further submits that the lapses in the investigation will not benefit the accused where the testimonies of witnesses of fact are sufficient in their deposition in establishing the case. Hence submits that the trial court has rightly convicted the accused appellant. The appeal is devoid of merit and liable to be dismissed.

APPRECIATION OF EVIDENCES:-

15. This Court has taken into consideration the rival submissions made by learned counsel for the parties and perused the record.

16. The point of determination in the present appeal is whether the trial court has rightly appreciated the testimonies of witnesses of fact and reached to the right conclusion of convicting the accused appellant?

17. The two witnesses of fact namely Shiv Kumar Singh and Sughar Singh are the chance witnesses, as they were stated to be standing in front of the house of informant Rajendra Singh, when Shiv Kumar Singh suffered gun shot injury and Sughar Singh was the eye witness. The principles of law enunciated by the Hon^{ble} the Supreme Court on the point of testimonies of chance witness is reiterated underneath:-

Thangaiya v. State of T.N.2

“8. Coming to the plea of the accused that PW 3 was a □chance witness□ who has not explained how he happened to be at the alleged place of occurrence, it has to be noted that the said witness was an independent witness. There was not even a suggestion to the witness that he had any animosity towards the accused. In a murder trial by describing the independent witnesses as □chance witnesses□ it cannot be implied thereby that their evidence is suspicious and their presence at the scene doubtful. Murders are not committed with previous notice to witnesses; soliciting their presence. If murder is committed in a dwelling house, the inmates of the house are natural witnesses. If murder is committed in a street, only passers-by will be witnesses. Their evidence cannot be brushed aside or viewed with suspicion on the ground that they are mere □chance witnesses□. The expression □chance witness□ is borrowed from countries where every man's home is considered his castle and everyone must have an explanation for his presence elsewhere or in another man's castle. It is quite unsuitable an expression in a country where people are less formal and more casual, at any rate in the matter of explaining their presence. Therefore, there is no substance in the plea that PW 3's evidence which is clear and cogent is to be discarded.”

(Emphasis Supplied)

Sarvesh Narain Shukla v. Daroga Singh3

“19. We are also of the opinion that if the court comes to the conclusion that the testimony of a chance witness is credible, the evidence cannot be thrown out merely on the ground that the witness happened to be present by chance. Dangar Tewari stated that when he along with Ram Dutt Mishra had reached at the tri junction of the GT Road, Gopiganj on Mukund Lal's Bullet motorcycle they had heard sounds of firing by weapons and had seen the accused persons armed with shotguns, rifles, carbine and pistols firing at the Ambassador car after it had come to a stop after colliding with a bus coming from the Allahabad side and that the murders had been committed while the deceased were still in the car. The evidence of Ram Dutt Mishra is much to the same effect. Both these witnesses have specifically revealed the identity of the assailants and the manner of attack and explained their presence by stating that they had gone for darshan and were on their

way back home. We also find that despite extensive cross-examination, no reasons are forthcoming on record as to why they would become false witnesses in a case of triple murder.”

Jarnail Singh v. State of Punjab 4

“22. The evidence of a chance witness requires a very cautious and close scrutiny and a chance witness must adequately explain his presence at the place of occurrence (Satbir v. Surat Singh, Harjinder Singh v. State of Punjab, Acharaparambath Pradeepan v. State of Karhala and Sarvesh Narain Shukla v. Daroga Singh. Deposition of a chance witness whose presence at the place of incident remains doubtful should be discarded (vide Shankarlal v. State of Rajasthan).

23. Conduct of the chance witness, subsequent to the incident may also be taken into consideration particularly as to whether he has informed anyone else in the village about the incident (vide Thangaiya v. State of T.N., Gurcharan Singh (PW 18) met the informant Darshan Singh (PW 4) before lodging the FIR and the fact of conspiracy was not disclosed by Gurcharan Singh (PW 18) and Darshan Singh (PW 4). The fact of conspiracy has not been mentioned in the FIR. Hakam Singh, the other witness on this issue has not been examined by the prosecution. Thus, the High Court was justified in discarding the part of the prosecution case relating to conspiracy. However, in the fact situation of the present case, acquittal of the said two co-accused has no bearing, so far as the present appeal is concerned. □

Harbeer Singh v. Sheeshpal 5

“23. The defining attributes of a □ chance witness □ were explained by Mahajan, J., in Puran v. State of Punjab. It was held that such witnesses have the habit of appearing suddenly on the scene when something is happening and then disappearing after noticing the occurrence about which they are called later on to give evidence.”

Suresh v. State of Haryana 6

“47. Generally, the chance witness, who reasonably explains his presence in the named location at the relevant time, may be taken into consideration and should be given due regard, if his version inspires confidence and the same is supported by surrounding circumstances. Nonetheless, the evidence of a chance witness requires a very cautious and close scrutiny. A chance witness must adequately explain his presence at the place of occurrence (refer to Satbir v. Surat Singh and Harjinder Singh v. State of Punjab. Deposition of a chance witness whose presence at the place of incident remains doubtful should be discarded (refer to Shankarlal v. State of Rajasthan). The behaviour of the chance witness, subsequent to the incident may also be taken into consideration particularly as to whether he has informed anyone else in the village about the incident (refer to Thangaiya v. State of T.N. [Thangaiya v. State of T.N.]).

18. The principles explained in the above quoted judgments is that the testimony of chance witness cannot be discarded but the witness required a very cautious and close scrutiny. If from the testimony it is inferred that the presence of chance witness is doubtful at the place of occurrence

then his testimony would have been discarded. Hence the testimony of two chance witnesses namely Shiv Kumar Singh and Sughar Singh is required to be closely scrutinized.

19. PW-2 Shiv Kumar Singh in his examination-in-chief has stated that the incident occurred at 5:30 to 6:00 p.m., whereas the consistent statement of PW-1 Rajendra Singh and PW-3 Sughar Singh reveals that the incident is of 5:00 p.m. PW-2 further deposed that Keshav and Brijbasi were levelling the foundation. Whereas PW-1 Rajendra Singh has attributed the work of levelling the foundation only on Keshav Singh @ Kallu. PW-2 further states that Rajendra Singh stopped Keshav Singh @ Kallu and Brijbasi Lal from levelling the foundation on which Brijbasi started abusing Rajendra Singh. PW-1 Rajendra Singh in his testimony has not assigned the role of abuse him on Brijbasi either in his testimony or in the first information report. PW-2 further deposed that he has stopped them from hurling abuses. PW-1 Rajendra Singh in his testimony and FIR has not disclosed that Shiv Kumar Singh has stopped Brijbasi or Keshav Singh @ Kallu from hurling abuses. PW-2 in his testimony further exaggerated his presence by showing that upon his opposing Brijbasi from hurling abuse Keshav had fired shot at him on the exhortation of Brijbasi, who exhorts that □ज्यादा बक बक करता है, मार साले को तभी केशव ने गोली चलाई□. Whereas the role of exhortation attributed on Brijbasi Lal to instigate Keshav Singh @ Kallu to fire shot at Rajendra Singh and not at Shiv Kumar Singh. PW-1 Rajendra Singh in his testimony has also admitted the exhortation which he has mentioned in FIR. On the contrary, Rajendra Singh PW-1 has stated that the shot was fired at Rajendra Singh but Shiv Kumar Singh was standing beside him as such he suffered gun shot injury, whereas Shiv Kumar Singh has in his testimony taken a lead role. The examination-in-chief of PW-2 Shiv Kumar Singh is entirely in contrast with the examination-in-chief of PW-1 Rajendra Singh. During cross examination of PW-2 has stated that there is no enmity with the accused appellant. His statement has not been recorded by the Investigating Officer. He refuted the suggestion that he suffered injuries at Raja Ke Baag, Etawah. He has admitted that his father has not lodged any FIR. He has stated that he and Mulaim Singh were at a distance of a hand. There were two shots fired. Blood was splitted. He has given description about gun by which the accused has fired at him. Whereas Rajendra Singh PW-1 has stated that there was only one fire. The inconsistency in the statement of this witness is further to be looked into when the statement of other witnesses of fact is taken to consideration.

20. PW-3 Sughar Singh in his examination in chief has stated that he was sitting on the platform situated at the south of the house of Mulaim Singh where Mulaim Singh, Bharat Singh and Rajendra Singh were sitting, Shiv Kumar Singh was standing, Brijbasi Lal and Keshav Singh @ Kallu came to the disputed plot and started levelling the foundation. Rajendra Singh has stopped them on which Brijbasi Lal and Keshav Singh @ Kallu started abusing. Shiv Kumar Singh when objected for hurling abuse, Brijbasi Lal exhorted Keshav Singh @ Kallu to open fire at Shiv Kumar Singh on which Keshav Singh @ Kallu has fired at Shiv Kumar Singh, who suffered gun shot injury. He is not aware whether any other persons suffered gun shot injury. This witness is of Village Kausari Khera. He is stated to be sitting along with Mulaim Singh and is not aware whether Mulaim Singh suffered gun shot injury or not, though PW-1 has stated that Mulaim also suffered gun shot injury which came to know in the next morning when he returned home. In his cross examination, he has stated that there was only one fire. He was there for half an hour. Both witnesses PW-2 and PW-3 have stated differently about the place of occurrence from the place of occurrence shown in the site plan. The Investigating Officer PW-7 Sub Inspector Surendra Singh

Sengar has prepared the site plan and showed that the foundation is on the East of the house of informant Rajendra Singh and West to the house of Brijbasi Lal, lying in the middle of their houses in North South direction there was no wall shown between the two houses except the foundation. The platform is shown on the North of the house of informant where Mulaim Singh was shown present at place □D□. The injured Shiv Kumar Singh was shown standing at place □A□ along with Rajendra Singh on the eastern door of the house of Rajendra Singh. The distance between Rajendra Singh and Shiv Kumar Singh with Mulaim Singh is 40 paces, though it is stated by the witnesses that Mulaim Singh was sitting adjacent to, where Rajendra Singh was standing along with other persons namely Shiv Kumar Singh, Sughar Singh, Lal Ji, Shyam Singh, Hakim Singh. It is pertinent to point here that the name of Hakim Singh is not shown in the FIR. In the site plan, two places have been shown from where accused Keshav has fired at Shiv Kumar Singh and at Mulaim Singh. From place □B□ Keshav has fired at Shiv Kumar Singh at place □A□ at a distance of 25 paces. From place □C□ he has fired at Mulaim at place □D□. There is discrepancy in the statement of witness pertaining to two shots fired by Keshav Singh @ Kallu.

21. PW-1 Rajendra Singh has stated that Shiv Kumar Singh is his nephew son of cousin sister. He stated that there is discrepancy in the site plan which he has denied being prepared by the Investigating Officer at his instance. He stated that at the time of incident, he was standing at the south eastern corner of his house. The site plan shows that he is on the eastern side of his house. He has stated that his father is at a distance 2 to 4 paces from him. He has stated about one shot fired by Keshav Singh @ Kallu. At no stretch of imagination it could be perceived that in a single shot fired two persons are injured one at standing position and one on a sitting position. Shiv Kumar Singh suffered injuries on his head whereas Mulaim Singh suffered injuries on his leg. He has stated that the firing was behind the wall. There is no wall between the two houses.

22. PW-4, Dr. C.K. Katiyar has stated in his examination in chief that he has conducted medico legal examination of injured Shiv Kumar Singh. He found four gun shot injuries on the person of injured Shiv Kumar Singh which he has examined at 19:45 p.m. on 04.12.1980. He found that injury no. 3 is the exit wound of injury no. 2. Injury nos. 2 and 3 are simple in nature. The injuries on the person of Shiv Kumar Singh are reiterated underneath:-

1. A gun shot wound of entry 0.4 cm x 0.4 cm x scalp deep on the left side of front of head. 4.5 cm above the outer and of left eye brow. Margins are inverted, contused, lacerated. The wound directed back wards. Soft clotted (fresh) blood is present.

2. Gun shot wound of entry 0.5 cm x 0.4 cm x scalp deep on the left side of head. 11 cm above the left ear. Margins are inverted, contused and lacerated and the wound is directed back-wards. Fresh clotted blood is present.

3. Gun shot wound of exit 0.5 cm x 0.5 cm x communicating freely with the injury no. 2. on the left side of the head. 4 cm behind the injury no. 2 margins are everted and lacerated. Fresh clotted blood is present.

4. Three gun shot wounds of entries in an area of 4cm x 3 cm on the front and middle part of the head. 9 cm.. above the ridge of nose. Each wound is measuring 0.4 cm x 0.4 cm into scalp

deep. Margins are inverted contused and lacerated. Wounds are directed back wards. Fresh soft clotted blood is present. Injury no. one and 4 are under observation. Advised x-ray.

All the injuries are caused by some fire arm. Injury no. 2 and 3 are simple. Restore Kuo Advised x-ray.

Duration- All the injuries are fresh.

23. PW-5 Hasin Akhtar the x-ray technician has stated that he is the x-ray technician and proved x-ray plates. He submits that the x-ray report was prepared by Dr. R. C. Sharma and proved the report as exhibit Ka-3, in secondary evidence. The x-ray report reveals the multiple radiopaque F-B metallic shadow rounded spike shaped. PW-4 Dr. C.L. Katiyar stated that the injuries are simple in nature but dangerous to life.

24. Considering the statement of Dr. C.L. Katiyar, it is found that the injured Shiv Kumar Singh suffered gun shot injury on his vital part of body, which are sufficient to cause death though they are simple in nature but so far as the point is whether those injuries have been inflicted by accused Keshav, is concerned, the testimonies of three witnesses are inconsistent in nature. Moreover, the Investigating Officer who is part of prosecution witness and has collected material, prepared the site plan has stated differently in respect to the place of occurrence. The trail of blood from the place of occurrence has not been recovered. The mattress which was put on bullock cart and injured was taken to the police station and then to the hospital from that bullock cart. The blood stained mattress, the blood stained clothes and the blood stained earth were not recovered by the Investigating Officer.

25. On the point of taking into possession the blood stained earth and clothes during the investigation, Hon^{ble} the Supreme Court in catena of judgments has elaborated the principles wherein it is held that merely the faulty investigation will not be beneficiary to the accused, if the evidence of eye witnesses is consistent, reliable, trustworthy and cogent.

Dhanaj Singh v. State of Punjab 7

“5. In the case of a defective investigation the court has to be circumspect in evaluating the evidence. But it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the investigating officer if the investigation is designedly defective.”

Motilal v. State of Rajasthan⁸

“11.□It is true that a faulty investigation cannot be a determinative factor and would not be sufficient to throw out a credible prosecution version. But in the instant case there is no explanation offered even to explain the discrepancies.”

State of U.P. v. Wasif Haider 9

“24. In the present case, the cumulative effect of the aforesaid investigative lapses has fortified the presumption of innocence in favour of the respondent-accused. In such cases, the benefit of doubt arising out of a faulty investigation accrues in favour of the accused.

25. □ Although we acknowledge the gravity of the offence alleged against the respondent-accused and the unfortunate fact of a senior official losing his life in furtherance of his duty we cannot overlook the fact that the lapses in the investigation have disabled the prosecution to prove the culpability of the accused. The accused cannot be expected to relinquish his innocence at the hands of an inefficacious prosecution, which is ridden with investigative deficiencies. The benefit of doubt arising out of such inefficient investigation, must be bestowed upon the accused.”

(Emphasis Supplied)

Madan v. State of U.P. 10

“68. □ Another submission on behalf of the appellants is with regard to faulty investigation. No doubt that there have been certain lacunae in the police investigation. However, the evidence of eyewitnesses is consistent, reliable, trustworthy and cogent. Merely because there are certain lacunae in the investigation, it cannot be a ground to disbelieve the testimony of eyewitnesses. In this respect, we may refer to the observations of this Court in □ Karnel Singh □ v. □ State of M.P.”

“5. Notwithstanding our unhappiness regarding the nature of investigation, we have to consider whether the evidence on record, even on strict scrutiny, establishes the guilt. In cases of defective investigation the court has to be circumspect in evaluating the evidence but it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the investigating officer if the investigation is designedly defective.”

Edakkandi Dineshan v. State of Karhala 11

“26. □ A cumulative reading of the entire evidence on record suggests that the investigation has not taken place in a proper and disciplined manner. There are various areas where a proper investigation could have strengthened its case. In □ Paras Yadav □ v. □ State of Bihar.

“8. □ the lapse on the part of the investigating officer should not be taken in favour of the accused. It may be that such lapse is committed designedly or because of negligence. Hence, the prosecution evidence is required to be examined dehors such omissions to find out whether the said evidence is reliable or not. For this purpose, it would be worthwhile to quote the following observations of this Court from □ Ram Bihari Yadav □ v. □ State of Bihar”

“13. □ In such cases, the story of the prosecution will have to be examined dehors such omissions and contaminated conduct of the officials otherwise the mischief which was deliberately done would be perpetuated and justice would be denied to the complainant party and this would obviously shake the confidence of the people not merely in the law-enforcing agency but also in the administration of justice. □ “

27.□Hence, the principle of law is crystal clear that on the account of defective investigation the benefit will not inure to the accused persons on that ground alone. It is well within the domain of the courts to consider the rest of the evidence which the prosecution has gathered such as statement of the eyewitnesses, medical report, etc. It has been a consistent stand of this Court that the accused cannot claim acquittal on the ground of faulty investigation done by the prosecuting agency. As the version of eyewitnesses in specifically naming the appellants have been consistent throughout the trial, we find that there is enough corroboration to drive home the guilt of the accused persons. When the testimony of PW 1 Jitesh, PW 2 and PW 4 is seen cumulatively, their versions can be seen to be corroborating each other. All of them being eyewitnesses, what is material to be seen is their stand is consistent when they said that it was A-2 who was responsible for inflicting blows on both the deceased. It may not be out of place to mention that though the unfortunate incident took place at midnight around 1 a.m., it was a full moon night and as such, it was not pitch dark. This has also not been vehemently disputed by the defence counsel. Hence, the version put forth by the prosecution witnesses inspires confidence of this Court. The specific role attributed by the prosecution witnesses cannot be challenged on extraneous grounds which have been raised by the defence. There is no contradiction when it comes to assigning specific role to the above accused. Admittedly, there was an enmity between the witnesses as they were from different political groups. Moreover, it can be seen from the record that the accused and the witnesses were well acquainted with each other as PW 1, PW 2 and PW 4 had defected from CPI and had joined RSS. The witnesses could have tried to implicate anyone had they wished to take advantage of their past acquaintance and recent rivalry.”

(Emphasis Supplied)

26. It is true that faulty investigation will not be of any help to the accused appellant. In the present case, the Investigating Officer has also not collected the weapon or sent it to the ballistic report. It is clear from the prosecution case that the accused appellant had used the gun of his grand father Subedar Singh. It would be opt to consider the principles enunciated by Hon□ble the Supreme Court on the point of recovery of weapon. The same rulings are reiterated underneath:-

Mano v. State of T.N. 12

“16. Even if the recovery of the weapons as claimed was after a long period and those were not sent for forensic examination that does not in any way dilute the evidentiary value of the prosecution version.”

Abdulwahab Abdulmajid Baloch v. State of Gujarat 13

“37. Be that as it may, we feel that only because the recovery of a weapon was made and the expert opined that the bullet found in the body of the deceased was fired from one of the weapons seized, by itself cannot be the sole premise on which a judgment of conviction under Section 302 could be recorded. There was no direct evidence. The accused, as noticed hereinbefore, was charged not only under Section 302 read with Section 34 of the Penal Code but also under Section 302 read with Section 120-B thereof. The murder of the deceased was said to have been committed by all the accused persons upon hatching a conspiracy. This charge has not been proved.

38. The learned trial Judge himself opined that the recovery having been made after nine months, the weapon might have changed in many hands. In absence of any other evidence connecting the accused with commission of crime of murder of the deceased, in our opinion, it is not possible to hold that the appellant on the basis of such slander evidence could have been found guilty for commission of offence punishable under Section 302 of the Penal Code.”

Jagroop Singh v. State of Punjab 14

“34. In the case at hand, the accused persons were arrested after 18 days and recovery was made at that time. The bloodstain found on the weapon has been found in the serological report as human blood. In Sattatiya the recovery was doubted and additionally, non-matching of blood group was treated to be a lacuna. It is worth noting that the clothes and the weapon were sent immediately for chemical examination. Here the weapon was sent after 18 days as the recovery was made after that period. The accused have not given explanation as to how human blood could be found on the spade used for agriculture which was recovered at their instance. In this context, we may profitably reproduce a passage from John Pandian v. State.

“57. □ The discovery appears to be credible. It has been accepted by both the courts below and we find no reason to discard it. This is apart from the fact that this weapon was sent to the forensic science laboratory (FSL) and it has been found stained with human blood. Though the blood group could not be ascertained, as the results were inconclusive, the accused had to give some explanation as to how the human blood came on this weapon. He gave none. This discovery would very positively further the prosecution case.”

35. Thus viewed, we do not find any substantial reason to disbelieve the disclosure statement and the recovery of the weapon used. It is apt to mention here that the doctor, who has conducted the post-mortem, has clearly opined that the injuries on the person of the deceased could be caused by the weapon (blade of such spade) and the said opinion has gone unrebutted.

Ram Singh v. State of U.P. 15

27. □ In □ Munna Lal □ v. □ State of U.P. □ , this Court opined that since no weapon of offence was seized in that case, no ballistic report was called for and obtained. This Court took the view that failure to seize the weapon of offence on the facts and in the circumstances of the case, had the effect of denting the prosecution story so much so that the same together with non-examination of material witnesses constituted a vital circumstance amongst others for granting the appellants the benefit of doubt. □

CONCLUSION:-

27. Upon marshalling the entire evidence on record including the testimonies of the witnesses of fact and injured witness in the light of judicial pronouncements, this Court is of the view that the two chance witnesses Shiv Kumar Singh and Sughar Singh were not only inconsistent in their statements as to the occurrence, but also in conflict with the statement of informant Rajendra Singh. The prosecution has also failed to show the reason of their being at the place of incident the prosecution version culled out from the testimonies of three witnesses of fact is not inspiring confidence in the truthfulness of the prosecution case, as discussed. If the site plan, non collection of blood stained cloth, earth and weapon is taken to consideration, it is found that the injured and informant have narrated different role of accused Brijbasi and Keshav. Where

PW-1 deposed that Brijbasi has exhorted Keshav to fire at him. PW-2 and PW-3 have stated that Brijbasi has exhorted Keshav to

fire at Shiv Kumar Singh. Further, taking of injured to District Etawah from District Mainpuri also creates doubt that despite Police Station- Karhal is nearer to the place of occurrence why the injured was taken to P.S.- Jaswant Nagar, Etawah. The injured is the resident of Etawah could be the reason of taking him to Etawah. The prosecution fail to establish that the licensed gun of Subedar Singh is used in the incident. There is discrepancies on the point of two shots fired and injury caused to two persons in one shot. Therefore, there is no clinching evidence against the accused to convict him for the offence of attempt to murder. Hence the accused is entitled for benefit of doubt and shall be acquitted.

28. In the case of *Jitendra Kumar Mishra alias Jittu Vs. State of Madhya Pradesh*¹⁶ Hon'ble the Supreme Court held that an appellate court should be slow in interfering with conviction recorded by courts below but where evidence on record indicates that prosecution has failed to prove guilt of accused beyond reasonable doubt and that a plausible view, different from one expressed by trial court, can be taken. The appellate court should not shy away in giving benefit of doubt to the accused.

29. Thus, the judgment of conviction and sentence dated 26.06.1987 passed by IIIrd Additional Sessions Judge, Mainpuri in Session Trial No. 165 of 1986 (State Vs. Brijbasi Lal and another) P.S.- Karhal, District- Mainpuri, under Section 307 IPC, is hereby **set aside**.

30. The appellant no. 2 Keshav Singh @ Kallu S/o Brijbasi Lal, is **acquitted** for offence under Section 307 IPC.

31. Accordingly, the criminal appeal is **allowed**.

32. The material exhibits shall be disposed of as per law.

33. The accused appellant is on bail. His sureties executed bail bonds are discharged.

34. The record remitted, forthwith, as per law.

(2026) 4 ILRA 1151
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 29.04.2026

BEFORE

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

Criminal Appeal No. 1779 of 1984

Lakhi Pal & Ors.

State of U.P.

...Appellants

Versus

...Respondent

Issue for Consideration

Matter pertains to whether the appellants, in furtherance of their common intention, committed the murder of the deceased and caused injuries to the injured witness, and whether the objections regarding delay in lodging the FIR, ante-timing of the FIR, contradictions relating to inquest proceedings, place of occurrence, recovery of weapon and appreciation of evidence render the prosecution case doubtful. (Paras 53-96)

Headnotes

Code of Criminal Procedure, 1973 -S. 154 -First Information Report -Testimony regarding reaching the hospital and thereafter the Police Station corroborated by injury report and check FIR -FIR lodged promptly -plea of delay and ante-timing held without force. (Paras 54,55,68,69,70)

Code of Criminal Procedure, 1973 -S. 154 -First Information Report -Mere fact that the informant initially approached a Constable and thereafter submitted a written application would not render the oral version the first information -written application which moved the machinery of law and upon which investigation commenced constituted the First Information Report. (Para 57)

Code of Criminal Procedure, 1973 -S. 174 -Inquest report-non-mentioning of names of appellants in the inquest report and connected papers does not lead to an inference that the FIR was not in existence -names of accused are not required under law to be incorporated in the inquest report. (Paras 59,60,61,62)

Code of Criminal Procedure, 1973 -S. 174 -Inquest report-Contradictions regarding time of holding inquest and dispatch of dead body for autopsy held not very material -delay, if any, in preparing the inquest report and taking the dead body to the hospital for autopsy does not shake the otherwise sound foundation of the prosecution case. (Paras 63,64,65,66)

Code of Criminal Procedure, 1973 -First Information Report -Delay, if any, in reaching the FIR to the Court for signature by the Magistrate not material where documentary evidence establishes existence of the FIR and related papers before commencement of post-mortem examination. (Paras 67,68,69,70)

Indian Evidence Act, 1872 -Appreciation of Evidence -Place of occurrence -Consistent testimony of prosecution witnesses and site-plan prepared by the Investigating Officer fully corroborated the prosecution version and established the place of occurrence. (Paras 71,72,73,75)

Indian Evidence Act, 1872 -Injured Witness -Testimony of injured witness carries great evidentiary value and when corroborated by other eye-witnesses and documentary evidence forms a reliable basis for conviction. (Paras 76,77,78,79)

Indian Evidence Act, 1872 -Motive -In a case of direct evidence motive loses its significance -absence of proof of any immediate motive is of no relevance where eye-witnesses have fully supported the prosecution case. (Paras 81,82,83,84,85,86)

Indian Penal Code, 1860 -S. 452 -Parties residing in the same Gher and occurrence taking place within the common residential enclosure -technically offence under S. 452 IPC not made out and the case not one of house trespass. (Para 86)

Indian Evidence Act, 1872 -Appreciation of Evidence -Minor contradictions regarding manner of assault or injuries which do not go to the root of the matter and do not shake the basic version of witnesses cannot be annexed with undue importance. (Paras 87,88,89,91)

Indian Evidence Act, 1872 -Related Witness -Relationship is not a factor to affect credibility of a witness -evidence of a natural witness cannot be discarded merely because of relationship with the deceased. (Paras 90,91)

Indian Evidence Act, 1872 -S. 27 -Recovery of knife at the pointing out of an accused from the place of concealment proved through independent witness and Investigating Officer -recovery admissible in evidence and corroborative of the prosecution case. (Paras 92,93)

Indian Penal Code, 1860 -Ss. 302/34 and 324/34 -Ocular testimony supported by medical evidence -prosecution proved beyond reasonable doubt that the appellants, in furtherance of their common intention, attacked the deceased and caused injuries to the injured witness by sharp-edged weapons -conviction and sentence affirmed. (Paras 93,94,95,96)

Held: The FIR was lodged promptly and was not ante-timed - the written application on the basis of which investigation commenced constituted the First Information Report - non-mentioning of names of appellants in the inquest report does not create any suspicion regarding the prosecution case - contradictions relating to the time of holding the inquest and dispatch of the dead body for autopsy are not material and do not shake the otherwise solid foundation of the prosecution case - the place of occurrence stands fully established by oral and documentary evidence including the site-plan - the testimony of the injured witness and other eye-witnesses is natural, consistent and trustworthy - in a case of direct evidence motive loses its significance and absence of proof of immediate motive has no relevance - minor contradictions do not go to the root of the matter and cannot affect the basic version of the prosecution witnesses - recovery of the weapon of assault at the pointing out of an accused is admissible and corroborative - ocular testimony is fully supported by medical evidence - the prosecution have proved beyond reasonable doubt that the appellants, in furtherance of their common intention, attacked and murdered the deceased and caused injuries to the injured witness by a sharp-edged weapon - conviction and sentence under Ss. 302 read with 34 and 324 read with 34 IPC call for no interference and deserve affirmation - appeal dismissed. (Paras 54-70,71-75,76-79,81-96) (E-7)

Case Law Cited

Shakila Khader v. Nausher Gama, **AIR 1975 SC 1324**; *Eqbal Baig v. State of Andhra Pradesh*, **AIR 1987 SC 923**; *Thaman Kumar vs. State of Union Territory of Chandigarh*, **(2003) 6 SCC 380: AIR 2003 SC 3975**; *State of H.P. Vs. Jeet Singh*, **(1999) 4 SCC 370: AIR 1999 SC 1293**; *Molu and others v. State of Haryana*, **AIR 1976 SC 2499**; *Suresh Chandra Bahri v. State of Bihar*, **AIR 1994 SC 2420**; *Maqsoodan and Others v. State of U.P.*, **1983 SCC (Cri.) 176**; *Bharwada Bhoginbhai Hirjibhai v. State of Gujarat*, **(1983) 3 SCR 280: AIR 1983 SC 753**; *Israr vs. State of U.P.*, **2005 (51) ACC 113**.

List of Acts

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

List of Keywords

Murder; Common intention; Injured witness; Eye-witness; Prompt FIR; Ante-timed FIR; Inquest report; Medical evidence; Ocular evidence; Recovery of knife; Blood-stained earth; Khukhri; Incised wound; Shock and haemorrhage; Place of occurrence; House trespass; Motive; Related witness; Minor contradictions; Credibility of witnesses.

Case Arising From

APPELLATE JURISDICTION: Against the judgment and order dated 30.06.1984 passed by Mr. Y.S. Raizada, the then III Additional Sessions Judge, Ghaziabad in Sessions Trial No. 328 of 1983 (arising out of Case Crime No. 203 of 1993), under Ss. 324, 325, 452 and 302 IPC read with S. 34 IPC, Police Station Dadri, District Ghaziabad, convicting the appellants and sentencing them to imprisonment for life under S. 302 read with S. 34 IPC and two and a half years rigorous imprisonment under S. 324 read with S. 34 IPC.

Appearances for Parties

Advs. for the Appellant:

Mr. Sunil Vashisth; Mr. Kapil Kumar Rajor;

Mr. Sunil Kumar;

Advs. for the Respondent:

Ms. Divya Ojha, AGA-I;

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

1. This instant Criminal Appeal by the appellants Lakhi Pal, Satya Pal, Rishi Pal and Shri @ Jain is directed against the judgment and order dated 30.06.1984 passed by Mr. Y.S. Raizada, the then III Additional Sessions Judge, Ghaziabad in Sessions Trial No. 328 of 1983 (arising out of

Case Crime No. 203 of 1993), under Sections 324, 325, 452 and 302 IPC read with Section 34 IPC, Police Station Dadri, District Ghaziabad.

2. By the impugned judgment and order, all the appellants were found guilty, convicted and sentenced to undergo imprisonment for life for the offence punishable under Section 302 read with Section 34 IPC and two and a half years $\square$ rigorous imprisonment for the offence punishable under Section 324 read with Section 34 IPC. The Trial Court acquitted all the appellants of the offence punishable under Section 452 IPC. It was ordered that both the sentences shall run concurrently.

3. During the pendency of this appeal, appellant no.4, Shri @ Jain died and this appeal on his behalf was abated vide order dated 18.08.2025. Now this appeal survives on behalf of appellants nos.1, 2 and 3, to wit, Lakhi Pal, Satya Pal, Rishi Pal.

4. Brief facts of the prosecution case are that informant, Anil Kumar, son of Shri Shyama Singh, resident of village Senthli, Police Station Dadri, District Ghaziabad, filed a written application (tahrir) dated 02.08.1983 (Ext. Ka-2), before the Station House Officer, Police Station Dadri, District Ghaziabad, stating therein that he is serving in Army and currently posted in the Technical Branch. On 08.07.1983, he had come home on 64 days leave. There was a dispute with regard to 03-03 $\square$ bigha of land between his brother and his cousins (Tau's sons). His cousins did not want to share any part of the said land and due to the issue, yesterday i.e. 01.08.1983, a dispute arose between his brother and Rishi Pal and Lakhi Pal, which was pacified somehow. Yesterday evening, another cousin of his Rishi Pal, who is also in the army, came home on leave. Today i.e. 02.08.1983 at 06:30 p.m., Satya Pal, Rishi Pal, Shri @ Jain entered his house, armed with lathi, knives and khukhri and attacked him as well as his brother with an intention to kill. Lakhi Pal and Satya Pal stabbed his brother Gulbir with knives, Rishi Pal attacked with the Khukhri and Shri @ Jain assaulted with the lathi. Rishi Pal attacked him with the Khukhri, as a result of which his right hand's fingers were chopped off.

5. It is further alleged in the FIR that, upon alarm raised by him and his children, Rajbir Singh son of Tej Pal Singh and Ajab Singh son of Harvansh and others reached the place of occurrence. Beerbala and Neeti, wife and daughter of Gulbir Singh respectively, and Bina wife of Satendra were already present in the house, who witnessed the incident and saved them. He took his brother to Dadri with the help of villagers. In the hospital, the doctor declared his brother Gulbir dead and did his (the informant's) medical examination. It was said that he had come to the police station with his brother Gulbir Singh's dead body along with the villagers to lodge an FIR. The dead body was lying in front of the police station.

6. On the basis of the said written application, a check FIR (Ext. Ka-4), with Case Crime No. 203 of 1983, under sections 302, 325, 452, 324 IPC was registered against Lakhi Pal, Rishi Pal, Satya Pal and Shri @ Jain at Police Station Dadri, District Ghaziabad on 02.08.1983 at 10:00 p.m.

7. After registration of the FIR, investigation commenced. The Investigating Officer reached the place of occurrence and collected blood-stained earth, plain earth and also blood-stained slippers of the deceased, which he sealed in two separate boxes and prepared a recovery memo (Ext. Ka-15). The Investigating Officer arrested the appellants Satya Pal, Lakhi Pal and

Rishi Pal on 03.08.1983 at about 12:00 noon. The appellant Lakhi Pal confessed to his crime and said that the knife, which he had employed in the assault was in his possession and which he concealed in a fodder bag (Bhuse ki bongi).

8. Upon this information, the Investigating Officer secured public witnesses and, at the pointing out of the accused Lakhi Pal, recovered a blood-stained knife from the fodder bag, which he sealed in a cloth and prepared a recovery memo (Ext. Ka-3).

9. The injured Anil Kumar was medically examined at P.H.C., Dadri and the doctor drew up an injury report (Ext. Ka-1). The inquest for the deceased Gulbir was held and an inquest report prepared along with other related papers. Thereafter, the dead body was sent for autopsy. Five ante-mortem injuries of the nature of incised wound and a healed scar on the right side scalp were found over the body and, in the opinion of the doctor, the cause of death was shock and haemorrhage, as a result of ante-mortem injuries. The Investigating Officer recorded statements of informant and other witnesses. He also inspected the place of occurrence and prepared a site plan (Ext. Ka-14). The Investigating Officer also sent blood-stained knife for chemical examination. As per chemical analysis report, blood was found over a large part of it.

10. After completion of investigation, the Investigating Officer submitted a charge-sheet (Ext. Ka-17), under Sections 302, 324, 325 and 452 IPC before the Magistrate. The learned Magistrate took cognizance of the offence and summoned the appellants. The appellants appeared before the learned Magistrate and the Court furnished them copies of relevant prosecution papers under Section 207 Cr.P.C. and thereafter, committed the case to the Court of Sessions for trial.

11. The accused appeared before the Sessions Court and charges under Sections 452, 302/34 and 325/34 IPC were framed against all the appellants. The appellants abjured the said charges, pleaded not guilty and claimed trial.

12. The prosecution examined as many as nine witnesses to prove their case namely, P.W.1 Dr. P.K. Sharma, P.W.2 Anil Kumar (informant), P.W.3 Smt. Beerbala (wife of deceased Gulbir), P.W.4 Rajbir Singh, P.W.5 Constable Sukhpal Singh, P.W.6, Dr. R.L. Saraswat, P.W.7 S.I. Hari Dutta Sharma, P.W.8 Prem Pal Singh Chauhan (Investigating Officer) and P.W.9 Constable Prem Dutta Gautam. Their testimonies, in brief, are as under.

13. P.W.1 Dr. P.K. Sharma, Medical Officer, conducted medical examination of informant/injured Anil Kumar. He has said that on 02.08.1983 at about 09:45 p.m., he examined injuries of Anil Kumar, while being posted as Medical Officer at P.H.C., Dadri, Ghaziabad and found following injuries:

(i) Incised wound of the size of 2 cm x 0.5 cm x muscle deep at the outer side of thumb of the right hand. Bleeding was present.

(ii) Incised wound 1 cm x 0.5 cm x muscle deep over nail of right finger of the right hand. Bleeding was present.

(iii) *Incised wound 2 cm x 0.5 cm x bone deep at the base of nail of index finger of his right hand. X-ray was advised.*

14. In the opinion of the doctor, injury nos. 1 and 3 were caused by a sharp-edged weapon, such as a knife or a khukhri, whereas injury no.2 was caused by a blunt object. Injury no.2 was simple in nature, however, injury nos. 1 and 3 were kept under observation and an x-ray examination was advised. He has proved Anil Kumar's injury report as Ext. Ka-1 and said that these injuries could have been caused on 02.08.1983 between 06:00 and 06:30 p.m.

15. In his cross-examination, P.W.1 has said that injury nos. 2 and 3 could be caused by knives. He does not remember if somebody else had accompanied the injured Anil Kumar or not. He could tell about it only after perusing the record.

16. P.W.2 Anil Kumar is the informant as well as an injured witness in this case. He has supported the prosecution case and said that all the accused are his cousins (tau's sons). He deposed that he had four brothers, including Gulbir and all of them, including the appellants, reside within the same residential compound. There is a dispute relating to 03-03 □ bigha of land between him and accused. One day prior to the incident, an altercation took place between them over the said land. He further said that this land is situated at a short distance from village Senthli, towards the road. The appellants were unwilling to part with the said land and wanted to retain it themselves, which resulted in animosity between them. He further said that on 02.08.1983 at about 06:00 or 06:30 p.m., he and his brother Gulbir were sitting in house near the kitchen. He has also said that he is employed with the Army in the Technical Branch as a mechanic and had come to his village on leave. At the time, all the four accused arrived there. Out of them Lakhi Pal and Satya Pal were armed with knives, Rishi Pal was armed with khukhri and Shri @ Jain was armed with a lathi. All the four accused persons attacked them, whereupon they ran to save their lives. Lakhi Pal and Satya Pal inflicted knife blows upon Gulbir, while Rishi Pal stabbed him with a khukhri. Gulbir got injured and when P.W.2 Anil Kumar attempted to rescue his brother, Rishi Pal attacked him with the khukhri, causing him injuries. At the time of incident, his sister-in-law Beerbala wife of Gulbir and Bina wife of Satendra were also present. Upon their alarm, Rajbir, Ajab Singh and others also reached there, whereupon the accused fled from the place of occurrence.

17. It is further testified by P.W.2 that he took his brother Gulbir to the Dadri Hospital, where the doctor declared him dead and did a medical examination for the informant. Thereafter, he took his brother's dead body to Police Station Dadri along with others. As his right hand was injured, he got the application scribed by Rajbir, and then affixed his left hand's thumb impression thereon. The witness has proved the written application (tahrir) as Ext. Ka-2. During his deposition, a knife from a sealed bundle was taken out in Court, to which the witness said that it is the same knife with which Lakhi Pal had employed to cause injuries. The said knife was proved as Material Ext. 1.

18. P.W.2 Anil Kumar, in his cross-examination, has said that there are six or seven co-sharers of his house namely Shyam Singh, Ajit Singh, Mathan Singh, Kubi Singh and Tejpal Singh. The house was partitioned prior to his birth. The accused are sons of Ajit Singh, who is still alive. He further said that their house bears the same number with no wall in between. They never

litigated regarding the partition of land. Ajab Singh did not accompany them to the police station, but his son Onkar went there. After about 2-2½ hours from the time of occurrence, they proceeded from the village to Police Station Dadri, which is 8-9 kilometres away. He further said that first they reached the hospital and thereafter proceeded to the police station. It took 1½-2 hours to reach the police station. They reached the hospital at about 09:00 p.m., and thereafter, reached the police station at about 09:30-09:45 p.m. He further deposed that his application was written outside the gate of the police station and it took 30 to 45 minutes for its preparation. He remained in the police station the entire night and sat near his brother's dead body. In the morning, inquest was done and prepared a report. He remained there till 08:00 a.m. and all through out this period of time, the dead body was lying outside the police station. From there, he was sent to the hospital and returned after one week to his house. In the meantime, he did not go to his village or the post-mortem house. Rajbir parted company at the police station on 03.08.1983.

19. P.W.2 further said that there is a door to the north of his house and a kitchen in front of his door and near the staircase. His brother was murdered on the staircase by the appellants. He himself was beaten on the lower portion of staircase. Gulbir could climb only one step of the staircase, when the appellants attacked and killed him. There was blood over the staircase and Gulbir fell after getting injured. The appellant Rishi Pal had attacked Gulbir with a Khukhri. Written application (Ext. Ka-2) was scribed by Rajbir himself. At the time of inquest, there was no bandage over the body of the deceased.

20. P.W.3 Smt. Beerbala is the deceased Gulbir's wife. She has deposed that at the relevant time, she was cooking in the kitchen. Her sister-in-law (Devrani), Bina, was present there. Her brother-in-law (Devar) and husband, Gulbir Singh, were also present there. At that time, Lakhi Pal, Satya Pal, Rishi Pal and Shri @ Jain arrived there. Satya Pal and Lakhi Pal were armed with knives and Rishi Pal was armed with a khukhri whereas Shri @ Jain wielded a lathi. They battered her husband Gulbir. Her husband ran to save his life towards the staircase and could climb only one step, when Lakhi Pal and Satya Pal attacked him with knives. Rishi Pal hit him with the khukhri and Shri with the lathi. There were blows from knives over Gulbir's chest and the lathi hit his head. When her brother-in-law Anil ran to save Gulbir, then Rishi Pal attacked him with the khukhri, in consequence whereof his right hand's fingers and thumb were chopped off. Upon hue and cry that entailed, Rajbir and Ajab Singh also reached at the spot.

21. P.W.3 has further said that prior to the above incident, all the four appellants had quarrelled with her husband as well as Anil Kumar regarding an issue over 3-3½ bigha of land. She also said that her husband was taken to Dadri Hospital, where the doctor declared him dead.

22. In her cross-examination, P.W.3 said that from the hospital, she went to the police station, but remained at the doorstep of the police station. She was crying and weeping. The dead body of her husband remained at the police station till the next morning. It is further said that she does not know whether any policeman came near the dead body. She herself did not see any policeman near the dead body. At 08:00-09:00 a.m., she returned to her village. She has further deposed that soon after entering inside the house, the appellants started beating her husband and attacked him with knives, khukhri and lathi. There were 4-5 blows by knives and her husband was beaten under the staircase and nowhere else. Her husband was not beaten in the courtyard. The

Khukhri was of the size of about one and a half feet long. She had seen the injury caused by khukhri over Gulbir's chest and injuries caused by lathi over his forehead. At the time her husband was attacked, she ran to save him. She, however, did not fallen upon him.

23. P.W.4 Rajbir Singh has said that the families of the informant and the appellants live in the same mansion (haveli). At about 06:00-06:30 p.m., on the date of occurrence, he was in his courtyard with Ajab Singh. All the four appellants were quarrelling with Gulbir Singh and Anil Singh. Lakhi Pal and Satya Pal were carrying knives, Rishi Pal had on him a khukhri and Shri was wielding a lathi. Gulbir ran towards the staircase, but at the first step, he was killed. Lakhi Pal, Satya Pal attacked Gulbir with knives and Jain with the lathi. When Anil attempted to save Gulbir, Rishi Pal attacked him with the khukhri, as a result whereof his fingers were chopped off. Lakhi Pal was arrested before him and at his pointing out, a knife was recovered from a house near the mansion, kept in a fodder bag. The witness has proved the recovered knife as Material Ext. 1 and said that its recovery memo was prepared at the spot, which he proved as Ext. Ka-3.

24. In his cross-examination, P.W.4 has said that Om Pal Singh was Major in Army. The appellant Shri @ Jain is handicapped in his right leg. He has denied the suggestion that Station Officer Chauhan came to the village prior to this incident. He has further said that the police reached the place of occurrence and collected blood-stained earth from site. He remained at the police station the entire night and had reached there at 10:00-11:00 p.m. No inquest was held in the night. Till 06:00 a.m., he was at the police station and in the morning his signatures were obtained on the inquest report. The Gulbir's cadaver was sent for autopsy at 06:00 or 07:00 a.m., and thereafter, he left for his house. The khukhri was about one and a half feet long and it's iron blade was straight; not curved. He did not see the appellant Lakhi Pal attacking Gulbir and Rishi Pal hitting him with a khukhri. He further said that the appellant Rishi Pal had hit with a khukhri alone. Lakhi Pal and Satya Pal attacked the deceased with knives, when he was on the staircase. There were three to four knife injuries on the deceased Gulbir's abdomen.

25. P.W.5 Constable Sukh Pal Singh is a formal witness, who scribed the check FIR (Ext. Ka-4) on the basis of the written application Ext. Ka-2. He said that he entered its gist in G.D. No. 45 dated 02.08.1983 at 10:00 p.m. He has proved a copy of G.D. as Ext. Ka-5. He, in his cross-examination, has said that on 02.08.1983 at 01:15 a.m. a case under Sections 353 and 427 IPC was registered and, later on 03.08.1983 at 10:00 a.m., another case under Sections 457 and 380 IPC was registered at the police station. At about 10:00 p.m. on 02.08.1983, the Station Officer Rana alongwith S.I. Sahgal, S.I. D.P. Pal and S.I. Prem Pal Singh Chauhan proceeded to village Senthli and returned to the police station on 03.08.1983 at 11.55 a.m. S.I. Chauhan returned to police station on 03.08.1983 at 02:00 p.m. alongwith Lakhi Pal, Satya Pal and Rishi Pal.

26. P.W.6 Dr. R.L. Saraswat, has conducted the post-mortem examination of deceased Gulbir, son of Shyama Singh. He has said that on 03.08.1983, while posted as Medical Officer at M.M.G. Hospital, Ghaziabad, he conducted the deceased Gulbir Singh's post-mortem at 03:00 p.m., whose dead body was brought by Constables Prem Dutta and Ranvir Singh, posted at Police Station Dadri. He has said that the body was of average built and rigor mortis was present over the dead body. He found following ante-mortem injuries over the body:

- (i) Incised wound 3 cm x 1 cm x chest cavity deep over right side of chest in lower part.*
- (ii) Incised wound 3 cm x 1 cm x chest cavity deep a little inside to injury no.1.*
- (iii) Incised wound 3 cm x 0.5 cm x cavity deep in the stomach over left lower part of chest.*
- (iv) Incised wound 2.5 cm x 1 cm x cavity deep in the stomach over lower left side.*

27. On internal examination, right pleural cavity of lung was found filled with blood. The stomach, small intestine and liver were punctured below the external injuries. In the opinion of the doctor, the cause of death was shock and haemorrhage, as a result of ante-mortem injuries. P.W. 6 has proved post-mortem report as Ext. Ka-6 and said that all the injuries were on the vital part of the body and, as a result of these injuries, the death could have occurred on 02.08.1983 at 06:30 p.m. He has also said that these injuries were caused by any sharp-edged weapon, such as a knife or a similar object. He has also said that these injuries could have been caused by sharp edged *khukhri*.

28. In his cross-examination, the witness has said that incised wound would be caused by sharp cutting object. The injuries from a sharp edged weapon used for stabbing would have more depth than length. Incised wound had smooth clean cut and well-defined edges.

29. P.W. 7 S.I. Hari Dutt Sharma is a formal witness, who prepared the inquest report at the direction of the In-Charge, Police Station Dadri, outside the police station on 02.08.1983. He has proved the inquest report as Ext. Ka-7 and related papers, such as, photo-nash, challan-nash, letter to CMO and letter to R.I etc. as Ext. Ka. 8 to 13 respectively.

30. In his cross-examination, P.W.7 has said that on 02.08.1983 at 10:55 p.m., he started with the inquest and completed it at 11:55 p.m., the same night. He handed over papers to concerned constable at about 12:00 mid night. At the time of holding the inquest, S.O. Suresh Pal Rana, Prem Dayal Singh Chauhan, R.K. Sahgal, Prem Dutt Gautam and Ranvir were also present. The Station Officer and Sub-Inspector, after inspecting the dead body, started their work inside the police station.

31. P.W.8, S.I. Prem Pal Singh Chauhan, is the Investigating Officer of this case. He has stated about the investigation carried out by him and deposed that on 02.08.1983, he recorded statement of informant Anil Kumar at the police station and went with him to the place of occurrence and, at his pointing out, prepared its site-plan on 02.08.1983, which he proved as Ext. Ka-14. He has also said that he collected sample of plain earth and blood-stained earth from the place of occurrence in two separate sealed boxes and prepared a recovery memo, which he proved as Ext. Ka-15. He recorded the statements of other witnesses and arrested the accused. He further stated that at the pointing out of accused Lakhi Pal, a blood stained knife was recovered from inside the house of the accused, which was sealed at the spot and its recovery memo prepared. He has proved the knife as Ext. 1 and its recovery memo as Ext. Ka-3. He has also said that he prepared the site map of the place of recovery of the knife, which he has proved as Ext. Ka-16. He has also

proved the samples of blood-stained earth and plain earth as Exts. 2 and 3 and said that, after completing the investigation, he filed the charge-sheet before the competent court, which he proved as Ext. Ka-17. He has further said that blood-stained earth and plain earth were sent for chemical examination.

32. In his cross-examination, P.W. 8 has said that he inspected the place of occurrence at about 11:45 p.m. and thereafter prepared its site plan at the pointing out of Anil Kumar. He did not find any blood at letter-A, mentioned in the site plan. He has said that at 11:15 p.m., he along with informant Anil Kumar and other police personnel proceeded to the place of occurrence. He did not attempt to take any finger print from the recovered knife. In his cross-examination, he has said that the wife of deceased did not come to the police station at the time when the case was lodged. He had raided appellant's houses on 2/3.08.1983. He further stated that at the time of inspection of the place of occurrence and collecting sample of blood-stained earth from there, except for the informant Anil, no other eye-witness was present. At the time of arrest, appellant Lakhi Pal, had injuries over his head and both hands whereas the appellant Satya Pal had injuries over his back, head and shoulders. The date is blank in the column regarding sending the check FIR Ext. Ka- 4.

33. P.W. 9 Constable Prem Dutt Gautam is a formal witness, who had taken the dead body of the deceased for autopsy to Mohan Nagar Hospital and said that in the night of 02/03.08.1983, the sealed dead body was handed over to him, which he had conveyed to Mohan Nagar Hospital. He stated that he reached there in the morning on 03.08.1983 along with Constable Rajvir Singh.

34. In his cross-examination, P.W.9 has said that he proceeded from the police station at about 12:00 in the night by a tempo along with the dead body. There is a distance of 24-25 kilometres from Dadri to Mohan Nagar. He reached Mohan Nagar hospital within one and a half hours.

35. After closure of the prosecution evidence, the statement of accused were recorded under Section 313 Cr.P.C., where they denied the prosecution case and said that the witnesses are deposing against them due to enmity. They have further said that the accused Rishi Pal had come on leave from Army, however, on 01.08.1983, he went to his in-law's home and was not present in the village. They have also said that on 03.08.1983 at about 08:00-09:00 a.m., the police took Lakhi Pal along with accused Satya Pal and Rishi Pal, but left accused Shri @ Jain, on being handicapped. They have also stated that Rajbir's sister-in-law Bedbati and informant's mother Sukhdei are real sisters. Ajab Singh's wife and Gulbir's wife Beerbala are real sisters. Rajbir, D.S.P. and Narendra are his cousins. Narendra Singh had influence over police and has falsely implicated them in the case. They have also stated that Anil had illicit relationship with his sister-in-law Beerbala, which led to a quarrel between Anil and Gulbir, though this was pacified by people. On 02.08.1983, Gulbir came in a drunken condition and started an altercation with Anil, then Anil killed him. Thereafter, Rajbir, Narendra Singh and Ajab Singh, after consultation, have lodged a false case against the accused. Anil's brother Om Pal Singh is a Major in the Army. The accused have not adduced any evidence in their defence.

36. After hearing both the parties and examining the evidence on record, the learned Trial Judge came to the conclusion that the prosecution had proved their case beyond reasonable doubt.

The learned Trial Judge observed that the FIR was lodged promptly. The witnesses of fact are consistent in their testimony and have proved the case. The ocular testimony is supported by the medical evidence. Accordingly, the Trial Court after having found the appellants guilty convicted and sentenced them to the terms, as indicated above.

37. We have heard Mr. Sunil Vashisth and Mr. Kapil Kumar Rajor, learned Counsel for appellant no.1, Mr. Sunil Kumar, learned Counsel appearing for appellant nos.2 and 3 and Ms. Divya Ojha, learned AGA-I on behalf of the State and perused the evidence on record.

38. It is argued on behalf of the appellants that the FIR has been lodged belatedly and there is no explanation for the delay. It is further submitted that the FIR is ante-timed. It is next submitted that there is material contradiction with regard to the time, as to when the inquest report of the deceased was prepared, which raises doubt over the prosecution case and reveals that the FIR was lodged after much consultation and deliberation and, as such, it was ante-timed. It is next submitted that the place of occurrence is also doubtful and that there are material contradictions in the testimonies of the witnesses of fact regarding the place where the deceased and the injured were assaulted.

39. It is next argued on behalf of the appellants that the presence of P.W. 2 at the place of occurrence is highly doubtful. The recovery of the knife from appellant Lakhi Pal is fabricated and concocted. There is no public witness of the alleged recovery. Thus, the Investigating Officer has planted the knife on the appellant Lakhi Pal to give weight to the prosecution case.

40. It is further argued by learned counsel for the appellants that there are material contradictions in ocular and medical evidence, which raise serious doubts about the prosecution case. It is next submitted that appellant Shri @ Jain was, admittedly, handicapped, and therefore, it was not possible for him to participate with the other appellants and assault the deceased and/or the informant, which makes the prosecution case doubtful.

41. It is also submitted that there was illicit relationship between Beerbala, wife of the deceased, and the informant Anil Kumar. When the deceased objected to it, an altercation took place between them. The informant Anil Kumar himself assaulted and killed the deceased. Therefore, the appellants have no role in the alleged incident and have been falsely implicated in this case.

42. It is next submitted that there is delay in preparation of the inquest report and sending the dead body for post-mortem examination. Lastly, it is submitted that it is highly improbable that the site plan of the place of occurrence would be prepared at the instance of the informant, because according to the informant, after lodging the FIR, he did not return to his village for a week. Therefore, the entire evidence collected and produced in Court is fabricated, in order to implicate the appellants in this case. The Trial Court failed to appreciate the evidence in the correct perspective and discussed and analyzed the evidence incorrectly, thereby reaching a wrong conclusion regarding the guilt of the appellants.

43. On the other hand, it is submitted on behalf of the State that there is no delay in lodging the FIR. The FIR is prompt and not ante-timed. The contradictions in the testimony of witnesses of fact and the formal witnesses are minor, which could happen after a lengthy cross-examination of these witnesses. On material points, the witnesses are consistent regarding the guilt of the accused and the lodging of the FIR. It is also submitted that there are no contradictions in ocular and medical evidence and the evidence of all witnesses of fact regarding the commission of offence is fully corroborated by medical evidence. It is also submitted that recovery of the knife, used in the commission of the offence, at the behest of appellant Lakhi Pal is proved.

44. It is also argued that Shri @ Jain was handicapped, however, it was not such a disability, which could restrict his participation in the crime. With regard to preparation of the inquest report, the contradictions in the statement of witnesses of fact and the formal witnesses are minor, which do not raise any suspicion about the prosecution case. There is no delay in sending the dead body for post-mortem examination. The site plan was prepared at the pointing out of the informant the same night. It is next submitted that there is no evidence that the informant Anil Kumar and deceased's wife Beerbala had any illicit relationship between them, and the said contention of the defence is not believable.

45. Therefore, the prosecution have proved their case beyond reasonable doubt and the Trial Court has rightly convicted and sentenced the appellants.

46. In view of the evidence led in the case and the submissions of the rival parties, it is to be examined whether the prosecution have indeed been able to prove their case beyond reasonable doubt. It is settled law that in a criminal case, the burden of proof lies on the prosecution to prove their case beyond reasonable doubt.

47. In the present case, the incident occurred on 02.08.1983 at 06:30 p.m. in the courtyard of the informant, Anil Kumar's, house in village Senthli, under Police Station Dadri, District Ghaziabad. The FIR was lodged by the informant Anil Kumar on 02.08.1983 at 10:00 p.m. The FIR was thus lodged after three and a half hours from the time of incident. According to the check FIR, (Ext. Ka-4), the distance from the place of occurrence to the Police Station Senthli is ten kilometres. According to P.W.2 Anil Kumar, the informant, after the incident, he took his injured brother Gulbir to Dadri Hospital, where the doctor declared him dead. Thereafter, he went to Police Station Dadri along with Rajbir, carrying the dead body of his brother Gulbir. He has said that the Inspector directed him to keep the dead body outside the Police Station and asked him to bring a written report. Thereafter, he took a piece of paper from the Police Station and, as his right hand was injured, dictated the report to Rajbir Singh, who scribed the same. Next, he had affixed his left hand's thumb impression on the application, which the witness has proved as Ext. Ka-2.

48. The above witness has been cross-examined at length and it has come in his evidence that the tahrir (Ext. Ka-2) was written by Rajbir and he did not dictate it to him. On this point, it is argued by learned counsel for the appellants that this statement raises suspicion about the prosecution case that the written application was dictated by the informant and thus, the basis of prosecution case, in itself, is doubtful.

49. We do not agree with this submission. While discussing evidence of a witness, it is not proper and reasonable to pick out one or two sentence from here and there to form opinion, but his testimony, as a whole, is to taken into account for the purpose. Here, in the present case, the above statement is only a minor contradiction and, if we look into the entire testimony of P.W.2, then it appears that he had given this statement in view of the fact that his right hand was injured, and, therefore, the written application was scribed by Rajbir Singh. P.W. 4 Rajbir Singh, the scribe of the application, has himself said that he had written it upon the dictation of the informant, Anil Kumar.

50. Thus, in view of the above, the submission made on behalf of the appellants has no force. Beside this, Rajbir Singh is also a witness of fact, who witnessed the incident. Therefore, what he has written in the written information (tahrir) is an eye witness account, and on this ground as well, the FIR cannot doubted.

51. It has come in evidence that after the incident, the informant Rajbir Singh along with the injured Gulbir Singh and others went to the police station on a buffalo cart and prior to that they went to Dadri Hospital. It has been stated by P.W.3 Beerbala that she also went to the hospital and thereafter to the Police Station along with them and remained outside the gate of the police station.

52. It has come in the statement of P.W.1 Anil Kumar that after two or two and half hours of the incident, he proceeded from the village on a buffalo cart. It took him one and a half hour or two to reach the Police Station. They reached the hospital at about 09:00 p.m. and subsequently, the Police Station at 09:00-09:45 or 10:00 p.m.

53. On the basis of above statement, it is vehemently argued on behalf of the appellants that if time sequence is calculated in light of prosecution version, then it is not possible for the informant to reach the Police Station by 10:00 p.m., the time when, allegedly, the FIR was lodged.

54. We do not agree with this submission of the learned counsel for the appellants. The time stated by P.W.2, Anil Kumar, with regard to his reaching the hospital, and subsequently, the police station, appears to be only an approximate estimate on his part. There is no denial of fact that P.W.1 Anil Kumar is a villager. He has also said that he reached the hospital at about 09:00 p.m., and thereafter, the Police Station at about 09:30-09:45 p.m. or 10:00 p.m. Thus, he has stated both, the duration of time taken and the time when he reached at both these places. If we examine these fact closely, then the above statements have no adverse affect on the prosecution case. According to the injury report of the informant Anil Kumar, it was prepared at 09:45 p.m. and going by the check FIR, it was lodged on 02.08.1983 at 10:00 p.m. Both the timings, mentioned in injury report and check FIR, do support the timings testified to by P.W.1. The sequence of firstly reaching the hospital, and thereafter, the Police Station is fully corroborated from the testimony of P.W.2 Anil Kumar, P.W.3 Beerbala and P.W. 4 Rajbir Singh. Thus, their testimony in this regard is consistent, which is also supported by documentary evidence produced on behalf of the prosecution.

55. It is hypothetical to assume that the informant and others proceeded from the village only after about two and a half hours and the evidence of P.W.2 in this regard cannot be interpreted so narrowly. What this testimony means is that after the incident, the victim and the witnesses,

arranged a buffalo cart, and thereafter, proceeded to the hospital; and, subsequently to the Police Station. Therefore, the submissions on behalf of appellants in this regard has no force.

56. It is next submitted on behalf of the appellants that according to the testimony of P.W.2 Anil Kumar, after reaching the Police Station, he informed the concerned Constable about the incident, who asked him to bring a written application, whereupon he got a written information (tahrir) scribed by Rajbir Singh and, on that basis, lodged the FIR. On this account, it is submitted by learned counsel for the appellants that oral information given by the informant to the concerned Constable is the First Information Report and not the written application given by Anil Kumar. The verbal information given, is not proved and, therefore, the prosecution case is doubtful.

57. We do not find any force in this submission. The informant Anil Kumar was not well versed in the law. If he went to the Constable to intimate about the incident, and after being asked, wrote down the details of the occurrence, the mere fact that he approached the Constable would not render his initial version of the first information. According to G.D. No. 45 of the day, it is mentioned that the scribe of the written information, Rajbir Singh, was accompanying the informant Anil Kumar. It is the written application Ext. Ka-2 which moved the machinery of Ia to take its course and thereupon investigation commenced. Therefore, it is the tahrir, Ext. Ka-2, which is the first information report in this case.

58. It is also submitted on behalf of the appellants that there are major contradictions in the testimony of prosecution witnesses regarding the time at which the inquest of the deceased was held and the report prepared. It is also submitted that the inquest and other connected papers do not bear the names of the appellants, which lead to the inference that the FIR had not been drawn up till then and it was lodged ante-timed.

59. We are unable to accept this submission as well because the name of appellants are not required under law to be incorporated in the inquest report and other related papers. Besides this, the crime number, section and time of recording the FIR and other particulars are mentioned in the inquest report of the deceased and other accompanying documents. Therefore, it is not proper to conjecture that the first information report was not in existence, when the inquest was prepared.

60. In **Shakila Khader v. Nausher Gama**, AIR 1975 SC 1324, the contention raised that non-mentioning of a person's name in the inquest report would show that he was not an eye-witness of the incident was repelled on the ground that an inquest under Section 174 Cr.P.C. is concerned with establishing the cause of death and only evidence necessary to establish it need be brought out. The same view was taken in **Eqbal Baig v. State of Andhra Pradesh**, AIR 1987 SC 923 that the non-mentioning of the name of an eye-witness in the inquest report could not be a ground to reject his testimony. Similarly, the absence of the name of the accused in the inquest report cannot lead to an inference that he was not present at the time of commission of the offence, as the inquest report is not a statement of a person wherein all the names (accused and also the eye-witnesses) ought to have been mentioned.

61. It is well settled by a catena of decisions of the Supreme Court that the purpose of holding an inquest is very limited, viz., to ascertain whether a person has committed suicide or been

killed by another or an animal or machinery or by an accident or has died under circumstances raising a reasonable suspicion that some other person has committed an offence. There is absolutely no requirement in law of mentioning the details of the FIR, names of the accused or the names of the eye-witnesses or the gist of their statement nor is it required to be signed by any eye-witnesses.

62. In view of the above legal position non-mentioning of names of appellants in the inquest does not raise any suspicion about the prosecution case.

63. There are some contradictions with regard to the time of holding the inquest and the preparation of a report, which we must notice. P.W.7 S.I. Hari Dutta Sharma, the Officer who held the inquest outside the premises of the Police Station, has said that he started preparing the inquest at 10:55 p.m. and completed it at 11:55 p.m. Thereafter, he handed over the concerned papers to the Constable at about 12:00 mid night and the cadaver was dispatched from the Police Station at 12:00 in the night. P.W. 9 Constable, Prem Dutt Gautam, is the official who carried the dead body of the deceased Gulbir Singh for post-mortem examination to Mohan Nagar Hospital. According to P.W.9, he received the dead body in the night of 02/03.08.1983 and reached Mohan Nagar Hospital in the morning of 03.08.1983.

64. It has come in the evidence of P.W.9 that he proceeded from the Police Station along with the dead body at about 12:00 mid night by a tempo. He has further said that Mohan Nagar Hospital is 24-25 kilometers away from Dadri. He reached Mohan Nagar Hospital within an hour and a half. He denied that the inquest was prepared in the morning after 08:00 a.m. On the other hand, P.W.2 Anil Kumar, P.W.3 Beerbala and P.W.4 Rajbir Singh have testified that the dead body of the deceased was lying outside the Police Station until the next morning, and, according to them, at about 07:00-08:00 or 08:30 a.m., the inquest was prepared and the body sent for autopsy.

65. Though these are contradictions regarding the time when the inquest of the deceased was held, but the testimony of P.W.9 Prem Dutt Gautam in this regard is very material, who says that he reached Mohan Nagar Hospital, along with the dead body, in the morning on 03.08.1983 and it took him about an hour and a half to reach there. If he had proceeded from Police Station at about 12:00 mid night and it took an hour and a half to reach the Mohan Nagar hospital, then he should have reached there by 01:30 or 02:00 a.m., whereas he has stated that he reached the hospital in the morning of 03.08.1983. This shows that perhaps due to the time taken in arrangement of the vehicle or something else, he proceeded to the hospital late from the Police Station for the autopsy and that is why P.W. 2, P.W.3, and P.W. 4 have said that they remained with the dead body outside the police station till the morning.

66. Therefore, the above contradictions are not very material and it is not in dispute that the post-mortem of the deceased was conducted on 03.08.1983 at 03:00 p.m. The dead body was taken to the hospital along with the inquest report and other necessary papers. Therefore, whatever the delay in preparing the inquest report and taking the dead body to the hospital for autopsy is immaterial, which does not shake the otherwise soul foundation of the prosecution case.

67. It is also submitted on behalf of the appellants that there is no date mentioned in the relevant column of the check FIR relating to the date of dispatch of the report from the police

station and the check FIR bears signatures of the Magistrate on 17.08.1983, which raises doubt that the FIR was not lodged at the time mentioned in it.

68. We do not agree with this submission. The copy of the check FIR along with other papers, such as the inquest report and other related papers, were sent to the doctor for autopsy on 03.08.1983, and autopsy was conducted at 03:00 p.m., which shows that at least before that time all the above papers were in existence. According to the statement of P.W.5 Constable Sukhpal Singh, who scribed the check FIR, on 02.08.1983 at 10:00 p.m., another cognizable case was lodged on 02.08.1983 at 01:15 a.m. before this case and a cognizable case under Section 457/380 IPC was lodged at the Police Station on 03.08.1983 at 10 a.m. after this case.

69. It is presumed that the General Diary at the police station is prepared according to law in chronological order and there were two cases of cognizable nature lodged before and after the FIR of the instant case. This rules out the possibility that the G.D. was stopped and the FIR of this case was lodged ante-timed. So, the delay, if any, in reaching the FIR to the Court for signature by the Magistrate, is not very material. Therefore, in the absence of any evidence contrary to it, it cannot be assumed that the check FIR of this case was lodged belatedly and it was ante-timed.

70. In view of the above discussion, we come to the conclusion that there is no delay in lodging the FIR and it was lodged promptly.

71. So far as the place of occurrence is concerned, it is the courtyard of the informant Anil Kumar's house. It has come in evidence of P.W. 2 Anil Kumar, P.W. 3 Beerbala, and P.W. 4 Rajbir Singh that the incident took place in the courtyard of the informant and the accused live in the neighbourhood. There is no boundary wall between the houses of the parties. The incident occurred in front of the kitchen and also at the staircase. It has come in evidence that when Gulbir ran towards the staircase and had climbed just one step, he was attacked and assaulted with lathi. In this case, the informant Anil Kumar also sustained injuries and it has come in evidence that when he ran to save Gulbir, the appellant Rishi Pal attacked him with a khukhri, resulting in a cut to his right-hand thumb. It has come in the testimony of P.W. 3 Beerbala that her husband Gulbir was attacked only under the staircase and nowhere else, particularly in the courtyard. Upon this statement, it is submitted on behalf of the appellants that this statement does not support the prosecution case, which raises suspicion about the place of occurrence.

72. We do not agree with this submission also because it has come in evidence that at the time of the incident, the deceased, the injured and other witnesses as well as the appellants were inside the house, and upon the assault taking place, Gulbir ran towards the staircase, where he sustained injuries from a knife. In this situation, if P.W. 3 Beerbala failed to notice any such assault upon Gulbir at a place, other than the staircase, then it is quite natural, and on this ground alone, her evidence cannot be disbelieved.

73. The Investigating Officer has drawn up a site-plan of the place of occurrence and has said that he prepared it on the pointing out of the informant Anil Kumar. In the site-plan, he has shown the place where the accused attacked the informant Anil Kumar and Gulbir marked as letter □A□. He has also shown the place under the staircase, where the appellants surrounded Gulbir

Singh and attacked him, and the place from where, he recovered blood-stained and plain earth by letter-□B□. The kitchen is just near the place of the incident. The house of the informant and the accused are shown nearby. The above site-plan fully corroborates the oral testimony of the witnesses.

74. It is submitted on behalf of the appellants that in view of the statement of the informant Anil Kumar, that he was sent from the Police Station to the hospital and did not return to his house for about a week, it was not possible for the Investigating Officer to prepare the site-plan at the instance of informant Anil Kumar on the date and time alleged by the prosecution.

75. We do not agree with the submission also. The informant Anil Kumar has nowhere said that he did not leave the Police Station on the night when the FIR was lodged but said that he was at the Police Station till 08:00 a.m., the next morning. It has come in the testimony of P.W.7, the Investigating Officer that after the FIR was lodged at 10:00 a.m. on 02.08.1983, he proceeded along with other Police personnel and the informant Anil Kumar to the place of occurrence and prepared a site-plan at the pointing out of the informant in the night. P.W. 5 Constable Sukhpal Singh has said that after the FIR was lodged, the S.H.O. along with other Police personnel proceeded to village Senthli in a Jeep. The Investigating Officer has stated that he raided the house of the appellants the same night, but they were not found. Thereafter he returned to the Police Station. It appears that after the FIR was lodged, the Investigating Officer along with the informant went straight to the place of occurrence in village Senthli and, after inspecting the place of occurrence and preparing site-plan, raided the house of the appellants to arrest them. The Investigating Officer returned to the Police Station the same night. Therefore, along with him the informant would also have returned to the Police Station. As such, preparation of the site-plan by Investigating Officer, at the instance of the informant, cannot be doubted and the place of occurrence is fully established by the prosecution.

76. According to the prosecution, on 02.08.1983 at about 06:30 p.m. all the appellants, i.e. Lakhi Pal, Satya Pal, Rishi Pal and Shri @ Jain entered the house of the informant Anil Kumar and in furtherance of their common intention, attacked Gulbir Singh with knives and lathi causing his death and when the informant Anil Kumar rushed to rescue his brother, he too was attacked with a Khukhri by Rishi Pal, causing injuries on the fingers and thumb of his right hand. To prove this fact, the prosecution has examined P.W.2 Anil Kumar, P.W.3 Beerbala and P.W.4 Rajbir Singh. P.W.2 Anil Kumar is the injured witness as well as the younger brother of deceased Gulbir Singh. P.W.3 Beerbala is the widow of deceased Gulbir Singh and P.W.4 Rajbir Singh is the witness, whose house is situate within the same boundary wall, where the houses of both informant and appellants are situated. All the three witnesses above mentioned have supported the prosecution case in their respective testimonies and they are consistent how the incident occurred. They have fully supported the prosecution case.

77. It has come in their evidence that the appellants are cousins of P.W.2 Anil Kumar, the informant and the deceased Gulbir Singh, and they were residing in the same house. It has also come in evidence that there was a dispute regarding 3-3 1/2 bigha of land between them, and a day before the incident, there was altercation relating to the said land. It has figured in evidence that on 02.08.1983 at about 06:00-06:30 p.m., Anil Kumar along with his brother Gulbir Singh was sitting

in their house near the kitchen, when appellant Lakhi Pal, Satya Pal armed with knives, Rishi Pal armed with khukhri and Shri @ Jain carrying a lathi, came over into their portion of the house and attacked the informant and his brother Gulbir. When they ran for shelter, Lakhi Pal and Satya Pal attacked with knives and Rishi Pal with Khukhri inflicted injuries to the deceased Gulbir Singh. As the informant Anil Kumar ran to save his brother Gulbir Singh, he too was attacked with a Khukhri by Rishi Pal, resulting in injuries to his right hand.

78. It has come in evidence that at the time of incident, Beerbala was cooking food in the kitchen and her sister-in-law (Devrani) Beena too was present there. The evidence shows that when Gulbir Singh ran to save his life, he was chased by the appellants and attacked with knives under the staircase. It was 06:00-06:30 in the evening, so the presence of Beerbala at the place of occurrence is quite natural. Similarly, the presence of P.W.2 Anil Kumar is also natural, as he was the younger brother of deceased and all of them were living jointly in the same house. The house of P.W.4 Rajbir Singh is also in the same Gher. Therefore, his presence there after hearing the commotion is also natural.

79. It has come in evidence that when alarm was raised, P.W.4 Rajbir Singh came out from his house besides Ajab Singh and others. Thereafter, the appellants accused fled from the place of occurrence. It has then come in evidence that the informant took his injured brother Gulbir Singh to the hospital in Dadri, where he was declared dead. He took his brother's dead body to the Police Station Dadri accompanied by Rajbir Singh and Beerbala and lodged the FIR. All the above witnesses of fact i.e. P.W.2 Anil Kumar, P.W.3 Veerbala and P.W.4 Rajbir Singh were exhaustively cross-examined, but no material contradiction have surfaced in their testimony so as to cast doubt on its veracity.

80. It is argued on behalf of the appellants that the informant Anil Kumar and Beerbala were into an illicit relationship, due to which, the informant himself attacked and killed Gulbir Singh. The defence has not produced any evidence in this regard. Importantly, the appellants have not given any such suggestion to P.W.2 Anil Kumar and P.W.3 Beerbala during their cross-examination, whom they claim were in illicit relationship.

81. The informant Anil Kumar was in military services and normally had to live away from home. Therefore, it is not normal for him to be involved in an illicit relationship of the kind suggested. During investigation, the appellants have not given any application or raised any such issue before any authority or the Police that the deceased was murdered by the informant himself and not them, due to the above reason. Had they raised such issue during investigation, this angle could also have been investigated. It is established that there was dispute between the parties regarding 3-3 □ bigha of land, which could have prompted the appellants to commit this offence. It is also remarked that this is a case of direct evidence, and in a case of direct evidence, motive loses its significance. Motive is a state of mind of a person, which cannot be seen from outside.

82. In the case of **Thaman Kumar vs. State of Union Territory of Chandigarh**, reported in (2003) 6 SCC 380: (AIR 2003 SC 3975), the Supreme Court has observed as under:-

"There is no such principle or rule of law that where the prosecution fails to prove the motive for commission of the crime, it must necessarily result in acquittal of the accused. Where the ocular evidence is found to be trustworthy and reliable and finds corroboration from the medical evidence, a finding of guilt can safely be recorded even if the motive for the commission of the crime has not been proved."

83. In the case of **State of H.P. Vs. Jeet Singh** reported in (1999) 4 SCC 370 : (AIR 1999 SC 1293), the Supreme Court has observed:

"No doubt it is a sound principle to remember that every criminal act was done with a motive but its corollary is not that no criminal offence would have been committed if the prosecution has failed to prove the precise motive of the accused to commit it. When the prosecution succeeded in showing the possibility of some ire for the accused towards the victim, the inability to further put on record the manner in which such ire would have swelled up in the mind of the offender to such a degree as to impel him to commit the offence cannot be construed as a fatal weakness of the prosecution. It is almost an impossibility for the prosecution to unravel the full dimension of the mental disposition of an offender towards the person whom he offended."

84. In the case of **Molu and others v. State of Haryana**, AIR 1976 SC 2499, the Supreme Court Hon'ble has held:

"It is well settled that where the direct evidence regarding the assault is worthy of credence and can be believed, the question of motive becomes more or less academic. Sometimes the motive is clear and can be proved and sometimes, however, the motive is shrouded in mystery and it is very difficult to locate the same. If, however, the evidence of the eye-witnesses is credit-worthy and is believed by the Court which has placed implicit reliance on them, the question whether there is any motive or not becomes wholly irrelevant."

85. Regarding motive for commission of the crime, the Supreme Court has in **Suresh Chandra Bahri v. State of Bihar** AIR 1994 SC 2420 observed:

"Sometimes motive plays an important role and becomes a compelling force to commit a crime and therefore motive behind the crime is a relevant factor for which evidence may be adduced. A motive is something which prompts a person to form an opinion or intention to do certain illegal act or even a legal act but with illegal means with a view to achieve that intention. In a case where there is clear proof of motive for the commission of the crime it affords added support to the finding of the Court that the accused was guilty for the offence charged with. But it has to be remembered that the absence of proof of motive does not render the evidence bearing on the guilt of the accused nonetheless untrustworthy or unreliable because most often it is only the perpetrator of the crime alone who knows as to what circumstances prompted him to a certain course of action leading to the commission of the crime."

86. Therefore, in view of the above discussion and the legal position, if for the sake of argument, it is assumed that the prosecution has failed to prove any immediate motive for the appellants to commit crime, it has no relevance in the present case, where the eye-witnesses have

fully supported the prosecution case. So far as the role of appellant Shri @ Jain is concerned, though it has come in evidence that he is handicapped in his right leg, but it has also come in evidence that he can walk, so his participation in the crime cannot be doubted. It has come in evidence that the houses of both the parties are in the same Gher, where the incident has taken place. Therefore, technically the offence under Section 452 IPC is not made out and this is not a case of house trespass.

87. P.W.3 Beerbala has said that the knife blows were inflicted on his husband Gulbir Singh's chest and she was sobbing at the time of the incident. The above testimony is corroborated by medical evidence. She, being a rustic woman, if she has at one place said that that appellant Shri @ Jain had delivered a lathi blow to her husband's head, and this injury is not found in the autopsy report, on this ground alone, her entire testimony cannot be discarded. It may be possible that due to loss of her husband, she suffered shock and in that condition, if she testified to a certain fact, which does not go to the root of the prosecution case, it would have no adverse effect on the prosecution. She has been thoroughly cross examined and in the given circumstances it is quite possible and natural that some minor contradictions may occur in her testimony.

88. In **Maqsoodan and Others v/s State of UP 1983 SCC (Cri.) 176** (Para 9) it was held that "minor inconsistencies in statements of witnesses and FIR in regard to number of blows inflicted and failure to state who injured whom, in the circumstances of the case, would not make the testimony of the witness unreliable---- On the contrary, they show that the witnesses were not tutored."

89. In **Bharwada Bhoginbhai Hirjibhai v/s State of Gujarat (1983) 3 SCR 280: AIR 1983 SC 753** at page 756; M.P.Thakkar, J. observed " A witness though wholly truthful, is liable to be overawed by the court atmosphere and the piercing cross examination made by counsel and out of nervousness mess up facts, get confused regarding sequence of events, or fill up details from imagination on the spur of the moment. The sub-conscious mind of the witness sometimes so operates on account of the fear of looking foolish or being disbelieved though the witness is giving a truthful and honest account of the occurrence witnessed by him□perhaps it is sort of a psychological defence mechanism activated on the spur of the moment.□ It was also held in this case that □ Discrepancies which do not go to the root of the matter and shake the basic version of the witnesses therefore cannot be annexed with undue importance. More so when the all important □probabilities - factor□ echoes in favour of the version narrated by the witnesses."

90. The Supreme Court in **Israr vs. State of U.P. (2005 (51) ACC 113)**, held:

".....Relationship is not a factor to affect credibility of a witness. It is more often than not that a relation would not conceal the actual culprit and make allegations against an innocent person. Foundation has to be laid if plea of false implication is made. In such cases, the Court has to adopt a careful approach and analyze evidence to find out whether it is cogent and credible."

91. In view of the above, the evidence of P.W. 3 Beerbala may have some contradictions regarding the injuries, but they are minor and do not go the root of the matter and with regard to the basic version, it is consistent and does not suffer from any major contradictions and is thus, reliable

and trustworthy. She, being wife of the deceased, would be the last person to spare the real culprit and rope in innocents.

92. According to P.W.4 Rajbir Singh, he reached at the place of occurrence upon hearing the alarm raised and saw the incident. He has stated that he was in his courtyard along with Ajab Singh, when Lakhi Pal, Satya Pal carrying knives, Rishi Pal armed with Khukhri and Shri @ Jain had a quarrel with Gulbir Singh and Anil Kumar and challenged Gulbir Singh. Upon this, Gulbir Singh ran towards the staircase to save his life and when he embarked on the very first step of the staircase, the appellants Lakhi Pal and Satya Pal attacked him with knives and Shri @ Jain with a lathi, causing his death. When Anil Kumar came to his rescue, Rishi Pal attacked him with a Khukhri cutting off his fingers. He has stated that he was at a distance of 14-15 steps from the place, where the alleged incident took place. Therefore, he had a clear vantage to witness the incident. It has come in his statement that appellant Lakhi Pal was arrested by the Investigating Officer and, upon his pointing out, a knife was discovered from a bhuse ka bongi (straw bag) from the house. He has proved knife as Ext. Ka-1 and his signatures on the recovery memo Ext. Ka-3.

93. It has been submitted on behalf of the appellants that the alleged recovery of knife at the pointing out of Lakhi Pal is doubtful. We do not agree with this submission. The Investigating Officer has proved that after arresting Lakhi Pal, he recorded his statement, who stated that he could get the weapon of assault (knife) recovered, which he had hid in the house. Then, upon his pointing out, the knife was recovered and P.W.4 Rajbir Singh is one of the public witness of such recovery. Therefore, the recovery of the knife at the pointing out of Lakhi Pal is admissible in evidence under Section 27 Evidence Act. The injury report of P.W.2 Anil Kumar shows that he sustained incised and lacerated wounds over the fingers of his right hand. The doctor has stated that these were caused by a sharp edged weapon and also by a blunt object. P.W.3 Beerbala has also said that the deceased and injured were attacked with knives, khukhri and lathi. P.W.4 has also stated the same thing. Khukhri and knives are sharp edged weapons and lahti is a blunt object. It has come in evidence that Gulbir Singh sustained injuries from knives over his chest and in the post-mortem report also injuries of the nature of incised wound were found over his chest.

94. Thus, the ocular testimony is supported by medical evidence and the submission on behalf of the appellants has no force that there are major contradiction in ocular and medical evidence.

95. On the basis of above, we come to the conclusion that the prosecution have proved their case beyond reasonable doubt. It is established that it was the appellants, Lakhi Pal, Satya Pal, Rishi Pal and Jain @ Shri, who in furtherance of their common intention had attacked and murdered the deceased Gulbir and caused injuries to the informant Anil Kumar by a sharp-edged weapon.

96. Thus, all the appellants are guilty of offence punishable under Section 302 read with 34 and 324 read with Section 34 IPC. The Trial Court has appreciated the evidence on record correctly and rightly reached the conclusion of guilt against all the accused. The conviction and sentence of the appellants deserve to be affirmed.

97. Thus, the present appeal lacks merit and is, accordingly, **dismissed**. The conviction and sentence of the appellants by impugned judgment and order dated 30.6.1984 is **affirmed**. The appellants Lakhi Pal, Satya Pal and Rishi Pal are on bail. Their personal bonds and bail bonds are cancelled and sureties discharged. They are directed to surrender before the learned Trial Court within two weeks from today to undergo their sentences, failing which, the Trial Court is directed to adopt coercive measures for securing their presence.

98. Let a copy of this order be forwarded to the Trial Court concerned along with the Trial Court record for information and necessary compliance.

(2026) 4 ILRA 1172
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 09.04.2026

BEFORE

THE HON'BLE MANOJ BAJAJ, J.

Criminal Appeal No. 1912 of 1986

Jagannath

...Appellant

Versus

State of U.P.

...Respondent

Issue for consideration

Matter pertains to whether benefit of probation be extended in conviction for offence of attempt to rape.

Headnotes

Indian Penal Code-Section 376; Probation of Offenders Act, 1958-attempt to commit rape-no injury suffered by the victim-medical evidence cannot be said to have favoured the accused-nature of offence and sentence imposed by the trial court-appropriate to extend the concession of Probation to the appellant under Section 4 Probation of Offenders Act, 1958-on employment of Section 511 IPC-the punishment for the offence, for which an attempt has been made, would be for a term which may extend to one half of the longest term of imprisonment provided for the offence-for offence under Sections 376/511 IPC- could be awarded imprisonment up to 10 years-case for probation clearly made out- upholding the impugned judgment of conviction -sentence is modified. **Appeal partly allowed.** (E-9)

Case Law Cited

State of Haryana Vs. Prem Chand, (1997) 7 SCC 756

List of Acts

1. Indian Penal Code, 1860
2. Probation of Offenders Act, 1958

List of Keywords

Attempt to rape; benefit of probation; Section 57 of the IPC.

Appearances of parties

Counsel for Appellant(s) : Chetan Chatterjee, K.K. Tripathi;

Counsel for Respondents(s) : A.G.A.

(Delivered by Hon'ble Manoj Bajaj, J.)

1. Appellant- Jagannath is aggrieved against the judgment of conviction and order of sentence dated 8.7.1986 passed by VII Additional Sessions Judge, Kanpur Nagar in S.T. No. 336 of 1985, arising out of Case Crime No. 376 of 1985, under Section 376 IPC, registered at Police Station Chakeri, District Kanpur Nagar, whereby he has been convicted under Sections 452, 376/511 IPC, and sentenced to three years rigorous imprisonment.

2. The subject F.I.R. was registered on the basis of a written complaint dated 25.6.1985 submitted by Birju to Station House Officer Chakeri, District Kanpur Nagar, who alleged that he works in Ordinance Factory and as usual today on 25th June, 1985, he had gone for his work at 6:00 a.m. The wife of the appellant had gone to handle the cow-dung, whereas his 13 years old minor daughter was at home. Around 10:00 a.m. appellant's neighbour Jagannath s/o Bhajan Lal entered his house and started doing wrong act with his minor daughter. When complainant's daughter screamed, Laxmi Narayan s/o Babu Lal and Kishanlal s/o Ganga Ram arrived at the spot and Jagannath ran away. Complainant returned home around 7:30 p.m. and his daughter and wife disclosed about the entire incident, then they all traced Jagannath and brought him to the police station. The complainant requested for taking legal action against him. Broadly, on these allegations, the above F.I.R. bearing Case Crime No. 376 of 1985 was registered against the accused.

3. After registration of the F.I.R., the investigation in the case was conducted by Investigating Officer namely, Mamta Vidyarthi, Sub Inspector, who associated complainant Birju to inspect the spot of occurrence for preparation of the site plan. On 28.6.1985 Sri K.P. Goswami, S.I. conducted further investigation and recorded the statements of victim, complainant's wife Vimla, as well as witnesses, namely Laxmi Narayan, Kishan Lal and Rampal. During investigation, the victim's medical report dated 26.6.1985 was collected and finally the charge sheet was filed against the accused under Section 173(2) Cr.P.C., thereby sending him to face prosecution for commission of offences punishable under Section(s) 376/511 I.P.C (Exb. Ka-5).

4. Thereafter, the case was committed to the court of Additional Sessions Judge, Kanpur Nagar and vide order dated 18.11.1985, the charges against the accused were framed for alleged commission of offences punishable under Sections 452 and 376/511 I.P.C. The appellant-accused pleaded not guilty and claimed trial.

5. The prosecution in order to prove the guilt of the accused had examined seven witnesses namely, Laxmi Narain (P.W.-1), Kishanlal (P.W.-2), Km. Sanjai (victim) (P.W.-3), Birju (complainant) (P.W.-4), Dr. S. Jabin (P.W.5), Constable Sonelal (P.W.-6), S.I. K.P. Goswami (P.W.-7), Dr. R.K. Gupta, Senior Radiologist (P.W.8) and Km. Mamta Vidyarthi (P.W.9). Besides, the prosecution also adduced documentary evidence i.e. written complaint (Exb.Ka-1), medical report of the victim (Exb.Ka-2), Check FIR (Exb. Ka-3), G.D. entry (Exb. Ka-4), Charge-sheet (Exb. Ka-5), site plan (Exb. Ka.6) and X-ray plate (Ex.1).

6. After completion of the prosecution evidence, the statement of accused-appellant was recorded under Section 313 Cr.P.C. on 6.5.1986, who denied the prosecution evidence and pleaded false implication. However, no defence evidence was adduced by the accused.

7. Upon analyzing the prosecution case, evidence and other material on record, the trial court proceeded to convict the appellant-accused under Sections 452 & 376/511 I.P.C. and awarded substantive sentence of three years rigorous imprisonment. Aggrieved against the judgment of conviction and order of sentence dated 8.7.1986, the appellant preferred this appeal.

8. Learned counsel for the appellant has argued that the evidence adduced by the prosecution to prove the charges against the accused is neither sufficient nor convincing, as the same does not take away the doubts from the prosecution case, therefore, conviction of appellant is not sustainable. Learned counsel submits that the FIR was registered after a long delay on 25.06.1985 at 11.35 p.m., whereas the occurrence had taken place at 10 a.m. Learned counsel has argued that the alleged occurrence is not supported by any cogent medical evidence, and further the complainant Birju- P.W.4 in his cross- examination denied his signatures on Ex.-1, i.e. the complaint, whereupon the FIR was registered, therefore, the whole case of prosecution becomes doubtful. He further submits that the accused after the alleged occurrence remained in the village and never ran away, therefore, it would also prove his innocence, but the trial court without noticing the serious discrepancies in the prosecution case has erroneously proceeded to convict the appellant. He has further argued that prosecution witness Kishal Lal P.W.2, complainant Birju P.W.4 and accused- Jagannath are members of a temple committee and they have a dispute, therefore, the appellant was falsely implicated. He further submits that the impugned judgment of conviction and order of sentence dated 8.7.1986 is apparently against the evidence on record, therefore, the same deserves to be set aside.

9. Alternatively, learned counsel for the appellant has prayed that in case, the conviction of the appellant is upheld, some leniency be shown in the sentence part, which is disproportionate to the guilt of the accused.

10. On the other hand, Mr. Sanjay Singh, learned A.G.A.-I has argued that the prosecution evidence has convincingly proved the charges against the accused and the case of the prosecution is based upon the evidence of prosecutrix P.W.3. He submits that the victim had identified the accused, who attempted to rape her in her house and his presence is witnessed by the other witnesses, namely, Laxmi Narayan P.W.1 and Kishan Lal P.W.2, as they had seen him running away. He submits that the impugned judgment of conviction as well as order of sentence are based upon proper appreciation of evidence on record, therefore, he prays that the appeal be dismissed.

11. After hearing the learned counsel for the parties and considering their submissions, this Court finds that according to the prosecution, when the minor daughter of complainant Birju- P.W.4 was alone at home, at around 10 a.m. accused- Jagannath entered the house and finding the victim alone, he bolted the door and attempted to rape her. As per the version of the prosecutrix, he pulled strings of her bottom (Salwar) and attempted to rape by gagging her mouth, but on her screams, the accused ran away from the spot, who was seen by Laxmi Narayan P.W.1 and Kishan Lal P.W.2 as they had reached at the place of occurrence. The prosecutrix in her deposition before

the trial court has clearly narrated about the involvement of accused in the commission of crime and presence of accused is also stated by witnesses Laxmi Naryan P.W.1 and Kishan Lal P.W.2. Though, a suggestion is put to the prosecutrix that as there is a dispute amongst the members of the temple committee consisting of witness complainant- Birju, witness Kishan Lal and accused Jagannath, but that suggestion has been specifically denied by prosecutrix P.W.3 and defence has not produced any evidence in order to lend support to the plea of false implication.

12. Further, the argument by the learned counsel for the appellant that the complaint Exb. Ka-1 given by Birju P.W.4 to the police is disowned, who has denied his signature on the said document during cross- examination, is also misplaced, as it is the consistent case of the complainant and other witnesses that after this occurrence, accused Jagannath was traced by complainant along with others and was produced before the police. Complainant Birju P.W.4 has clearly stated that he is an illiterate person and the complaint was written by one Rampal, which was signed by him. The signatures appended on the complaint would also show that the complainant is barely able to write his name and the handwriting in the complaint is of someone else. The Police Officer, namely, K.P.. Goswami P.W.7, who registered the FIR also testified before the Court that the complaint was given by Birju, therefore, this Court has no hesitation in holding that the complaint by Birju Exb. Ka-1 cannot be doubted.

13. The document whereupon Birju P.W.4 denied his signatures is not the complaint given to the police relating to the alleged occurrence dated 25.6.1985, but is a kind of apology allegedly signed by him on 19.2.1982, that he had done something wrong with his daughter, but no convincing evidence in this regard has been produced by the defence, and only suggestions were put to the complainant and his daughter, which were clearly denied by them. A reading of the document Ex.1 would clearly reveal that it is addressed to the Police Officer levelling allegations against Birju having done something wrong with Vimla's daughter, but it is not signed by any person. Of course, the alleged apology by Birju is signed at bottom, but he categorically denied his signatures on this document. Most importantly, the said document is signed by various witnesses, but the date of signatures of the witnesses is different which is recorded as 19.2.1983. Thus, the defence adopted by the accused appellant relating to an event which is not connected with the occurrence dated 25.6.1985, would not raise any doubt in the prosecution case.

14. No doubt, there is no injury suffered by the victim, but considering the nature of occurrence, which is an attempt to commit rape, and the medical evidence cannot be said to have favoured the accused or raising a doubt in the prosecution case, therefore, the said ground is also without any merit. A perusal of the record would show that the trial court has rightly convicted the appellant- accused by giving valid reasons in the impugned judgment dated 8.7.1986, therefore, impugned judgment of conviction dated 8.7.1986 does not call for any interference.

15. However, considering the alternative prayer made by the learned counsel for the appellant, this Court finds that the occurrence had taken place in the year 1985 and this appeal is pending for the last four decades, therefore, considering the long pendency of the appeal as well as the fact that the appellant may have reached at the advanced age, who was 42 years old at the time of recording his statement under Section 313 Cr.P.C. this Court deems it appropriate to modify the sentence imposed upon the appellant.

16. The law regarding concession of probation in cases of attempt to commit an offence punishable with life imprisonment stands clarified by the Hon'ble Supreme Court in the case of **State of Haryana Vs. Prem Chand, (1997) 7 SCC 756**, and the relevant extract of the judgment is reproduced here as under:-

3. If the conviction of the appellant were to be one under Section 376 IPC he could have been awarded imprisonment for life or one extending to 10 years. But the offence for which the respondent has been found guilty, is for attempt to rape. Therefore, it is idle to contend that the respondent has been held guilty for an offence which would attract imprisonment for life, disentitling him to the benefit of probation under the aforementioned two statutes. Section 57 of the IPC clearly points out that in calculating fractions of terms of imprisonment, imprisonment for life shall be reckoned as imprisonment for 20 years. Thus, on employment of Section 511 IPC, the punishment for the offence, for which an attempt has been made, would be for a term which may extend to one half of the longest term of imprisonment provided for the offence. Therefore, for offence under Sections 376/511 IPC, the respondent could be awarded imprisonment up to 10 years. On this reasoning, his case for probation was clearly made out, be it under Section 360 CrPC or under Section 4 of the Probation Act. The Court of Session, therefore, was not wrong in extending to him such benefit and the High Court committed no error in declining to interfere therein. The appeal thus has no merit and is, therefore, dismissed.

17. Thus, considering the nature of offence as well as the sentence imposed upon the convict by the trial court, this Court deems it appropriate to extend the concession of Probation to the appellant under Section 4 Probation of Offenders Act, 1958, keeping in view the law on the subject.

18. Consequently, the order of sentence dated 8.7.1986 is modified and it is ordered that the appellant be released on probation for a period of one year subject to his furnishing the requisite bonds/undertaking to the satisfaction of the trial court.

19. Resultantly, the appeal is partly allowed, and while upholding the impugned judgment of conviction dated 8.7.1986, an even date order on sentence is modified to the above noted extent.

(2026) 4 ILRA 1176
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 15.04.2026

BEFORE

THE HON'BLE SALIL KUMAR RAI, J.
THE HON'BLE DR. AJAY KUMAR-II, J.

Criminal Appeal No. 1924 of 2013

Ashiq

State of U.P.

...Appellant

Versus

...Respondent

Issue for consideration

Matter pertains to legality of order convicting u/s 304 IPC

Headnotes

Indian Penal Code-Section 304- case of burning a person alive- minor school going girl has been burned alive by appellant- Ashiq named in the first information report and Ashish named by the deceased in her dying declaration-victim remained conscious during her statement and she remained conscious even after her statement- all prosecution witnesses of facts have turned as hostile- evidence of a hostile witness cannot be discarded as a whole, and relevant part thereof, which are admissible in law, can be used by prosecution or the defence.- dying declaration - clear that her neighbour Ashish has burnt her-appellant is having two names Ashiq and Ashish and is also the neighbour of informant dying declaration is brief, precise and reliable- trial court did not frame charge under section 302 IPC- which could have been lawfully framed-rightly awarded the maximum penalty i.e. life imprisonment - no ground to interfere. **Appeal dismissed.** (E-9)

Case Law Cited

1. K.P. Tamilmaran Vs. The State Rep. by Deputy Superintendent, 2025 INSC 576 / 2025 SCC OnLine SC 958
2. Koli Lakhmanbhai Chandabhai vs. State of Gujarat 1999 (8) SCC 624
3. Ramesh Harijan vs. State of U.P. 2012 (5) SCC 777
4. State of U.P. vs. Ramesh Prasad Misra and another 1996 AIR (Supreme Court) 2766
5. Irfan alias Naka Vs. State of Uttar Pradesh, 2023 SCC OnLine 1060
6. Sat Paul V. Delhi Administration (1976) 1 SCC 727
7. Khujji @ Surendra Tiwari v. State of Madhya Pradesh (1991) 3 SCC 627
8. Bhagwan Singh v. State of Haryana (1976) 1 SCC 389
9. Sri Rabindra Kuamr Dey v. State of Orissa (1976) 4 SCC 233
10. Syad Akbar v. State of Karnataka (1980) 1 SCC 30
11. Selvamani v. State Rep. by the Inspector of Police (2024) 19 SCC 112
12. Lakhan V. State of MP(2010) 8 SCC 514
13. Khushal Rao v. State of Bombay AIR 1958 SC 22
14. Kusa v. State of Orissa (1980) 2 SCC 207
15. Meesala Ramakrishnan v. State of A.P. (1994) 4 SCC 182 (SCC p. 183, para 4)
16. Ranjit Singh v. State of Punjab (2006) 13 SCC 130
17. Nanhau Ram v. State of M.P. 1988 Supp SCC 152
18. Laxman v. State of Maharashtra (2002) 6 SCC 710
19. State of MP V. Dal Singh (2013) 14 SCC 159
20. PV Radhakrishnan V. State of Karnataka (2003) 6 SCC 443
21. Ram Bihari Yadav V. State of Bihar & Ors. MANU/SC0302/998
22. Atbir V. Govt. (NCT of Delhi) (2010) 9 SCC 1
23. Paniben v. State of Gujarat (1992) 2 SCC 474
24. PV Radhakrishnan V. State of Karnataka (2003)6SCC443
25. Naeem V. State of UP (2024) 3 SCR 36
26. Surajdheo Ojha & Ors. V. State of Bihar 1980 (Supp) SCC 769
27. Sat Paul V. Delhi Administration (1976) 1 SCC 727

List of Acts

1. Indian Penal Code, 1860
2. Indian Evidence Act,1872

List of Keywords

Dying declaration; certificate of fitness; medical opinion; clarity, and the conscious state of the declarant; mental fitness; burn injuries.

Appearances of parties

Counsel for Appellant(s) : Abhishek Mayank, Ajay Dubey, Haridwar Singh, Manoj Yadav
Counsel for Respondent(s) : Govt. Advocate

(Delivered by Hon'ble Dr. Ajay Kumar-II, J.)

1. The instant Criminal Appeal at the instance of convict - accused has been directed against the judgment and order dated 30.03.2013 passed by Additional Sessions Judge, Court no.5, Agra in Sessions Trial No.1474 of 2008 (State Vs. Ashiq and others) arising out of Case Crime No.290 of 2008, under Sections 304/34, 326/34 IPC, Police Station - Rakabganj, District Agra convicting and sentencing the appellant under Section 304 I.P.C. read with Section 34 I.P.C. for life imprisonment and a fine of Rs. Rs.20,000/- with stipulation of default clause.

2. Brief facts, as culled out from the record, are that the informant Pradeep gave a written report on 21.07.2008 at the Police Station Rakabganj, District Agra that his daughter Vineeta is a student of class IX in Anglo Bengali School and she had been photographed at a fair by her friend Pooja's brother Ashiq son of Raj Kumar with his friend Amit. Both Ashiq and Amit used to blackmail his daughter by showing her photograph. Amit also used to demand money and call her at his place. Kishore and Sethi are also involved with them. On 20.07.2008 in the evening, Ashiq came on the roof of the informant along with Amit, poured kerosene oil on his daughter and Amit set her ablaze and thereafter both of them fled away from the spot. At that time, the daughter of the informant was alone in the house. The whole incident was narrated to the informant by his daughter in severely burnt condition, who was admitted in emergency ward and according to Doctors, she has sustained 90% burn injuries.

3. On 20.7.2008, the victim was admitted in S.N. Medical College, Agra for treatment and on the same day at 10:30 P.M. the dying declaration (Ext. Ka-12) of the victim was recorded.

4. On the basis of the written report (Ext. Ka-1), First Information Report (Ext. Ka-12) was registered at Police Station concerned on 21.7.2008 at 3:10 A.M. as Case Crime No.290 of 2008 under Sections 326 IPC read with 34 IPC against the accused persons and the investigation was handed over to Sub-Inspector Lalit Kumar Tyagi.

5. Vineeta was admitted for treatment in the Emergency Department of S.N. Medical College, Agra on the date of incident i.e. 20.07.2008 at around 7:45 P.M., where her dying declaration (Ex.Ka.-17) was recorded by Additional City Magistrate-III, Agra, P.W.9 in presence of Dr. Brahmdev, P.W.10. at 10:40 P.M. During the course of treatment, the victim died at 6:20 A.M. on 21.7.2008 and in this matter offence of section 304 IPC was added.

6. Sub-Inspector Lalit Kumar Tyagi, P.W.7 started the investigation and during the course of investigation he prepared inquest report (Ex.Ka.-3) on 21.07.2008 and sent the body of deceased Vineeta for postmortem examination. Dr. Sunehri Lal, P.W.5 conducted the postmortem of the deceased and prepared her postmortem report (Ex.Ka.-11). The Investigating Officer inspected the spot and took possession of the plastic container and half burnt plastic mat and prepared its recovery memo (Ex.Ka.-15). He also inspected the place of incident on 22.07.2008 and prepared the site plan (Ex.Ka.-14) on the spot. Thereafter, the investigation was transferred to Sub-Inspector

G.C. Seth and was further transferred to Sub-Inspector Dinesh Pal Singh, who after recording the statement of various witnesses submitted charge-sheet (Ex.Ka.-16) against accused Ashiq, Kishore and Sethi under Sections 304, 326, 34 IPC and investigation against accused Amit was kept pending.

7. On 21.07.2008 at 3:15 P.M., the autopsy of the deceased was performed by Dr. Sunehri Lal, P.W.5 who found following injuries on her person :

(i) Superficial to deep burn injuries all over the body except skull region. Scalp hairs singed.

(ii) Surgical dressing all over the body except head.

(iii) Cut open mark is seen at right elbow area.

As per opinion of the Doctor, the cause of death of the deceased was due to shock, as a result of extensive burn injury. The postmortem report is Ex. Ka.-11.

8. The learned Magistrate took cognizance of the offences on 23.10.2008 and committed the case to Court of Session, as the charged offences were triable by the Court of Session.

9. After hearing both the parties, charges were framed against accused under Sections 304/34 and 326/34 IPC. However, the accused denied the charges and claimed trial.

10. Trial started and in support of it's case, prosecution

examined as many as nine witnesses, who are as follows:

P.W.1 Pradeep (the informant of the case and father of the deceased), P.W.2 Dabbu (the uncle of the deceased), P.W.3 Mithilesh (aunt of the deceased and wife of P.W.2), P.W.4 Ashok Kumar (witness of Inquest), P.W.5 Dr. Sunehri Lal (autopsy surgeon, who conducted the postmortem of the deceased and prepared the autopsy report), P.W.6 Head Constable Dinesh Kumar (the scribe of the chik F.I.R.), P.W.7 S.I. Lalit Kumar Tyagi (first Investigating Officer, who prepared inquest report, site plan and recovery memo), P.W.8 S.I. Ganesh Pal Singh (the subsequent Investigating Officer, who completed the investigation and submitted the charge-sheet against accused persons), P.W.9 Garima Yadav, (the then Addl. City Magistrate-III, who recorded the dying declaration of the deceased) and P.W.10 Dr. Brahmdev (the then Chief Medical Officer, Emergency, S.N. Medical College, Agra, who gave fitness certificates prior to and after recording of dying declaration).

11. In support of oral version, following documents were filed and proved on behalf of the prosecution:

Written report (Ex.Ka.-1), letter sent to S.S.P. (Ex.Ka.-2), Inquest Report (Ex.Ka.-3), Copy of G.D. No.15 at 7:15 A.M. dtd. 21.07.2008 (Ex.Ka.-4), Letter sent to C.M.O. (Ex.Ka.-5),

Police Paper No.13 (Ex.Ka.-6), Information to police regarding death of the deceased (Ex.Ka.-7), Copy of G.D. dtd. 21.07.2008 regarding death of victim (Ex.Ka.-8), Letter to C.M.O. by I.O. (Ex.Ka.-9), Photo Nash (Ex.Ka.-10), Postmortem Report (Ex.Ka.-11), Chik F.I.R. (Ex.Ka.-12), Copy of Report No.4 at 3:10 A.M. dtd. 21.07.2008 (Ex.Ka.-13), Site Plan (Ex.Ka.-14), Recovery Memo (Ex.Ka.-15), Charge-sheet (Ex.Ka.-16) and Dying Declaration of the deceased (Ex.Ka.-17).

Plastic bag and partially burnt mat were also produced and proved as Material Ex.-1 and Material Ex.-2.

12. After conclusion of evidence, statements of accused persons were recorded under Section 313 Cr.P.C., in which they pleaded that on the basis of misunderstanding, a false incident has been accepted as true and on that basis a false report has been lodged. They have been falsely implicated in this case. They further pleaded that charge-sheet has been filed on the basis of flawed investigation. They further stated that a boy named Ashiq was chasing the deceased and because of wrong pronunciation of name of said boy the name has been wrongly recorded as Ashish, which fact is proved by the prosecution evidence available on record. The present appellant has specifically stated that as his name has been wrongly written in the dying declaration because of wrong pronunciation, therefore, he has been falsely implicated. The present appellant was specifically asked in question no.2 and 3 of his additional statement recorded under section 313 Cr.P.C. on 05.02.2013 that he has signed as Ashiq as well as Ashish Kumar on various dates on the order-sheets and the defence witness D.W.1 in his cross-examination has stated that he is acquainted with the father of the accused Ashish and after perusing Paper No.37, which was an affidavit available on record, he (D.W.1) stated that on the aforesaid affidavit photograph of the father of accused Ashiq alias Ashish namely, Raj Kumar is affixed and executant of affidavit has further been identified as Raj Kumar by D.W.1. In the said affidavit, in paragraph no.2, it was specifically written that Ashish and Ashiq are the names of his (executant's) son. The appellant in answer to the aforesaid question no.2 and 3 has stated that he was initially taken into custody with the name Ashiq, therefore, on the asking of court moharrir, he was signing as Ashiq. As far as the said affidavit is concerned, he denied having any knowledge of the same, however, he has submitted that the aforesaid false affidavit was tendered on the asking of police. In support of its case, defence has examined D.W.1 Sunny and D.W.2 Ramesh Chandra.

13. Trial Court after having heard learned counsel for parties and after going through entire record, vide impugned judgment and order, convicted and sentenced only the accused-appellant under Section 304/34 IPC by observing that as per Section 71 of I.P.C. the offence under Section 326 I.P.C. has merged with the offence under Section 304 I.P.C. However, the other accused persons were acquitted by the trial court. Hence, feeling aggrieved with said judgment and order, present accused-appellant has filed this appeal. However, no appeal has been reported to be filed against the acquittal of accused Kishore and Sethi.

14. Heard Sri Abhishek Mayank, learned counsel for the appellant, Sri Nagendra Kumar Srivastava, learned A.G.A for the State and perused the entire record.

15. Assailing the findings, learned counsel appearing for appellant vehemently argued that the first information report was actually registered against one muslim boy named Ashiq from

Mantola and appellant name is Ashish, who has been falsely implicated in this case because of wrong mentioning of his name while recording the dying declaration. This fact is duly admitted by informant Pradeep P.W.1 and informant's brother Dabbu P.W.2. It was further argued that the deceased was not in a fit state to give dying declaration and the dying declaration is also not recorded in question-answer form. The doctor, who gave fitness certificate, in his cross-examination has clearly stated that because of missing of alphabet, name of Ashiq might have been recorded as Ashish. It was further submitted that no reliance can be placed on dying declaration of the deceased. It was Ashiq against whom the present F.I.R. was registered and appellant has been falsely implicated in this case. The prosecution case is totally baseless and from the evidence available on record, no case is made out as against the appellant. It was further argued that the learned trial court has misinterpreted the evidence available on record and has not given any weightage to the defence evidence which was against the norms of the established legal principles. No ingredient to bring home the guilt of the accused under section 304/34 IPC was proved by the prosecution. On the basis of analysis of prosecution evidence, no guilt against the accused appellant is established and proved. Learned trial court misread the evidence and wrongly convicted and sentenced the appellant. It was lastly argued that this appeal relates to the year 2013 and the appellant is in jail for a considerable period of time. The sentence for life imprisonment awarded to the appellant by the trial court is very harsh and excessive.

16. Learned A.G.A. for the State vehemently opposed the

submissions made on behalf of the appellant and submitted that the present appellant is known by Ashish as well as Ashiq. There is no dispute regarding the identity of present appellant. The deceased in her dying declaration has categorically named appellant Ashish with necessary particulars that Ashish is her neighbour and resides in their street. The present appeal has been filed with the name of appellant as Ashiq and appellant himself is claiming that he is Ashish not Ashiq. The dying declaration of the deceased has been duly proved by the prosecution, which is a trustworthy piece of evidence and it alone is sufficient to convict the appellant. The appellant has committed a very gruesome act, as a result of which the deceased died on account of ante mortem burn injuries. Hence, while going through the evidence on record, it cannot be said that the offence under Section 304/34 IPC is not made out against the appellant. The learned trial court has not committed any error of law or of fact, in convicting and sentencing the accused-appellant under Section 304/34 IPC. There is no merit in the appeal and learned A.G.A. thus urged for the dismissal of appeal.

Oral Evidence on Record.

17. Informant Pradeep is the father of the deceased Vineeta, who has been examined as P.W.1. Pradeep P.W.1, in his deposition, has stated that his daughter Vineeta was a IXth grade student. She was taken by her friend Pooja who is sister of Ashiq, to a fair on 14.04.2008, where Pooja called Ashiq and Amit, and got photographs taken of Vineeta with Amit. Thereafter, Ashiq, Amit, Kishore and Sethi started blackmailing her. On 20.07.2008 at 7:00 P.M., Amit and Ashiq came to his roof while Kishore and Sethi were standing on the Ashiq's rooftop. At that time, he was in his house downstairs and his daughter was on the rooftop. Ashiq and Amit poured kerosene oil on his daughter and set her on fire causing 90% burns. He thereafter admitted his daughter in the

Emergency Ward. He got scribed the written report / Tehrir, which was read over to him and thereafter he signed the same. This witness proved the written report / Tehrir as Ex.Ka.-1. He further stated that his daughter in burnt condition told him that Ashiq and Amit have set her on fire. At the time of incident, his brother Dabbu and Dabbu's wife Mithlesh also came on spot. Earlier, an application regarding blackmailing was given by him to S.S.P., Agra on 03.07.2008, carbon copy of which bearing signature of this witness has been proved by him as Ex.Ka.-2. He further confirmed after looking at the photograph available on record that the said photograph was of his daughter Vineeta and Amit. The accused used to blackmail her on the strength of said photograph.

18. P.W.1 Pradeep was cross-examined and in his cross-examination, which remained inconclusive on 29.09.2009, this witness has stated that he had not complained regarding Ashiq and Amit to their fathers regarding blackmailing, because their fathers are influential persons. A perusal of the cross-examination conducted by defence on 29.09.2009 reveals that no material cross-examination of this witness was done on this date. Remaining cross-examination of this witness was recorded thereafter on 20.04.2010 i.e. about 6 months after recording of his examination-in-chief and cross-examination in part. In the remaining cross-examination conducted on 20.04.2010, this witness stated that accused, who is present in Court, is not Ashiq. Ashiq was a muslim boy of Mantola, who used to harass his daughter Vineeta. On the date of incident, he had seen him alongwith Amit coming out from his house. **It was Ashiq of Mantola who had burnt his daughter. Surprisingly this specific cross-examination was not done on first available opportunity i.e. 29.09.2009, however, when this witness was further cross-examined after a delay of about 6 months then this witness stated that a muslim boy named Ashiq was the real assailant who had burnt his daughter.** This witness has also stated that his daughter told him the name of aforesaid Ashiq not the Ashiq present in the Court. On the request of A.D.G.C, an opportunity to cross examine this witness was provided to prosecution without declaring this witness as hostile. In his cross-examination by prosecution, this witness stated that the name of sister of accused Ashish present in the Court is Pooja. He has not named Ashish in the written report.

19. Brother of the informant Dabbu P.W.2 in his deposition has stated that he was standing downstairs at his house, when his wife shouted that Ashiq and Amit had burnt Vineeta. Vineeta was his niece and she was on the terrace. He went to terrace and saw that Vineeta was lying in a burned state. This witness is not an eyewitness but arrived immediately on the spot and had seen Vineeta lying in a burned state. He even tried to extinguish the fire and had taken Vineeta to the hospital in a burnt condition who died during the course of treatment on 21.07.2008. This witness was declared hostile on the request of prosecution and was cross-examined. In his cross-examination by the prosecution, this witness stated that he had not seen Ashiq, Kishore and Sethi running from the spot. **However, this witness has stated that Ashiq, Kishore and Sethi, who are present in the Court, are the residents of his colony / mohalla. This witness was also cross-examined by defence in which he stated that accused Ashiq, who is present in Court, is Ashish of his colony. Accused Ashiq is a muslim boy of Mantola.**

20. Sister-in-law / bhabhi of the informant Mithlesh has been examined as P.W.3, who in her deposition has stated that on the date, time and place of incident, she heard the shrieks of her niece Vineeta and on reaching at the spot, she saw Vineeta burning. She had not seen anyone

pouring kerosene on Vineeta and setting her on fire. This witness was also declared hostile and was cross-examined by the prosecution in which **she stated that Ashish is her neighbour** and she does not know Ashiq. This witness was not cross-examined by defence.

21. Ashok Kumart P.W.4 is a witness of inquest and has proved the inquest report as Ex.Ka.-3. This witness has not been cross-examined by the defence.

22. Dr. Sunehri Lal P.W.5 is the autopsy surgeon, who has conducted postmortem examination of the deceased Vineeta and has proved the same as Ex.Ka.-11 along with 10 police papers, which have been proved by this witness as Ex.Ka.-3 to Ex.Ka.-10. **This autopsy surgeon, in his deposition has stated that he found superficial to deep burn marks all over the body of deceased except her face as ante-mortem injuries. The hair on the head was singed.** There was a cut mark on the right forearm. **No abnormality was found in the head and neck.** In the opinion of this doctor, shock as a result of ante-mortem burn injuries, was the cause of the death of the deceased. In his cross-examination, this witness has stated that burn injuries sustained by the deceased could have been caused in an effort to commit suicide by burning.

23. Head Constable Dinesh Kumar P.W.6, who was the scribe of the first information report, is a formal witness who has proved the first information report as Ex.Ka.-12 and G.D. Report No.4 dated 21.07.2010 as Ex.Ka.-13.

24. Sub Inspector Lalit Kumar Tyagi P.W.7 was the first Investigating Officer of this case who conducted the inquest proceedings and has prepared the inquest report Ex.Ka.-3. On 22.07.2008, he also recorded the statement of the informant, inspected the place of incident and prepared the site plan, which has been proved by him as Ex.Ka.-14. He also took into possession a plastic container and partial burnt plastic mat from the scene of the crime and prepared recovery memo, which has been proved by this witness as Ex.Ka.-15. This witness also seized a 5 litre blue plastic container without lid and a plastic mat which was compressed due to burning, from the place of incident. This witness has proved the blue plastic container as Material Ex.Ka.1, partially burnt plastic mat as Material Ex.-2 and bundle of cloth as Material Ex.-3.

25. Sub Inspector Ganesh Pal Singh P.W.8, the subsequent Investigating Officer of the case recorded further statement of the informant Pradeep and statement of witnesses of inquest and that of accused Kishore and Sethi and finally submitted the charge-sheet, which has been proved by this witness as Ex.Ka.-16.

26. Garima Yadav P.W.9 in her deposition has stated that on 20.07.2008, she was posted as A.C.M.-III and she recorded the dying declaration of the victim Vineeta, who was admitted in the Emergency Ward of S.N. Medical College, Agra. After issuance of fitness certificate by the doctor, she started writing the dying declaration of the victim at 10:40 P.M. on that day and in her dying declaration she (deceased) told her name as Vineeta and has stated that ***“Ashish had set her on fire. He is her neighbour and lives in the same lane. He has her photographs. He poured oil on her and set her ablaze. She did not know the time and there was no one else at the home at that time”***. Owing to bandage on the victim's hands, thumb impression of her right leg toe was taken on the dying declaration and after her statement was completed, the doctor again certified that Vineeta

was conscious during her statement. This witness has proved the dying declaration of Vineeta as Ex.Ka.-17. She was cross-examined by the defence and in her cross-examination she stated that victim Vineeta, was in general ward, where other patients were present. No one was beside her to tell. The curtain was drawn, preventing anyone from seeing her. She has specifically denied the defence suggestion that victim might have told the name of accused Ashiq but she may have written the same as Ashish.

27. Dr. Brahmdev P.W.10 is the doctor who has certified the fitness of Vineeta both prior to recording of her dying declaration and after recording of her dying declaration. P.W.10 in his examination-in-chief has stated that on 20.07.2008, he was posted as Chief Medical Officer (Emergency) at S.N. Medical College, Agra and on that day at 10:35 P.M. the victim Vineeta was admitted in Emergency Ward in a burnt condition for treatment. Before recording her dying declaration by the Magistrate, this witness was asked to provide a written report regarding the victim, which was given by him as under :

“ The victim Vineeta was fully conscious to give statement and she was having some difficulty in pronouncing the words.

After completing the statement of the victim, this witness certified that □the victim remained conscious during her statement and she remained conscious even after her statement.”

He further stated that aforesaid two reports are in his handwriting and signed by him prior to and after recording of the statement of the victim on Ex.Ka.-17. He also stated that there may be a difference in the alphabet while being pronounced by victim.

This witness was cross-examined by the defence and in his cross-examination, he deposed that because of mistake of alphabet, instead of name of Ashiq it could have been Ashish. However, there was no cross-examination on the point of fitness of victim of this witness by defence.

28. The main contention / arguments of the learned counsel for the appellant was that the first information report was registered against one muslim boy named Ashiq, who was from Mantola and appellant has been falsely prosecuted and wrongly convicted. The second argument was that the dying declaration is very brief and it is not recorded in question-answer form and as the deceased was burnt more than 90%, therefore, in the totality of the circumstances the dying declaration is not reliable. Last contention was that the sentence awarded to the appellant is excessive.

Analysis

29. In the light of above arguments, following questions arise for consideration in present appeal :

(i) Whether Ashiq named in the first information report and Ashish named by the deceased in her dying declaration is one and the same person or not and whether Ashiq of Mantola is the real accused not the appellant ?

(ii) Whether the dying declaration of the deceased is reliable or not ?

(iii) Whether the prosecution could be said to have proved its case against the appellant - convict beyond reasonable doubt ?

(vi) Whether the sentence awarded to the appellant is excessive or not ?

30. The most crucial aspect of the present case is that all prosecution witnesses of facts have turned as hostile, a fact which has been strongly pressed by the defence in its favour by arguing that Ashiq of Mantola was the real accused, not the appellant, which is admitted by father and uncle of victim in their deposition as P.W.1 and P.W.2.

31. The word 'hostile' or 'hostile witness' has not been used in the Evidence Act. The word 'hostile witness' carries a specific significance under the English Law, but the position in India is different and here it is left to the discretion of the Court to allow a party to cross-examine its own witness, regardless of a declaration of hostility. Hon'ble Apex Court in **K.P. Tamilmaran Vs. The State Rep. by Deputy Superintendent, 2025 INSC 576 / 2025 SCC OnLine SC 958** in para 31 has observed that :

"The phrase 'hostile witness' is commonly used in criminal jurisprudence and court proceedings. We too cannot escape the blame of using the term 'hostile witness' in our judgment. We do it for pragmatic reasons. Some words like 'hostile witness' in this case are now a part of our legal vocabulary. There is no point in inventing or substituting new words or phrases, at least in the present case, and we leave that for the future. But what is necessary, however, is to explain the meaning of the term as it is now to be understood. The phrase 'hostile witness' has come to be used for a witness who gives a statement contrary to the story of the side for which he/she is a witness. All the same, because a witness has supported some, though not all, aspects of a case, it would not automatically mean that this witness has to be declared 'hostile'. A party can cross-examine its own witness under Section 154 Evidence Act, even without getting a declaration of 'hostility'. The only restriction to cross-examination under Section 154 Evidence Act is that the party, who seeks to cross-examine its own witness, must obtain the leave of the Court. Whether there is a declaration of 'hostility' or not, one thing is clear that evidence of witness, who has been cross-examined under Section 154 Evidence Act by the party who called such witness, cannot be washed off entirely and it is for the Court to see what can be retrieved from such evidence."

32. Hon'ble Apex Court in **Koli Lakhmanbhai Chandabhai vs. State of Gujarat 1999 (8) SCC 624**, has held that evidence of hostile witness can be relied upon to the extent it supports the version of prosecution and it is not necessary that it should be relied upon or rejected as a whole. It is settled law that evidence of hostile witness also can be relied upon to the extent to which it supports the prosecution version. Evidence of such witness cannot be treated as washed off

the record. It remains admissible in the trial and there is no legal bar to base his conviction upon his testimony, if corroborated by other reliable evidence.

33. In **Ramesh Harijan vs. State of U.P. 2012 (5) SCC 777**, the Hon'ble Apex Court has also held that it is settled legal position that the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross-examined him. The evidence of such witness cannot be treated as effaced or washed off the record altogether.

34. In **State of U.P. vs. Ramesh Prasad Misra and another 1996 AIR (Supreme Court) 2766**, the Hon'ble Apex Court held that evidence of a hostile witnesses would not be totally rejected if spoken in favour of the prosecution or the accused but required to be subjected to close scrutiny and that portion of the evidence which is consistent with the case of the prosecution or defence can be relied upon.

35. Hon'ble Apex Court in **Sat Paul V. Delhi Administration (1976) 1 SCC 727** in para 52 has observed that :

“52. From the above conspectus, it emerges clear that even in a criminal prosecution when a witness is cross-examined and contradicted with the leave of the court, by the party calling him, his evidence cannot, as a matter of law, be treated as washed off the record altogether. It is for the Judge of fact to consider in each case whether as a result of such cross-examination and contradiction, the witness stands thoroughly discredited or can still be believed in regard to a part of his testimony. If the Judge finds that in the process, the credit of the witness has not been completely shaken, he may, after reading and considering the evidence of the witness, as a whole, with due caution and care, accept, in the light of the other evidence on the record, that part of his testimony which he finds to be creditworthy and act upon it. If in a given case, the whole of the testimony of the witness is impugned, and in the process, the witness stands squarely and totally discredited, the Judge should, as matter of prudence, discard his evidence in toto.”

36. A 3-Judge Bench of Apex Court in the case of **Khujji @ Surendra Tiwari v. State of Madhya Pradesh (1991) 3 SCC 627**, relying on it's previous cases of **Bhagwan Singh v. State of Haryana (1976) 1 SCC 389**, **Sri Rabindra Kuamr Dey v. State of Orissa (1976) 4 SCC 233**, **Syad Akbar v. State of Karnataka (1980) 1 SCC 30**, has held that the evidence of a prosecution witness cannot be rejected in toto merely because the prosecution chose to treat him as hostile and cross-examined him. It was further held that the evidence of such witnesses cannot be treated as effaced or washed off the record altogether but the same can be accepted to the extent their version is found to be dependable on a careful scrutiny thereof. Relying on the aforesaid judgments, Apex Court has taken a similar view in the case of **Selvamani v. State Rep. by the Inspector of Police (2024) 19 SCC 112** and has held that the evidence of a hostile witness cannot be discarded as a whole, and relevant parts thereof which are admissible in law, can be used by the prosecution or the defence.

37. Thus, the law can be summarized to the effect that evidence of a hostile witness cannot be discarded as a whole, and relevant part thereof, which are admissible in law, can be used by prosecution or the defence. The maxim ‘falsus in uno, falsus in omnibus’ i.e. ‘false in one thing,

false in everything', is not applicable to our criminal justice system. It is for the Court to distinguish the wheat from the chaff while dealing with the deposition of a hostile witness. A witness may be allowed to be cross-examined by the party who calls him under Section 154 (1) of the Evidence Act and sub-section 2 of this section makes it clear that nothing in this section shall disentitle the person so permitted under sub-section (1), to rely on any part of the evidence of such witness. Law is well settled that the evidence of a witness, who has been cross-examined by the side which produced him, cannot be totally discarded. It is also settled law that the evidence of hostile witness can also be relied upon by the prosecution to the extent to which it supports the prosecution version of the incident. The evidence of such witness cannot be treated as washed off the records; it remains admissible in trial and there is no legal bar to even base the conviction of the accused upon such testimony, if corroborated with other reliable evidence. There can be several reasons for a witness to turn hostile and the Court must look into these factors while evaluating the evidence given by a hostile witness. Therefore, we will be evaluating the depositions of P.W.1, P.W.2 and P.W.3 in the light of above noted well settled position of law regarding admissibility and reliability of hostile witnesses.

Question No.1 : Whether Ashiq named in the first information report and Ashish named by the deceased in her dying declaration is one and the same person or not or whether Ashiq of Mantola is the real accused not the appellants ?

38. In the present case this is the strongest argument of the defence and, therefore, we have considered oral and documentary evidence in this regard very minutely and we find that in written report / Tehrir Ex.Ka.1, Ashiq son of Raj Kumar has been described as brother of Pooja, who is stated to be the friend of the deceased. The deceased Vineeta in her dying declaration (Ex.Ka.-17) has described Ashish as the only accused, whom she stated to be her neighbour and resides in her street. It has also been stated by her that he is having photographs of the deceased.

39. Informant Pradeep P.W.1 in his examination-in-chief has stated that his daughter's friend Pooja who is also the sister of Ashiq, took his daughter in a fair on 14.04.2008 where Pooja called Ashiq and Amit and took photographs of deceased with Amit. Thereafter Ashiq, Amit, Kishore and Sethi were blackmailing his daughter. In his examination-in-chief he has supported the contents of the written report / Tehrir and has alleged that Amit and Ashiq have burnt his daughter. He also stated that Amit and Ashiq came on her rooftop and Kishore and Sethi were standing on the rooftop of Ashiq, which clearly signifies that Ashiq was his neighbour and was having his home nearby.

40. In the site plan prepared by the Investigating Officer, house of appellants is shown to be the adjacent one with a gap of mere 2 feet and it is shown that from the rooftop of appellants, he alongwith other accused came on rooftop of informant's house by using stairs. However, in his cross-examination P.W.1 has specifically stated that father of both Ashiq and Amit are very influential and, therefore, he had not made complaint against Ashiq and Amit either to their fathers or to the residents of his colony.

41. P.W.1's cross-examination on 09.07.2009 remained unconcluded and was deferred for next date. However, he was cross-examined thereafter only on 20.04.2010 and in the very

beginning of his cross-examination, he stated that Ashiq was a muslim boy of Mantola. It seems that during this period from 09.07.2009 to 20.04.2010, this witness was won over by the defence and that is why in the very beginning of his cross-examination done on 20.04.2010, this witness has stated that accused present in the Court is not Ashiq and thereafter stated that Ashiq is a muslim boy of Mantola. This question could have been asked very easily on the previous date of his cross-examination i.e. 09.07.2009. In his remaining cross-examination on 20.04.2010, he has stated that it was Ashiq of Mantola who has burnt his daughter. He further stated that he does not know Pooja. Surprisingly, during his cross-examination, this witness stated that his daughter has informed him the name of Ashiq, however, accused present in the Court is not Ashiq. At this juncture, when this witness deviated from the prosecution story, on the request of A.D.G.C., the prosecution was granted permission to cross-examine this witness and in the cross-examination done by A.D.G.C. he stated that he does not know that name of sister of accused Ashiq, who is present in Court is Pooja or not. Then, he himself stated that he was Ashish. He further stated that he know accused Ashish whose father name is Raj Kumar. This witness was not asked any question regarding his statement made in examination-in-chief, when he stated that Pooja is the sister of Ashiq and his said statement remained uncontroverted in his cross-examination. However, in the cross-examination done by A.D.G.C., he has stated that name of brother of Pooja is Ashish, meaning thereby that brother of Pooja is Ashiq and Ashish both.

42. P.W.2 Dabbu has stated in his examination-in-chief that Ashiq and Amit burnt Vineeta. **However, this witness was declared hostile and nothing material came out in his cross-examination done by A.D.G.C. However, in the cross-examination done by the defence, this witness specifically stated that accused Ashiq present in Court is Ashish of his colony.** But Ashiq of Mantola, who was a muslim boy, was the culprit. However, the fact remains that in the cross-examination by the defence, this witness has fairly conceded that accused Ashiq present in Court is Ashish of their colony.

43. P.W.3 Mithlesh, who is the wife of P.W.2 and sister-in-law of P.W.1, was declared hostile and in her cross-examination by A.D.G.C., she stated that Ashish is her neighbour and Ashiq is not her neighbour.

44. Perusal of the trial court record reveals that father of appellant namely, Raj Kumar has given an affidavit on 30.08.2008, wherein he has specifically stated that Ashiq and Ashish Kumar are the names of his son and his school name is Ashish, whereas he is called Ashiq in their home. The aforesaid affidavit is still available in original records of the learned trial Court, which was filed in support of the application moved by appellant - convict for declaring him as juvenile and sending his case to Juvenile Justice Board. The aforesaid application is dated 29.08.2008 and affidavit is dated 30.08.2008. To rebut this contention, Raj Kumar has not been examined as defence witness. In the written report / Tehrir Ex.Ka.-1 as well as in the charge-sheet Ex.Ka.-16, the name of accused is mentioned as Ashiq son of Raj Kumar. The deceased in her dying declaration Ex.Ka.-17 has named the assailant as her neighbour and resident of their street. P.W.1 in his cross-examination has admitted that the name of father of accused Ashish present in Court is Raj Kumar. P.W.2 in his cross-examination by A.D.G.C. has stated that accused Ashiq, Kishore and Sethi present in Court are his neighbours and accused Ashiq present in Court is Ashish of their colony. P.W.3 in his cross-examination by A.D.G.C. has stated that Ashish is her neighbour.

45. Perusal of the record of the trial Court reveals that the case was committed by the name of accused Ashiq. Charge was framed against appellant Ashiq as accused Ashiq on 15.01.2009. Appellant □ convict Ashiq signed as Ashiq continuously from 19.12.2008 to 22.11.2011 and it is only on 02.12.2011, he firstly signed as Ashiq alias Ashish. Thereafter he signed as Ashiq alias Ashish on 15.12.2011, 23.12.2011, 16.01.2012 & 31.01.2012 and thereafter he started signing as Ashish Kumar from 22.02.2012 onwards.

46. Informant Pradeep P.W.1 remained present for recording of his deposition on 06.03.2009, 06.04.2009, 13.05.2009, 22.05.2009, 16.06.2009 and his examination-in-chief was recorded only on 09.07.2009 and his cross-examination was deferred for the next date i.e. 29.07.2009. However, on 29.07.2009, learned defence counsel failed to turn up to cross-examine him, inspite of availing specific opportunity of 15 minutes at 2:30 P.M., therefore, opportunity to cross-examine this witness was closed by learned trial Court vide it□s order dated 29.07.2009. Thereafter application of defence for recalling P.W.1 for remaining cross-examination was allowed by the trial court on 03.12.2009 and informant was accordingly summoned. On 20.04.2010, informant came present and was cross-examined and prosecution also cross-examined this witness. It is first time on 20.04.2010, the alleged consensual defence was developed that Ashiq was a muslim boy of Mantola colony. However, even on 20.04.2010 the appellant Ashiq has signed as Ashiq and continued to sign as Ashiq till 22.11.2011. Criminal Misc. Bail Application No.3265 of 2009 filed by appellant Ashiq was rejected by this Court on 22.01.2010 and even before this Court, no such plea was taken by the appellant accused Ashiq. Thus, it appears that, on account of a long gap between the examination-in-chief and remaining cross-examination, the informant and his family members were won over by the accused and that is why informant resiled from the version as deposed in the examination-in-chief, which fully incriminate the appellant □ convict.

47. In this background, the deposition of two defence witnesses is also very important. Sunny D.W.1 in his cross-examination by the prosecution has stated that accused Ashiq resides at a distance of 8 to 10 houses from his house, whereas in his examination-in-chief he has stated Ashiq to be resident of different colony. After stating that accused Ashiq resides at a distance of 8 to 10 houses from his house, this witness himself stated that he is not residing near the house of Ashiq but resides near the house of Ashish. He confirmed the name of accused present in Court as Ashish and name of his father as Raj Kumar. This witness in his cross-examination has fairly conceded that there is an affidavit available on record on which photograph of father of accused Ashish alias Ashiq is affixed. In paragraph 2 of the said affidavit, it is specifically mentioned that Ashish and Ashiq are the names of his son. Therefore, this witness has confirmed the fact that Raj Kumar, the father of appellant, has admitted in his affidavit that appellant Ashiq is known by both names i.e. Ashish and Ashiq.

48. Ramesh Chandra D.W.2 in his examination-in-chief toed the line of defence, however, in his cross-examination he has fairly admitted that his house situate at a distance of 7 to 8 houses from the house of Ashiq. **He (D.W.2) further stated that he know Ashiq very well and name of his father is Raj Kumar.** Therefore, even the defence witnesses are supporting the prosecution story that appellant is known by both names Ashiq as well as Ashish.

49. The most important scenario in this case, which emerged from the very beginning i.e. from written report / Tehrir, is that Ashiq son of Raj Kumar is the brother of Pooja. The accused-appellant in his statement recorded under section 313 Cr.P.C. has not denied that his sister name is not Pooja. When accused Ashiq's father name is mentioned as Raj Kumar and his sister name is specifically mentioned as Pooja in the written report / Tehrir, then it is clear that the aforesaid Ashiq was not a muslim boy, rather a hindu boy. It is only after the defence has won over father of the deceased after a considerable lapse of time that a consensual defence version was agreed upon that Ashiq was a muslim boy of Mantola. The deceased Vineeta in her dying declaration has specifically stated that it was Ashish, who is her neighbour and is having her photograph, who has actually burnt her. The dying declaration is, therefore, clear that her neighbour Ashish has burnt her. Therefore, in the totality of the circumstances, it is apparent that the appellant is having two names Ashiq and Ashish and is also the neighbour of informant.

50. The informant Pradeep P.W.1 in his written report / Tehrir has specifically mentioned that accused Ashiq is the brother of Pooja and Pooja was the friend of his daughter Vineeta. In the first information report, father's name of Ashiq is specifically written as of Raj Kumar. However, he (P.W.1) later on in his deposition as P.W.1 seems to be won over by defence and, therefore, he toed the consensual line of defence that aforesaid Ashiq was a muslim boy of Mantola. Therefore, he toed into this consensual defence version to the fullest extent and his brother Dabbu P.W.2 also toed in the same. Pradeep P.W.1, Dabbu P.W.2, Mithlesh P.W.3, Sunny D.W.1 and Ramesh Chandra D.W.2 all have specifically stated that appellant Ashish is their neighbour. The trial court has considered this aspect of defence and rightly found that Ashiq and Ashish is the one and the same guy. In our considered opinion appellant Ashiq is Ashish and he is known by both names.

51. It is the case of defence that Ashiq, a muslim boy from Mantola, was the real culprit. However, in the first information report, aforesaid Ashiq is specifically stated to be the brother of Pooja as well as son of Raj Kumar. Therefore, this defence version does not inspire any confidence and cannot be accepted at all. It was Ashiq, who was a hindu boy, whose father name is Raj Kumar and sister name is Pooja, who is the neighbour of informant, who is alleged to have committed the crime. Therefore, we are of the opinion that alleged Ashiq, a muslim boy of Mantola, was not the real accused and appellant is known by Ashish as well as Ashiq. Question No.1 is answered accordingly. The trial court has thus rightly found that Ashish is also having another name Ashiq.

Question No.2 : Whether the dying declaration of the deceased is reliable or not ?

52. Garima Yadav P.W.9 has recorded the dying declaration of Vineeta on 20.07.2008 at 10:40 P.M. Before recording the dying declaration, P.W.9 obtained the fitness certificate of Dr. Brahmdev P.W.10 and only after issuance of fitness certificate, she recorded the dying declaration of Vineeta. After recording the dying declaration, she again obtained the fitness certificate of Dr. Brahmdev P.W.10. It is the contention of learned counsel for the appellant that the victim was having some difficulty in pronunciation, therefore, P.W.9 wrongly recorded the name of accused Ashish instead of Ashiq. To buttress this argument, learned counsel for the appellant drew the attention of this Court on the statement of P.W.10, wherein he has specifically stated that there may be a difference in the alphabet while pronouncing and because of mistake of alphabet, instead of name of Ashiq it could have been recorded as Ashish. It is pertinent to mention here that the dying

declaration was recorded by Garima Yadav, P.W.9, who in her cross-examination has denied the suggestion of defence in this specific respect that victim might have told the name of Ashiq and she might have written the name of Ashish instead. P.W.10, in his deposition, has not stated that the victim told the name of accused in her dying declaration as Ashiq, moreover P.W.10 is not the witness, who has recorded the dying declaration, but a medical expert, who has given certificate of fitness. It was P.W.9, who has recorded the dying declaration of victim and she has firmly stated that victim has told the name of Ashish. Moreover, it is the case of prosecution from the very beginning that it was Ashiq son of Raj Kumar, who was the assailant and a neighbour of victim. Therefore, there is no force in the argument so raised by learned counsel for the appellant that name of Ashish has been wrongly recorded instead of Ashiq due to pronunciation difficulty. The dying declaration of the deceased recorded by P.W.9 is proved as Ex.Ka.-17, which is reproduced verbatim here-in-below :-

"नाम विनीता। आशीष ने जलाया। पड़ोसी है गली में रहता है। फोटो है मेरी उसके पास। तेल डालकर जलाया। टाइम नहीं पता है घर में कोई और नहीं था।"

53. A dying declaration is admitted in evidence on the principle of *proesumitur mentiri* i.e. a man will not meet his maker with a lie in his mouth. Dying declaration does not require any corroboration as long as it creates confidence in the mind of the Court and is free from any form of tutoring. In **Lakhan V. State of MP(2010) 8 SCC 514**, the Apex Court in para no.9 of its judgment has observed as under :-

"9. The doctrine of dying declaration is enshrined in the legal maxim nemo moriturus praesumitur mentire, which means 'a man will not meet his Maker with a lie in his mouth'. The doctrine of dying declaration is enshrined in Section 32 of the Evidence Act, 1872 (hereinafter called as 'the Evidence Act') as an exception to the general rule contained in Section of the Evidence Act, which provides that oral evidence in all cases must be direct i.e. it must be the evidence of a witness, who says he saw it. The dying declaration is, in fact, the statement of a person, who cannot be called as witness and, therefore, cannot be cross-examined. Such statements themselves are relevant facts in certain cases."

54. In **Khushal Rao v. State of Bombay AIR 1958 SC 22**, **Kusa v. State of Orissa (1980) 2 SCC 207** and in **Meesala Ramakrishan v. State of A.P. (1994) 4 SCC 182 (SCC p. 183, para 4)** it has been held that the law is well settled that the conviction can be founded solely on the basis of dying declaration, if the same inspires full confidence.

55. In **Ranjit Singh v. State of Punjab (2006) 13 SCC 130**, it has been held that: (SCC p. 134, para 13)

"conviction can be recorded on the basis of a dying declaration alone, if the same is wholly reliable, but in the event there exists any suspicion as regards the correctness or otherwise of the said dying declaration, the courts in arriving at the judgment of conviction shall look for some corroborating evidence."

56. The Apex Court in **Nanhau Ram v. State of M.P. 1988 Supp SCC 152** has held that normally, the court, in order to satisfy itself whether the deceased was in a fit mental condition to make the dying declaration, looks up to the medical opinion. But, where the eyewitness said that the deceased was in a fit and conscious state to make the dying declaration, the medical opinion cannot prevail. While dealing with the evidence of the declarant's mind, the Constitution Bench in **Laxman v. State of Maharashtra (2002) 6 SCC 710**, has laid down thus: (SCC pp. 713-14, para 3)

“The juristic theory regarding acceptability of a dying declaration is that such declaration is made in extremity, when the party is at the point of death and when every hope of this world is gone, when every motive to falsehood is silenced, and the man is induced by the most powerful consideration to speak only the truth. Notwithstanding the same, great caution must be exercised in considering the weight to be given to this species of evidence on account of the existence of many circumstances which may affect their truth. The situation in which a man is on the deathbed is so solemn and serene, is the reason in law to accept the veracity of his statement. It is for this reason the requirements of oath and cross-examination are dispensed with. Since the accused has no power of cross-examination, the courts insist that the dying declaration should be of such a nature as to inspire full confidence of the court in its truthfulness and correctness. The court, however, has always to be on guard to see that the statement of the deceased was not as a result of either tutoring or prompting or a product of imagination. The court also must further decide that the deceased was in a fit state of mind and had the opportunity to observe and identify the assailant. Normally, therefore, the court in order to satisfy itself whether the deceased was in a fit mental condition to make the dying declaration looks up to the medical opinion. But where the eyewitnesses state that the deceased was in a fit and conscious state to make the declaration, the medical opinion will not prevail, nor can it be said that since there is no certification of the doctor as to the fitness of the mind of the declarant, the dying declaration is not acceptable. A dying declaration can be oral or in writing and any adequate method of communication whether by words or by signs or otherwise will suffice provided the indication is positive and definite.”

57. In the **State of MP V. Dal Singh (2013) 14 SCC 159**, an issue arose regarding the acceptability of dying declaration where the victim suffered from 100% burn injuries and had placed her thumb impression on her statement and the ridges and curves were clearly found on the thumb impression. The Apex Court in para 30 of this judgement has observed that

“There may also be in a given case, a situation where a part of the body may bear upon it severe burns, but a small part of the body may have none. When burns occur on the scalp, they may cause greater difficulties. They can usually be distinguished from wounds inflicted before the body was burnt by their appearance, their position in areas highly susceptible to burning, and on fleshy areas by the findings recorded after internal examination. Shock suffered due to extensive burns is the usual cause of death, and delayed death may be a result of inflammation of the respiratory tract, caused by the inhalation of smoke. Severe damage to the extent of blistering of the tongue and the upper respiratory tract can follow due to the inhalation of smoke.”

58. The Apex Court in para 16 of **PV Radhakrishnan V. State of Karnataka (2003) 6 SCC 443** has observed that

“The residuary question whether the percentage of burns suffered is a determinative factor to affect the credibility of the dying declaration and the improbability of its recording. There is no hard-and-fast rule of universal application in this regard. Much would depend upon the nature of the burn, part of the body affected by the burn, impact of the burn on the faculties to think and convey the idea or facts coming to mind and other relevant factors. Percentage of burns alone would not determine the probability or otherwise of making the dying declaration”

59. In *Ram Bihari Yadav V. State of Bihar & Ors.* MANU/SC0302/998 in para 9, the Apex Court has held that

“Generally, the dying declaration ought to be recorded in the form of questions and answers but if a dying declaration is not elaborate but consists of only a few sentences and is in the actual words of the maker the mere fact that it is not in question-answer form cannot be a ground against its acceptability or reliability. The mental condition of the maker of the declaration, alertness of mind, memory and understanding of what he is saying, are matters which can be observed by any person. But to lend assurance to those factors having regard to the importance of the dying declaration, the certificate of a medically trained person is insisted upon. In the absence of availability of a doctor to certify the above-mentioned factors, if there is other evidence to show that the recorder of the statement has satisfied himself about those requirements before recording the dying declaration there is no reason as to why the dying declaration should not be accepted.”

60. The Hon’ble Apex Court in para 22 of **Atbir V. Govt. (NCT of Delhi) (2010) 9 SCC 1** has observed as under :

“(i) Dying declaration can be the sole basis of conviction if it inspires the full confidence of the court.

(ii) The court should be satisfied that the deceased was in a fit state of mind at the time of making the statement and that it was not the result of tutoring, prompting or imagination.

(iii) Where the court is satisfied that the declaration is true and voluntary, it can base its conviction without any further corroboration.

(iv) It cannot be laid down as an absolute rule of law that the dying declaration cannot be the sole basis of conviction unless it is corroborated. The rule requiring corroboration is merely a rule of prudence.

(v) Where the dying declaration is suspicious, it should not be acted upon without corroborative evidence.

(vi) A dying declaration which suffers from infirmity such as the deceased was unconscious and could never make any statement cannot form the basis of conviction.

(vii) Merely because a dying declaration does not contain all the details as to the occurrence, it is not to be rejected.

(viii) *Even if it is a brief statement, it is not to be discarded.*

(ix) *When the eyewitness affirms that the deceased was not in a fit and conscious state to make the dying declaration, medical opinion cannot prevail.*

(x) *If after careful scrutiny, the court is satisfied that it is true and free from any effort to induce the deceased to make a false statement and if it is coherent and consistent, there shall be no legal impediment to make it the basis of conviction, even if there is no corroboration.”*

61. The Apex Court in **Paniben v. State of Gujarat (1992) 2 SCC 474** has laid down some factors, which can be considered to determine when a dying declaration should be accepted. The relevant para 18 of this judgment is reproduced herein below :-

“(i) *There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration. (See Munnu Raja v. State of M.P. [(1976) 3 SCC 104 : 1976 SCC (Cri) 376 : (1976) 2 SCR 764])*

(ii) *If the court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration. (See State of U.P. v. Ram Sagar Yadav [(1985) 1 SCC 552 : 1985 SCC (Cri) 127 : AIR 1985 SC 416] and Ramawati Devi v. State of Bihar [(1983) 1 SCC 211 : 1983 SCC (Cri) 169 : AIR 1983 SC 164] .)*

(iii) *The court has to scrutinize the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination. The deceased had an opportunity to observe and identify the assailants and was in a fit state to make the declaration. (See K. Ramachandra Reddy v. Public Prosecutor [(1976) 3 SCC 618 : 1976 SCC (Cri) 473 : AIR 1976 SC 1994] .)*

(iv) *Where a dying declaration is suspicious, it should not be acted upon without corroborative evidence. (See Rasheed Beg v. State of M.P. [(1974) 4 SCC 264 : 1974 SCC (Cri) 426])*

(v) *Where the deceased was unconscious and could never make any dying declaration the evidence with regard to it is to be rejected. (See Kake Singh v. State of M.P. [1981 Supp SCC 25 : 1981 SCC (Cri) 645 : AIR 1982 SC 1021])*

(vi) *A dying declaration which suffers from infirmity cannot form the basis of conviction. (See Ram Manorath v. State of U.P. [(1981) 2 SCC 654 : 1981 SCC (Cri) 581])*

(vii) *Merely because a dying declaration does not [Added by official Corrigendum No. F.3/Ed. B.J./107/2003 dated 28-10-03] contain the details as to the occurrence, it is not to be rejected. (See State of Maharashtra v. Krishnamurti Laxmipati Naidu [1980 Supp SCC 455 : 1981 SCC (Cri) 364 : AIR 1981 SC 617] .)*

(viii) Equally, merely because it is a brief statement, it is not to be discarded. On the contrary, the shortness of the statement itself guarantees truth. (See Surajdeo Ojha v. State of Bihar [1980 Supp SCC 769 : 1979 SCC (Cri) 519 : AIR 1979 SC 1505] .)

(ix) Normally, the court in order to satisfy whether the deceased was in a fit mental condition to make the dying declaration looks up to the medical opinion. But where the eyewitness said that the deceased was in a fit and conscious state to make the dying declaration, the medical opinion cannot prevail. (See Nanhau Ram v. State of M.P. [1988 Supp SCC 152 : 1988 SCC (Cri) 342 : AIR 1988 SC 912])

(x) Where the prosecution version differs from the version as given in the dying declaration, the said declaration cannot be acted upon. (See State of U.P. v. Madan Mohan [(1989) 3 SCC 390 : 1989 SCC (Cri) 585 : AIR 1989 SC 1519] .)

(xi) Where there are more than one statements in the nature of dying declaration, the one first in point of time must be preferred. Of course, if the plurality of the dying declaration could be held to be trustworthy and reliable, it has to be accepted. (See Mohanlal Gangaram Gehani v. State of Maharashtra [(1982) 1 SCC 700 : 1982 SCC (Cri) 334 : AIR 1982 SC 839] .”

62. The Hon’ble Apex Court in **Irfan alias Naka Vs. State of Uttar Pradesh, 2023 SCC OnLine 1060** in para 62 has affirmed the aforesaid factors for determining when a dying declaration should be accepted. However, the Apex Court has made it clear that these factors will only affect the weight of the dying declaration and not its admissibility. In this case, there were two dying declarations, which were not found consistent and were rather found contradictory to the oral evidence on record.

63. The Apex Court in **PV Radhakrishnan V. State of Karnataka (2003)6SCC443** in para 12 and in **Naeem V. State of UP (2024) 3 SCR 36** in para 6, has observed that a dying declaration carries great evidentiary weight but lacks the safeguard of cross-examination, so courts must ensure it inspires full confidence. The declaration must be free from tutoring, prompting, or imagination, and the deceased must have been in a fit mental state with a clear opportunity to identify the assailant. Once the court is satisfied of its truth and voluntariness, a conviction can be based solely on it without corroboration. The rule requiring corroboration is not an absolute rule of law but merely a rule of prudence. Thus, a credible and reliable dying declaration alone is sufficient to sustain a conviction.

64. The Apex Court in **Surajdheo Ojha & Ors. V. State of Bihar 1980 (Supp) SCC 769** in para 3 observed that

“Moreover, the deceased has also given a short statement which is a proof of the manner in which the deceased was assaulted. The shortness of the statement itself, appears to be the guarantee of its truth. Even the Doctors who examined the deceased do not say, that having regard to the injuries, the deceased would have become unconscious immediately. In this view of the matter we are fully satisfied about the truth of the dying declaration.”

65. Law thus can be summarized that a credible and reliable dying declaration alone is sufficient to sustain a conviction. The rule requiring corroboration is not an absolute rule, but merely a rule of prudence. A dying declaration, even if brief or short in nature, holds significant evidentiary value under Indian law and is well recognized as an exception to the hearsay rule under Section 32(1) of the Indian Evidence Act, 1872. It is well settled that the value of a dying declaration depends not upon its length but upon its truthfulness, clarity, and the conscious state of the declarant. The absence of elaborate detail does not diminish its legal sanctity. Whenever there is a brief dying declaration it is indicative of the fact that it is neither the result of tutoring nor prompting. The shortness of the statement is itself a guarantee of its veracity.

66. Generally, the dying declaration ought to be recorded in the form of questions-answers but if a dying declaration is not elaborate but consists of only a few sentences and is in the actual words of the maker the mere fact that it is not in questions-answer form cannot be a ground against its acceptability or reliability.

67. If a person recording the dying declaration finds the victim / deceased to be in a fit physical and mental condition to make a statement, absence of fitness certificate in respect of such state of deceased is not essential in every case. The percentage of burns marks on the deceased is not a determinative factor in assessing the credibility of a dying declaration, as mental fitness depends on various factors such as the nature and impact of injuries, not solely on the extent of physical harm. The mental condition of the maker of the declaration, alertness of mind, memory and understanding of what he is saying, are matters which can be observed by any person. But to lend assurance to those factors having regard to the importance of the dying declaration, the certificate of a medically trained person is insisted upon. In the absence of availability of a doctor to certify the above mentioned factors, if there is other evidence to show that the recorder of the statement has satisfied, himself about those requirements before recording the dying declaration there is no reason as to why the dying declaration should not be accepted. Normally the court looks to the medical opinion about the fit condition of the declarant at the time of making the statement. But this cannot be an inelastic rule. If the person who records the statement or the witness to the declaration tenders satisfactory evidence as to the fit mental condition, the Dying Declaration will be accepted.

68. In the light of the above principles, the acceptability of the alleged dying declaration in the instant case has to be considered. The dying declaration is only a piece of untested evidence and must, like any other evidence, satisfy the court that what is stated therein is the unalloyed truth and that it is absolutely safe to act upon it. If after careful scrutiny, the court is satisfied that it is true and free from any effort to induce the deceased to make a false statement and if it is coherent and consistent, there shall be no legal impediment to make it the basis of conviction, even if there is no corroboration.

69. The incident happened on 20.07.2008 at 7:00 P.M., thereafter victim Vineeta was admitted to hospital and her dying declaration was recorded by P.W.9 on the same day i.e. 20.07.2008 at 10:40 P.M. Meaning thereby that the dying declaration of the victim was recorded within 3 hours 40 minutes of the occurrence of incident. The victim expired at 6:20 A.M. on the next day i.e. 21.07.2008. Vineeta in her dying declaration has specifically stated that **“My name is**

Vineeta. Ashish has burned her. He is a neighbour and lives in the street. He has my photo. He burned her by pouring oil. I don't know the time, there was no one else in the house.”. Her dying declaration is a brief and precise statement in which she has not only named her neighbour Ashish but even the manner of incident has been precisely stated by her that she was burnt by pouring oil. Victim has also specifically stated that accused is having her photograph. The reliability of aforesaid dying declaration Ex.Ka.-17 is further strengthened by the fact recorded in her statement that at the time of incident, there was no one else in the house. The then Additional Additional City Magistrate-III, Agra, Garima Yadav P.W.9 in her deposition has proved the dying declaration of the victim Vineeta as Ex.Ka.-17. Prior to recording of dying declaration she obtained the fitness certificate of Dr. Brahmdev, P.W.10. and only after issuance of fitness certificate, she started writing the dying declaration and after writing down the same, she again obtained the certificate of P.W.10 that victim Vineeta was conscious during and after her statement. There was no suggestion by the defence to this witness P.W.9 that victim Vineeta was not in a fit state of mind at the time of giving her dying declaration. Informant has deposed that Ashiq and Amit have burnt his daughter, whereas Vineeta has named only Ashiq. Therefore, this fact further confirms that dying declaration of Vineeta is not the result of tutoring.

70. Dr. Brahmdev, P.W.10. has given certificates on the dying declaration i.e. Ex.Ka.-17. This doctor P.W.10 firstly gave a certificate prior to recording of dying declaration of victim and also gave a certificate after recording of the dying declaration. This doctor certified that Vineeta was fully conscious to give statement prior to recording of dying declaration and after completing the statement of Vineeta, this witness again certified that victim remained conscious during her statement and also remained conscious even after her statement. Although word “fitness” is missing in the deposition of this witness as well as in his certificate, but there is not an iota of evidence available either in the deposition of this witness or in the deposition of P.W.9 that victim was not mentally fit to give statement. No suggestion to this witness was also given by the defence that victim was not mentally fit to give statement. Surprisingly, autopsy surgeon Dr. Suneheri Lal P.W.5 was also not cross-examined on the point of possibility of fitness of the deceased / victim at about 10:40 P.M. on 20.07.2008.

71. We have perused the postmortem report of the deceased as well as deposition of P.W.5, the autopsy surgeon and it is clear that there was no burn injury on the face of the victim or even on her skull. It is specifically mentioned in deceased’s antemortem injuries that there was superficial to deep burn injuries all over her (deceased) body except skull region. It was also observed that scalp hair were singed, which is indicative of the fact that scalp was not burnt and only hair were singed. P.W.5 has specifically stated that there were no burn marks on her face. He further stated that no abnormality was found in the head and neck of the deceased. **Resultantly, we are of the considered opinion that victim though was fully conscious before, during and after recording of her dying declaration but was also medically fit to give statement.** The victim / deceased in her dying declaration has clearly stated that only the appellant was involved in the incident. **Therefore, from the totality of the circumstances, we are of the opinion that prosecution has been able to prove the dying declaration of the deceased Vineeta as Ex.Ka.-17 and the same is brief, precise and reliable. In her dying declaration, the deceased has specifically named the appellant as an assailant, who has burnt her by pouring oil. The deceased has also given sufficient particulars from which the appellant could be very easily identified i.e. the**

appellant is her neighbour. Question No.2 is answered in the affirmative and the learned trial court has rightly found the dying declaration of deceased as reliable one.

Question No.3 : Whether the prosecution could be said to have proved it's case against the appellant - convict beyond reasonable doubt ?"

72. The prosecution has successfully proved the dying declaration of the deceased as Ex.Ka.-17 and as per aforesaid dying declaration, it was accused Ashish, who has burnt the deceased Vineeta by pouring oil upon her. The dying declaration Ex.Ka.-17 of the deceased is brief, precise and having necessary particulars to identify the assailant. Her dying declaration Ex.Ka.-17 is a reliable evidence and conviction of the appellant can be sustained only on the strength of aforesaid dying declaration without there being any corroboration. However, from the record, the prosecution has also been able to sufficiently corroborate the aforesaid dying declaration from the depositions of P.W.1, P.W.2 and P.W.3 along with ocular and documentary medical evidence.

73. The first information report was lodged against Ashiq son of Raj Kumar, who is the brother of victim's friend Pooja, clearly meaning thereby that Ashiq was a hindu boy. Prosecution has been able to prove that Ashiq named in the first information report is the same guy, who has been named as Ashish by the victim in her dying declaration. We have already arrived on this conclusion that appellant Ashiq is one and the same guy having two names i.e. Ashiq and Ashish.

74. Informant P.W.1 in his deposition has specifically stated that Ashiq is the brother of Pooja. P.W.1 has also proved that on the date, place and time of incident, his daughter Vineeta was burned and had sustained burn injuries because of which she died on the next day. We have already arrived on the conclusion that after a period of about 6 months of recording his examination-in-chief and part cross-examination, this witness was won over by the defence and that is why he toed into a consensual line of defence that Ashiq was a muslim boy of Mantola. However, the defence has miserably failed to prove that Ashiq named in the first informant report was a muslim boy of Mantola.

75. P.W.2 and P.W.3 have also supported the prosecution version as far as date, place, time and manner of incident is concerned i.e. their niece Vineeta was burned on the date, place and time of incident.

76. Ocular as well as documentary medical evidence proved it on record that the deceased Vineeta sustained burn injuries and she died due to shock, as a result of extensive burn injuries. Therefore, ocular as well as documentary medical evidence corroborate this part of prosecution story that the deceased suffered burn injuries on the date and time of the alleged incident and she finally succumbed to her injuries due to shock, as a result of extensive burn injuries.

77. Site plan Ex.Ka.-14 also proves that the house of appellant is adjoining to the house of informant and, therefore, appellant is the immediate neighbour of the victim / deceased. Moreover, P.W.7 also recovered a plastic container and partially burnt plastic mat from crime scene, which also strengthen the prosecution story.

78. In the totality of the circumstances, the prosecution has been able to successfully prove the dying declaration of the deceased, which is a reliable piece of evidence. In the present case, the dying declaration Ex.Ka.-17 is in itself sufficient to convict the appellant, however, in the present case, the aforesaid dying declaration also finds sufficient corroboration from the depositions of P.W.1, P.W.2 and P.W.3. The depositions of P.W.1, P.W.2 and P.W.3. are consistent as far as date, time and place of incident is concerned. All of these witnesses have also consistently deposed that deceased sustained burn injuries on the date, time and place of incident. The prosecution has been able to successfully prove that the appellant Ashiq is also known by Ashish. The ocular as well as documentary medical evidence strengthen the prosecution story that the deceased sustained burn injuries on her body at the time of incident and ultimately she succumbed to her burn injuries within 12 hours of the incident. The case of the defence was that it was Ashiq, a muslim boy of Mantola, who was the real culprit, but the defence has miserably failed to prove the very defence taken by it. It has been proved on record that Ashiq alias Ashish is son of Raj Kumar and brother of Pooja, therefore, he is a hindu boy having necessary particulars both in the first information report as well as deceased's dying declaration, therefore, the prosecution has been successfully able to prove its case against the appellant - convict beyond reasonable doubt. Question No.3 is accordingly decided in the affirmative.

Question No.4 : Whether the sentence awarded to the appellant is excessive or not ?

79. The appellant was charged under Section 304/34 IPC and has been convicted under the same section. The appellant has been sentenced to undergo life imprisonment with a fine of Rs.20,000/- and in case of default in deposit of fine amount, he has been further sentenced to undergo additional imprisonment of two years R.I. The trial Court has not specified that the appellant has been convicted under Part-I or Part-II of Section 304 IPC. However, it is apparently clear that as appellant has been sentenced for life imprisonment, therefore, he has been convicted under Part-I of Section 304 IPC. A person can be sentenced to imprisonment for life or imprisonment of either description which may extend to 10 years and shall also be liable to fine.

80. In the present case, in additional statement recorded under section 313 Cr.P.C. in the year 2013, the accused has stated his age to be about 23 years. Therefore, at the time of commission of offence i.e. 20.07.2008, the appellant was about 18 years of age and the deceased was a school going girl of about 16 years at the time of incident. The prosecution has successfully proved that appellant poured oil on the deceased and thereafter deceased was burned. The appellant was immediate neighbour of the victim. The victim Vineeta sustained such extensive burn injuries that she died within 12 hours of the incident. Therefore, it is clear that burn injuries were caused to the deceased by appellant with intention to cause such bodily injuries as were likely to cause death. The accused is presumed to know the consequences of his actions, of having poured oil on the deceased and setting her on fire. Burning a person alive, is a gruesome act. No one in such cases, can claim that he did not act in a cruel and unusual manner. It is a case of burning a person alive and therefore, it is the duty of the Court to deal with it in most severe and strict manner and award the maximum penalty prescribed by the law in order that it may operate as a deterrent to other persons from committing such heinous crimes. Though the trial court did not frame charge under section 302 IPC, which could have been lawfully framed, but the present case is a case, where a minor school going girl has been burned alive by appellant, therefore, the trial Court has rightly awarded the maximum penalty prescribed under section 304 Part-I i.e. life imprisonment to the appellant and no ground to interfere in the sentence so awarded to the appellant is made out. Therefore, question no.4 is decided in the negative.

81. No good ground to interfere in the well reasoned judgment of the trial court is made out. Thus there is no merit in the present appeal. Consequently, the judgment and sentence dated 30.03.2013, passed by Additional Sessions Judge, Court No.5, Agra is hereby '**Affirmed**'.

82. The appellant is in jail. He shall undergo the remaining jail sentence.

83. Let a copy of the judgment be provided immediately to the appellant through Superintendent Jail, free of cost.

84. The record of the 'Trial Court' be sent back immediately with a copy of this judgment for necessary information and compliance.

85. The appeal fails and is hereby **Dismissed**.

86. Before parting with this case, we direct State Government to consider the case of appellant - convict for grant of remission, if not considered already, in the light of directions issued by Hon^{ble} Supreme Court in Suo Moto Writ Petition (Crl.) No. 4 of 2021 titled In Re : Policy Strategy for Grant of Bail, 2025 INSC 239. The appellant is continuously languishing in jail from the date of his arrest. As per custody certificate dated 14.11.2025, the appellant ☐ convict had already undergone a period of 17 years 3 months and 15 days without remission and his total sentence including remission as per aforesaid custody certificate was 19 years 11 months and 27 days as on 14.11.2025. Therefore, order on remission shall be passed within a period of two months from the date of receipt of copy of this judgment, as per existing State policy of remission. Chairman and Secretary, District Legal Services Authority, Agra are also directed to ensure compliance of directions issued by Hon^{ble} Supreme Court in aforesaid case qua appellant - convict.

87. Registrar Compliance is directed to send a copy of this judgment to Chief Secretary, Government of Uttar Pradesh and a copy to Chairman / Secretary, District Legal Services Authority, Agra for ensuring compliance of directions issued in Para 86 of this judgment.

(2026) 4 ILRA 1200
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 10.04.2026

BEFORE

THE HON'BLE CHANDRA DHARI SINGH, J.
THE HON'BLE DEVENDRA SINGH-I, J.

Criminal Appeal No. 2509 of 1985

Danna @ Ramesh & Anr.

State of U.P.

...Appellants

Versus

...Respondent

Issue for consideration

Matter pertains to legality of conviction order on the basis of extra judicial confession.

Headnotes

Extra judicial confession-Sections 302 IPC- circumstantial evidence- extra-judicial confession made by accused Danna before PW-1, PW-2 and PW-3-are not independent witnesses-an extra-judicial confession is a weak piece of evidence- alleged confession -appears doubtful and unnatural- recovery of the dead body -place was accessible to all the inmates of the house-recovery cannot be said to be exclusively at the instance of the accused- recovery of the alleged weapon and bloodstained articles at the instance of accused- no independent witness to prove the said recovery- absence of any forensic report- creates a serious dent in the prosecution case- absence of a strong motive-no independent witness- chain of circumstances is not complete. **Appeal allowed.** (E-9)

Case Law Cited

1. Sharad Birdhichand Sarda vs. State of Maharashtra, AIR 1984 SC 1622
2. State of U.P. Vs. Ashok Kumar Srivastava, (1992) Cr.L.J.1104
3. Hanumant Govind Nargundkar v. State of M.P., AIR 1952 SC 343
4. Padala Veera Reddy v. State of A.P., 1989 Supp (2) SCC 706
5. Laxman Prasad alias Laxman Vs. State of Madhya Pradesh 2023 (3) SCC (Cri) 27
6. R. Sreenivasa Vs. State of Karnataka, (2024) 17 SCC 426
7. Pankaj vs. State of Rajasthan, (2016) 16 SCC 192
8. Bhagwan Sahai vs. State of Rajasthan, AIR 2016 SC 2714
9. Sahadevan and Another v. State of Tamil Nadu, (2012) 6 SCC 403
10. Goverdhan and Another vs. State of Chhattisgarh, (2025) 3 SCC 378
11. Jitendra Kumar Mishra @ Jittu vs. State of Madhya Pradesh, 2024 INSC 20

List of Acts

Indian Penal Code, 1860

List of Keywords

Circumstantial evidence; complete chain of circumstances; hypothesis of guilt; extra-judicial confession; corroborated by other reliable evidence; benefit of doubt.

Appearances of parties

Counsel for Appellant(s) : G.C.Saxena

Counsel for Respondent(s) : A.G.A.

(Delivered by Hon'ble Chandra Dhari Singh, J.)

1. The instant Criminal Appeal has been preferred by the accused-appellants namely Danna alias Ramesh and Barati against a judgment and order dated 03.09.1985 passed by learned Ist Additional Sessions Judge, Moradabad in Sessions Trial No. 550 of 1981, whereby the learned Judge convicted both the appellants for the offence under Sections 302/34 and 201 I.P.C. and sentenced them as under:

(a) Imprisonment for life for the offence under Section 302 read with Section 34 I.P.C.

(b) Rigorous imprisonment of three years for the offence under Section 201 I.P.C.

Both the sentences shall run concurrently.

2. Vide order dated 12.09.2018, passed by the co-ordinate Bench of this Court, the instant criminal appeal stands abated qua appellant no. 1-Danna alias Ramesh.

Brief Facts

3. The fact of the prosecution case is that a written report was filed on 16.09.1980 by Dr. Amit Rastogi, resident of Civil Line, Moradabad stating inter-alia that since 1979, Dassa alias Ramesh was employed at his residence for domestic work. Thereafter, in September 1979, Dassa alias Ramesh brought along with him two other persons, namely, Sohan and Barati and got them employed at his residence. Since then, all three had been working at his place. Sohan used to work in the dispensary, while the other two performed household duties. On the night intervening 14/15.09.1980, at about 11□12 midnight, while we were asleep, cries were heard from the room where these three servants used to stay. The cries appeared to say, □Babuji, save me.□ Upon hearing the cries, he along with his father Dr. J.N. Rastogi and neighbors Kamal Rai Sharma and Girish Chandra Jaikwal woke up and came out. They made inquiries from the servants Dassa and Barati, who stated that they were asleep and had heard nothing. Upon asking about Sohan, they stated that he was sleeping. They searched around but, found nothing suspicious, they went back to sleep. In the next morning, only Barati came inside the house. Upon being asked about Sohan and Dassa, he stated that both had left early in the morning by train, and that he would go to the tailor to collect clothes. Thereafter, they all engaged in their respective work. However, Barati did not go to his room during the day, took his meals downstairs, and repeatedly visited the coal room without any apparent reason. This created suspicion and we questioned him about the other two servants, but he did not give any satisfactory reply and slept in the verandah instead of his room that night. Today, at about 11:00 p.m., upon hearing dogs barking and the sound of a rickshaw, he woke up and looked outside. He saw a rickshaw standing at the gate and Dassa alias Ramesh standing there. He stopped him and asked about the matter. He stated that he had come to take money for a ticket. Upon suspicion, he detained Dassa and called his neighbors Girish Chandra Jaikwal, Dr. J.N. Rastogi, and Kamal Rai Sharma. In their presence, when questioned about Sohan, Dassa confessed that he had committed a mistake and requested to be saved. He stated truthfully that few days back, three of them had gambled, in which Sohan had won Rs. 200/- and Barati had won Rs. 100/-. Sohan had given the money to someone known to him. When their own money was exhausted, they demanded money from Sohan, but he refused. This led to anger, and both of them conspired to kill Sohan. On the night at about 11□12 PM, while Sohan was sleeping on a cot, they attacked him with an iron weapon (लोहे का दाव). When he raised alarm, they gagged him, pressed him down, and repeatedly assaulted him, causing his death. Thereafter, they placed the body in a sack, covered it with wood and coal, tied the sack, and hid it in the coal room. Dassa then led us to the coal room and showed us the dead body of Sohan lying inside the sack. When asked about the weapon used in the commission of the offence, Dassa stated that Barati had concealed the iron weapon (लोहे का दाव) somewhere, the location of which is known only to him. The aforesaid written report was marked Ext.Ka.1.

4. On the basis of aforesaid written report, a First Information Report was lodged on 16.09.1980 at 00:30 hours at Case Crime No. 1293 of 1980, under Section 302/201 I.P.C., Police Station Civil Line, District Moradabad. The said First Information Report was marked as Ext.Ka.4.

5. After registration of the aforesaid case, the law set into motion and investigation of the aforesaid case started.

6. The First Information Report of this case was written by Head Moharir Babu Ram Sharma (PW-4). Thereafter, S.S.I Narottam (PW-6) has started the investigation of the aforesaid case. He, along with S.I. Nathu Singh, Constable Abdul Wahid Khan and two Home Guards left for the place of incident i.e. residence of Dr. J.S. Rastogi. He recovered the dead body of Sohan (hereinafter referred to as □deceased□). The dead body was packed in a sack. After taking out the dead body, his clothes were taken into possession and recovery memo was prepared, which was marked as Ext.Ka.7. Thereafter, the inquest proceedings on the dead body of the deceased was conducted. The photo lash, challan lash, letter to CMO, Sample and letter to R.I. were prepared, which were marked as Ext.Ka.8, 9, 10, 11, 12 and 13 respectively. The dead body of the deceased was sealed and sent for post-mortem examination. Thereafter, he recorded the statement of Dr. Amit Rastogi and Kamal Rai Sharma. He has also prepared a Site Plan, which was marked as Ext.Ka.14. He also recorded the statement of S.I. Nathu Singh. He also got an information, from an informer, that the accused Barati was hiding in a servant□s room in the house of one Satyapal. On this information, he reached to the house of Satyapal and took Barati into his custody. Upon an interrogation, accused-Barati confessed his guilt and told that the murder of Sohan was committed with an iron weapon (लोहे का दाव), which was hidden in a briefcase kept in his own room. Thereafter, he along with two witnesses namely P.K. Das and Rakesh Chandra along with accused Barati walked ahead to the accused room. The accused Barati took out a key from his pocket, opened the lock of the room, went inside and showed the briefcase which was kept on the table. Thereafter, accused Barati opened the briefcase and showed the iron weapon kept in it and told that this is the weapon of crime. The bloodstained underwear, towel, piece of carpet, cotton, belt and shirt, which were kept in the briefcase were taken into possession, which was marked as Ext.Ka.16. The lock and the key was also taken into possession. Recovery memo was prepared and marked as Ext.Ka.15. On 17.09.1980, he recorded the statement of Rakesh Chandra.

7. After culmination of investigation, the investigating officer submitted charge-sheet on 14.12.1980, which was marked as Ext.Ka.20.

8. As the case was exclusively triable by the Court of Sessions, the learned Magistrate committed the case to the Court of Sessions, where the case was registered as Sessions Trial No. 550 of 1981. Learned Ist Additional Sessions Judge, Moradabad, vide order dated 27.07.1982, framed charges against the accused-appellants for the offence under Sections 302 read with 34 I.P.C. and Section 201 I.P.C., which were read over and explained to the accused-appellants in hindi, who pleaded not guilty and claimed to be tried.

9. To bring home guilt of the accused-appellants beyond the hilt, the prosecution has examined as many as six prosecution witnesses, out of whom Dr. Amit Rastogi (PW-1/informant), Dr. J.S. Rastogi (PW-2) and Girish Chandra Jakwal (PW-3) are the witnesses of fact, whereas, Babo Ram Sharma (PW-4), Umesh Chandra Tyagi (PW-5) and S.S.I. Narottam (PW-6) are formal witnesses. Dr. Shashi Rastogi has also been examined as (CW-1).

10. Dr. Amit Rastogi (PW-1/informant), in his deposition, has reiterated the prosecution version given in the F.I.R. However, he further stated that his father namely Dr. J.S. Rastogi had prepared the written report, upon which he had put his signatures. The report was written by his father on his dictation. Thereafter, they proceeded to police station along with said written report as well as with the accused Danna. On the basis of written report, first information report was lodged. Thereafter, Sub Inspector from Police Station Civil Line accompanied him and his father to his house. The dead body of Sohan was recovered and sent for post-mortem examination.

11. Dr. J.S. Rastogi (PW-2), in his deposition, has stated that the deceased Sohan was his servant working at his dispensary and residing in his house. Besides Sohan, two other servants, namely Danna and Barati, were also employed and all three used to reside together in a room situated above the garage. On the night of 14/15.09.1980, while sleeping, he heard cries of □ Babuji Bachao□. He, along with his son Dr. Amit and neighbours, searched for the source of the cry but could not find anything. On inquiry, Danna and Barati stated that they had not heard any noise and that Sohan was sleeping. In the next morning, Barati informed him that Sohan and Danna had left for their village. As Sohan did not reach the dispensary, the compounder came and took the key to open it. Later, during the night, Danna returned, and upon questioning in the presence of neighbours, he confessed that due to a dispute over gambling money, he and Barati had murdered Sohan by assaulting him with an iron made weapon while he was asleep, and thereafter concealed the body in a sack in the coal room. He further stated that Danna led them to the place where the dead body was concealed. Thereafter, he prepared a written report, went to the police station, and lodged the FIR. The police recovered the dead body from the indicated place, prepared the inquest, sealed the body, and sent it for post-mortem examination. He also proved a letter allegedly written by accused Danna, identifying his handwriting, which was marked as Exhibit Ka-2, and the envelope as Exhibit Ka-3.

12. Girish Chandra Jakwal (PW-3), in his deposition, has stated that he resides adjacent to the house of Dr. Amit Rastogi. His house is situated at a distance of about 10 steps from the house of PW-1. He further stated that in the night intervening 14.15.09.1980, he was sleeping in his room. He heard a cry saying □ Babu Ji, Save Me□. The cry appeared to be coming from the direction of Dr. Rastogi□s house. Upon hearing the same, he came out of his house and proceeded towards his residence. There, he saw Dr. Amit Rastogi, Dr. J.S. Rastogi, and the neighbour Kamal Rai Sharma already present. The house of Kamal Rai Sharma is adjacent to that of Dr. J.S. Rastogi, separated only by a wall. They searched around to ascertain the source of cries, but could not find anything. Both the servants of Dr. Rastogi namely Danna and Barati had also came out from their quarters and upon enquiry, they stated that they were asleep and know nothing about the cry. When they asked about the third servant i.e. Sohan, they stated that he is sleeping. On the following night, Dr. Amit Rastogi called him. Dr. J.S. Rastogi and Kamal Rai Sharma were also present. They again questioned Danna regarding Sohan. At that time, Danna confessed and said □ Babu Ji, forgive me, I have committed a mistake, Please save me□. Accused Danna disclosed that few days earlier, they were gambling. Sohan had won Rs. 200/- from him and Rs. 100/- from Barati, and had already given that money to someone known to him. When he and Barati ran out of money, they demanded some money from Sohan, but he refused. This enraged them, and during the night, while Sohan was asleep, both of them assaulted him with a weapon (लोहे का दाव) and killed him. Accused Danna further stated that when Sohan cried out, they muffled his mouth with a quilt and continued

assaulting him until he died. Thereafter, they placed his dead body in a sack, filled it with sawdust, tied the sack, and concealed it in the coal room. Thereafter, accused Danna led us to the coal storage room and showed the dead body of the deceased kept inside a sack. When we asked about the weapon used, he stated that Barati could provide that information as he had hidden it somewhere.

13. Babo Ram Sharma (PW-4), in his deposition, has stated that on 16.09.1980, he was posted as Head Moharir at Police Station Civil Lines, Moradabad. At about 12:30 am, Dr. J.S. Rastogi submitted a written report (Ext.Ka.1) at the police station. Based upon the said written report, he prepared chik report (Ext.Ka.4). The case was registered and an entry to that effect was made in the General Diary. Dr. Rastogi had also brought with him the accused Danna @ Ramesh, who was thereafter taken into custody and lodged in the lock-up.

14. Umesh Chandra Tyagi (PW-5), in his deposition, has stated that on 16.09.1980, he conducted the post-mortem examination on the dead body of Sohan. The body was brought by Constable Abdul Waheed Khan, Home Guard Shamim and one Suresh. The age of the deceased was approximately 22 years. Upon examination, following ante-mortem injuries were found :-

(i) Incised wound of 1 cm x 0.5 cm bone deep on the right side of the forehead, about 05 cm above the right eye.

(ii) Lacerated wound of 4 cm x 1 cm bone deep just below the right eye.

(iii) Lacerated wound, 3 cm □ 2 cm, muscle-deep, on the front side of the left arm.

(iv) Incised wound, 2 cm □ 1 cm, muscle-deep, about 2 cm away from injury no. 3.

(v) Abrasion with bluish discoloration, 12 cm □ 6 cm, on the front of the neck below.

The doctor has opined that the death had occurred within approximately three days prior to the post-mortem. The cause of death was shock and hemorrhage resulting from the aforesaid injuries.

15. S.S.I. Narottam (PW-6), in his deposition, has stated that he had conducted the investigation, recorded the statements of the witnesses, effected the recovery of the dead body and weapon, and upon completion of the investigation, submitted charge-sheet before the concerned court.

16. Dr. Shashi Rastogi (C.W.1), in her deposition, has stated that she is wife of Dr. Amit Rastogi (PW-1/informant). She was married to Dr. Amit Rastogi about eight years ago. After marriage, she resided in Lucknow till December, 1979 as her husband was also pursuing his post-graduation. In December, 1979, she and her husband have joined the Provincial Medical Services (PMS) and were posted at Moradabad. She along with her husband, father-in-law and mother-in-law resided at the house situated at Civil Lines, Moradabad. From their wedlock, a child was born in the year 1978. At that time, three servants were employed in the house namely Danna (used to

perform domestic work), Barati (used to perform cleaning) and Sohan (used to work in her father-in-law's dispensary). They all reside together in a room located above the garage of the house. She further stated that on the night when Sohan was murdered, she was present in the house but was asleep and did not hear anything. Her husband did not wake her or inform her about the incident that night. Her bedroom was situated on the first floor of the bungalow. She came to know about the incident on the third day that deceased Sohan had been murdered by Danna and Barati. The allegation made by the accused persons that she had illicit relations with the deceased Sohan is completely false. She never engaged Sohan for any of her personal work.

17. After closure of the prosecution evidence, the statement of the accused-appellants namely Danna alias Ramesh and Barati has been recorded under Section 313 Cr.P.C., who denied the charges levelled against them and further stated that Shashi (wife of Dr. Amit Rastogi) had illicit relations with the deceased Sohan. They were granted leave. When they returned, they came to know that Sohan had been murdered and they have been falsely implicated in this case.

18. Learned Ist Additional Sessions Judge, Moradabad after hearing the learned counsel for the parties and assessing, evaluating and scrutinizing the evidence on record, convicted and sentenced the accused-appellants as indicated herein above.

19. Hence, the instant appeal.

Submissions on behalf of the Accused-Appellant

20. Learned counsel appearing on behalf of the appellant no. 2 assailed the impugned judgment and order dated 03.09.1985 passed by the trial court on the ground that the entire prosecution case rests on circumstantial evidence. The settled principle of law is that such a chain must be complete and must unerringly point towards the guilt of the accused. In the present case, the chain is clearly broken at several crucial links.

21. It is further submitted that the alleged confession made by the appellant no. 1-Danna before PW-1, PW-2 and PW-3 is highly doubtful, and such confession cannot be made the sole basis of conviction.

22. It is next submitted that in this case, no truly independent witness has been examined to lend the credibility to the prosecution version, as the neighbours, who were examined, are closely associated with the complainant.

23. It is next submitted that the recovery of the dead body from the coal room is shown at the instance of appellant-Danna, but the place is within the complainant's premises and accessible to all. The alleged recovery of the weapon at the instance of Barati, suffers lack of independent corroboration and there is no forensic report to conclusively connect the recovered article with the crime.

24. It is next submitted that the alleged motive of gambling dispute over a small amount is trivial and insufficient to drive the accused to commit such a heinous crime. The prosecution has failed to establish a strong and compelling motive.

25. It is further submitted that the accused-appellants have been falsely implicated and suggested an alternative theory involving strained relations and suspicion within the household.

26. In view of the above deficiencies, it is submitted that the prosecution has failed to prove its case beyond reasonable doubt. The appellants are entitled to benefit of doubt and deserve acquittal.

Submissions on behalf of Respondent-State

27. Per-contra, learned A.G.A. appearing on behalf of the State has supported the impugned judgment and order by contending that the conviction, recorded by the trial court, is well reasoned and based upon cogent evidence.

28. It is submitted that the prosecution has successfully established a complete chain of circumstances i.e. cry for help heard from the servants' quarter, sudden disappearance of the deceased, confession and recovery of the dead body and recovery of weapon and bloodstained articles. These circumstances form a consistent and unbroken chain pointing only towards the guilt of the accused-appellants.

29. It is next submitted that the testimonies of PW-1, PW-2 and PW-3 are natural, consistent and corroborate each other on material particulars. It is also submitted that the confession made by the appellant-Danna was voluntary, made before multiple witnesses and was consistent with subsequent recovery of the dead body. It is further submitted that weapon in crime was also recovered at the instance of appellant-Barati. The recovery provide strong corroboration to the prosecution case.

30. It is further submitted that the injuries found on the body of the deceased are consistent with the assault by a hard and sharp objection, supporting the prosecution version. It is next submitted that the dispute over gambling money is admitted and even a small motive can lead to grave offences. It is further submitted that the allegation of illicit relationship is baseless and unsupported by any evidence.

Analysis and Conclusion

31. Heard Mr. Salman Ahmad, learned Amicus Curiae appearing on behalf of the appellant no. 2-Barati and Mr. S.K. Ojha, learned Additional Government Advocate-Ist for the State of U.P.

32. We have considered the rival submissions advanced by the learned counsel appearing on behalf of respective parties. We have also carefully perused the entire record of the case including the evidence of the prosecution witnesses, documentary evidence and medical report.

33. The issue for consideration in the present appeal is □ whether the prosecution has successfully established an uninterrupted and conclusive chain of evidence leading unequivocally to the guilt of the accused-appellants?□

34. It is a settled proposition of law that in cases based purely on circumstantial evidence, the prosecution must establish a complete chain of circumstances which must be consistent only with the hypothesis of the guilt of the accused and inconsistent with any other hypothesis. The circumstances must be of a conclusive nature and tendency.

35. The Hon□ble Supreme Court in **Sharad Birdhichand Sarda vs. State of Maharashtra¹** has laid down the five golden principles governing cases based on circumstantial evidence, which require:

- (a) the circumstances must be fully established;
- (b) the facts so established must be consistent only with the hypothesis of guilt;
- (c) the circumstances must be conclusive;
- (d) they must exclude every possible hypothesis except the one to be proved; and
- (e) there must be a complete chain of evidence.

36. In **State of U.P. Vs. Ashok Kumar Srivastava²**, it was pointed out that great care must be taken in evaluating circumstantial evidence and if the evidence relied on is reasonably capable of two inferences, the one in the favour of the accused must be accepted. It was also pointed out that the circumstances relied upon must be found to have fully established and cumulative effect of all the facts so established must be consistent only with the hypothesis of guilt.

37. In the case of **Hanumant Govind Nargundkar v. State of M.P.³**, Hon'ble Apex Court observed as under:

"It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused."

38. In the case of **Padala Veera Reddy v. State of A.P.⁴**, Hon'ble Apex Court opined as under:

"10. Before advertng to the arguments advanced by the learned Counsel, we shall at the threshold point out that in the present case there is no direct evidence to connect the accused with the offence in question and the prosecution rests its case solely on circumstantial evidence. This Court in a series of decisions has consistently held that when a case rests upon circumstantial evidence such evidence must satisfy the following tests:

(1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

(2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;

(3) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and

(4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.

39. In the case of **Ramreddy Rajesh Khanna Reddy v. State of A.P.**⁵, Hon'ble Apex Court again considered the case of conviction based on circumstantial evidence and held as under:

"26. It is now well settled that with a view to base a conviction on circumstantial evidence, the prosecution must establish all the pieces of incriminating circumstances by reliable and clinching evidence and the circumstances so proved must form such a chain of events as would permit no conclusion other than one of guilt of the accused. The circumstances cannot be on any other hypothesis. It is also well settled that suspicion, however grave it may be, cannot be a substitute for a proof and the courts shall take utmost precaution in finding an accused guilty only on the basis of the circumstantial evidence."

40. In the case of **Sattatiya v. State of Maharashtra**⁶, Hon'ble Apex Court held as under:

"10. We have thoughtfully considered the entire matter. It is settled law that an offence can be proved not only by direct evidence but also by circumstantial evidence where there is no direct evidence. The court can draw an inference of guilt when all the incriminating facts and circumstances are found to be totally incompatible with the innocence of the accused. Of course, the circumstances from which an inference as to the guilt is drawn have to be proved beyond reasonable doubt and have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances." This Court further observed in the aforesaid decision that:

"17. At this stage, we also deem it proper to observe that in exercise of power under Article 136 of the Constitution, this Court will be extremely loath to upset the judgment of conviction which is confirmed in appeal. However, if it is found that the appreciation of evidence in

a case, which is entirely based on circumstantial evidence, is vitiated by serious errors and on that account miscarriage of justice has been occasioned, then the Court will certainly interfere even with the concurrent findings recorded by the trial court and the High Court--Bharat v. State of M.P., (2003) 3 SCC 106. "

41. The decision in **Sharad Birdichand Sarda (Supra)** has recently been followed by Hon^{ble} Supreme Court in catena of judgement **including Laxman Prasad alias Laxman Vs. State of Madhya Pradesh**⁷ and **R. Sreenivasa Vs. State of Karnataka**⁸.

42. The Supreme Court in the case of **Pankaj vs. State of Rajasthan**⁹, has held that “*when the genesis and the manner of the incident is doubtful, the accused cannot be convicted.*” It also referred to **Bhagwan Sahai vs. State of Rajasthan**¹⁰, which states that once the prosecution is found to have suppressed the origin of the occurrence, the only proper course is to grant the benefit of doubt.

43. In the present case, the first circumstance relied upon by the prosecution is the alleged extra-judicial confession made by accused Danna before PW-1, PW-2 and PW-3, who are not independent witnesses. It is well settled that an extra-judicial confession is a weak piece of evidence and requires strong corroboration. Reference may be made to **Sahadevan and Another v. State of Tamil Nadu**¹¹, wherein the Hon^{ble} Supreme Court has held that such confession must inspire confidence and should be corroborated by other reliable evidence. In the instant case, the alleged confession appears doubtful and unnatural, particularly in view of the circumstances in which it is said to have been made, and does not inspire confidence to form the sole basis of conviction.

44. The second circumstance pertains to the recovery of the dead body from the coal room. Admittedly, the said place is situated within the premises of the complainant and was accessible to all the inmates of the house. Thus, the recovery cannot be said to be exclusively at the instance of the accused so as to conclusively connect them with the crime.

45. The third circumstance relates to the recovery of the alleged weapon of offence and bloodstained articles at the instance of accused Barati. However, no independent witness of unimpeachable character has been examined to prove the said recovery. Further, the absence of any forensic report connecting the recovered article with the crime creates a serious dent in the prosecution case.

46. Another important aspect is the absence of a strong motive. The alleged motive of a gambling dispute over a meagre amount does not appear to be sufficiently grave to impel the accused to commit such a heinous offence.

47. It is also noteworthy that the prosecution has failed to examine any truly independent witness. The witnesses examined are either interested or closely associated with the complainant, which necessitates cautious scrutiny of their testimonies.

48. In view of the aforesaid discussion, this Court finds that the chain of circumstances in the present case is not complete. The circumstances relied upon by the prosecution do not form an unbroken chain pointing only towards the guilt of the accused-appellants. On the contrary, several missing links and inconsistencies create reasonable doubt in the prosecution story.

49. It is a cardinal principle of criminal jurisprudence that suspicion, however strong, cannot take the place of proof. The benefit of doubt must always go in favour of the accused.

50. Hon'ble Supreme Court in the case of **Goverdhan and Another vs. State of Chhattisgarh**¹² wherein, the Court has held as under:-

“20. As per Section 3 of the Indian Evidence Act, 1872, a fact can be said to have been proved when, after considering the matters before it, the court either believes it to exist or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act up on the supposition that it exists. The court undertakes this exercise of examining whether the facts alleged including the particular criminal acts attributed to the accused are proved or not.

21. It is also to be noted that the law does not contemplate stitching the pieces of evidence in a watertight manner, for the standard of proof in a criminal case is not proof beyond all doubts but only beyond reasonable doubt. In other words, if a clear picture emerges on piecing together all evidence which indicates beyond reasonable doubt of the role played by the accused in the perpetration of the crime, the court holds the accused criminally liable and punishes them under the provisions of the penal code, in contradistinction to the requirement of proof based on the preponderance of probabilities as in case of civil proceedings.

22. It will be relevant to discuss, at this juncture, what is meant by □reasonable doubt□. It means that such doubt must be free from suppositional speculation. It must not be the result of minute emotional detailing, and the doubt must be actual and substantial and not merely vague apprehension. A reasonable doubt is not an imaginary, trivial or amerey possible doubt, but a fair doubt based upon reason and common sense.”

51. The Supreme Court in the case of **Jitendra Kumar Mishra @ Jittu vs. State of Madhya Pradesh**¹³, has held as under :

“We are conscious of the fact that the appellate court should be slow in interfering with the conviction recorded by the courts below but where the evidence on record indicates the prosecution has failed to prove the guilt of the accused beyond reasonable doubt and that a plausible view, different from the one expressed by the courts below can be taken, the appellate court should not shy away in giving the benefit of doubt to the accused persons.”

52. Consequently, this Court is of the considered opinion that the prosecution has failed to prove its case beyond reasonable doubt against the accused-appellants.

53. Accordingly, the criminal appeal is allowed. The judgment and order dated 03.09.1985 passed by the learned Ist Additional Sessions Judge, Moradabad in Sessions Trial No. 550 of 1981 is hereby set aside.

54. The appellant no. 2-Barati is acquitted of all the charges levelled against him. He is on bail, his bail bonds are cancelled and sureties are discharged.

55. Let a copy of this judgment be transmitted to the court concerned for compliance.

56. Mr. Salman Ahmad, learned Amicus Curiae shall be paid a sum of Rs. 15,000/- (rupees fifteen thousand only) for his assistance to the Court in deciding this criminal appeal.

(2026) 4 ILRA 1212
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 08.04.2026

BEFORE

THE HON'BLE MANOJ BAJAJ, J.

Criminal Appeal No. 3129 of 1986

Amar Nath Singh

...Appellant

Versus

State of U.P.

...Respondent

Issue for consideration

Matter pertains to legality of conviction order u/s 376 IPC

Headnotes

Indian Penal Code-Section 376- victim specifically named the accused-appellant- evidence proves the presence of the accused-appellant at the place of occurrence- bleeding suffered proved by the medical evidence beyond doubt -clothes worn by the victim at the time of occurrence, got blood stains-also produced as case property- mother of the prosecutrix and Gayatri Singh, who had also arrived at the place of occurrence were not examined by prosecution -would not throw any doubt on the version of the prosecution case- testimony of prosecutrix (P.W.-1)-**Appeal dismissed.** (E-9)

Case Law Cited

Nil

List of Acts

Indian Penal Code, 1860

List of Keywords

Medical evidence; non examination; inconsistent to his innocence

Appearances of parties

Counsel for Appellant(s) : Ronak Chaturvedi(ac), T.d. Singh

Counsel for Respondent(s) : A.G.A.

(Delivered by Hon'ble Manoj Bajaj, J.)

1. Appellant-Amar Nath Singh is aggrieved against the judgment of conviction and order of sentence dated 9.12.1986 passed by IInd Additional Sessions Judge, Azamgarh in Sessions Trial No. 72 of 1985, arising out of Case Crime No. 124 of 1984, under Section 376 I.P.C., registered at Police Station Maharajganj, District Azamgarh, whereby he stands convicted and sentenced to seven years rigorous imprisonment alongwith fine of Rs. 5,000/-, and in the event of default, he has been ordered to undergo further rigorous imprisonment of one year.

2. The above F.I.R. was registered on the basis of a written complaint by prosecutrix submitted before Station House Officer Maharajganj, District Azamgarh, who stated that she is a resident of village Molanapur Prathvipal, Police Station Maharajganj and used to take her goat for grazing at Sivan. On 7.10.1984 at around 5:00 p.m., I took my goat for grazing on the eastern side of village in a mango orchard, where my mother at some distance was cutting grass. Amar Nath Singh @ Jhinku Singh s/o Bansh Gopal Singh, who belongs to our village was also working nearby in his agricultural fields. My goat entered the Pigeon Pea fields of Chandrika Master, So I went there, then suddenly Jhinku Singh came lifted me and took inside the Pigeon Pea fields. I struggled and screamed, but he threw me on the ground and lifted my clothes (Peticoat and Sari) and raped me. On hearing of screams, my mother and Gayatri Singh s/o Ram Aadhar Singh, Ram Chandar Singh s/o Shiv Poojan Singh came there at the spot and on seen them, he ran away towards his house. I was bleeding and could not walk before I fainted. I was brought by other persons and as it was late night, no vehicle was available to reach police station. My mother brought me to Parshurampur Hospital by Rickshaw where doctor refused treatment and asked to go to police station. The complainant alongwith her mother reached the police station by Rickshaw to lodge the report. Broadly, on these allegations, the F.I.R. was registered against the accused for alleged commission of offence punishable under Section 376 I.P.C.

3. After registration of the F.I.R., the investigation in the case was conducted by Investigating Officer namely, Mukteshwar Singh, who recorded the statements of witnesses namely, Gayatri Singh and Ram Chandar Singh. During investigation, the injury report was collected and the site plan was also prepared. The statements of other formal witnesses were also recorded and finally the charge sheet was filed against the accused under Section 173(2) Cr.P.C. thereby sending him to face prosecution for commission of offence of rape.

4. Thereafter, the case was committed to the court of sessions and vide order dated 10.10.1985 the charges against the accused were framed for alleged commission of offence punishable under Section 376 I.P.C. The appellant-accused pleaded not guilty and claimed trial.

5. The prosecution in order to prove the guilt of the accused had examined five witnesses namely, Katwari-victim (P.W.-1), Ramchandar (P.W.-2), S.I. Mukteshwar Singh (P.W.-3), Dr. S.D.P. Gupta (P.W.-4) and Dr. B. Kumar (P.W.-5). Besides, the prosecution also adduced documentary evidence i.e. written complaint (Exb.Ka-1), site plan (Exb.Ka-2), recovery memo (Exb.Ka-3), Charge Sheet (Exb.Ka-4), check report (Exb.Ka-5), Carbon Check report (Exb.Ka-6), X-Ray report (Exb.Ka-7), medical report (Exb.Ka-8) and supplementary medical report (Exb.Ka-

9), which were proved by the relevant witnesses prosecutrix (P.W.-1), Investigating Officer-Mukteshwar Singh, Dr. B. Kumar (P.W.-5) and Dr. S.D.P. Gupta (P.W.-4).

6. After completion of the prosecution evidence, the statement of accused-appellant was recorded under Section 313 Cr.P.C. on 13.11.1986, who denied the prosecution evidence and pleaded false implication. No evidence was adduced by the accused-appellant in defence.

7. Upon analyzing the prosecution case, evidence and other material on record, the trial court proceeded to convict the appellant-accused under Section 376 I.P.C. and sentenced him to seven years rigorous imprisonment alongwith fine. Aggrieved against the judgment of conviction and order of sentence dated 9.12.1986, the appellant preferred this appeal.

8. Mr. Ronak Chaturvedi, Advocate being Amicus Curiae appeared on behalf of appellant and argued that the complainant has falsely implicated the appellant in this case at the behest of witnesses namely, Ramchandar Singh and Gayatri Singh, who have a dispute with appellant's father namely, Bansh Gopal Singh and father of prosecutrix namely, Rampati Kahar was an employee of both these persons. Learned counsel submits that there are material contradictions in the statements of prosecution witnesses as Ramchandra (P.W.-2) does not mention about the presence of the mother of the prosecutrix at the place of occurrence, whereas prosecutrix (P.W.-1) stated that on hearing her cries, her mother alongwith Gayatri Singh arrived at the spot. Learned counsel for the appellant has referred to the site plan to argue that according to the version of prosecutrix (P.W.-1), her mother was working at Point-D, which is vacant land of the accused from where she alongwith Gayatri Singh arrived at the spot, and the witness Ram Chandra (P.W.-2), who was working at Point-C also reached there, but the presence of the mother and Gayatri Singh is not mentioned by Ram Chandra (P.W.-2) in his deposition before the trial court.

9. Learned counsel for the appellant submits that though according to the prosecution, mother of the prosecutrix alongwith Gayatri Singh arrived at the place of occurrence, but during trial they were not examined as prosecution witnesses and this omission renders the prosecution case doubtful. Learned counsel has argued that the medical evidence does not conclusively support the prosecution case as Dr. B. Kumar (P.W.-4) in her deposition clearly mentioned that the injuries suffered by the prosecutrix could be caused by a fall also. Learned counsel submits that the evidence adduced by the prosecution suffers from major discrepancies and the onus has not been discharged by the prosecution beyond doubt, therefore, the benefit of doubt ought to have been extended to the accused by the trial court. He prays that the impugned judgment of conviction as well as order of sentence dated 9.12.1986 be set aside, and the appellant be acquitted of the charges.

10. On the other hand, Mr. Sanjay Singh, learned A.G.A.-I has argued that the material witness P.W.-1 (prosecutrix) has candidly supported the prosecution case by identifying the accused involved in commission of crime against her, and further, the victim suffered injuries as a result of use of force by accused, which are proved by Dr. B. Kumar (P.W.-5). Learned A.G.A. has referred to the testimony of Dr. S.D.P. Gupta, Radiologist (P.W.-4) to argue that the age of the prosecutrix was below 15 years., therefore, according to him, the prosecution evidence has proved the charges against the accused beyond doubt, and analyzing the entire evidence on record, the trial

court has rightly convicted the appellant under Section 376 I.P.C. He prays that the appeal be dismissed.

11. Learned counsel for the parties have been heard and with their assistance, case file and the trial court record has been perused carefully.

12. Upon hearing the learned counsel for the parties and considering their submissions, this Court finds that the appellant was put to trial for raping the prosecutrix (victim) by use of force and the occurrence took place in an agricultural field where the victim was grazing her goat and accused came there and committed the alleged crime. The entire case of the prosecution relating to the occurrence dated 7.10.1984 at around 5:00 p.m. is primarily based on the testimony of the prosecutrix. A perusal of complaint dated 8.10.1984 (Exb.Ka-1) shows that the victim specifically named the accused-appellant, who raped her and as a result of commission of crime, she suffered profuse bleeding and injuries. The version contained in F.I.R. is reiterated by the prosecutrix when she appeared during trial as P.W.-1. This material witness was subjected to lengthy cross-examination by the defence, but her testimony has gone unimpeached and the witness candidly stood by her stand, accusing the appellant involved in commission of crime against her.

13. According to the version of the prosecutrix, when her goat was grazing, her mother was also working at some distance nearby a field and accused-appellant was also working in his agricultural field. The witness deposed that the accused forcibly put her on the ground and after lifting her clothes raped her. The prosecution case is further supported by the medical evidence as well as medical examination of victim conducted on 8.10.1984 at Women Hospital, Azamgarh (Exb.Ka-8) reveals that her pervaginal examination shows laceration (lacerated wound 0.5 cm X 0.3 cm X muscle deep over the vagina). The medical report by Dr. B. Kumar (P.W.-5) has mentioned that the victim suffered bleeding and her hymen was freshly torn (ruptured). Fourchette was also lacerated with 0.3 cm X 0.3 cm X muscle deep injury and pervagina examination was painful.

14. Apart from this, injury was found present in the shape of abrasion on both sides of □laviamajora□ as well as over □laviaminora.□ In addition to the above injuries, the medical examination of the prosecutrix was further extended to analyze her age and as per medical report (Exb.Ka-9), her age was found to be below 15 years.

15. The prosecution has further relied upon the evidence of independent witness namely, Ramchandra (P.W.-2), who had arrived at the place of occurrence on hearing the screams of prosecutrix and a reading of his testimony would show that he found the prosecutrix naked and bleeding. The accused was attempting to wipe off the blood, who on seeing the witness, ran away from the spot. This witness has also specifically mentioned about the presence of the accused at the place of occurrence and particularly his conduct after commission of crime. Though, the accused had set up a defence that the father of prosecutrix namely, Rampati was an employee of Ramchandra (P.W.-2) and Gayatri Singh, who had also arrived at the place of occurrence, but was not examined as a witness, who had a dispute with Bansh Gopal (father of accused), therefore, at the instance of Gayatri

Singh and Ramchandra, the appellant-accused was falsely implicated. In this context, the reliance has been placed upon a certified copy of complaint dated 13.10.1983 (Exb.Kha-1), wherein it was alleged that goat of Rampati entered their field and when Bansh Gopal was taking it to the cattle home, he forcibly snatched the goat, but there is nothing on record to suggest that the said complaint was ever acted upon. Even otherwise, the alleged dispute between Bansh Gopal (father of accused) and Ramchandra etc. may not be of much significance to the subject occurrence leading to the prosecution of the accused.

16. Further, assumably if, the said defence is true, the complainant would falsely implicate Bansh Gopal instead of his son, but the evidence on record actually proves the presence of the accused-appellant at the place of occurrence. The bleeding suffered by the victim is proved by the medical evidence beyond doubt and further, the clothes worn by the victim at the time of occurrence, got blood stains, which were also produced before the trial court as case property.

17. Merely, because the mother of the prosecutrix and Gayatri Singh, who had also arrived at the place of occurrence were not examined by prosecution would not throw any doubt on the version of the prosecution case, particularly in the light of the testimony of prosecutrix (P.W.-1). As noticed above, the evidence and material witnesses (P.W.-1 and P.W.-2) have clearly proved the involvement of the accused-appellant in commission of crime, the appellant-accused cannot derive any benefit for non examination of the mother of the prosecutrix and Gayatri Singh.

18. The last argument advanced by learned counsel for the appellant that the injuries suffered by the victim could be a result of fall is also without any merit, as the suggestion put to Dr. B. Kumar (P.W.-5) was not put to the victim, and on the contrary, the suggestion by the defence that the prosecutrix suffered injury while urinating has been specifically denied by her. Most importantly, a perusal of the impugned judgment of conviction and order of sentence dated 9.12.1986 would show that the trial court has carefully examined the facts, circumstances and evidence on record to ascertain the involvement of the accused-appellant in commission of crime. The findings and observations made by the trial court in the impugned judgment of conviction and order of sentence dated 9.12.1986 are founded upon proper appreciation of prosecution evidence as well as material on record.

19. Further, it is not a case where the evidence adduced by prosecution gives rise to any doubt, much less to favour the defence. The evidence adduced by the prosecution is not only consistent to the guilt of the accused, but if, examined conversely, it is inconsistent to his innocence as well. Consequently, this Court does not find any meritorious ground to interfere with the impugned judgment of conviction and order of sentence dated 9.12.1986.

20. Resultantly, the appeal fails and is hereby dismissed. Record and proceedings be sent back to the Court below forthwith.

List of Keywords

printed proforma; judicial mind; cognizance order; summoning order; mechanical manner; application of mind; quashed; SC/ST Act; charge-sheet; appellate jurisdiction

Case Arising From

APPELLATE JURISDICTION: Appeal under Section 14A(1) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 challenging charge-sheet dated 22nd May, 2022, cognizance/summoning order dated 23rd November, 2022 and entire proceedings of Session Case No. 963 of 2022 arising out of Case Crime No. 108 of 2022 pending before Special Judge (S.C./S.T. Act), Kannauj.

Appearances for Parties**Advs. for the Appellant:**

Mr. Sarvesh Kumar Dubey, learned counsel for the appellants

Advs. for the Respondents:

Learned A.G.A. appearing for the State respondent;

none appeared for opposite party no.2 despite service of notice.

(Delivered by Hon'ble Madan Pal Singh, J.)

1. Heard Mr. Sarvesh Kumar Dubey, learned counsel for the appellants, and learned A.G.A. appearing for the State respondent. Despite the fact that notice has been served upon opposite party no.2 personally as per the office report dated 28th September, 2024, no one appears for opposite party no.2 even in the revised reading of the list.

2. By means of the present criminal appeal under Section 14A(1) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, the appellants are challenging the charge-sheet dated 22nd May, 2022, cognizance/summoning order dated 23rd November, 2022 as well as entire proceedings of Session Case No. 963 of 2022 (State Vs. Raja & Others), under Sections 323, 504, 506 I.P.C. and Section 3 (1) (da) of S.C./S.T. Act arising out of Case Crime No. 108 of 2022, pending in the Court of Special Judge (S.C./S.T. Act), Kannauj.

3. While assailing the impugned order, the contention of the learned counsel for the appellant is that the learned Special Judge has not applied judicial mind while passing the order, as the same has been made on a printed proforma in which the name of the accused, case crime number and sections have been filled in by hand.

4. Relying upon the decision of this Court and the Hon'ble Apex Court in Ankit vs. State of U.P. and another, reported in JIC 2010 (1) 432, it is submitted that the impugned order, being on a printed proforma, is clearly without application of judicial mind and is liable to be quashed on this ground alone.

5. Learned A.G.A. has opposed the prayer but has admitted that the impugned order has been passed on a printed proforma. Therefore, in view of the decision in Ankit (supra), it is submitted that the Special Judge concerned may be directed to pass a fresh order.

6. I have considered the arguments advanced by the learned counsel for the appellant and the learned A.G.A. and have also perused the record.

7. The certified copy of the summoning order has been appended with the paper book. On perusal of the same, it is evident that it is a typed proforma in which the blanks have been filled in by the Special Judge in handwriting, leading to the conclusion that the order has been passed in a mechanical manner without application of judicial mind.

8. In the case of *Ankit (supra)*, the co-ordinate Bench of this Court has not only castigated and deprecated the practice of passing proforma orders in a fill-in-the-blanks manner but also directed the Registrar General of this Court to issue a circular letter. The relevant paragraphs are reiterated hereinbelow:

"10. The manner in which the impugned order has been prepared shows that the learned magistrate did not at all apply his judicial mind at the time of passing this order and after the blanks were filled up by some employee of the court, he has put his initial on the seal of the court. This method of passing judicial order is wholly illegal. If for the sake of argument it is assumed that the blanks on the printed proforma were filled up in the handwriting of the learned magistrate, even then the impugned order would be illegal and invalid, because an order of taking cognizance or any other judicial order cannot be passed by filling up blanks on a printed proforma. Although, as held by this Court in the case of Megh Nath Gupta & another vs. State of U.P. and another 2008 (62) ACC 826, in which reference has been made to the cases of Deputy Chief Controller Import and Export vs. Roshan Lal Agrawal 2003 (46) ACC 686 (SC), U.P. Pollution Control Board vs. Mohan Meakins AIR 2000 SC 1456 and Kanti Bhadra vs. State of West Bengal 2000 (40) ACC 441 (SC), the magistrate is not required to pass a detailed reasoned order at the time of taking cognizance on the charge-sheet, but it does not mean that such an order can be passed by filling up blanks on a printed proforma. At the time of passing any judicial order, including an order taking cognizance on the charge-sheet, the court is required to apply its judicial mind and even such an order cannot be passed in a mechanical manner. Therefore, the impugned order is liable to be quashed and the matter has to be sent back to the court below for passing a fresh order on the charge-sheet after applying judicial mind.

.....

If approved by the Hon?ble Administrative Committee, let a circular letter be issued by the Registrar General directing all the judicial officers in Uttar Pradesh that printed proforma should not be used in passing judicial orders.

The Registrar General is directed to send a copy of this order to Sri Talevar Singh, the then Judicial Magistrate, Saharanpur, through the District Judge concerned for his future guidance."

9. **Circular Letter No. 28/Admin. 'G-II' dated 04.12.2021 (Allahabad)** in reference to "Printed Proforma" and Circular No. 8159/Admin. G-II dated 07.07.2025 in reference to "pre-printed rubber stamps" or "pre-typed proformas" have also been issued by the High Court in this regard.

10. Despite a series of decisions of the Apex Court and this Court disapproving such practice of passing orders on printed proforma, it is painful and unfortunate to note that the appellant in the present case has been summoned by such an order, wherein blanks have been filled in without applying judicial mind. Such an order has already been held unsustainable by this Court in the case of *Ankit (supra)*, relying on several decisions of the Apex Court.

11. In view of the above, the conduct of the judicial officers concerned in passing orders on printed proforma by filling up blanks without application of judicial mind is objectionable and deserves to be deprecated. The summoning of an accused in a criminal case is a serious matter, and the order must reflect that the Special Judge has applied his mind to the facts as well as the law applicable thereto.

12. Accordingly, the present appeal is allowed. The impugned cognizance/summoning order dated 23rd November, 2022 passed by the Special Judge, SC/ST Act, Kannauj, is hereby quashed. The court concerned is directed to pass a fresh, well-reasoned order after applying judicial mind to the facts of the case.

(2026) 4 ILRA 1220
REVISIONAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 21.04.2026

BEFORE

THE HON'BLE MANOJ BAJAJ, J.

Criminal Revision No. 1049 of 2026

Surendra Singh

...Revisionist

Versus

State of U.P. & Anr.

...Opposite Parties

Issue for Consideration

Issue pertains to whether the petitioner could be convicted u/s 138 of the Negotiable Instruments Act, 1881 for dishonour of cheque when, as per the terms of agreement between the parties, the cheque was to be encashed only after sanction of loan and transfer of ownership of vehicle, but the said conditions remained unfulfilled and no legally enforceable debt or liability existed against the petitioner.

Headnotes

Negotiable Instruments Act, 1881 - s. 138 - Code of Criminal Procedure, 1973 - ss. 251, 313 - Dishonour of cheque - Legally enforceable debt - Presumption u/s 139 - Rebuttal of presumption - Tractor with Trolley sale agreement - Conditional cheque - Loan sanction - Transfer of ownership - Admission of complainant - Accused never borrowed amount from complainant - Impugned orders - Acquittal - The petitioner challenged the judgment dated 15.12.2025 passed by Sessions Judge, Chitrakoot, whereby his criminal appeal was dismissed and the judgment of conviction dated 10.09.2025 passed by trial court in Complaint Case No. 1771 of 2021 u/s 138 of Negotiable Instruments Act, 1881 was affirmed - The complainant alleged that an agreement dated 03.03.2021 was executed between the parties for sale of a Tractor with Trolley for a consideration of Rs. 3,55,000/- and petitioner issued a cheque for the said amount - It was

agreed that the cheque would be cleared after transfer of ownership of vehicle and sanction of loan in favour of petitioner - The cheque was subsequently presented and dishonoured due to insufficient funds, followed by issuance of demand notice and filing of complaint u/s 138 of Negotiable Instruments Act - The petitioner contended that the transaction of sale was incomplete as the ownership of Tractor was never transferred and the loan was never sanctioned, therefore, dishonour of cheque could not constitute breach of a legally enforceable debt - The complainant opposed the revision stating that the cheque belonged to petitioner's account and the statutory ingredients of the offence were satisfied.

Held: Notably, the complainant in her complaint has specifically averred that on verification from the Bank, the loan amount not deposited in the account of accused, therefore, she had the knowledge that for lack of finance facility in favour of accused the cheque would not be cleared - Though despite this knowledge the complainant presented the cheque, but there is no averment in complaint that before presentation either accused was informed or he asked the complainant to present the cheque - The complainant in her cross examination suffered vital admission regarding execution of agreement dated 03.03.2021 and conditions to get the ownership of vehicle transferred in his name, before en-cashing the cheque of Rs. 3,55,000/- - Further the complainant also admitted that the accused never borrowed the amount of Rs. 3,55,000/- from her - Most importantly, the complainant deposed before the trial court that the Tractor is still with her, therefore, it becomes clear that the transaction of sale of vehicle between the parties failed for variety of reasons and the presumption attached to cheque that it was issued for discharge of legal liability or enforceable debt stands sufficiently rebutted - Impugned orders set aside, criminal revision allowed. [Paras 21, 22, 24, 25] (E-13)

Case Law Cited

Nil

List of Acts

Negotiable Instruments Act, 1881; Code of Criminal Procedure, 1973

List of Keywords

Criminal Revision; s. 138 of Negotiable Instruments Act; Code of Criminal Procedure, 1973; Agreement was between complainant and accused; Tractor alongwith Trolley; Breach of agreement; Sale consideration; Cheque issued by accused; Ownership of vehicle; Sanction of loan; Account for clearance; Verification; Insufficient funds; Dishonour of cheque; Transaction relating to purchase of tractor; Breach of Contract; Account holder; Mercantile transactions; Reverse onus upon the accused; Formalities of transfer of ownership; Condition unfulfilled; Illegality; Impropriety; Acquitted; Revision allowed.

Case Arising From

ORIGINAL JURISDICTION: Criminal Revision No. - 1049 of 2026

From the Judgment and Order dated 15.12.2025 passed by the Sessions Judge, Chitrakoot in Criminal Appeal No. 43 of 2025 and also Order dated 10.09.2025 passed in Complaint Case No. 1771 of 2021.

Appearances for Parties

Adv. for the Revisionist(s):

Dev Prakash Singh

Advs. for the Opposite Party(s):

Gyanendra Kumar Gyani, Sai Girdhar

(Delivered by Hon'ble Manoj Bajaj, J.)

1. Petitioner-Surendra Singh has preferred this Criminal Revision to challenge the judgement dated 15.12.2025 passed in Criminal Appeal No. 43 of 2025 by Sessions Judge, Chitrakoot, whereby his Criminal appeal has been dismissed, and the judgment of conviction and order of sentence dated 10.09.2025, passed in Complaint Case No. 1771 of 2021 titled Smt. Shanti Devi versus Surendra Singh under section 138 Negotiable Instrument Act, 1881 has been upheld.

2. The sentence of six months simple imprisonment along with a fine of Rs. 5,32,500/- and in default of payment of fine, additional three months further imprisonment awarded to the petitioner-convict by the trial court has also been upheld.

3. Briefly, the facts leading to the revision petition are that the opposite party no. 2-complainant filed a Criminal Complaint, bearing no. 1771 of 2021 under Section 138 Negotiable Instruments Act, 1881 (hereinafter referred to as "NI Act") with the allegations that on 3rd March, 2021 an agreement was reduced in writing between the complainant and accused, in the presence of the witnesses, whereby a Tractor with Trolley bearing Registration No. U.P. 96 E/0304 was agreed to be sold to the accused against a total sale consideration of Rs. 3,55,000/-, and in this regard a cheque bearing no. 003653 drawn at IDBI Bank, Branch- Karwi, City- for an amount of Rs. 3,55,000/- dated 05.03.2021 was issued. At the stage of agreement, the accused stated that after transfer of ownership of Vehicle in his name from the concerned Department, he would obtain loan against it and deposit in his account for clearance of the cheque issued in favour of complainant, but even after a month of the agreement, the accused informed that the loan has not been sanctioned and as and when it is sanctioned, the cheque can be en-cashed. According to the complainant the Tractor along with Trolley was given to the accused, and that upon verification from the Bank, she came to learn that the requisite amount is not credited in the account of the purchaser, therefore, on the next date, she along with her husband went to the house of the accused, who refused to either pay the money or return the Tractor. On 28.04.2021, the Cheque presented by the complainant was returned on 29.04.2021 by the bank with the remarks "insufficient funds" and thereafter the complainant sent a demand notice dated 19.05.2021 through her Advocate, but neither any response was sent by the accused nor any payment was made. Therefore, the complaint under section 138 Negotiable Instruments Act was filed on 13.07.2021 for prosecution of accused.

4. After recording the pre-summoning evidence, the accused was summoned vide order dated 14.09.2021, and pursuant to the same he appeared and was released on bail. In his statement under Section 251 Cr.P.C. he denied the accusations and claimed trial.

5. In support of the complaint, the complainant examined herself as P.W.-1, whereas her husband Shivkaran Prajapati appeared as P.W.-2. The complainant also adduced documentary evidence i.e. the Cheque No. 003653, return memo, demand notice, receipt of Registered Post and the agreement dated 03.03.2021.

6. After the completion of the evidence of the complainant, the accused in his statement under Section 313 Cr.P.C. denied the prosecution evidence and pleaded false implication, who explained that the cheque in question was given as a security which was misused. However, no defence evidence was adduced by the petitioner.

7. Upon considering the evidence on record, the trial court vide judgment dated 10.09.2025, proceeded to convict the accused-petitioner under Section 138 "N.I. Act" and imposed the sentence as noticed above.

8. Being dissatisfied with the said judgment of conviction and order of sentence dated 10.09.2025, the convict preferred a Criminal Appeal bearing no. 43 of 2025 and the same has also been dismissed through the impugned judgment dated 15.12.2025. Hence this Criminal Appeal.

9. Learned counsel for the petitioner has argued that the cheque in question was given to the complainant against the purchase of Tractor Trolley from complainant and the sale price was fixed as Rs. 3,55,000/- and at that very stage it was clarified that the cheque would be cleared only after sanctioning of the loan against the said Vehicle after transfer of ownership in the name of the accused. Learned counsel has further argued that the complaint itself contains an averment that no loan was given to the accused, and before presenting the Cheque the complainant had verified it from the Bank also, when she came to learn that the sufficient amount is not available in the account of the accused. Thus, according to the learned counsel, the Cheque could be presented by the complainant, only if, the accused-purchaser would get the loan, but the same was not sanctioned as the ownership of the Tractor throughout remained in the name of the complainant.

10. Learned counsel has further pointed out that the vehicle in question is still in possession of the complainant, therefore, this material admission would establish that the transaction relating to purchase of Tractor was never complete, therefore, the dishonor of Cheque alone cannot be construed as breach of contract on the part of the accused, much less a liability of legally enforceable debt. Therefore, the impugned judgment of conviction dated 10.09.2025 passed by the trial court is bad in law, and the appellate court also fell into error of law while dismissing the petitioner's appeal. He prays that the impugned judgment be set aside and the petitioner be acquitted in the subject case.

11. The prayer is opposed by Mr. Gyanendra Kumar Gyani, learned counsel for the complainant who has argued that the entire case of the prosecution/complainant is founded upon the documentary evidence and the accused has neither disputed his signatures on the cheque nor questions the cheque which belonged to his account, therefore, in the event of refusing to make the payment to the complainant despite issuance of demand notice, it becomes clear that the ingredients to constitute the offence are complete. Thus, the trial court rightly convicted the petitioner. He submits that the appellate court has also affirmed the judgment of conviction dated 10.09.2025 passed by the trial court and the impugned judgment does not call for any interference by this Court in exercise of revisional jurisdiction.

12. Heard Shri Dev Prakash Singh, learned counsel for the petitioner, Shri Gyanendra Kumar Gyani, learned counsel for the complainant and learned A.G.A. for the State.

13. Before examining the prosecution evidence on record as well as the merits to test the correctness and validity of the impugned judgments convicting the petitioner, this Court deems it appropriate to analyze the statutory provisions relating to the prosecution of an accused for dishonour of cheque punishable under Section 138 "N.I. Act". The said Section reads as under:-

"138. Dishonour of cheque for insufficiency, etc., of funds in the account."

Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for a term which may be extended to two years, or with fine which may extend to twice the amount of the cheque, or with both: Provided that nothing contained in this section shall apply unless"

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, [within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid;

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Explanation.-For the purposes of this section, "debt or other liability" means a legally enforceable debt or other liability.]"

14. A reading of the above would make it clear, that where the account holder has issued a cheque for payment to any other person for discharge, in whole or in part of any debt or any other liability, and if the same is dishonoured, the drawer is said to have committed the above offence, but before presentation of the complaint, three conditions contained in Proviso to Section 138 "N.I. Act" are required to be fulfilled by the complainant: 1) the cheque, was presented before the Bank within the validity period; 2) the holder of the cheque makes a demand for payment of said amount of money by giving a notice in writing within a period of 30 days from the receipt of information regarding dishonor of cheque from the Bank and the drawer of the cheque fails to make the payment of money to the holder of the cheque or the payee within 15 days of the receipt of the statutory notice. Once these conditions are fulfilled, a valid cause of action accrues in favour of complainant for prosecution of the accused.

15. Further, Section 118 "N.I. Act", contains the special rules of evidence in the nature of presumptions in respect of negotiable instruments, which also includes a presumption that every negotiable instrument was made or drawn for consideration, until the contrary is proved. Similarly, Section 139 "N.I. Act" also lays down a presumption that the holder of the cheque received the cheque for discharge, whole or in part, of any debt or other liability, unless the contrary is proved.

16. The prosecution of the accused under Section 138 "N.I. Act", is governed by Chapter XX Code of Criminal Procedure i.e trial of summons case by Magistrate.

17. The legislature in its wisdom has laid down a summary procedure for such trials, perhaps for this reason a presumption has been attached to the cheque/negotiable instrument in question that it was issued by accused against a consideration, and further the holder of the cheque received the cheque, towards discharge, in whole or in part of any debt or other liability. The aim of the "N.I. Act" is to strengthen the mercantile transactions by attaching credibility to cheque/negotiable instruments, and in order to shorten the trial procedure the complainant is not required to initially discharge the onus regarding liability of the accused. Thus, it is abundantly clear that the statute has placed reverse onus upon the accused to rebut the statutory presumptions attached to the cheque/negotiable instruments. 18. Essentially, in a trial under Section 138 "N.I. Act", the courts are required to ascertain, if, the accused, has successfully shattered the presumption attached to the cheque in question.

19. Now while reverting back to the facts of the case in hand and considering the respective submissions of the learned counsel for the parties, this Court finds that the prosecution of the petitioner-accused arose from breach of an agreement dated 03.03.2021, whereby the complainant had agreed to sell her Tractor and Trolley bearing Registration No. U.P. 96E/0304 to the accused against a sale consideration of Rs. 3,55,000/-, which was given to the complainant through cheque bearing no. 003653 dated 15.03.2021. A perusal of the complaint would also show that in all fairness the complainant clearly mentioned in the complaint that the cheque was to be cleared after sanction of loan in favour of the accused, that too after completion of formalities of transfer of ownership of vehicle in his favour.

20. During the course of hearing, it is fairly conceded by learned counsel for the complainant that the transfer of the ownership of the Tractor in favour of the accused was never entered, as it remained in the name of the complainant. Thus, the loan which was to be obtained by the accused on the basis of transfer of ownership of purchased vehicle was never disbursed, and the cheque on presentation dishonored for insufficient funds. The cheque is dated 15.03.2021, and as per agreement between the parties the accused assured that the cheque would be cleared in 13 days only after the sanction of loan, whereas in essence as per the word and promise of the accused the cheque was to be presented only after sanctioning the loan, but the said condition remained unfulfilled.

21. Notably, the complainant in her complaint has specifically averred that on verification from the Bank the loan amount not deposited in the account of the accused, therefore, she had the knowledge that for lack of finance facility in favour of accused the cheque would not be cleared. Though despite this knowledge the complainant presented the cheque, but there is no averment in the complaint that before presentation either accused was informed or he asked the complainant to present the cheque.

22. Apart from the above, the complainant in her cross examination suffered vital admission regarding execution of agreement dated 03.03.2021 as well as the conditions to get the ownership of vehicle transferred in his name, before en-cashing the cheque of Rs. 3,55,000/-.

Further the complainant also admitted that the accused never borrowed the amount of Rs. 3,55,000/- from her. Most importantly, the complainant deposed before the trial court that the Tractor is still with her, therefore, it becomes crystal clear that the transaction of sale of vehicle between the parties failed for variety of reasons and the presumption attached to the cheque in question that it was issued for discharge of legal liability or enforceable debt stands sufficiently rebutted.

23. Admission is the best evidence which can be used against a party, and surprisingly, the trial court notices the vital admissions suffered by the complainant, but still it proceeded to convict the accused on the ground that the cheque was issued by the accused which belonged to his account. Further, this Court finds that the appellate court has also failed to exercise the jurisdiction in a judicious manner, while affirming the judgment of conviction and order of sentence dated 10.09.2025 passed by the trial court. The approach adopted by the trial court as well as the appellate court in convicting the petitioner in the facts and circumstances of the case is erroneous in law, and is result of misreading of evidence as well as law on the subject.

24. As a result, this Court has no hesitation in holding that the impugned judgment dated 15.12.2025 passed by the appellate court affirming the judgment dated 10.09.2025 passed by the trial court suffers from grave illegality and impropriety, therefore, interference is warranted by this Court in exercise of revisional jurisdiction.

25. Resultantly, the revision petition succeeds and the impugned judgment dated 10.09.2025 passed in Complaint Case No. 1771 of 2021 as well as order dated 15.12.2025 in Criminal Appeal No. 43 of 2025 are set aside and petitioner-Surendra Singh is acquitted in the Complaint Case No. 1771 of 2021 titled Smt. Shanti Devi versus Surendra Singh.

(2026) 4 ILRA 1226
REVISIONAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 01.04.2026

BEFORE

THE HON'BLE JAI PRAKASH TIWARI, J.

Criminal Revision No. 5278 of 2025

Juvenile X

...Revisionist

Versus

State of U.P. & Anr.

...Opposite Parties

Issue for Consideration

Issue pertains to whether the Juvenile Justice Board was justified in invoking s. 15 of Juvenile Justice (Care and Protection of Children) Act, 2015 and referring the revisionist for trial as an adult when the medical opinion assessed his age as "about 16 years" and he had not completed 16 years of age on the date of alleged offence.

Headnotes

Juvenile Justice (Care and Protection of Children) Act, 2015 - ss. 15, 18 - Code of Criminal Procedure, 1973 - ss. - Indian Penal Code, 1860 - ss. 452, 302, 506 - About 16 years - Determination of age - Preliminary assessment in heinous offences - Applicability - Word "about" used in age determination not synonymous with "completed" - Interpretation of - An FIR was lodged against the revisionist and others in Case Crime No. 134 of 2017 under various ss. of IPC, alleging that the accused persons allegedly abused certain women and assaulted the complainant's father when he objected and subsequently attacked him with a knife while he was sleeping, resulting in his death - During the proceedings, the revisionist was declared a juvenile by Juvenile Justice Board on the basis of a medical age determination report assessing his age to be about 16 years - Despite the absence of any significant adverse material in District Probation Officer's report, the Juvenile Justice Board conducted a preliminary assessment u/s 15 of Juvenile Justice Act, 2015 and referred the matter to Children's Court for trial as an adult - Aggrieved thereby, the revisionist challenged the orders of Juvenile Justice Board and Children's Court, contending that on the date of occurrence he was approximately 15 years and 6 months old and, therefore, s. 15 of Act was inapplicable to him.

Held: There is no settled legal principle that specifically deals with the interpretation of term "about," which is commonly used by courts in determining age - When the exact age of child is not known and there is no documentary evidence available, a medical examination is conducted to determine age as per mandate of s. 94(2)(iii) of JJ Act, 2015 - However, such medical opinion does not provide an exact age and is only an estimate on the basis of any ossification test or any other latest medical age determination test - While considering the medical report given by CMO, the JJ Board should interpret it in a manner that benefits the child and serves the interests of justice - The Board should not simply adopt the age mentioned in report without proper consideration and application of mind - The JJ Board ought to have given benefit of a margin of error in age determination, as recognized by judicial precedents - Although, the order regarding the determination of age has not been challenged - Only the preliminary assessment order has been challenged - The Board conducted a preliminary assessment on the basis that the child in conflict with law was approximately 16 years of age, whereas u/s 15 of J.J. Act, a preliminary assessment requires the child's age to be 16 years or more as of date of incident - Thus, "about" could not be construed as "completion" provided u/s 15 of J.J. Act, 2015 - Accordingly, impugned orders set aside, thus, criminal revision allowed - Remanded back. [Paras 12, 13, 14, 16, 17] (E-13)

Case Law Cited

Raju v. State (GNCT of Delhi) reported in 2025 SCC OnLine Del 6361; *Vinod Katara v. State of M.P.*, reported in 2022 SCC Online SC 1204 - referred to

Books and Periodicals Cited

Black's Law Dictionary - referred to

List of Acts

Indian Penal Code, 1860; Juvenile Justice (Care and Protection of Children) Act, 2015

List of Keywords

Criminal Revision; Declared juvenile; Indian Penal Code, 1860; Juvenile Justice (Care and Protection of Children) Act, 2015; Child in conflict with law; About 16 years; Preliminary assessment; Heinous offence; Mental and physical capacity; Consequences of offence and circumstances; Jurisdiction of Juvenile Justice Board; Adult; Age determination; Benefit of doubt; Medical examination; Medical report; Documentary evidence; Ossification test; Medical opinion; Margin of error; Benefits the child and serves the interests of justice; About could not be construed as completion; Date of incident; Revision allowed; Remanded back.

Case Arising From

ORIGINAL JURISDICTION: Criminal Revision No. - 5278 of 2025

From the Judgment and Order dated 16.07.2024 passed by the Additional District and Sessions Judge/Special Judge (POCSO), Court No. 2, Ghaziabad in Criminal Case No. 65 of 2018 and also Order dated 20.03.2018 passed by Juvenile Justice Board, Ghaziabad in Case No. 76 of 2017 arising out of Case Crime No. 134 of 2017, Police Station Shahibabad, Ghaziabad.

Appearances for Parties

Adv. for the Revisionist(s):

Gaurav Tiwari, Sanjay Chaturvedi

Adv. for the Opposite Party(s):

G.A., Gaurav Singh Tomar, Inder Pal Singh Tomar

(Delivered by Hon'ble Jai Prakash Tiwari, J.)

1. Heard learned counsel for the revisionist, learned counsel for the opposite party no. 2, as well as Sri Ashutosh Srivastava, learned A.G.A. for the State and perused the entire material available on record.

2. This criminal revision has been filed under Section 102 of the Juvenile Justice (Care and Protection of Children) Act, 2015 for setting aside the judgment and order dated 16.07.2024 passed by learned Additional District and Sessions Judge/Special Judge (POCSO), Court No. 2, Ghaziabad in Criminal Case No. 65 of 2018 (State vs. Anash), and order dated 20.03.2018 passed by the learned Juvenile Justice Board, Ghaziabad in Case No. 76 of 2017 (State vs. Anash), arising out of Case Crime No. 134 of 2017, under Sections 452, 302, 506 IPC, Police Station Shahibabad, District Ghaziabad.

3. Learned counsel for the revisionist submits that the present criminal revision arises out of an FIR dated 26.01.2017 lodged by opposite party no. 2 against the revisionist and others, registered as Case Crime No. 134 of 2017 under Sections 452, 302, and 506 I.P.C. at Police Station Sahibabad, District Ghaziabad. As per the prosecution case, on 21.01.2017 at about 9:00 P.M., the accused persons allegedly abused certain women and assaulted the complainant's father when he objected. Thereafter, in the intervening night of 25/26.01.2017 at about 1:30 A.M., the said person was allegedly attacked with a knife while sleeping, resulting in his death.

4. It is submitted that the revisionist was declared a juvenile by the Juvenile Justice Board, Ghaziabad, vide order dated 26.09.2017 on the basis of the medical report of the Chief Medical Officer dated 03.06.2017, which assessed his age to be **about 16 years** on that date. Accordingly, on the date of the incident, the revisionist was approximately 15 years and 6 months old and, therefore, below 16 years of age. Learned counsel contends that the District Probation Officer's report dated 21.11.2017 does not disclose any adverse material or criminal antecedents against the revisionist, except a vague apprehension regarding bad company.

5. Despite this, the Juvenile Justice Board, by order dated 20.03.2018, referred the matter to the Children's Court for trial of the revisionist as an adult. It is argued that such referral is contrary to Section 15 of the Juvenile Justice (Care and Protection of Children) Act, 2015, which applies only to children aged 16 years or above on the date of commission of the offence. Since the revisionist was below 16 years, the preliminary assessment and mental status examination were

without jurisdiction and contrary to law. It is further submitted that the learned trial court wrongly rejected the application dated 17.01.2023 and arbitrarily closed the opportunity to cross-examine Dr. Saket Nath Tiwari, thereby causing prejudice to the revisionist.

6. Learned counsel further submits that the mental status examination report is neither conclusive nor sufficient to justify trial of the revisionist as an adult. Since Section 15 itself was inapplicable, the consequential provisions of Section 18 of the Act also could not have been invoked. The impugned orders are stated to be based on conjectures, unsupported by evidence, and contrary to the scheme and provisions of the Juvenile Justice Act. It is lastly submitted that the revisionist has already undergone the maximum period of three years contemplated under the Act, and therefore continuation of the proceedings is wholly unjustified. Accordingly, the impugned orders passed by the Juvenile Justice Board and the learned trial court are liable to be set aside.

7. In support of his submissions, learned counsel for the revisionist has placed reliance upon the judgment of High Court of Delhi at New Delhi in the case of *Raju vs. State (GNCT of Delhi)* reported in **2025 SCC OnLine Del 6361**.

8. Learned counsel for the opposite party no. 2 and learned A.G.A. has vehemently opposed the submissions made by the learned counsel for the revisionist and has submitted that the judgment and order of the courts concerned are in accordance with law.

9. Having heard the learned counsel for the parties and perused the record.

The core of this revision rests on the age of the accused. A report from the Chief Medical Officer dated 03.06.2017, determined the revisionist was **about 16 years** old at that time. Consequently, the Juvenile Justice Board, Ghaziabad determined the age of child in conflict with law **about 16 years** declared him a juvenile on 26.09.2017. Crucially, the learned counsel for the revisionist argues that on the actual date of the incident 26.01.2017, the revisionist was approximately 15 years and 6 months old.

10. The learned counsel for the revisionist submits that the revisionist has been wrongly assessed under Section 15 of the JJ Act. This provision applies only when a child in conflict with law has completed the 16 years of age or above.

11. Here, it would be relevant to go through the opening line of Section 15, which clearly states:

"In case of a heinous offence alleged to have been committed by a child, who has completed or is above the age of sixteen year". This makes it clear that the child must have completed 16 years of age."

*In the present case, the age of the revisionist has been recorded as "about 16 years." As per **Black's Law Dictionary**-*

"The word "about" is generally construed to mean "approximately", "nearly", or "close to" a specific amount, time, or quantity"

The word "about" is generally understood to mean something that is not exact but approximate. Therefore, it indicates that the revisionist has not yet completed 16 years of age.

12. The Court, while adjudicating the present judgment, has dealt with the following two issues:

Firstly, the issue that arises for consideration is whether the terms “completed” and “about” are synonymous with each other.

The words ‘completion’ and ‘about’ are not synonymous in legal interpretation, as each conveys a distinct meaning and legal effect. The term “completion” denotes the finalization, fulfillment, or full execution of an act or obligation. In contrast, the word “about” is ordinarily used to indicate approximation, relation, or reference to a subject matter, without implying finality or conclusiveness. Under principles of statutory and contractual interpretation, courts generally assign words their ordinary and contextual meanings unless expressly defined otherwise. Therefore, treating ‘completion’ and ‘about’ as synonymous would be legally unsustainable, as such interpretation may alter the objective of the act and create ambiguity in the construction of the statute.

The JJ Board failed to properly consider the use of the word "**about 16 years**" and incorrectly treated the revisionist as having completed 16 years, thereby wrongly declaring him as an adult. On the bare perusal of Section 15 of the JJ Act, the revisionist was not eligible for assessment under this provision. Section 15 of the JJ Act, 2015 reads as under:-

Section 15. Preliminary assessment into heinous offences by Board.

(1) In case of a heinous offence alleged to have been committed by a child, who has completed or is above the age of sixteen years, the Board shall conduct a preliminary assessment with regard to his mental and physical capacity to commit such offence, ability to understand the consequences of the offence and the circumstances in which he allegedly committed the offence and may pass an order in accordance with the provisions of sub-section (3) of section 18:

Provided that for such an assessment, the Board may take the assistance of experiences psychologists or psycho-social workers or other experts.

Explanation. For the purposes of this section, it is clarified that preliminary assessment not a trial but is to assess the capacity of such child to commit and understand the consequence of the alleged offence.

(2) Where the Board is satisfied on preliminary assessment that the matter should be disposed of by the Board, then the Board shall follow the procedure, as far as may be, for trial in summons case under the Code of Criminal Procedure, 1973 (2 of 1974):

Provided that the order of the Board to dispose of the matter shall be appealable under sub-section (2) of section 101:

Provided further that the assessment under this section shall be completed within the period specified in section 14.

Secondly, the issue that arises for consideration is whether a child in conflict with law, who has neither attained nor completed the age of 16 years, can be subjected to an assessment under Section 15 of the Juvenile Justice Act, 2015.

There is no settled legal principle that specifically deals with the interpretation of the term "**about**," which is commonly used by courts in determining age. When the exact age of the child is not known and there is no documentary evidence available, a medical examination is conducted to determine the age as per mandate of section 94(2)(iii) of the JJ Act, 2015. However, such medical opinion does not provide an exact age and is only an estimate on the basis of any ossification test or any other latest medical age determination test.

13. Therefore, while considering the medical report given by the CMO, the JJ Board should interpret it in a manner that benefits the child and serves the interests of justice. The Board should not simply adopt the age mentioned in the report without proper consideration and application of mind.

14. Further, the JJ Board ought to have given the benefit of a margin of error in age determination, as recognized by judicial precedents.

Reference may be made to the judgment of the Hon'ble Apex Court in the case of ***Vinod Katara Vs. State of M.P.***, reported in ***2022 SCC Online SC 1204***, wherein, the Hon'ble Apex Court held:

"60. The bone ossification test is not an exact science that can provide us with the exact age of the person. As discussed above, the individual characteristics such as the growth rate of bones and skeletal structures can affect the accuracy of this method. This Court has observed in Ram Suresh Singh v. Prabhat Singh, (2009) 6 SCC 681; (2010) 2 SCC (Cri) 1194, and Jyoti Prakash Rai v. State of Bihar. (2008) 15 SCC 223; (2009) 3 SCC (Cri) 796, that the ossification test is not conclusive for age determination because it does not reveal the exact age of the person, but the radiological examination leaves a margin of two years on either side of the age range as prescribed by the test irrespective of whether the ossification test of multiple joints is conducted. The courts in India have accepted the fact that after the age of thirty years the ossification test cannot be relied upon for age determination. It is trite that the standard of proof for the determination of age is the degree of probability and not proof beyond reasonable doubt".

15. In view of the above, the revisionist should have been given the benefit of this margin, and the assessment under Section 15 of the JJ Act was not justified.

16. Although, the order regarding the determination of age has not been challenged in this revision. Only the preliminary assessment order has been challenged. The Board conducted a preliminary assessment under Section 15 of the Act on the basis that the child in conflict with law

was approximately 16 years of age, whereas under Section 15 of the J.J. Act, a preliminary assessment requires the child's age to be 16 years or more as of the date of incident.

17. From the above discussion and in the considered opinion of this Court, "about" could not be construed as "**completion**" provided under Section 15 of the J.J. Act, 2015.

18. In view of the aforesaid discussion, the impugned order dated 20.03.2018 passed by the Juvenile Justice Board, Ghaziabad and the order dated 16.07.2024 passed by the learned trial court cannot be sustained in the eyes of law.

19. Accordingly, the criminal revision is **allowed**.

20. The impugned judgment and order dated 16.07.2024 passed by the learned Additional District and Sessions Judge/Special Judge (POCSO), Court No. 2, Ghaziabad and the order dated 20.03.2018 passed by the Juvenile Justice Board, Ghaziabad are hereby **set aside**.

21. It is directed that the case of the revisionist shall be dealt with strictly in accordance with the provisions applicable to a juvenile under the Juvenile Justice (Care and Protection of Children) Act, 2015.

22. The matter is remanded back to the Juvenile Justice Board, Ghaziabad to proceed afresh in accordance with law.

23. Before parting with the judgment, I would like to express my appreciation to my Research Associate, **Ms. Divya Pandey** for her thorough research and assistance to the Court in the instant case.

(2026) 4 ILRA 1232
REVISIONAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 27.04.2026

BEFORE

THE HON'BLE LAKSHMI KANT SHUKLA, J.

Criminal Revision No. 5837 of 2025

Ramraj

...Revisionist

Versus

State of U.P. & Anr.

...Opposite Parties

Issue for Consideration

Issue pertains to whether the Family Court committed illegality and material irregularity in allowing the application u/s 125 Cr.P.C. and awarding maintenance to wife without framing any specific point for determination regarding the allegation of unchastity raised by the husband in his written statement, which was a statutory bar to the wife's claim for maintenance.

Headnotes

Code of Criminal Procedure, 1973 - ss. 125 - Maintenance - Grant of maintenance to wife - Allegation of adultery by husband - Necessity of determination - Framing of Issues - Family Court - Evidence - Written Statement - Pleadings - Opportunity to adduce evidence - Material irregularity - Revisional jurisdiction - Remand - The revisionist-husband challenged the judgment and order dated 27.06.2025 passed by the Principal Judge, Family Court, Gorakhpur in Case No. 39 of 2021 u/s 125 Cr.P.C., whereby the application filed by the wife for maintenance was partially allowed and the revisionist was directed to pay Rs. 4,000/- per month as maintenance - The revisionist contended that he had specifically pleaded in his written statement that the opposite party-wife was living an unchaste life and had an illicit relationship with another person - However, the trial court failed to frame any issue or point for determination regarding such allegation and passed the maintenance order without recording any finding on the said aspect - The opposite party and the State opposed the revision, submitting that no issue regarding chastity was framed and therefore, no evidence on such aspect could be considered - It was further argued that the revisionist failed to demonstrate any illegality or irregularity in the impugned order.

Held: Although no assertion regarding chastity of opposite party no. 2 was present in petition u/s 125 Cr.P.C. but the allegation of unchastity of opposite party no. 2 has been made in written statement filed by revisionist before the trial court - But the trial court did not frame any point for determination in this regard - Consequently no finding on that point could be given by trial court which causes serious injustice to revisionist, set aside - The impugned orders suffers from material irregularities - Accordingly, instant criminal revision allowed - The Trial Court is directed to frame a specific point for determination regarding unchastity of opposite party no. 2 and, thereafter, after affording adequate opportunity to parties to adduce evidence, if court requires necessary, to pass fresh order/judgment in accordance with law, expeditiously and without causing any undue delay. [Paras 10 to 13] (E-13)

Case Law Cited

Vijay Kumar Prasad v. State of Bihar (2004) 4 SCC 468; *Savitri v. Govind Singh Rawat* (1985) 4 SCC 337; *Jaiminiben Hirenghai Vyas and Another v. Hirenghai Rameshchandra Vyas and Another* (2015) 2 Supreme Court Cases 385 - referred to

List of Acts

Code of Criminal Procedure, 1973

List of Keywords

Criminal Revision; Family Court; Maintenance; s. 125 Cr.P.C.; Principal Judge; Criminal proceeding; Civil Procedure Code; Living in adultery constitute statutory bar; Evidence; Written statement; Allegation of unchastity; Point for determination; Trial Court; Revisional Jurisdiction; Material irregularity; Serious injustice; Impugned order set aside; Revision allowed; Matter remanded.

Case Arising From

ORIGINAL JURISDICTION: Criminal Revision No. - 5837 of 2025

From the Judgment and Order dated 27.06.2025 passed by the Principal Judge, Family Court, Gorakhpur, in Case No. 39 of 2021.

Appearances for Parties

Advs. for the Revisionist(s):

Saurabh Yadav, Suraj Raj

Advs. for the Opposite Party(s):

G.A., Kailash Chaudhary, Nitesh Kumar Chaudhary

(Delivered by Hon'ble Lakshmi Kant Shukla, J.)

1. Rejoinder affidavit filed on behalf of revisionist, is taken on record.

2. Heard Mr. Saurabh Yadav, the learned counsel for revisionist, Mr. Gyanendra Singh, the learned AGA representing State-opposite party no. 1 and Mr. Kailash Choudhary, learned counsel representing opposite party no. 2 and perused the record.

3. The present revision has been preferred by revisionist Ramraj challenging the impugned judgment and order dated 27.06.2025 passed by learned Principal Judge, Family Court, Gorakhpur (hereinafter referred to as trial court) in Case No. 39/2021, under section 125 Cr.P.C. (Kumari Shushila Vs. Ramraj) wherein the trial court partially allowed the application of opposite party no. 2/the complainant under section 125 Cr.P.C. and the revisionist was ordered to pay Rs. 4,000/- monthly as maintenance to opposite party no. 2 the wife of revisionist.

4. Feeling aggrieved from that order the present criminal revision has been filed on the grounds that the impugned order has manifest error of law. It is absolutely illegal, unjust, improper, arbitrary against the evidence on record, hence the same is liable to be set aside by this Court invoking the revisional jurisdiction.

5. To elaborate his submission learned counsel appearing on behalf of revisionist urged that the revisionist has claimed in his objection that the opposite party no. 2 is leading unchastity life but the trial court failed to frame any issue in this regard and consequently no finding in this record has been recorded by the trial court and it is thus contended that the impugned order is not sustainable in law. In support of his submission he placed reliance upon paragraph 8 and 10 of the written statement which occurs at page 90 of the paper book. The relevant paragraph nos. 8 and 10 of the aforesaid written statement are quoted here under:-

"8. यह कि याची का अश्व नी कुमार पुत्र अज्ञा त ग्र ा म व पोस्ट -बरईपार, हाल मुकामनहर चौराहा, डोहिरया कला, पोस्ट -मिनवा, थाना-सहजनवाँ, जनपद-गोरखपुर के साथ अनैतिक सम्बन्ध था जिसके सम्बन्ध में अश्व नी कुमार की पत्नी मीना देवी ने दिनांक 27-12-2020 को थानाध्यक्ष सहजनवाँ, गोरखपुर को एक शिकायती प्रार्थना पत्र दी थी जिसकी छायाप्रति शपथ पत्र के साथ संलग्न है। जिस पर एनेक्चर सं०-1 डाला गया है।

10- यह कि याची का चाल-चलन ठीक नहीं था इसीलिए वह शपथकर्ता के साथ रहकर वैवाहिक जीवन का निर्वार बखूबी नहीं की और शपथकर्ता को वैवाहिक जीवन से वंचित रखी। याची व शपथकर्ता के बीच में कई बार सुलह-समझौता हुआ लेकिन याची ने सुलह समझौता का कभी पालन नहीं किया।"

6. Per contra learned AGA as well as learned counsel appearing on behalf of opposite party no. 2 submitted that there no issue was framed regarding chastity of opposite party no. 2. In such circumstances if there any evidence regarding unchastity or chastity had been adduced, such

evidence could not be taken into consideration. It is further submitted that the parties are bound to lead evidence confining the issues framed in the matter and submitted that the revisionist could not show any material irregularity in the impugned order. The jurisdiction of trial court on the matter is not disputed so this criminal revision is liable to be set aside and impugned order is liable to be confirmed.

7. Having heard the submissions urged by learned counsel appearing on behalf of revisionist regarding fact of unchastity claimed by revisionist and non framing of issue in this regard is clearly borne out from the record. Section 125 of Cr.P.C. entitles the wife, children and parents having no sufficient means of maintenance to get maintenance from husband, parents or children as the case may be, having sufficient means to maintain his wife, his/her parents or children as the case may be. In addition to that the wife has to qualify certain additional qualifications to get maintenance from her husband. Section 125 Cr.P.C. reproduced herein under:-

" 125. Order for maintenance of wives, children and parents.

(1) If any person having sufficient means neglects or refuses to maintain

(a) his wife, unable to maintain herself, or

(b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or

(c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or

(d) his father or mother, unable to maintain himself or herself.

a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct:

Provided that the Magistrate may order the father of a minor female child referred to in clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means.

[Provided further that the Magistrate may, during the pendency of the proceeding regarding monthly allowance for the maintenance under this sub-section, order such person to make a monthly allowance for the interim maintenance of his wife or such child, father or mother, and the expenses of such proceeding which the Magistrate considers reasonable, and to pay the same to such person as the Magistrate may from time to time direct:

Provided also that an application for the monthly allowance for the interim maintenance and expenses of proceeding under the second proviso shall, as far as possible, be disposed of within sixty days from the date of the service of notice of the application to such person.)

Explanation: *For the purposes of this chapter,-*

(a) "minor" means a person who, under the provisions of the Indian Majority Act 1875 is deemed not to have attained his majority;

(b) "wife" includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried.

(2) *Any such allowance for the maintenance or interim maintenance and expenses of proceeding shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance or interim maintenance and expenses of proceeding, as the case may be.]*

(3) *If any person so ordered fails without sufficient cause to comply with the order, any Magistrate may, for every breach of the order, Issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole or any part of each month's allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be, remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made;*

Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due:

Provided further that if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing.

Explanation. *If a husband has contracted marriage with another woman or keeps a mistress, it shall be considered to be just ground for his wife's refusal to live with him.*

(4) No wife shall be entitled to receive an [allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be] from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.

(5) *On proof that any wife in whose favour an order has been made under this section is living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order"*

8. Due to existence of Clause 4 to section 125 of Cr.P.C. if wife leads her life in adultery she cannot claim any maintenance from her husband meaning thereby if specific pleading in this regard is made by husband i.e. crucial point which must be determined prior to order of payment of any maintenance. It is apparent from perusal of written statement of revisionist occurred on page 90 of paper book that the revisionist has placed specific versions disclosing the name and address of co-adulterer. Though the revisionist is defendant/opposite party before the trial court and the case was filed by opposite party no. 2. Though the provision under section 125 Cr.P.C. is a part of criminal proceeding but when such proceeding is initiated the provisions of civil procedure code applies. In *Vijay Kumar Prasad Vs. State of Bihar (2004) 4 SCC 468* and *Savitri Vs. Govind Singh Rawat (1985) 4 SCC 337* it is held by Hon'ble Apex Court that the jurisdiction exercised by Magistrate under Chapter IX Cr.P.C. is not strictly criminal in nature and that proceedings under section 125 Cr.P.C. are essentially civil in nature. In *Jaiminiben Hirenbbhai Vyas and Another Vs. Hirenbbhai Rameshchandra Vyas and Another (2015) 2 Supreme Court Cases 385* the Apex Court has held that every final order under section 125 Cr.P.C. and other sections referred to in sub-section (c) of Section 354 must contain points for determination, the decision thereon and the reasons for such decision. In other words, Section 125 and Section 354(6) must be read together. In *Shailesh Kumar Yadav Vs. State of U.P. and Another* order dated 14th November, 2025 passed by the co-ordinate Bench of this Court it is observed that several judgments passed by the learned Trial Court have been decided without framing any points for determination. A perusal of the record further shows that the trial court decided the section 125 Cr.P.C. application without framing any points for determination, which is mandatory as per Section 354(6) Cr.P.C. This provision requires that every order under section 117 or sub-section (2) of Section 138, and every final order made under Section 125, Section 145, or Section 147, shall contain the point or points for determination, the decision thereon, and the reasons for the decision. It is clarified that in the absence of framing any points for determination, it is difficult to ascertain the basis on which the Trial Court passed the order or awarded the maintenance amount.

9. At the stage of framing of points for determination the trial court should be very cautious while considering the provisions contained under section 125 of Cr.P.C. Living in adultery constitutes a statutory Bar to the entitlement of a wife to get maintenance meaning thereby it is the legal requirements that the petition of wife in this regard must contained the pleading that the she is not living in adultery in any manner whatsoever.

10. In view of above discussions, I am of the considered opinion that although no assertion regarding chastity of opposite party no. 2 was present in petition under section 125 Cr.P.C. but the allegation of unchastity of opposite party no. 2 has been made in written statement filed by revisionist before the trial court. But the trial court did not frame any point for determination in this regard. Consequently no finding on that point could be given by the trial court which causes serious injustice to the revisionist in the matter.

11. In view of above, the impugned judgment and order dated 27.06.2025 passed by learned Principal Judge, Family Court, Gorakhpur in Case No. 39/2021, under section 125 Cr.P.C. suffers from material irregularities, therefore, the same is liable to be set aside invoking its revisionist jurisdiction and present criminal revision deserves to be allowed.

12. Accordingly, the present criminal revision is hereby allowed. The Judgment and order dated 27.06.2025 passed by learned Principal Judge, Family Court, Gorakhpur is hereby set aside.

13. The Trial Court is directed to frame a specific point for determination regarding unchastity of opposite party no. 2 and, thereafter, after affording adequate opportunity to the parties to adduce evidence on the said issue, if court requires necessary, to pass fresh order/judgment in accordance with law, expeditiously and without causing any undue delay.

(2026) 4 ILRA 1238
REVISIONAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 17.04.2026

BEFORE

THE HON'BLE ACHAL SACHDEV, J.

Criminal Revision No. 6123 of 2025

Urvesh

...Revisionist
Versus

State of U.P. & Anr.

...Opposite Parties

Issue for Consideration

Issue pertains to whether the delay in conducting preliminary assessment u/s 15 of Juvenile Justice (Care and Protection of Children) Act, 2015, would invalidate the assessment and cause miscarriage of justice to the revisionist, thereby requiring interference with the order directing that the revisionist be treated as a major and tried as an adult.

Headnotes

Juvenile Justice (Care and Protection of Children) Act, 2015 - ss. 15, 20 - Indian Penal Code, 1860 - s. - 376 - The Protection of Children from Sexual Offences Act, 2012 - ss. 3/4 - Juvenile Justice (Care and Protection of Children) Model Rules, 2016 - Rule 10A(1) - Child in conflict with law - Heinous offence - Preliminary assessment - Mental and physical capacity - Understanding consequences of offence - Juvenile Justice Board - Children's Court - Adult trial - Transfer of juvenile - Delay in assessment - Statutory provision - Rehabilitation - Psychological evaluation - Age determination - Victim's appeal - POCSO proceedings - Fair trial - Procedural safeguards - Judicial delay - Scope of - The revisionist challenged the order passed by the Special Judge, POCSO Court, Budaun in Criminal Appeal whereby the appellate court set aside the order of Juvenile Justice Board and directed that the revisionist be treated as a major during trial - An F.I.R. was lodged against the revisionist under provisions of I.P.C. and POCSO Act alleging sexual assault upon the victim - During the alleged occurrence, the age of revisionist was 17 years 11 months and 19 days, and he claimed juvenility on the basis of his School Leaving Certificate - His application for being treated as a juvenile was initially rejected, but after directions of High Court, the Juvenile Justice Board conducted preliminary assessment under provisions of Juvenile Justice Act, 2015 and declared him a juvenile - The victim preferred an appeal against the order of Juvenile Justice Board, and Special Judge, POCSO Court, considering the gravity of offence and preliminary assessment report, modified the order and directed that the revisionist be tried as an adult - The revisionist contended that the preliminary assessment conducted after considerable delay violated provisions of Juvenile Justice Act and adversely affected his right to fair trial.

Held: Section 20 of JJ Act addresses the specific scenario where a child has attained 21 years but is yet to complete the prescribed term at a place of safety - At that stage, the Children's Court undertakes a fresh evaluation to determine whether the person has reformed or rehabilitated sufficiently to be released, or must serve the remaining term in an adult prison - A 4-year delay could therefore push the case into the ambit of s. 20 - In essence, a 4-year delay due to High Court pendency does not automatically invalidate the preliminary assessment, but significantly strengthens a juvenile's argument that any psychological evaluation now conducted is unreliable and that the assessment order if it goes against him deserves heightened judicial scrutiny - Accordingly, impugned order upheld, thus, criminal revision devoid of merit, dismissed. [Paras 25 to 29] (E-13)

Case Law Cited

Barun Chandra Thakur v. Master Bholu & Anr. **2022 SCC Online SC 870**; *Mother v. State of Karnataka & Another*, **2024 SCC Online SC 798**; *Mumtaz Ahmed Nasir Khan and Ors. v. The State of Maharashtra & Ors.*, **MANU/MH/1902/2019** - referred to

List of Acts

Juvenile Justice (Care and Protection of Children) Act, 2015; Indian Penal Code, 1860; The Protection of Children from Sexual Offences Act, 2012; Juvenile Justice (Care and Protection of Children) Model Rules, 2016

List of Keywords

Criminal Revision; Juvenile Justice (Care and Protection of Children) Act, 2015; Indian Penal Code, 1860; The Protection of Children from Sexual Offences Act, 2012; Juvenile Justice (Care and Protection of Children) Model Rules, 2016; Appeal by Revisionist; Special Judge/POCSO Court; F.I.R.; Children's Court; Charge-sheet; Investigation; Miscarriage of Justice; Juvenile; Major; Delay in preliminary assessment; Heinous Offence; Juvenile Justice Board; Mental capacity; Physical capacity; Consequences of the offence; Children's Court; Philosophy of rehabilitation over punishment; Miscarriage of Justice; Judicial Scrutiny; Procedural and societal impact of crime; Order upheld; Criminal revision devoid of merit; Dismissed.

Case Arising From

ORIGINAL JURISDICTION: Criminal Revision No. - 6123 of 2025

From the Judgment and Order dated 13.10.2023 passed by the Special Judge POCSO Court, Badaun in Criminal Appeal No. 21 of 2013.

Appearances for Parties

Adv. for the Revisionist(s):
Raghuvansh Mishra

Advs. for the Opposite Party(s):
Arvind Kumar Sahu, G.A., Praveen Kumar Srivastava

(Delivered by Hon'ble Achal Sachdev, J.)

1. Heard Sri Raghuvansh Misra, learned counsel for the revisionist, learned A.G.A. for the State and Sri Praveen Kumar Srivastava, learned counsel for the opposite party no. 2.

2. The present criminal revision has been preferred, being aggrieved by the order dated 13.10.2023 passed by the Special Judge, POCSO Court, Budaun in Criminal Appeal No. 21/2013 (Victim A Vs. State of U.P. and Anr.)

3. Facts giving rise to present revision are that an appeal was preferred by the revisionist, Urvesh @ Pravesh Kumar before the Children's Court pursuant to direction given in the order dated 14.09.2021 passed by this Court in Criminal Revision No. 163 of 2019 [Urvesh @ Pravesh Kumar (Minor) Vs. State of U.P. and Another]. wherein, vide order dated 14.09.2021, this Court quashed the order dated 04.08.2018 passed by the learned 8th Additional Sessions Judge/POCSO Court, Budaun in Misc. Case No. 95 of 2018 and had directed the Sessions Court to pass a fresh order after considering the entire evidence and material. After consideration, a fresh order dated 13.10.2023 was passed by the Special Judge, POCSO Court, Budaun in Criminal Appeal No. 21/2013 [Victim 'A' v. State of U.P. and Anr.] wherein the Special Judge has passed an order whereby the revisionist was ordered to be treated a major during the trial. The revisionist is working as worker at sweet shop and earns merely Rs. 7000/- per month to earn his bread and butter. In the present matter, an F.I.R. bearing Case Crime No. 15 of 2018 was lodged on 23.01.2018 by the informant, the victim, under Section 376 I.P.C. at Police Station- Kadar Chowk, District- Budaun against the revisionist wherein it has been alleged that the revisionist had sexually assaulted the victim. In the matter, investigation was conducted and a charge-sheet dated 10.03.2018 was submitted by the Investigating Officer under Section 376 I.P.C. and 3/4 POCSO Act whereupon cognizance of the matter was taken by the 8th Additional Sessions Judge/POCSO Court, Budaun on 25.04.2018. The date on which the alleged sexual harassment was committed, the age of the revisionist was 17 years 11 months and 19 days, and hence a minor. The date of birth of the minor is 03.02.2000 which is clearly stated in the School Leaving Certificate of the revisionist dated 28.01.2018. Subsequent to the cognizance being taken by the 8th Additional Sessions Judge/POCSO Court, Budaun, an application was preferred by the revisionist on 12.02.2018 through his father before the trial court/POCSO and his plea for being treated as a juvenile was initially rejected by the trial court on 04.08.2018, but the High Court, on 14.09.2021, set aside the order dated 04.08.2018 and directed reconsideration, pursuant to which the trial court on 25.11.2021 declared him a juvenile. Following a mental assessment under the Juvenile Justice (Care and Protection of Children) Act, 2015, the Juvenile Justice Board on 12.12.2022 directed that he be tried as a juvenile; however, on an appeal by the victim, the Special Judge (POCSO Court), Budaun, vide order dated 13.10.2023, set aside the decision of the Juvenile Justice Board and held that the revisionist should be treated as a major during trial.

4. Learned counsel for the revisionist argues that the order dated 13.10.2023 passed by the Children Court/Special Judge (POCSO Act), Budaun, in Criminal Appeal No. 21/2023, Victim 'A', resident of village Gangpur, Police Station- Kadarchowk, District- Budaun Vs. State of UP and Another violates express provisions contained in Section 15 of Juvenile Justice (Care and Protection of Children) Act, 2015 and has also placed reliance on the guidelines of Hon'ble Supreme Court in the case of **Barun Chandra Thakur Vs. Master Bholu & Anr. 2022 SCC Online SC 870**. Learned counsel for the revisionist submits that the judgment highlights the tension between the victim's right to justice and juvenile's right to rehabilitation and reinforces that children in conflict with law cannot be automatically treated as adults; due process must be followed and sets a benchmark for future cases involving heinous offences by juveniles, ensuring that transfer to adult courts is not routine but based on rigorous assessment. The **Barun Chandra Thakur (supra)** case is a landmark ruling that underscores the importance of scientific, expert-driven assessment before treating juveniles as adults in heinous crimes. It strengthens procedural

safeguards while acknowledging the gravity of offences, ensuring justice remains both fair and humane.

5. Learned counsel for the revisionist further submits that as per the provisions contained in Section 15(1) of The Juvenile Justice (Care and Protection of Children) Act, 2015 and the rules enacted thereunder, the Juvenile Board was duty bound to conduct preliminary assessment of the child in conflict with law who is aged between 16 -18 years and has been accused of having committed a heinous offence in light of provisions contained therein. Learned counsel for the revisionist has drawn attention of the Court to the fact that the Juvenile Justice (Care and Protection) Act, 2015 or the Model Rules enacted in support thereof do not lay down any guidelines or framework to facilitate the Board in making a proper preliminary assessment on the relevant aspects and only liberty that has been given to the Board is to obtain assistance of an experienced psychologist or a psycho social worker. The task of preliminary assessment under Section 15 of the Juvenile Justice (Care and Protection) Act, 2015, has its own implications as regards the trial of the case.

6. Learned counsel for the revisionist has further submitted that Section 15(1) mandates that in the case of a heinous offence alleged to have been committed by a child who has completed or is above the age of sixteen years, the Juvenile Justice Board (JJB) shall conduct a preliminary assessment concerning :

- (a) His mental and physical capacity to commit such an offence,
- (b) His ability to understand the consequences of the offence, and
- (c) The circumstances in which he allegedly committed the offence.

And only then, the Board may pass an order in accordance with Section 18(3) and, in holding a preliminary assessment, it may take the assistance of experienced psychologists, psycho-social workers, or other experts. Crucially, the statute clarifies that a preliminary assessment is not a trial, but is only to assess the capacity of the child. Only juveniles committing heinous offences defined under Section 2(33) as offences carrying a minimum imprisonment of 7 years or more are eligible for preliminary assessment under Section 15. Learned counsel for the revisionist has drawn the attention of the Court to paragraphs 45 and 76 of the **Barun Chandra Thakur (supra)** that underscores the importance of scientific, expert-driven assessment before treating juveniles as adults in heinous crimes. It strengthens procedural safeguards while acknowledging the gravity of offences, ensuring justice remains both fair and humane.

7. Learned counsel for the revisionist has submitted further that vide order dated 13.10.2023 passed by the appellate court in criminal appeal preferred by the victim against the order declaring the revisionist as a juvenile, the appellate court directed the trial of the revisionist as an adult and the appellate court failed to consider the fact that the preliminary assessment of the revisionist was conducted after four years from the date of the alleged offence and on the date of preliminary assessment of the accused/revisionist, the accused had become a major and belated

preliminary assessment, in absence of a speaking order explaining the delay, has adversely affected valuable rights of the revisionist to a fair trial.

8. Learned counsel for the opposite party no. 2 has argued that the delay in preliminary assessment had been caused by acts of the accused. He further submits that an F.I.R. bearing Case Crime No. 15/2018, under Section 376 I.P.C. was lodged by the informant on 23.01.2018 against accused/revisionist and after investigation, a charge-sheet was preferred before the Children Court/POCSO Court, Budaun and cognizance of the offence was taken by the court on 25.04.2018. Subsequent to the cognizance, father of the accused preferred an application before the Juvenile Justice Board and the same was rejected in the absence of any reliable document. The accused/revisionist filed a Criminal Revision No.3163/2019 before the Allahabad High Court and vide order dated 14.09.2021, the revision was allowed, and the trial court was directed to decide the matter afresh after considering the entire evidence and materials available on record. In pursuance of the order dated 14.09.2021 passed in the revision, the Juvenile Justice Board, Budaun, passed a fresh order holding the accused/revisionist to be a Juvenile after conducting a preliminary assessment of the accused/revisionist in terms of Section 15 of J.J. Act and decided to proceed with the trial. Aggrieved by the order dated 12.12.2022, the victim preferred an appeal under Section 101 of J.J. Act. The appellate court, vide order dated 13.10.2023, modified the order of Juvenile Justice Board, Budaun, owing to gravity of offence and preliminary assessment report. The order under challenge does not suffer from any irregularity.

9. Learned counsel for the opposite party no. 2 further submits that the time frame for completion of preliminary assessment is merely directory and where the delay in conducting the preliminary assessment arises due to judicial intervention, the delay won't result in lapse of proceeding. In essence, a 4-year delay due to High Court pendency does not automatically invalidate the preliminary assessment, but significantly strengthens a juvenile's argument that any psychological evaluation now conducted is unreliable and that the assessment order if it goes against him, deserves heightened judicial scrutiny.

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

11. At the very outset, it would be pertinent to mention here that the present revision is directed to the modification of the order of the Juvenile Justice Board in a criminal appeal preferred by the victim, whereunder, the appellate court had directed the trial of the child in conflict with law as an adult.

12. Section 15 of The Juvenile Justice (Care and Protection of Children) Act, 2015, is being reproduced below for the sake of convenience :-

15. Preliminary assessment into heinous offences by Board. - (1) *In case of a heinous offence alleged to have been committed by a child, who has completed or is above the age of sixteen years, the Board shall conduct a preliminary assessment with regard to his mental and physical capacity to commit such offence, ability to understand the consequences of the offence and the circumstances in which he allegedly committed the offence, and may pass an order in accordance with the provisions of sub section (3) of section 18:*

Provided that for such an assessment, the Board may take the assistance of experienced psychologists or psycho-social workers or other experts.

Explanation. - For the purposes of this section, it is clarified that preliminary assessment is not a trial, but is to assess the capacity of such a child to commit and understand the consequences of the alleged offence.

(2) Where the Board is satisfied on preliminary assessment that the matter should be disposed of by the Board, then the Board shall follow the procedure, as far as may be, for trial in summons case under the Code of Criminal Procedure, 1973 :

Provided that the order of the Board to dispose of the matter shall be appealable under sub-section (2) of section 101 :

Provided further that the assessment under this section shall be completed within the period specified in section 14.

13. Section 14 of Juvenile Justice (Care and Protection) Act, 2015 is also being reproduced below for the sake of convenience :-

14. Inquiry by Board regarding child in conflict with law. - *(1) Where a child alleged to be in conflict with the law is produced before the Board, the Board shall hold an inquiry in accordance with the provisions of this Act and may pass such orders in relation to such child as it deems fit under sections 17 and 18 of this Act.*

(2) The inquiry under this section shall be completed within a period of four months from the date of first production of the child before the Board, unless the period is extended. for a maximum period of two more months by the Board, having regard to the circumstances of the case and after recording the reasons in writing for such extension.

(3) A preliminary assessment in case of heinous offences under Section 15 shall be disposed of by the Board within a period of three months from the date of first production of the child before the Board.

(4) If an inquiry by the Board under sub-section (2) for petty offences remains Inconclusive even after the extended period, the proceedings shall stand terminated :

Provided that for serious or heinous offences, in case the Board requires further extension of time for completion of the inquiry, the same shall be granted by the Chief Judicial Magistrate or, as the case may be, the Chief Metropolitan Magistrate, for reasons to be recorded in writing.

(5) The Board shall take the following steps to ensure fair and speedy inquiry, namely :

(a) At the time of initiating the inquiry, the Board shall satisfy itself that the child in conflict with the law has not been subjected to any ill-treatment by the police or by any other person, including a lawyer or probation officer, and take corrective steps in case of such ill-treatment;

(b) in all cases under the Act, the proceedings shall be conducted in simple manner as possible, and care shall be taken to ensure that the child, against whom the proceedings have been instituted, is given a child-friendly atmosphere during the proceedings;

(c) Every child brought before the Board shall be given the opportunity of being heard and participate in the inquiry;

(d) cases of petty offences shall be disposed of by the Board through summary proceedings, as per the procedure prescribed under the Code of Criminal Procedure, 1973;

(e) inquiry of serious offences shall be disposed of by the Board, by following the procedure, for trial in summons cases under the Code of Criminal Procedure, 1973;

(f) inquiry of heinous offences, -

(i) for child below the age of sixteen years as on the date of commission of an offence shall be disposed of by the Board under clause (e);

(ii) for a child above the age of sixteen years as on the date of commission of an offence shall be dealt with in the manner prescribed under section 15.

14. It is laid down in Section 15(1) of the aforesaid Act that the Board is assisted by a practicing professional with a degree in child psychology or psychiatry. A legal-aid counsel must be provided through the District Legal Aid Service Authority, who must be present with the child during the assessment. Rule 10A (1) of the Juvenile Justice (Care and Protection of Children) Model Rules, 2016, provides further guidance with respect to the implementation of Section 15 of the JJ Act. The rule states as under :-

"10A. Preliminary assessment into heinous offences by Board. –

(1) The Board shall in the first instance, determine whether the child is of sixteen years of age or above; if not, it shall proceed as per the provisions of section 14 of the Act.

(2) For the purpose of conducting a preliminary assessment in case of heinous offences, the Board may take the assistance of psychologists or psycho-social workers or other experts who have experience of working with children in difficult circumstances. A panel of such experts may be made available by the District Child Protection Unit, whose assistance can be taken by the Board or could be accessed independently.

(3) While making the preliminary assessment, the child shall be presumed to be innocent unless proved otherwise.

(4) Where the Board, after preliminary assessment under section 15 of the Act, passes an order that there is a need for trial of the said child as an adult, it shall assign reasons for the same and the copy of the order shall be provided to the child forthwith.

15. Section 15(2) provides that where the Board is satisfied on preliminary assessment that the matter should be disposed of by the Board, it shall follow the procedure for trial in summons cases under the CrPC. This order is appealable under Section 101(2).

16. If the Board finds that the child needs to be tried as an adult, it transfers the trial to a Children's Court. The Children's Court then conducts a trial and passes an appropriate order considering the special needs of the child and principles of justice but it cannot award death sentence or life imprisonment without possibility of release.

17. A preliminary assessment in case of heinous offences under Section 15 is to be disposed of by the Board within a period of three months from the date of first production of the child before the Board.

18. However, the critical legal question is whether this timeline is mandatory or directory. The Supreme Court, in the case **Child in Conflict with Law through his Mother Vs. State of Karnataka & Another, 2024 SCC Online SC 798**, has authoritatively settled this :

“The provision of Section 14(3) of the Act, providing three months for completion of a preliminary assessment under Section 15, is not mandatory, and is directory. The period can be extended, for reasons to be recorded in writing, by the Chief Judicial Magistrate or the Chief Metropolitan Magistrate.”

19. In summary, Section 15 creates a two-tier gateway, the JJB first assesses whether the child should be treated as a juvenile or referred to a Children's Court for adult trial. It is a delicate balancing act between accountability for serious crime and the juvenile justice system's core philosophy of rehabilitation over punishment.

20. In **Mumtaz Ahmed Nasir Khan and Ors. Vs The State of Maharashtra & Ors.**, MANU/MH/1902/2019, the Bombay High Court has stated and reiterated that the preliminary assessment is not a trial. The relevant excerpts are produced below :

33. As Section 15 permits, the Board may, during the preliminary assessment, take the assistance of experienced psychologists, psycho-social workers or other experts. First, the preliminary assessment is "not a trial." Second, it is, instead, an inquiry to assess the child's capacity to commit the alleged offence and to understand its consequences. On inquiry, the Board must satisfy itself in its preliminary assessment about the juvenile's mental and physical capacity, his ability to understand the consequences of the offence, and so on. Then, if the Board is "satisfied on preliminary assessment that the matter should be disposed of", it will follow "the procedure, as

far as may be, for trial in summons case under CrPC. " The Board's order is appealable under sub-section (2) of Section 101.

21. The question that arises for consideration is whether the delay in the preliminary assessment would amount to a miscarriage of justice, as alleged by the learned counsel for the revisionist.

22. Where the delay was not attributable to the Board or the State, but arose because the matter was pending before the High Court (e.g., the juvenile or another party had approached the High Court and proceedings were stayed), several important legal consequences follow :

(a) The delay is legally excused. Courts have consistently held that delay caused by judicial proceedings particularly High Court or Supreme Court orders cannot be attributed to either party as culpable delay. The period during which a stay or pendency operates is effectively excluded from consideration.

(b) The assessment is of the child's capacity at the time of the offence. This is a crucial point: the preliminary assessment is not a trial, but is to assess the capacity of the child to commit and understand the consequences of the alleged offence i.e., the assessment is backwards-looking to the time the offence was committed, not the current age or capacity of the child.

(c) The child turning 18 or even older during pendency does not bar the assessment. As per Section 5 of the Act, the inquiry can be continued by the Board and orders may be passed in respect of such person as if such person had continued to be a child. If such person is not released on bail, he shall be placed in a Place of Safety during the process of inquiry.

23. Even where the delay is excused legally, courts will scrutinize the assessment very carefully on account of the time gap. The following consequences arise in practice :

(a) Reliability of psychological evaluation is compromised. From a neurobiological perspective, the development of cognitive behavioural attributes like decision-making, risk-taking, impulsivity, and judgement continues until the early 20s. If the child was, say, 17 at the time of the offence but is now 21, a psychological evaluation conducted today will not accurately reflect his mental and emotional maturity at the time of the offence. This is a major ground of challenge.

(b) The assessment must still be meticulous. The evaluation of mental capacity and ability to understand the consequences of the offence cannot be relegated to the status of a perfunctory and routine task, as the fate of the child precariously rests on it. After a 4-year gap, the Board must be even more careful in reconstructing the developmental state of the child at the time of the alleged offence.

(c) Prejudice to the juvenile is a ground for challenge. The juvenile can argue before the Children's Court or High Court that the delay even if caused by the High Court proceedings has resulted in practical prejudice: witnesses may have become unavailable, records may be stale, and the psychological baseline of the child at the time of the offence can no longer be reliably assessed.

24. At this juncture, provisions of Section 20 of the Juvenile Justice (Care and Protection) Act, 2015 assume importance and are being reproduced below :-

20. Child attained age of twenty-one years and yet to complete prescribed term of stay in place of safety. - (1) When the child in conflict with the law attains the age of twenty-one years and is yet to complete the term of stay, the Children's Court shall provide for a follow up by the probation officer or the District Child Protection Unit or a social worker or by itself, as required, to evaluate if such child has undergone reformatory changes and if the child can be a contributing member of the society and for this purpose the progress records of the child under sub-section (4) of section 19, along with evaluation of relevant experts are to be taken into consideration.

(2) After the completion of the procedure specified under sub-section (1), the Children's Court may –

(i) decide to release the child on such conditions as it deems fit which includes appointment of a monitoring authority for the remainder of the prescribed term of stay;

(ii) decide that the child shall complete the remainder of his term in a jail:

Provided that each State Government shall maintain a list of monitoring authorities and monitoring procedures as may be prescribed.

25. Section 20 of the JJ Act addresses the specific scenario where a child has attained 21 years but is yet to complete the prescribed term at a place of safety. At that stage, the Children's Court undertakes a fresh evaluation to determine whether the person has reformed or rehabilitated sufficiently to be released, or must serve the remaining term in an adult prison. A 4-year delay could therefore push the case into the ambit of Section 20.

26. In essence, a 4-year delay due to High Court pendency does not automatically invalidate the preliminary assessment, but significantly strengthens a juvenile's argument that any psychological evaluation now conducted is unreliable and that the assessment order if it goes against him deserves heightened judicial scrutiny.

27. In light of the above analysis, order dated 13.10.2023 was passed by the Special Judge, POCSO Court, Budaun in Criminal Appeal No. 21/2013 (Victim A Vs. State of U.P. and Anr.), keeping in sight the procedural as well as societal impact of crime, does not suffer from any infirmity and is liable to be upheld.

28. The present criminal revision has been preferred with an oblique purpose of hindering the trial and is devoid of merit.

29. It is accordingly **dismissed**.

(2026) 4 ILRA 1248
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 30.04.2026

BEFORE

THE HON'BLE VIKAS BUDHWAR, J.

Writ A No 168 of 2002

Smt. Shushila Shukla

...Petitioner

Versus

State of U.P.

...Respondent

Issue for Consideration

(1) Applicability of the UP Police (Extraordinary Pension) Rules, 1961 on the entitlement of Follower's widow to get the extra-ordinary pension.

Headnotes

(A) Service law – Extra-ordinary pension – Entitlement of widow – The husband was crushed by a Maruti car, while discharging the duty as the Follower in State Civil Police, and was expired – Claim for extra-ordinary pension was rejected – Validity challenged – Applicability of the Rules, 1961 and Rules, 2009 felt into consideration: (E-1)

Held: Rule 3 of the Uttar Pradesh Police (Extraordinary Pension) Rules 1961 also provides for grant of extraordinary pension to permanent or temporary employees. Thus on the said count, it appears that the order dated 07.06.2002 proceeds on misconception of fact that the follower is not covered under the 1961 Rules. [Para 10]

Further held: Returning or going for preparing meal as a follower and confronted with an accident on road is not a incident or a factor to be considered for payment of extraordinary pension, particularly when Rule 5 itself creates a bar that no award is to be made in respect of the death caused by any reason covered under Rule 3. Since Rule 3 does not contemplate such an exigency, thus on this ground the writ petitioner is not entitled to relief. [Para 11]

Case Law Cited

Service Single No. 40 of 2011, Krishna Murari vs. State of U.P. decided on 06.02.2009 – referred to.

List of Acts

Uttar Pradesh Police (Extraordinary Pension) Rules 1961 – Rule 3 and 5; Uttar Pradesh Police Group 'D' Employees Service Rules, 2009 – Rule 4.

List of Keywords

First Information Report, Extra-ordinary pension, Legal heirs, Contingency, Misconception, Exigency, Parameter, Ambit.

Case Arising From

Order dated 07.06.2002 passed by the State Government rejecting the claim of Extra-ordinary pension.

Appearances for Parties

Advs. for the Appellant: Amar Nath Dubey, Asif Hasan

Advs. for the Respondents: Badrish Kumar Tripathi (S.C.)

(Delivered by Hon'ble Vikas Budhwar, J.)

1. Heard Sri Amar Nath Dubey, learned counsel for the writ petitioner and Sri Badrish Kumar Tripathi, learned Standing Counsel for the respondents.

2. The case of the writ petitioner is that the husband of the original writ petitioner, who happens to be the wife of Sri Heera Lal Shukla was working in State Civil Police since 14.10.1972 as a Follower. On 02.10.1999, being the fateful day, the petitioner's husband was required from his residence to prepare a meal for the additional force who were camping in connection with election duty. The writ petitioner left his house at 11:30 p.m. and when the petitioner's husband was going to attend the duty on his bicycle, he was crushed by a Maruti Car at 11:30 p.m. near the AMC Supply Depot on the way from Charbagh side to Kanpur. A first information report stood lodged by the brother of the husband of the deceased with respect to fatal accident being Case Crime no.179/99 under Sections 279, 304-A, 427 IPC at P.S. Alambagh, Lucknow on 03.10.1999. The husband of the writ petitioner expired and a criminal proceeding stood triggered. Post death of husband of the writ petitioner before his date of his retirement, the writ petitioner staked his claim for grant of extra-ordinary pension and the said claim came to be rejected on 07.06.2002 by the order of the State Government.

3. Though initially, the petition was preferred seeking mandamus to extend the extraordinary pension in terms of Uttar Pradesh Police (Extraordinary Pension) Rules 1961, but consequent to the rejection of the claim, amendment came to be filed, which was allowed.

4. Learned counsel for the writ petitioner has sought to argue that the consideration which weighed with the respondent is negating the claim of the writ petitioner that the husband of the writ petitioner happened to be a follower, who was called from his house for preparing meal and he met with an accident on account whereof he died, thus the original writ petitioner, who happens to be the widow, who also expired and now the legal heirs are entitled to extraordinary pension in terms of Uttar Pradesh Police (Extraordinary Pension) Rules 1961.

5. Submission is also to the extent that follower is a post, which is equivalent to cook /Kahar and as per Uttar Pradesh Police Group-D Employees Service Rules 2009, there are 7887 posts earmarked and sanctioned.

6. Contention is that the writ petitioner is entitled to be accorded extraordinary pension in that regard. Reliance has been placed upon a Division Bench judgment of this Court in ***Service Single No.40 of 2011, Krishna Murari vs. State of U.P.*** decided on 06.02.2009.

7. Learned Addl. Chief Standing Counsel on the other hand submitted that whatever might be, the issue is on a larger aspect relatable to the fact that even if it is treated that the writ petitioner is a regular employee, then too in view of the provisions contained under Rule 3 of the 1961 Rules, further read with Rule 5, none of the contingencies for grant of extraordinary pension stands extracted as it is not the case of death due to attack/fight with dacoits/criminals/foreign hostiles/extremists/ terrorists/naxalites, death due to attack by aggressive public, death due to accident, while undergoing important training/demonstration, death during rescue and relief

operations undertaken during natural calamities like flood/earthquake/landslide/snow storm etc. or man made disasters like train accidents, tanker blast etc., death while extinguishing fire or helping in extinguishing fire in any area, death due to attack in an area under curfew; and death due to attack while escorting prisoner. Contention is that mere accident would not come within the beneficial provision in that regard.

8. I have heard the submissions so made across the Bar and perused the record.

9. Before embarking an enquiry upon the rival submissions, it would apposite to extract the relevant statutory provisions:

"The Uttar Pradesh Police (Extraordinary Pension) Rules, 1961

....

3. These rules shall apply to all the Gazetted/Non-Gazetted Police, PAC or Fire Service personnel of Uttar Pradesh, whether employed in a permanent or temporary capacity under the rule making control of the Governor, whose death occur while on duty under the following circumstances:

(a) death due to attack/fight with dacoits/criminals/foreign hostiles/extremists/terrorists/naxalites etc.;

(b) death due to attack by aggressive public;

(c) death due to accident, while undergoing important training/demonstration;

(d) death during rescue and relief operations undertaken during natural calamities like flood/earthquake/landslide/snow storm etc. or man made disasters like train accidents, tanker blast etc.;

(e) death while extinguishing fire or helping in extinguishing fire in any area;

(f) death due to attack in an area under curfew; and

(g) death due to attack while escorting prisoner.

....

5. (5) No award shall be made in respect of death caused by any reason other than those covered under Rule 3."

"The Uttar Pradesh Police Group 'D' Employees Service Rules, 2009

4. Cadre of Service.—

(1) Number of posts in each category of posts therein shall be such as may be determined by the Government from time to time provided that the appointing authority may leave unfilled by the Governor may hold in abeyance any post or class of post without thereby entitling any person to compensation.

(2) The strength of service and of each category therein shall until orders varying the same are passed under sub-rule (1), be as given below:

Sl. No. 1, Name of the Post- Follower/ Cook/Kahar, Number of Posts - 7887"

10. Plainly and simply, the husband of the original writ petitioner and the predecessor in interest of the substituted petitioner was a follower, who met with an accident on the fateful day, when he was to attend the police station for cooking meal. Though at the time when the said incident took place and when the order impugned dated 07.06.2002 came to be passed. The Uttar Pradesh Police Group-D Employees Service Rules 2009 was not in existence, but in view of the provisions contained under Rule 4, further read with the chart so appended thereto, there happened to be 7887 posts of the follower /cook/kahar and the appointment in question as per the said Rule was substantive in nature. Further Rule 3 of the Uttar Pradesh Police (Extraordinary Pension) Rules 1961 also provides for grant of extraordinary pension to permanent or temporary employees. Thus on the said count, it appears that the order dated 07.06.2002 proceeds on misconception of fact that the follower is not covered under the 1961 Rules.

11. Now, a question arises whether in the wake of the provisions contained under Rule 3 read with Rule 5 of the 1961 Rules whether the writ petitioner is entitled to extraordinary pension or not. Notably, returning or going for preparing meal as a follower and confronted with an accident on road is not a incident or a factor to be considered for payment of extraordinary pension, particularly when Rule 5 itself creates a bar that no award is to be made in respect of the death caused by any reason covered under Rule 3. Since Rule 3 does not contemplate such an exigency, thus on this ground the writ petitioner is not entitled to relief.

12. Though this Court would have remanded the matter back to the authority to pass a fresh order, particularly in view of the fact that the follower also holds a post and as per Rule 3 of the 1961 Rules, temporary and permanent employees are covered, but since the writ petitioner does not come within the parameters or ambit of 1961 Rules for grant of benefits, thus it would be a futile exercise to remit the matter back. Accordingly, this Court is of the opinion that no good ground is made out to interfere in this regard, particularly while invoking Article 226 of the Constitution of India.

13. Resultantly, interference is declined. The writ petition stands **disposed of** leaving it open for the writ petitioner to avail other remedies which are available against the vehicle owner or the driver, as the case may be under the Motor Vehicles Act.

(2026) 4 ILRA 1252
APPELLATE JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 09.04.2026

BEFORE

THE HON'BLE SARAL SRIVASTAVA, J.
THE HON'BLE MRS. GARIMA PRASHAD, J.

Special Appeal Defective No. 220 of 2011

Shiv Bachan Ram

...Appellant
Versus

State of U.P. & Ors.

...Respondents

Issue for Consideration

- (1) Applicability of principle of natural justice in the matter of cancellation of appointment obtained on the strength of a forged mark-sheet.
- (2) Relevancy of verification reports in the matter of cancellation of an appointment obtained on the basis of a fictitious document.
- (3) High Court's power to impose exemplary costs.

Headnotes

(A) Service law – Cancellation of appointment – Assistant Teacher – Forged mark-sheet was used to obtain the appointment – On the direction of writ court, the Secretary also found mark-sheet forged – Single Judge dismissed writ petition – Validity challenged – Ground was taken that the learned Single Judge relied upon the verification report without granting adequate opportunity to the petitioner to rebut the same – Further pleaded that no proper inquiry into the alleged forgery was conducted and that the report could not have been relied upon without affording an opportunity of hearing and action taken was violative of the principles of natural justice – Permissibility – Relevancy of verification reports felt into consideration:

Held: The principles of natural justice are intended to ensure fairness and cannot be invoked to protect a claim founded on a forged document – The contention that the learned Single Judge recorded findings on forgery without a regular trial also cannot be accepted in the facts of the present case. The writ court was not trying the appellant for an offence. It was examining whether the employer was justified in cancelling an appointment obtained on the basis of a document which stood verified to be fictitious. For that purpose, the verification reports from the competent authorities were sufficient material – It is trite that fraud vitiates every solemn act. An appointment secured on the basis of a forged educational certificate does not confer any enforceable right upon the appointee, and no equity can be claimed on the basis of long continuance in service. [Para 17, 18 and 19]

B. Allahabad High Court Rules, 1952 – Ch. XXII, Rule 9 – Cost – Exemplary cost – High Court's power to impose: (E-1)

Held: The appellant not only questioned the termination but persisted in asserting the genuineness of the very same mark-sheet and even brought on record a certificate in support thereof, which also failed to withstand verification. In such circumstances, the learned Single Judge cannot be said to have acted arbitrarily in imposing exemplary costs so as to deter abuse of the process of Court. The amount imposed also cannot be said to be so disproportionate as to warrant appellate interference. [Para 20]

List of Keywords

Termination, Exemplary cost, Assistant teacher, Verification, Mark-sheet found forged, Opportunity of hearing, Principle of natural justice, False certificate, Misconduct, Departmental enquiry, Fictitious educational

certificate, Misrepresentation, Forged documents, Fraud, Solemn act, Procurement of public employment, Abuse of process of law, Perversity, Arbitrariness, Jurisdictional error.

Case Arising From

Judgment and order dated 09.11.2010 passed by the learned Single Judge in Civil Misc. Writ Petition No. 34650 of 2010.

Appearances for Parties

Advs. for the Appellant: Deepak Kumar Jaiswal, Hare Ram Pandey, S.K. Singh Paliwal, Shishir Kumar Dwivedi.

Advs. for the Respondents: C.S.C.

(Delivered by Hon'ble Mrs. Garima Prashad, J.)

Civil Misc. Delay Contonation Application No.64342 of 2011

1. There is delay of 66 days in filing the present special appeal.
2. For the reasons stated in the affidavit accompanying the delay condonation application, the delay in filing the special appeal is condoned.
3. The delay condonation application is allowed.

Appeal

4. The present appeal has been filed challenging the order dated 09.11.2010 passed by the learned Single Judge in Civil Misc. Writ Petition No. 34650 of 2010, whereby the writ petition filed by the petitioner?appellant was dismissed, and the order of termination passed by the District Basic Education Officer, Siddharth Nagar was upheld, and further directions were issued for lodging an FIR against the petitioner as well as for recovery, along with imposition of exemplary costs of Rs. 50,000/-.

5. Brief facts of the case are that the petitioner was appointed as an Assistant Teacher on 31.03.1995 by the District Basic Education Officer, Siddharth Nagar at Primary Pathshala, Balua. The petitioner claimed to have passed High School, Intermediate and B.T.C. examinations and to have submitted all relevant testimonials at the time of selection. On 06.12.2005, the petitioner was required to produce original mark-sheets and certificates, which were submitted. However, on 27.03.2010, a show cause notice was issued to the petitioner stating that, upon verification from the Principal of P.N. Intermediate College, Mardah, Ghazipur, it was found that Roll No. 335639, as mentioned in the petitioner's Intermediate mark-sheet, had not been allotted to any candidate, and thus the mark-sheet appeared to be fictitious. The petitioner was also called upon to explain as to why an FIR be not lodged against him.

6. When the petitioner failed to appear, a further notice dated 16.04.2010 was issued. The petitioner thereafter responded on 22.04.2010, enclosing a certificate purportedly issued by the Principal stating that he had passed the Intermediate examination in 1983 with the same roll

number. Subsequently, by order dated 10.05.2010, the petitioner's appointment was cancelled with retrospective effect. Aggrieved, the petitioner filed the writ petition.

7. During the pendency of the writ petition, the appellant filed a supplementary affidavit annexing another copy of the Intermediate mark-sheet. Upon directions of the learned Single Judge, the said mark-sheet was verified, and the Secretary, Madhyamik Shiksha Parishad, U.P., Allahabad, vide report dated 08.11.2010, categorically stated that in the year 1983, no candidate in P.N. Intermediate College, Mardah, Ghazipur was allotted Roll No. 335639, and thus the mark-sheet relied upon by the petitioner was found forged.

8. The learned Single Judge recorded that learned counsel for the petitioner was unable to dispute these facts and concluded that the petitioner had secured appointment on the basis of a forged mark-sheet. In such circumstances, the writ petition was dismissed with exemplary costs of Rs. 50,000/- as a deterrent, the termination order was upheld, and a direction was issued to lodge an FIR against the petitioner in terms of the order dated 10.05.2010.

9. Aggrieved, the present appeal has been filed, primarily on the ground that the learned Single Judge relied upon the verification report without granting adequate opportunity to the petitioner to rebut the same. It is further submitted that no proper inquiry into the alleged forgery was conducted and that the report could not have been relied upon without affording an opportunity of hearing. It is also contended that the petitioner neither committed forgery nor misused any document, and that the action taken is violative of the principles of natural justice. The imposition of exemplary costs is also challenged on the ground that no opportunity was afforded to explain his conduct.

10. It has further been submitted that the learned Single Judge exceeded the scope of writ jurisdiction by directing lodging of an FIR against the petitioner and ordering recovery of salary received by him as an Assistant Teacher. It is contended that the impugned order is non-speaking and unreasoned, and therefore liable to be set aside.

11. Per contra, learned Standing Counsel for the State submits that the appellant was rightly terminated by order dated 10.05.2010, as the Intermediate mark-sheet relied upon by him was found to be forged and fictitious. It is submitted that no such roll number was ever allotted to any student in the concerned institution. It is further contended that the appellant has failed to establish his bona fides and has, in fact, produced a false certificate before the Court. The District Basic Education Officer, therefore, rightly directed lodging of an FIR and recovery of the salary paid to the petitioner.

12. We have considered the submissions advanced by learned counsel for the parties and have perused the record.

13. From the record, it is evident that the appellant had obtained appointment as Assistant Teacher on the strength of educational qualifications which included the Intermediate examination. A specific doubt having arisen with regard to the genuineness of the Intermediate mark-sheet submitted by him, the matter was verified from the concerned institution as well as from the

competent examining authority. The consistent position emerging from such verification is that Roll No. 335639, which forms the basis of the appellant's claim, was not allotted to any candidate of P.N. Intermediate College, Mardah, Ghazipur in the relevant year. The appellant, despite opportunity, failed to produce any credible material of unimpeachable character to dislodge the said finding.

14. The submission that no inquiry was held in accordance with law also does not merit acceptance. The present is not a case of misconduct committed during service requiring a full-fledged departmental inquiry into disputed conduct in the ordinary course. The very foundation of appointment was under scrutiny. Where an appointment is obtained on the basis of a forged or fictitious educational certificate, the employer is entitled to verify the authenticity of such document, and once the document is found to be false, the appointment itself becomes voidable at the instance of the employer, being founded on misrepresentation and fraud. In such a case, verification of the certificate by the competent authority is sufficient, and the appellant was afforded an opportunity to explain.

15. The record further shows that a show cause notice dated 27.03.2010 was issued to the appellant specifically informing him that the Intermediate mark-sheet produced by him was found doubtful and fictitious, and he was also called upon to explain why an FIR be not lodged. When he did not initially appear, a further notice dated 16.04.2010 was issued. The appellant thereafter responded on 22.04.2010 and sought to support his stand by filing a certificate allegedly issued by the Principal. Thus, it cannot be said that the order of cancellation was passed behind his back or without notice. Adequate opportunity was afforded to the appellant to explain the genuineness of the document relied upon by him.

16. Even before the learned Single Judge, the appellant was given further latitude, inasmuch as the mark-sheet annexed along with the supplementary affidavit was got independently verified pursuant to directions of the Court. The report submitted by the Secretary, Madhyamik Shiksha Parishad, U.P., Allahabad clearly negated the appellant's claim. The learned Single Judge has recorded that learned counsel appearing for the petitioner was unable to dispute the said factual position. In such circumstances, the contention that the report was relied upon without opportunity is not borne out from the record.

17. The plea of violation of principles of natural justice is, therefore, without merit. The principles of natural justice are intended to ensure fairness and cannot be invoked to protect a claim founded on a forged document. In the present case, the appellant was informed of the allegation and was given an opportunity to respond. The matter was also independently verified from the competent statutory authority. In such circumstances, no prejudice can be said to have been caused. Mere invocation of natural justice, in the absence of any credible rebuttal to the verification report, does not advance the case of the appellant.

18. The contention that the learned Single Judge recorded findings on forgery without a regular trial also cannot be accepted in the facts of the present case. The writ court was not trying the appellant for an offence. It was examining whether the employer was justified in cancelling an appointment obtained on the basis of a document which stood verified to be fictitious. For that

purpose, the verification reports from the competent authorities were sufficient material. The learned Single Judge was fully justified in testing the validity of the appellant's continuance in service on the basis of such record.

19. It is trite that fraud vitiates every solemn act. An appointment secured on the basis of a forged educational certificate does not confer any enforceable right upon the appointee, and no equity can be claimed on the basis of long continuance in service. Length of service cannot sanitize an entry which is tainted at inception. Once the foundational qualification itself is found to be supported by a forged mark-sheet, the order cancelling the appointment cannot be faulted.

20. Insofar as the challenge to the imposition of exemplary costs is concerned, we find that the appellant not only questioned the termination but persisted in asserting the genuineness of the very same mark-sheet and even brought on record a certificate in support thereof, which also failed to withstand verification. In such circumstances, the learned Single Judge cannot be said to have acted arbitrarily in imposing exemplary costs so as to deter abuse of the process of Court. The amount imposed also cannot be said to be so disproportionate as to warrant appellate interference.

21. As regards the direction for lodging of FIR, we find that once the competent authority had already, while passing the order dated 10.05.2010, contemplated such action on the basis of use of a forged educational certificate for obtaining public employment, the learned Single Judge merely directed consequential action in light of the facts which had emerged on record. No exception can be taken to such direction, particularly where the allegation pertains to procurement of public employment on the basis of a forged public document.

22. Similarly, the contention that the learned Single Judge exceeded jurisdiction in directing recovery also does not persuade us to interfere. If salary has been drawn on the strength of an appointment obtained by fraud, the matter of recovery would remain open to be dealt with by the competent authority in accordance with law. Mere issuance of such direction does not render the judgment unsustainable, particularly when the appellant's very entry into service has been found to be founded on a forged document.

23. We are thus of the considered opinion that the learned Single Judge committed no error in upholding the order dated 10.05.2010 cancelling the appellant's appointment. The findings recorded are based on verification from the competent authorities, and the appellant has failed to demonstrate either any factual error in such findings or any legal infirmity in the procedure adopted.

24. The order under appeal does not suffer from perversity, arbitrariness, violation of natural justice, or any jurisdictional error warranting interference in intra-court appeal.

25. The special appeal, being devoid of merit, is accordingly dismissed.

26. Interim order, if any, stands discharged. There shall be no order as to costs in this appeal.

(2026) 4 ILRA 1257
APPELLATE JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 28.04.2026

BEFORE

THE HON'BLE MAHESH CHANDRA TRIPATHI, J.
THE HON'BLE KUNAL RAVI SINGH, J.

Special Appeal No. 367 of 2026

Prem Kumar Singh	...Appellant
	Versus
Pawan Kumar Gangwar & Ors.	...Respondents

Issue for Consideration

- (1) Maintainability of Special Appeal against an order, whereby the contempt application was dismissed holding that no case for contempt is made out.
- (2) Applicability of judgment passed in Tanseem Fatima's case, which was already declared as *per incuriam*.

Headnotes

(A) Practice and procedure – Special Appeal – Maintainability – Contempt application was dismissed holding that no case for contempt is made out – Validity challenged – Applicability of Tasneem Fatima's case, Subhash Chandra's case and Alok Kumar Yadav's case felt into consideration: (E-1)

Held: Intra court special appeals in contempt cases are maintainable only when the contempt court oversteps its jurisdiction by addressing the merits of the original dispute. In the instant matter the contempt court vide order impugned has neither touched the merit nor has decided any issue and it has not made any direction relating to the merits of the disputes between the parties. Hence, we find that the contempt court has not overstepped its jurisdiction – No interference is required in the instant intra court appeal – The judgment in Tasneem Fatima's case being *per incuriam* is not applicable in the instant matter and the judgments in Subhash Chandra's case and Alok Kumar Yadav's case are holding the field. [Para 8]

Case Law Cited

Special Appeal no. 83 of 2025, Tasneem Fatima vs. Sri Amit Mohan Mishra decided on 20.02.2025, 2025: AHC-LKO:11415-DB; Subhash Chandra vs. Srikant Goswami and others, 2024 SCC OnLine All 5435; Alok Kumar Yadav vs. Sri Ashish Kumar Pandey, 2025 (172) ALR 489; Midnapore Peoples' Cooperative Bank Ltd. & Ors. vs. Chunilal Nanda & Ors., (2006) 5 SCC 399 – **referred to.**

List of Acts

Allahabad High Court Rules, 1952 – Chapter VIII Rule 5.

List of Keywords

Public Interest Litigation, Maintainability of intra court appeal, Contempt Application, Contempt proceeding, *Per incuriam*, Oversteps its jurisdiction, Merits of the dispute, Direction.

Case Arising From

Judgment and order dated 12.3.2026 passed in Contempt Application (Civil) No. 1591 of 2026; Prem Kumar Singh v. Pawan Kumar Gangwar & Ors.

Appearances for Parties**Advs. for the Appellant:** Ramesh Kumar Tiwari, Sanjay Pandey**Advs. for the Respondents:** Manish Goyal (Sr. Adv. and AAG), Devesh Vikram (ACSC), Ms. Akanksha Sharma (SC), Fuzail Ahmad Ansari(SC).

(Delivered by Hon'ble Mahesh Chandra Tripathi, J.

&

Hon'ble Kunal Ravi Singh, J.)

1. Heard learned counsel for the petitioner and Shri Manish Goyal, learned Addl. Advocate General assisted by Shri Devesh Vikram, learned Addl. Chief Standing Counsel; Ms. Akanksha Sharma, learned Standing Counsel and Shri Fuzail Ahmad Ansari, learned Standing Counsel for State respondents.

2. The instant intra court special appeal has been preferred assailing the validity of the order dated 12.3.2026 passed in Contempt Application (Civil) No.1591 of 2026 (Prem Kumar Singh v. Pawan Kumar Gangwar & Ors.) and for a direction to respondents to make compliance of the writ Court order dated 6.10.2025 passed in Public Interest Litigation (PIL) No.2933 of 2025 (Munni Lal @ Hari Sharan v. State of U.P. & Ors.). For ready reference, the order dated 12.3.2026 passed by the Contempt Court is reproduced as under:-

"1. Perused the material on record.

2. No case for contempt is made out.

3. Contempt application is misconceived and the same stands dismissed.""

3. At the time of admission, on 24.04.2026, while arguing on the maintainability of the instant intra court appeal under Chapter VIII Rule 5 of the Allahabad High Court Rules, 1952, learned counsel for the appellant had relied upon a judgment passed by Division Bench dated 20.02.2025 in Special Appeal no.83 of 2025 (Tasneem Fatima v. Sri Amit Mohan Mishra)². The said intra court special appeal was filed under Chapter VIII Rule 5 of the Rules, 1952 against the order dated 22.01.2025 passed by learned Single Judge in Contempt Application (Civil) No.2046 of 2023. The said special appeal was allowed on 20.02.2025 and the order impugned passed by learned Single Judge in Contempt Application was set aside. The contempt application was restored to its original number and listed before the appropriate Court for further proceeding. Learned counsel for the appellant, in this background had submitted on the previous date, that being on similar footing the instant intra court special appeal is also maintainable and liable to be allowed.

4. In this backdrop, we have proceeded to pass the following order on 24.04.2026:-

"1. Learned counsel for the appellant submits that the instant intra court appeal under Chapter VIII Rule 5 of the High Court Rules, 1952 is maintainable against the order passed by learned Single Judge dated 12.03.2026 in Contempt Application (Civil) No.1591 of 2026.

2. Before proceeding further on merits of the case, we request Shri Manish Goyal, learned Addl. Advocate General assisted by Shri J.N. Maurya, learned Chief Standing Counsel to assist the Court as to whether the instant intra court appeal is maintainable or not.

3. Put up this matter again on 28.04.2026 at 12.30 p.m. for further orders."

5. In response to the aforesaid order, Shri Manish Goyal, learned Addl. Advocate General has appeared before the Court and, at the outset, placed reliance on the judgment passed by a Division Bench of this Court in Subhash Chandra v. Srikant Goswami Posted Managing Director, Sahkari Gram Vikas Bank Ltd. Lucknow & Ors.³ He submits that in the said proceeding similar question, qua the maintainability of an intra court appeal filed under Chapter VIII Rule 5 of the Rules, 1952 from orders emanating from contempt proceeding, was raised. While considering the entire spectrum of the dispute in question as well as considering the judicial pronouncements in this regard, the Division Bench had proceeded to dismiss the said appeal. Learned Addl. Advocate General, in this backdrop, submits that in the light of the judgment in Subhash Chandra (Supra), the instant intra court appeal is not maintainable. For ready reference, paragraphs 19, 20, 69, 70 and 71 of the said judgment are reproduced as under:-

".....19. Before proceeding further, it will be relevant to notice an order in the instant case passed by a Coordinate Bench of this Court dated 22.04.2024 and the relevant portion of the said order reads as under:-

"Now, the order impugned herein has been passed by the High Court in exercise of its contempt jurisdiction under Section 12 of the Contempt of Courts Act, 1971 which is a central enactment. It is referable to entry 14 of the concurrent list, therefore, to this extent there is no difficulty i.e. if it is found that this is an order passed in exercise of criminal jurisdiction by the High Court, then, this appeal would fall within the exception made in Chapter VIII Rule 5 of the Allahabad High Court Rules, 1952, however, if it is found that contempt jurisdiction exercised by the learned Judge of the High Court while passing the impugned order, does not fall within the meaning of the words "in the exercise of criminal jurisdiction" used in Chapter VIII Rule 5, then, the position would be different subject of course to there being other issues involved and authorities thereon as also the submissions to be made by the learned counsel for the parties.

The question is whether the aforesaid words- "in the exercise of criminal jurisdiction" refer to the jurisdiction exercised by the High Court on the criminal side under the Code of Criminal Procedure or any other law falling in the criminal field or would it include the exercise of contempt jurisdiction which is termed as quasi criminal proceeding/jurisdiction. Whether these words will include the quasi criminal jurisdiction of a contempt Court of the High Court."

20. In light of the tentative observations noted above, this Court will consider the nature of the proceedings exercised by the High Court in its contempt jurisdiction inter alia to adjudge the issue of maintainability of the instant appeal in light of the rival submissions.

.....□

69. *The pith and substance of the aforesaid discussion, the legal principles involved and circumstances when an appeal may lie under □Section 19 of the Contempt of Courts Act, 1971 and when a Special Appeal may lie from an order passed in contempt jurisdiction can be summarized as under:-*

(A) □Section 19 (1) of the Contempt of Courts Act can be invoked only when the Contempt Court has exercised its jurisdiction to punish for contempt. The essence of this provision is to provide a remedy against decision where the court has taken a definitive action to penalize a contemnor. This includes orders that impose fines, imprisonment, or other punitive measures directly related to the contemptuous behavior. Interlocutory orders, which do not entail punishment for contempt, do not fall within the ambit of □Section 19. Such orders may include directions to produce documents, file affidavits, or procedural directives necessary for the continuation of the contempt proceedings. These are routine judicial actions that facilitate the progress of the case but do not constitute a final determination on the issue of contempt. Routine orders passed during the pendency of contempt proceedings are also excluded from the scope of □Section 19. These orders are typically procedural and administrative in nature, ensuring that the proceedings move forward without addressing the substantive issues of the original case or the merits of the contempt.

(B) The crux of the matter lies in the nuanced interpretation of what constitutes "merit" within the context of contempt proceedings, as referenced by the Supreme Court in the Midnapore Peoples Cooperative Bank Limited case. The term "merit" has not been defined in a straight jacket formula, leading to varying interpretations. However, a cumulative reading of the judgments provide clarity on several key aspects. In the Midnapore case, the Supreme Court held that in contempt proceedings, it is inappropriate to adjudicate or decide any issue related to the merits of the dispute between the parties. This principle aims to ensure that contempt proceedings do not encroach upon the substantive rights of the parties involved in the original dispute. The focus of contempt jurisdiction is to uphold the dignity and authority of the court, not to resolve the underlying dispute. The term "merit" in this context refers to the substantive issues of the original case that led to the contempt proceedings. It encompasses the core legal and factual questions that were or are being contested in the original litigation.

(C) Special appeals from the order or judgment of a single judge bench in contempt cases hinge on the distinction between addressing the merits of the original dispute and the conduct constituting contempt. The primary responsibility of the Contempt Court is to determine whether contempt has occurred and to impose appropriate sanctions if it has. The merits of the original controversy are outside the domain of the contempt court. However, when the Contempt Court issues directions or discusses the merits of the original controversy, it oversteps its jurisdiction. In such cases, a special appeal would lie to the High Court. This ensures that the original substantive issues are not inadvertently decided within the limited scope of contempt proceedings, preserving the parties' rights to a fair adjudication of their dispute.

(D) The interpretation of each case depends on its specific facts and circumstances. Courts must carefully distinguish between orders that address the procedural aspects of contempt proceedings and those that encroach upon the substantive issues of the original case. This distinction is crucial to maintaining the integrity of contempt jurisdiction and ensuring that appeals

under□Section 19 of the Act of 1971 are appropriately limited to cases where punitive action for contempt has been taken.

Thus, Special appeals in contempt cases are warranted only when the Contempt Court oversteps its jurisdiction by addressing the merits of the original dispute, ensuring that the substantive rights of the parties are protected. The interpretation of each case must consider the specific facts and circumstances to uphold the integrity of contempt jurisdiction and provide appropriate remedies for aggrieved parties.

70. If the impugned order is now tested on the anvil of the principles summarized above then it would reveal that the Contempt Court vide order impugned has neither touched the merit nor has decided any issue and it has not made any direction relating to the merits of the disputes between the parties. Hence, it cannot be canvassed that the Contempt Court overstepped its jurisdiction.

71. Thus, in the aforesaid facts and circumstances, this Court is of the firm view that the intra-court appeal is not maintainable. Accordingly, it is dismissed. There shall be no order as to costs."

(Emphasis supplied)

6. Learned Addl. Advocate General submits that while passing the judgment in Tasneem Fatima (Supra), the Division Bench has not considered the judgment in Subhash Chandra (Supra). He has also placed reliance on the judgment dated 28.08.2025 in Special Appeal No.788 of 2025 (Alok Kumar Yadav v. Sri Ashish Kumar Pandey)⁴, wherein the Division Bench has again denied to interfere in the special appeal questioning the validity of the order passed by contempt court. In the said judgment, the Division Bench while considering the other judgments has also considered the judgments in Tasneem Fatima (Supra); Midnapore Peoples' Cooperative Bank Ltd. & Ors. v. Chunilal Nanda & Ors.⁵ and Subhash Chandra (Supra). In the said judgment, the Division Bench has held the judgment in Tanseem Fatima as per incuriam. For ready reference, the relevant para 16 of the judgment in Alok Kumar Yadav (Supra) is reproduced as under:-

"16. So far as the judgement in the case of Tanseem Fatima (supra) is concerned, the Division Bench without referring to any of the binding precedents came to the conclusion that the judgement in the case of Midnapore (supra) on the question of maintainability of Special Appeal under Chapter VIII Rule 5 of the Rules of 1952, has no application and provisions of Chapter VIII Rule 5 of the Rules of 1952 do not bar appeal against order dismissing the contempt petition, which judgement apparently on account of ignoring binding precedents is per incuriam and cannot be pressed into service as a precedent."

(Emphasis supplied)

7. Learned Addl. Advocate General, in this backdrop, submits that once the judgment in Tanseem Fatima (Supra) has already been declared as per incuriam, the reliance on the same by

learned counsel for the appellant is not justified and the instant intra court appeal being not maintainable is liable to be dismissed.

8. Having heard rival submissions, perusing the record and respectfully considering the judgments cited at Bar, we find that intra court special appeals in contempt cases are maintainable only when the contempt court oversteps its jurisdiction by addressing the merits of the original dispute. In the instant matter the contempt court vide order impugned has neither touched the merit nor has decided any issue and it has not made any direction relating to the merits of the disputes between the parties. Hence, we find that the contempt court has not overstepped its jurisdiction. We find that the judgment in Tasneem Fatima (Supra) being per incuriam is not applicable in the instant matter and the judgments in Subhash Chandra (Supra) and Alok Kumar Yadav (Supra) are holding the field. As such, no interference is required in the instant intra court appeal.

9. In the aforesaid facts and circumstances, this Court is of the considered opinion that the instant intra court appeal against the order impugned is not maintainable and is accordingly **dismissed**.

(2026) 4 ILRA 1262
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 27.04.2026

BEFORE

THE HON'BLE MRS. MANJU RANI CHAUHAN, J.

Writ A No 4960 of 2026

Smt. Asha Singh

...Petitioner

Versus

State of U.P. & Ors.

...Respondents

Issue for Consideration

(1) Entitlement of first wedded wife to get family pension, particularly when nomination by husband in favour of second wife is there.

Headnotes

(A) Service law – Family pension – Entitlement of first wife – Petitioner's husband was died in harness – First wife claimed family pension – Daughter of second wedded wife also claimed compassionate appointment – Effect – B.S.A. required first wife to produce the succession certificate for payment of family pension – Validity challenged: (E-1)

Held: The second marriage, after the Hindu Marriage Act, 1955, came into force, is void. The second wife does not fall within the definition of 'family,' and any nomination in her favour cannot override the legally wedded wife's right to family pension, as she qualifies as a family member – As the second marriage is void under the Hindu Marriage Act, the petitioner, as the legally wedded wife, is entitled to the family pension. [Para 16]

Case Law Cited

Manno Singh vs. State of U.P., 2014 (9) ADJ 701; Kiran Sonkar vs. State of U.P. and Others, 2023 (3) ADJ 253; Urmila Singh vs. State of U.P. and Others, 2025:AHC:121667; Rafat Naaz and Others vs. State of U.P. and Others, MANU/UP/5109/2024 – **referred to.**

List of Acts

Hindu Marriage Act, 1955 – S. 12.

List of Keywords

Died in harness, Legally wedded wife, Family pension, Second wife, Succession certificate, Void marriage, Family, Eldest surviving widow, Valid nomination.

Case Arising From

Order of District Basic Education Officer dated 02.11.2023 requiring the petitioner, the legally wedded wife, to produce a succession certificate for the payment of the family pension.

Appearances for Parties

Advs. for the Appellant: Grijesh Tiwari

Advs. for the Respondents: Akhilesh Kumar Sharma, Bansh Gopal Mishra (S.C.)

(Delivered by Hon'ble Mrs. Manju Rani Chauhan, J.)

1. Heard Mr. Grijesh Tiwari, learned counsel for the petitioner, learned Standing Counsel for the State-respondents, Mr. Bansh Gopal Mishra, Advocate holding brief of Mr. Akhilesh Kumar Sharma, learned counsel for the respondent nos.2, 5 & 6 and perused the record.

2. The present writ petition has been filed inter-alia for the following reliefs:-

"i) Issue a writ order or direction in the nature of Mandamus commanding/directing the respondents to provide/pay the family pension as well as dues of late Dileep Kumar Singh to the petitioner being a wife and legal heir in terms of applicable Rules and Schemes by ignoring the order dated 02.12.2023, passed by the respondent no.5, forthwith or within stipulated period as fixed by this Hon'ble Court.

ii) Issue a writ order or direction in the nature of Mandamus commanding / directing the respondents to decide the representation dated 06.01.2026 (contained as Annexure No.17 to the writ petition), filed by the petitioner within stipulated period as fixed by this Hon'ble Court.

iii) Issue any other writ order or direction which this Hon'ble Court may deem fit and proper in the circumstances of the case

. iv) Award cost of the writ petition to the petitioner."

3. Placing brief facts of the case, the learned counsel for the petitioner submits that the petitioner's husband, Dileep Kumar Singh, was initially appointed as an Assistant Teacher in the year 2005 in a Primary School. He died in harness on 05.07.2017, leaving behind the petitioner, his legally wedded wife, and an adopted son, Vijay Kumar Singh. After the death of the petitioner's husband, the concerned District Magistrate issued a Family Membership Certificate on 10.12.2019, recognizing the petitioner as the legally wedded wife and naming Vijay Kumar Singh as the

adopted son. After receiving the No Dues Certificate from the In-charge of the Primary School where the petitioner's husband had been working, the petitioner moved an application for payment of family pension.

4. When nothing was done, the petitioner filed Writ Petition No.5574 of 2023 (Smt. Asha Singh vs. State of U.P. and others), which was disposed of by order dated 11.07.2023 directing the District Basic Education Officer to pass orders for payment of family pension in case the petitioner is entitled for the same. When the aforesaid order was not complied with, a contempt application (Civil) No.7209 of 2023 was filed wherein the opposite party was granted further time for compliance with the orders passed in the writ petition.

5. On 02.12.2023, the Additional Director (Treasury & Pension), Varanasi Region, Varanasi, directed the District Basic Education Officer, Varanasi, as well as the Finance and Account Officer, to take the necessary steps for the payment of family pension to the petitioner.

6. In the meantime, Vaibhavi Singh, the daughter of the second wife, namely, Pooja Singh, filed Writ Petition No. 11772 of 2023, seeking a compassionate appointment due to the death of Late Dileep Kumar Singh. The Co-ordinate Bench of this Court, by order dated 11.08.2023, directed the petitioner to file a fresh representation, which was to be decided after hearing the legally wedded wife, Asha Singh.

7. Learned counsel for the petitioner further submits that all the documents, i.e., passport, Aadhar Card, mutation receipt issued by the Municipal Corporation Varanasi, Voter I.D. Card, and Domicile Certificate, prove that the petitioner is the legally wedded wife and Vijay Kumar Singh is the adopted son, both of whom are entitled to the payment of family pension.

8. Learned counsel for the petitioner has drawn the attention of the Court to page 87 of the petition, which contains a property suit filed by Vaibhavi Singh, wherein, in paragraph 3 of the plaint, it is admitted that the petitioner, Asha Singh, is the first legally wedded wife of Late Dileep Kumar Singh.

9. In compliance with the order dated 11.07.2023 in the writ petition and the order dated 04.10.2023 passed in the Contempt Petition, the District Basic Education Officer, Varanasi, passed an order dated 02.11.2023, requiring the petitioner to submit a succession certificate. In the aforesaid order, the District Basic Education Officer also mentioned that both Asha Singh and Pooja Singh had produced succession certificates, each claiming to be the wife of Late Dileep Kumar Singh. The Officer further noted that, in view of Section 12 of the Hindu Marriage Act, 1955, a second marriage is void if the legally wedded wife is still alive. The documents submitted by the petitioner were also taken into consideration by the District Basic Education Officer while passing the order dated 02.11.2023, which proved her to be the legally wedded wife; however, a succession certificate is still required for the payment of the family pension.

10. Learned counsel for the petitioner has relied upon the judgment of the Co-ordinate Bench of this Court in the case of **Manno Singh vs. State of U.P., reported in 2014 (9) ADJ 701**. The relevant paragraph 16 of the aforesaid judgment is as follows:

"16. It is clear from the facts and rules, stated herein above, that the second marriage after coming into force of the Hindu Marriage Act, 1955 is null and void. The second wife is not included within the definition of family, nomination if made in her favour would not defeat the claim of the legally wedded wife to claim family pension as she falls within the definition of family. Regulation 7 provides that family pension is not admissible to a person who is not a member of the deceased official's family. Sub-clause (4) refers to nomination under sub-regulation (5) which is exception to the general rule, Sub-clause 4(a)(i) provides that pension shall be paid to the "eldest surviving widow", thus, the rules refer to two widows and the manner in which pension is to be paid to them. In case, there is no nomination, the eldest widow shall receive pension and in case of nomination the nominee shall receive pension. Regulations being subordinate legislation cannot recognize second marriage which is null and void under the Hindu Marriage Act, thus in the opinion of the Court, the petitioner is entitled to family pension as she falls within the definition of family of the deceased employee. "

11. He has also relied upon the judgment of the Co-ordinate Bench of this Court in the case of **Kiran Sonkar vs. State of U.P. and Others**, reported in 2023 (3) ADJ 253. The relevant paragraphs 16 and 18 are as under:-

"16. In case of Chandra Kali Vs. State of U.P. and 7 others passed in Writ A No. 3288 of 2017 decided on 31.07.2019, Court has held that pension is to be disbursed as per provisions of Rules, 1961. The Rules clearly states that only eligible persons as defined in definition of "family" shall be entitled to receive family pension and member out of family member as defined in Rules, 1961 is not entitled for pension. Relevant paragraph of aforesaid judgment is quoted below; -

"As regards, eligibility to family pension, the pension is to be disbursed as per the provisions of the Rules, 1961. The Rules clearly state that only eligible person is entitled to receive family pension but where pension awarded ceases to be payable on the death or marriage of the recipient or for any other reason, it will be regranted to the persons next lower in the order mentioned in sub-rule (4) of Rule 7. The Hindu second wife would not be eligible for family pension as long as the first wife is alive and has not remarried. There is no provision in the Rules for relinquishment of family pension in favour of another person. The eighth respondent would not fall within the definition of "family" of the employee. The sixth and seventh respondent being sons of the deceased employees brother are also not family of the employee within the definition of "family" under the Rules, 1961."

18. Therefore, after death, gratuity, pension and terminal benefits shall be paid strictly in accordance with Rule 3(3), Rule 5(1) & Rule 6 of Rules, 1961 and any nomination made in service book contrary to the Rules, 1961 cannot be accepted. Petitioner being legally wedded wife is fully entitled for terminal benefits"

12. He has also relied upon the judgment of the Co-ordinate Bench of this Court in the case of **Urmila Singh vs. State of U.P. and 4 Others**, reported in Neutral Citation No. 2025:AHC:121667, where it was held that the petitioner, being the legally wedded wife, is entitled to the family pension.

13. Relying upon the judgment of the Co-ordinate Bench of this Court in the case of **Rafat Naaz and Others vs. State of U.P. and Others**, reported in MANU/UP/5109/2024, learned counsel for the petitioner submits that once it is proved that the petitioner is the legally wedded wife, no succession certificate is required for the payment of family pension.

14. Learned counsel for the respondents-BSA could not disputed the aforesaid facts.

15. From the arguments as placed by learned counsel for the parties, it is undisputed that the petitioner is the legally wedded wife of the deceased government servant. The same is evident from the succession certificate issued by the concerned District Magistrate, which has not been disputed.

16. The second marriage, after the Hindu Marriage Act, 1955, came into force, is void. The second wife does not fall within the definition of 'family,' and any nomination in her favour cannot override the legally wedded wife's right to family pension, as she qualifies as a family member. Regulation 7 specifies that family pension is only payable to members of the deceased's family. Sub-clause 4(a)(i) provides that the 'eldest surviving widow' is entitled to the pension, recognizing the rights of two widows and the procedure for pension distribution. In the absence of a valid nomination, the eldest widow receives the pension. As the second marriage is void under the Hindu Marriage Act, the petitioner, as the legally wedded wife, is entitled to the family pension.

17. Having considered the submissions of learned counsel for the parties and the peculiar facts and circumstances of the case, and in view of the admitted fact that the petitioner is the legally wedded wife of late Dileep Kumar Singh, this Court finds that the petitioner is entitled for the family pension. A mandamus is issued to the respondents to immediately release the family pension and other dues of late Dileep Kumar Singh in favour of the petitioner.

18. The writ petition stands **allowed** accordingly.

19. There shall be no order as to costs.

(2026) 4 ILRA 1266
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 03.04.2026

BEFORE

THE HON'BLE MRS. MANJU RANI CHAUHAN, J.

Writ A No. 11875 of 2025

Preeti Jaiswal

...Petitioner

Versus

State of U.P. & Ors.

...Respondents

Issue for Consideration

- (1) Permissibility of challenging the cancellation of the appointment, obtained by using fraudulent marksheet, on the ground that no regular disciplinary enquiry was conducted.
- (2) Permissibility of challenging the cancellation of the appointment, obtained by using fraudulent marksheet, on the ground that the impugned action is being vitiated on account of delay of 25 years.
- (3) Permissibility of challenging the cancellation of the appointment, obtained by using fraudulent marksheet, on the ground that the marksheet was not annulled by the University.
- (4) Scope of Writ jurisdiction to interfere in the finding of facts.

Headnotes

(A) Service law – Cancellation of appointment – Assistant Teacher – Marksheet of BA IIIrd year was found doubtful as marks entered in it is slight more than the tabulation chart – Appointment was annulled with retrospective effect with a direction of recovery and initiating criminal proceeding – Validity challenged – Plea of not conducting regular disciplinary enquiry was taken – Grounds of impugned action being vitiated on account of delay of 25 years was also taken – Permissibility: (E-1)

Held: The present case does not pertain to an instance of misconduct committed during the course of service; rather, it strikes at the very root of the petitioner's entry into service, which is alleged to have been secured on the basis of a tainted and fraudulent document. It is trite law that where the initial appointment itself is void ab initio, the employer is not obliged to undertake a detailed disciplinary inquiry akin to punitive proceedings contemplated under the service rules. [Para 82]

Further held: Fraud vitiates all proceedings and that there can be no limitation for the discovery and correction of a fraud. The moment such fraud comes to light, the competent authority is well within its jurisdiction to take appropriate corrective measures, irrespective of the lapse of time. [Para 94]

(B) Service law – Cancellation of appointment – Assistant Teacher – Allegation of using Marksheet of BA IIIrd year procured by playing fraud was leveled – Appointment was annulled – Validity challenged – Plea of lack of formal cancellation of the degree by the University was raised – Permissibility: (E-1)

Held: An employer is not only entitled, but is under a legal obligation, to satisfy itself as to whether a candidate fulfilled the prescribed eligibility conditions at the time of entry into service. Where the material on record demonstrably indicates that the marksheet relied upon by the candidate is manipulated, inconsistent, or otherwise unreliable, the employer cannot be compelled to await a formal annulment of the degree by the University authorities. The satisfaction of the employer, arrived at on the basis of a duly conducted inquiry and founded upon cogent material, with regard to fraud or misrepresentation, is sufficient to invalidate the appointment. [Para 87]

(C) Practice and procedure – Constitution of India – Article 226 – Writ – Finding of facts – Scope of interference: (E-1)

Held: This Court, in exercise of its writ jurisdiction, does not sit as an appellate forum to reappraise or reassess findings of fact, unless such findings are demonstrated to be perverse, arbitrary, or wholly unsupported by the record. [Para 91]

(D) Service law – Cancellation of appointment – Assistant Teacher – Marksheet of BA IIIrd year was found forged – After enquiry, the appointment was annulled with retrospective effect – Validity challenged – Plea of length of continuous service of 15 years was taken – Permissibility: (E-1)

Held: The petitioner cannot claim any vested or indefeasible right on the basis of long continuance in service, when the very foundation of such continuance stands vitiated – Equity cannot be invoked to perpetuate an illegality, nor can a person be permitted to derive benefit from a fraudulent act. Once fraud is detected, the authorities are not only empowered but duty-bound to initiate inquiry and take consequential action, irrespective of the lapse of time. [Para 96 and 127]

Case Law Cited

Writ A No. 10029 of 2025, Krishna Kant vs. State of U.P. and others, 2025:AHC:186564; Writ A No. 11846 of 2025, Virendra Kumar Mishra vs. State of U.P. and Others; Writ A No. 12839 of 2023, Shiv Kumar vs. State of U.P. and 8 Others; Writ A No. 12336 of 2025, Pankaj Mathur vs. State of U.P. and 3 Others; Writ A No. 10843

of 2025, Deepa Magleena vs. State of U.P. and 4 others; Writ A No. 2014 of 2023, Kamlesh Kumar Nirankari vs. State of U.P. and 2 Others; Writ A No. 19634 of 2025, Garima Singh vs. State of U.P. and 2 Others; Poonam Shukla vs. State of U.P. and others, 2016 (1) ADJ 225; Special Appeal No.26 of 2007, Vinay Kumar Shahi vs. Deen Dayal Upadhyaya Gorakhpur University and Others; State of Bihar vs. Radha Krishna Singh and others, (1983) 3 SCC 118; LIC of India and another vs. Ram Pal Singh Bisen, (2010) 4 SCC 491; Mansaram vs. S.P. Pathak and others, 1984 (1) SCC 125; Radhe Shyam Yadav & Another vs. State of Uttar Pradesh & Others, (2024) 11 SCC 770; Riyazul Hasan vs. State of Uttar Pradesh & Others, 2025:AHC:223273; A.P. State Financial Corporation vs. M/S GAR Re-Rolling Mills and another, (1994) 2 SCC 647; S. P. Chengalvaraya Naidu vs. Jagannath, (1994) 1 SCC 1; R. Vishwanatha Pillai vs. State of Kerala and others, (2004) 2 SCC 105; Bank of India and another vs. Avinash D. Mandivikar and others, (2005) 7 SCC 690; Chairman and Managing Director, FCI and others vs. Jagdish Balaram Bahira and others, (2017) 8 SCC 670 – **referred to.**

List of Acts

Constitution of India – Article 226; State Universities Act, 1973; Right to Information Act, 2005; U.P. Government Servant (Discipline and Appeal) Rules, 1999 – Rule 7; U.P. Basic Education Staff Service Rules, 1973.

List of Keywords

Selection proceeding, Special B.T.C., Appointment, Charge sheet, Inquiry proceeding, Suspension, Verification of Degree, Enquiry Committee, Dispute, Conformity, Decision, Hearing, Notice, Reply, Verification report, Erroneous, Computation of salary, Recovery of salary, Departmental proceeding, Infirmary, Tabulation chart, Justification, Counter foil, Cancellation, Correctness of marks, Doubt, Adjournment, Genuine, Interpolation in the marks, Manipulated marks, Cogent material, Lawful inquiry, Illegality, Fraud, Solemn act, Foundation of appointment, Fabricated documents, Opportunity of hearing, Principle of natural justice, Substratum, Consequential direction, Criminal proceeding, Credentials, Inflation of marks, Explanation, Jurisdiction, Unexplained delay, Determination, Misconceived, Legally untenable, Trite law, Void ab initio, Punitive proceeding, Insignificant, Satisfaction, Devoid of merit, Manifest oversimplification, Evidentiary frameworks, Settled proposition of law, Discrepancies, Finding of facts, Reappreciate, Reassess, Principle of equity, Degree of falsification, Hierarchical evidentiary value, Probative value, Derivative record, Presumption, Inconsistency, Deliberation, Arbitrary, Discovery of fraud, Sanctity of public record, Abuse of process, Equitable relief, Non-genuine documents, Procedural safeguards, Arbitrariness, Perversity.

Case Arising From

Impugned order dated 28.07.2025 passed by the Basic Shiksha Adhikari, Gorakhpur cancelling the appointment of the petitioner with effect from the date of her initial appointment.

Appearances for Parties

Advs. for the Appellant: Siddharth Khare.

Advs. for the Respondents: Chandan Sharma, Shailendra Singh, Ashish Kumar Nagvanshi.

(Delivered by Hon'ble Mrs. Manju Rani Chauhan, J.)

1. Heard Mr. Siddharth Khare, learned counsel for the petitioner, Sri Chandan Sharma, learned counsel for the respondent Nos.4 and 5, Mr. Shailendra Singh, learned counsel for the respondent Nos.1 and 2, Sri Ashish Kumar Nagvanshi, learned counsel for the respondent Nos.3, 6 and 7 and perused the record.

2. The writ petition has been filed with the following prayers:-

“(i) A writ, order or direction in the nature of certiorari quashing the order dated 28.07.2025 passed by Basic Shiksha Adhikari, Gorakhpur.

(ii) A writ, order or direction of suitable nature restraining the respondents from interfering with the working of the petitioner as Assistant Teacher at Prathmik Vidyalay Jangal Dumri No.1, Development Block Bhathat, District Gorakhpur and to pay the petitioner her full monthly salary of the said post regularly every month.

(iii) Any other relief as this Court may deem fit and proper in the facts & circumstances of the case.”

3. Placing the brief facts of the case, learned counsel for the petitioner submits that the educational qualification of the petitioner is High School, Intermediate, Bachelor of Arts Degree, Bachelor of Education and Special BTC Training Course, 2008. In the year 2008 selection proceedings were undertaken by the State Government for admission to Special BTC Training Course 2008 to such candidates who possessed some other teacher's training qualification.

4. Accordingly, the petitioner also applied in pursuance thereof, and was selected and underwent training at District Institute of Education & Training, Gorakhpur. On successful completion of Special BTC Training Course 2008, the petitioner was issued a certificate dated 21.12.2009. Upon declaration of the result of Special BTC Training Course, the petitioner became entitled for automatic appointment as an Assistant Teacher, accordingly, based upon the result of Special BTC Training Course, 2008, the petitioner was issued appointment order dated 06.02.2010.

5. The petitioner forthwith joined and thereafter has been working continuously up to the satisfaction of her superiors. The work and conduct of the petitioner has been fully satisfactory. The petitioner was at the relevant point of time was posted at Prathmik Vidyalaya Jangal Dumri No.1, Development Block Bhathat, District Gorakhpur. The petitioner has been paid her regular monthly salary up to the month of June 2025.

6. The petitioner passed her Bachelor of Arts Course as a student of St. Andrew's College, Gorakhpur, affiliated to Deen Dayal Upadhyay Gorakhpur University, Gorakhpur (in short □Gorakhpur University□). The aforesaid degree as awarded to the petitioner was duly verified by the Examination Controller, Gorakhpur University, Gorakhpur. It was duly verified that the petitioner had secured 1175 marks out of 1800 marks in aggregate of 3 years Bachelor of Arts Course.

7. Without there being any material against the petitioner, she was placed under suspension by the Basic Shiksha Adhikari, Gorakhpur on 19.12.2019 and a charge sheet dated 26.12.2019 was issued. Aggrieved by the aforesaid, the petitioner filed Writ A No.8607 of 2020 (Preeti Jaiswal vs. State of U.P. & Others) and vide order dated 15.10.2020 the writ petition was finally disposed of directing to conclude the inquiry proceedings within a period of 30 days from that date, failing which the suspension order of the petitioner would stand revoked.

8. The Khand Shiksha Adhikari, Bhathat, sent a communication dated 10.01.2020 addressed to the Principal St. Andrew's College, Gorakhpur, seeking verification of Bachelor of Arts Degree of the petitioner. In response, the Principal of the aforesaid college made an endorsement to the effect that according to the tabulation sheet made available by the University, the petitioner secured 1175 marks out of 1800 marks and passed her Bachelor of Arts Examination in First Division. The endorsement dated 11.01.2020 finds place on the communication of Khand Shiksha Adhikari, Bhathat.

9. On 18.01.2020, the Khand Shiksha Adhikari, Bhathat, sent a communication to the Basic Shiksha Adhikari, Gorakhpur, giving an opinion that no discrepancy is reflected. However, it would be appropriate to seek verification of the Graduation Degree of the petitioner from the University.

10. The Vice Chancellor of the Gorakhpur University, Gorakhpur, proceeded to appoint an Enquiry Committee to conduct verification of the mark sheet of the petitioner. The Committee so constituted was headed by a professor of the University with three other members. The Committee met on 30.09.2022 and proceeded to submit a report dated 30.09.2022 for consideration and decision by the Examination Committee of the University. The report as placed by the Committee dated 30.09.2022 mentions about the verification of the marks of the petitioner based upon the counter foil made available by the confidential section of the University, however, does not dispute the marks awarded to the petitioner are in conformity with the tabulation chart maintained by the University.

11. The Examination Controller of the University based on the aforesaid report dated 30.09.2022 of the Committee constituted by the Gorakhpur University submitted a report dated 18.09.2024 which was followed by a further report dated 21.05.2024. Though, the Committee while placing the report before the Examination Controller of the University has directed the Examination Controller to pass appropriate orders and place the same before the Basic Shiksha Adhikari, Gorakhpur and Incharge STF, Gorakhpur. Till date, no decision has been taken at the level of the Examination Committee on the basis of the report dated 30.09.2022.

12. Learned counsel for the petitioner submits that degree so awarded by the respondent-University can be cancelled or revoked only on the basis of decision of the Executive Council of the University and this decision can be made only on the basis of limited grounds enumerated under the State Universities Act, 1973. Neither the Executive Council nor the Examination Committee has taken any decision on the Bachelor of Arts Degree of the petitioner.

13. In between the Special Task Force, Gorakhpur appears to have submitted some report dated 01.04.2024. Another report dated 14.02.2025 followed by a further report dated 21.05.2024 was sent by the Examination Controller.

14. On 20.08.2024, a notice was issued by the Basic Shiksha Adhikari, Gorakhpur, fixing 26.08.2024 as the date of hearing, and the petitioner was required to remain present. In response to the aforesaid notice, the petitioner filed an application dated 26.08.2024 requesting for supply of documents referred to therein. Thereafter, another notice dated 19.10.2024 was issued by the Basic

Shiksha Adhikari, Gorakhpur, fixing 29.10.2024 as the date of hearing. The aforesaid notice was accompanied by a copy of the proceedings of the Inquiry Committee of Gorakhpur University dated 30.09.2022, letters of Gorakhpur University, Gorakhpur dated 21.05.2024 and 18.09.2024 and the report of Special Task Force dated 26.07.2024. The petitioner in response of the aforesaid notice filed a detailed representation dated 29.10.2024. Against the notice dated 19.10.2024, however, she filed a Writ Petition No.77 of 2025 (Preeti Jaiswal vs. State of U.P. & 2 Others), and the aforesaid writ petition was finally disposed of by order dated 17.02.2025 directing the petitioner to submit a reply to the notice dated 19.10.2024 within a period of three weeks from that date before the concerned respondent who shall inturn take decision in the matter strictly in accordance with law, expeditiously, preferably within a period of three months thereafter.

15. Pursuant to the aforesaid order, a fresh notice dated 01.03.2025 making partial amendment to the notice dated 19.10.2024 was issued fixing 17.03.2025 as the date of hearing. In response to the aforesaid notice, the petitioner filed a representation dated 17.03.2025. Another notice dated 27.05.2025 was issued by Basic Shiksha Adhikari, Gorakhpur, which was a fourth notice to the petitioner to which a detailed reply and representation dated 09.06.2025 was submitted by her.

16. Learned counsel for the petitioner further points out that the Controller of Examination has verified the mark sheet of the petitioner on 03.02.2014 and has forwarded the verification report dated 03.02.2014 to the Basic Shiksha Adhikari, Gorakhpur through Khand Shiksha Adhikari, Bhathat, vide letter dated 05.02.2014.

17. He further submits that on the basis of application filed under Right to Information Act, 2005, the petitioner received the information that by communication dated 22.06.2021 issued by the Examination Controller it has been informed that Tabulation Register is maintained as a permanent record, whereas the counter foil/mark slip is retained only for a period of one year. It was further informed that the verification of the results is undertaken from the Tabulation Register. Evaluated answer sheets are retained for a period of two years or till holding of the examination thereafter. It was also informed by communication dated 04.09.2024 by the Principal of St. Andrews College, Gorakhpur, responded that the marks are entered in the format of the mark sheet made available from the University on the basis of marks contained in the Tabulation Register. By communication dated 18.10.2024, the Principal of the College intimated that the Tabulation Register was maintained by Gorakhpur University and verification of marks was only possible from the said Tabulation Register.

18. Learned counsel for the petitioner further submits that on 14.02.2025 the Examination Controller proceeded to submit a report to the effect that the earlier verification report dated 01.04.2024 was found to be erroneous and, accordingly, a modified report was placed on 21.05.2024. Thereafter, on 28.07.2025, an order was passed by the Basic Shiksha Adhikari, Gorakhpur, purporting to cancel the appointment of the petitioner with effect from the date of her initial appointment with further directions for lodging the First Information Report against the petitioner and for computation of salary for effecting a recovery of the salary from the year 2010 as paid to the petitioner.

19. The aforesaid order dated 28.07.2025, which is the order impugned has been challenged on the following grounds:-

(i). That no regular departmental proceedings were initiated prior to passing of the order impugned.

(ii). That the Basic Shiksha Adhikari, Gorakhpur has not conducted any oral hearing at his own level or by appointing any inquiry officer in accordance with Rule 7 of U.P. Govt. Servant (Discipline and Appeal) Rules, 1999 (in short □ Rules of 1999 □).

(iii). It is settled position of law that prior to imposition of major penalty like termination of service, a proper inquiry must be conducted in accordance with the procedure as provided under Rule 7 of the Rules of 1999.

(iv). None of the mark sheet of the petitioner suffer from any infirmity.

(v). None of the notices have been given to the petitioner making allegations to the effect that the mark sheet of the petitioner could not be verified by Deen Dayal Upadhyay, Gorakhpur University, Gorakhpur, because entries in the mark sheet is being compared with some counter foil claim to be available at St. Andrews College, Gorakhpur, on the basis of which a doubt is cast upon the petitioner for giving a forged mark sheet. As informed, the mark sheet are to be verified from the tabulation chart as maintained and there exists no discrepancy in the petitioner's mark sheet as compared with the tabulation sheet. There is no justification in passing any order on the basis of some counter foil obtained from St. Andrews College. The petitioner has worked for almost 18 years and cancellation of appointment by passing the order impugned after so many years, is arbitrary and bad in the eyes of law.

20. Learned counsel for the petitioner has filed written submissions wherein challenging the order impugned the following grounds have been taken:-

21. The objection which has been taken with respect to Bachelor of Arts Degree obtained by the petitioner in the year 2000 being student of St. Andrews College, Gorakhpur affiliated to Deen Dayal Upadhyay Gorakhpur University, Gorakhpur. There does not exist any allegation that the petitioner was not a student of St. Andrew's College, Gorakhpur, however, it has been stated that the marks entered in the mark sheet of IIIrd year of B.A. Course are inflated. Such objection is being raised on the basis of comparison of the mark sheet of the petitioner from the counter foil available with the Gorakhpur University. He submits that despite the fact that the marks entered in the mark sheet of the petitioner tallies with the marks entered in the tabulation register maintained by the St. Andrew's College as well as by the Gorakhpur University. The aforesaid objection is arbitrary as the tabulation register of the University and the College are the most authentic documents and any doubt with regard to the correctness of the marks can be resolved on the basis of the entries in the tabulation register only. Learned counsel for the petitioner has further submitted that the Bachelor of Arts Degree/mark-sheet awarded to the petitioner continues to remain intact, hence, the impugned order could not have been passed unless the aforesaid is

cancelled or revoked. There also does not exist any justification on the part of Basic Shiksha Adhikari to pass the order impugned basing upon the mark sheet which is still intact.

22. Learned counsel for the petitioner further submits that the appointment of the petitioner is on the basis of Special BTC Training Certificate 2008, which is also intact, therefore, his appointment could not be cancelled on non existing grounds. The power of canceling the degree awarded to the petitioner lies with the Executive Council, however, there is no such decision on the basis of which the BSA could have proceeded to pass the order impugned. The respondents have tried to justified the entire action and have passed the order impugned on the basis of inquiry report of the Inquiry Committee dated 30.09.2022, minutes of the meeting of Examination Committee dated 21.08.2024, award sheet of BA-III, 2000, report of Examination Controller dated 21.05.2024, 18.09.2024 and 14.02.2025 as well as the report of the Special Task Force dated 26.07.2014. None of the aforesaid documents so relied upon demonstrate any decision for cancelling the degree/mark sheet already awarded to the petitioner.

23. The report of the Inquiry Committee (constituted by order dated 14.10.2025) by the Examination Controller contains a recital that the said report was being forwarded to the Examination Committee for further action. The extract of the aforesaid is as follows:-

“तदनुसार जाँच समिति की आख्या परीक्षा समिति को संदर्भित है। परीक्षा समिति के निर्णयानुसार सत्यापन आख्या बेसिक शिक्षा अधिकारी, गोरखपुर और प्रभारी STFफील्ड इकाई, गोरखपुर को प्रेषित किया जाये।”

24. The Examination Committee in its meeting dated 21.08.2024 has mentioned as under:-

“16 कु० प्रीति जायसवाल पुत्री रागपति गुप्ता बी० ए० एवम बी० एड दोनों के प्रकरण में गठित जाँच समिति की संस्तुति दिनांक 30/09/2022को परीक्षा समिति के सम्मुख प्रस्तुत किये जाने पर विधार।

निर्णय समिति जाँच आख्या एवं कृत्य कार्यवाही से संसूचित हुई। “

25. From the aforesaid, it is clear that no decision has been taken by the Examination Committee which also does not have any such powers. The report of the examination controller and Special Task Force as forwarded to the Basic Shiksha Adhikari is based on an inquiry report dated 30.09.2022, which itself cannot be taken as decision of the Examination Committee.

26. As per the report of the inquiry committee dated 30.09.2022 and letters of the Examination Controller and Special Task Force, the basis for doubting correctness of the marks entered in the mark sheet of the petitioner and the tabulation register of St. Andrew's College and the tabulation register of Gorakhpur University is the award sheet (counter foil).

27. At no point of time, any inquiry has been conducted with respect to the authenticity of the tabulation sheet on the basis of which marks of the petitioner has already been verified. The authorities have casted doubt on the tabulation register of the University itself on the basis of award sheet (counter foil) which is arbitrary and without justification.

28. The aforesaid objection has been raised after a lapse of 25 years after graduation of the petitioner and it is beyond imagination to believe as to why even after lapse of 25 years the award sheet has still not been destroyed. The impugned order is thus based on non existing grounds, therefore, is illegal, arbitrary and bad in the eyes of law.

29. The Bachelor of Arts Degree of the petitioner has been obtained in the year 2000 while the objection has been raised with respect to the aforesaid mark sheet between 2022 to 2025 years after a period of more than decades, there does not exist any justification for such belated action.

30. The only allegation which could be accepted is entering slight higher marks than the marks obtained in the IIIrd Year Bachelor of Arts. Even on the basis of the marks as shown in the tabulation sheet, the petitioner would continue to remain a pass and valid holder of graduation degree, therefore, there is no justification in passing the order impugned. A verification report of Controller of Examination dated 03.02.2014, the communication of the Principal St. Andrew's College, Gorakhpur dated 04.09.2024, 18.10.2024 as well as tabulation chart maintained by St. Andrews College, Gorakhpur as well as the Gorakhpur University and the report of examination controller dated 01.04.2024 all go to prove the correctness of the mark sheet of the petitioner.

31. Learned counsel for the petitioner further submits that even if the reduced marks of the petitioner are there an issue would arise as to how reduced marks would effect the selection/appointment of the petitioner, thus, the recovery on the basis of the aforesaid impugned order dated 28.07.2025, is also bad and not justified in the eyes of law. Hence, the impugned order is liable to be set aside.

32. Learned counsel appearing for the respondent-BSA submits that the petitioner came to be appointed as an Assistant Teacher in a Primary School pursuant to an appointment letter dated 06.02.2010. It is further contended that, subsequent to such appointment, certain doubts and suspicions arose with regard to the genuineness and authenticity of the B.A. mark-sheet purportedly issued in favour of the petitioner by St. Andrew's College, Gorakhpur, an institution affiliated with Gorakhpur University.

33. In view thereof, and in discharge of the statutory obligation to ensure the integrity of public appointments, the competent authority deemed it appropriate to initiate proceedings for verification of the said educational credentials, so as to ascertain their authenticity and veracity.

34. Learned counsel for the respondents further submits that, in order to ascertain the authenticity of the petitioner's academic credentials, the Vice-Chancellor of Deen Dayal Upadhyaya University, Gorakhpur, constituted a three-member inquiry committee to examine the genuineness of the B.A. examination mark-sheets pertaining to the academic sessions 1998-2000.

35. It is contended that, in the course of the said inquiry, the committee issued multiple notices to the petitioner, affording her adequate opportunity to appear in person and submit a written explanation. However, despite due service of notices, the petitioner neither appeared before the committee nor furnished any reply, thereby choosing not to avail the opportunity so granted.

36. It is further submitted that, upon completion of the inquiry proceedings, the committee finalized its report on 30.9.2022 and duly forwarded the same to the District Basic Education Officer, Gorakhpur, for appropriate action in accordance with law.

37. Learned counsel for the respondents further submits that, upon receipt of the aforesaid inquiry report, notices were duly issued by the District Basic Education Officer, Gorakhpur, as well as by the Inspector, STF, calling upon the petitioner to furnish her explanation and to appear for personal hearing.

38. It is contended that, instead of responding to the said notices, the petitioner preferred Writ Petition No.77 of 2025 before this Hon'ble Court, which came to be disposed of by order dated 17.02.2025. By the said order, this Hon'ble Court was pleased to grant liberty to the petitioner to submit her reply to the notice dated 19.10.2024 issued by the District Basic Education Officer, Gorakhpur, and further directed respondent no.2 to consider and decide the matter strictly in accordance with law, after duly advertent to the submissions so made by the petitioner.

39. Learned counsel for the respondents further submits that, in compliance with the order dated 17.02.2025 passed by this Hon'ble Court, the District Basic Education Officer, Gorakhpur issued a notice dated 01.03.2025 to the petitioner, calling upon her to submit her reply to the allegations levelled against her.

40. It is contended that, in response thereto, instead of furnishing a substantive explanation, the petitioner, vide letter dated 17.03.2025, merely sought supply of certain documents and failed to address the issues raised in the notice. Thereafter, a further notice dated 27.05.2025 was issued by respondent no.6, granting yet another opportunity to the petitioner; however, she again sought adjournment and prayed for additional time to submit her reply.

41. It is further submitted that, pursuant to the subsequent notice dated 14.07.2025 issued by respondent no.6, the petitioner neither submitted any reply nor availed the opportunity of hearing extended to her.

42. In these circumstances, and after affording repeated opportunities which the petitioner failed to avail, the competent authority, being left with no alternative, proceeded to pass the order dated 28.07.2025, whereby the appointment of the petitioner was cancelled in accordance with law.

43. Learned counsel for the respondents, while defending the impugned order, submits that the same has been passed on the basis of a detailed and duly conducted inquiry, culminating in a report dated 30.9.2022 submitted by the committee constituted by Gorakhpur University.

44. It is contended that the said inquiry report, which forms the very foundation of the impugned action, has not been assailed or challenged by the petitioner at any point of time before any competent forum. Consequently, the findings recorded therein have attained finality and are binding upon the parties.

45. On the strength of the aforesaid report, it is further submitted that the petitioner's mark sheet has been conclusively found to be not genuine, and therefore, the impugned order does not suffer from any legal infirmity warranting interference by this Hon'ble Court.

46. Learned counsel for the respondents further submits that the inquiry has unequivocally revealed that the tabulation chart of the college pertaining to the examination in question had been tampered with. It is contended that there exists clear interpolation in the marks, whereby the petitioner's score was unlawfully enhanced from 227 to 336.

47. It is further submitted that the manner and extent of such interpolation stand conclusively established from the counterfoil maintained by the University, which constitutes primary and unimpeachable evidence for ascertaining the actual marks obtained by a candidate. The said primary record, therefore, belies the authenticity of the mark sheet relied upon by the petitioner.

48. In light of the aforesaid, it is contended that the petitioner had deliberately relied upon a fabricated and manipulated mark sheet to secure appointment, and consequently, the impugned order, having been passed on the basis of cogent material and lawful inquiry, does not suffer from any illegality or infirmity warranting interference by this Hon'ble Court.

49. Learned counsel for the respondents further submits that it is a well-settled principle of law that any appointment secured on the basis of fraud or misrepresentation stands vitiated at its very inception, and such a person is not entitled to any equitable relief, sympathy, or indulgence from the Court.

50. It is contended that fraud unravels all solemn acts, and once it is established that the very foundation of appointment is tainted, no leniency can be shown in favour of such an incumbent. In support of the aforesaid proposition, reliance has been placed upon the judgments rendered in **Krishna Kant vs. State of U.P. and others, (Writ-A No. 10029 of 2025)**, **Virendra Kumar Mishra vs. State of U.P. and Others in Writ A No.11846 of 2025**, **Shiv Kumar Vs. State of U.P. and 8 Others in Writ A No.12839 of 2023**, **Pankaj Mathur vs. State of U.P. and 3 Others in Writ A No.12336 of 2025**, **Deepa Magleena vs. State of U.P. and 4 others in Writ A No.10843 of 2025**, **Kamlesh Kumar Nirankari vs. State of U.P. and 2 Others in Writ A No.2014 of 2023** wherein it has been categorically held that a candidate who secures appointment on the strength of forged or fabricated documents cannot claim any protection in law. The similar issue has also been settled in case of **Garima Singh vs. State of U.P. and 2 Others in Writ A No.19634 of 2025**. On that issue Division Bench of this Court has also made observation in case of **Poonam Shukla vs. State of U.P. and others, 2016 (1) ADJ 225** and **Vinay Kumar Shahi vs. Deen Dayal Upadhyaya Gorakhpur University and Others in Special Appeal No.26 of 2007** that the tabulation chart is a sacred documents and no person can be permitted to make any interpolation in it.

51. Accordingly, it is submitted that the petitioner, having obtained appointment on the basis of a manipulated mark sheet, is not entitled to any relief, and the impugned order calls for no interference by this Hon'ble Court.

52. Learned counsel for the respondents submits that, in cases where an appointment has been secured by practising fraud, the requirement of affording further opportunity of hearing or entertaining delayed replies does not arise under the applicable Rules of 1999. It is contended that once fraud is *prima facie* established, the principles of natural justice cannot be invoked to perpetuate an illegality or to confer any advantage upon the wrongdoer.

53. It is further submitted that the petitioner, having failed to avail repeated opportunities already extended and having been found to have procured appointment on the basis of fraudulent documents, cannot now insist upon any additional opportunity as a matter of right.

54. In view of the aforesaid, it is submitted that the present writ petition is devoid of merit and is, accordingly, liable to be dismissed.

55. Learned counsel appearing for the respondent-University submits that, upon scrutiny of the petitioner's academic records, material discrepancies and variations in the marks obtained by the petitioner were detected.

56. It is contended that, in order to afford due opportunity, several communications were issued by the University calling upon the petitioner to appear in person and furnish an appropriate explanation with respect to the said discrepancies. In response thereto, the petitioner submitted a reply dated 25.06.2021, however, the explanation so tendered was found to be wholly unsatisfactory and failed to dispel the serious doubts regarding the authenticity of the marks in question.

57. Learned counsel appearing for the respondent-University submits that a detailed counter affidavit has been filed upon due perusal of the original records of the University as well as the inquiry report. It is contended that, upon scrutiny, it has been conclusively established that the marks recorded in respect of the petitioner for B.A. Part-I (1998, Roll No. 128685), B.A. Part-II (1999, Roll No. 109673), and B.A. Part-III (2000, Roll No. 114125) were found to have been tampered with in the tabulation register maintained at the examination centre, namely St. Andrew's College, Gorakhpur, as well as in certain corresponding University records.

58. It is further submitted that, from a perusal of the original award sheets obtained from the confidential section of the University, particularly with regard to B.A. Part-III (2000), it emerges that the petitioner had actually secured 41 marks in the first paper of Psychology, 06 marks in the second paper, 47 marks in the third paper, and 26 marks in the practical examination. Similarly, in Political Science, the petitioner had secured 42 marks in the first paper, 30 marks in the second paper, and 35 marks in the third paper.

59. However, it is contended that the mark sheet submitted by the petitioner before the office of the District Basic Education Officer reflects wholly different and inflated marks, namely 62, 51, 57, and 24 in Psychology, and 62, 72, and 62 in Political Science, respectively, thereby demonstrating a stark and unexplained variation from the original records maintained by the University. Such discrepancies, it is submitted, unmistakably establish that the mark sheet relied

upon by the petitioner is forged and fabricated, and further indicate tampering with the tabulation register in collusion with certain unknown persons.

60. It is thus submitted that the B.A. mark sheet produced by the petitioner is not genuine, and the inquiry report to that effect was duly placed before the competent authority, on the basis whereof the impugned order has been passed.

61. It is further submitted that, pursuant to the directions issued by this Hon^{ble} Court, a communication dated 19.10.2025 was addressed to the Controller of Examinations of the University for initiating appropriate action against the erring officials. In compliance thereof, the Vice-Chancellor directed the Controller of Examinations to issue show cause notices to the staff and employees of the Examination Department who had discharged duties during the period 1998 to 2019, with a view to identify the persons responsible for the fraud.

62. It is also contended that, consequent thereto, a First Information Report came to be lodged on 21.10.2025 at Police Station Cantt, District Gorakhpur, being Case Crime No. 0584 of 2025, under Sections 419, 420, 467, 468, 471 and 120-B of the Indian Penal Code. Further, the Controller of Examinations also addressed a communication to the Principal Secretary, Department of Higher Education, requesting constitution of a Special Task Force to conduct a comprehensive inquiry into the fraud perpetrated, of which the petitioner is a direct beneficiary.

63. All the aforesaid facts, it is submitted, have been duly brought on record by means of a personal affidavit filed by the Registrar of the University, in compliance with the directions issued by this Hon^{ble} Court.

64. Learned counsel for the respondents submits that the Inquiry Committee, upon a meticulous examination of the academic records of the petitioner as maintained by the University, particularly the counterfoil which constitutes primary and unimpeachable evidence, has rendered a detailed report. The findings recorded therein conclusively establish, beyond any reasonable doubt, that the petitioner had consciously, deliberately, and with mala fide intent, indulged in tampering with her educational documents so as to derive undue benefit for securing appointment in the Basic Education Department.

65. It is thus contended that the B.A. mark sheet relied upon by the petitioner cannot, by any stretch of imagination, be regarded as genuine or authentic. It is further submitted that the said inquiry report, forming the very substratum of the impugned action, has neither been assailed nor challenged by the petitioner at any stage and, as such, has attained finality.

66. In view of the aforesaid, it is submitted that the petitioner is not entitled to any relief as prayed for, and the present writ petition, being devoid of merit, is liable to be dismissed.

67. Heard learned counsel for the parties and perused the records.

68. The instant writ petition has been preferred laying challenge to the order dated 28.07.2025 passed by the Basic Shiksha Adhikari, Gorakhpur, whereby the petitioner's

appointment to the post of Assistant Teacher has been annulled with retrospective effect, accompanied by consequential directions for recovery of emoluments disbursed and initiation of criminal proceedings against the petitioner.

69. The factual conspectus, shorn of superfluous details, is that the petitioner asserts to have attained educational qualifications up to the level of Bachelor of Arts, followed by B.Ed., and thereafter completing the Special BTC Training Course, in the year 2008. On the strength of the aforesaid credentials, she came to be appointed as an Assistant Teacher in the year 2010.

70. It is not in dispute that subsequent to her appointment, certain complaints came to be lodged casting doubt upon the authenticity of her Bachelor of Arts marksheet, particularly with regard to the alleged inflation of marks obtained in the third year examination.

71. The matter was subjected to multifarious levels of scrutiny, encompassing verification by the University authorities, consideration of the inquiry committee report dated 30.09.2022, examination of the reports submitted by the Controller of Examinations, as well as inputs received from the Special Task Force.

72. On the basis of the aforesaid materials, repeated notices were issued to the petitioner, affording her adequate opportunity to submit her explanation with respect to the allegations pertaining to the authenticity of the Bachelor of Arts marksheet.

73. The principal submissions advanced by learned counsel for the petitioner, assailing the impugned order, are manifold.

74. Firstly, it is contended that no regular departmental inquiry, as contemplated under the U.P. Government Servant (Discipline and Appeal) Rules, 1999, was conducted prior to the passing of the impugned order, thereby vitiating the action on account of procedural infirmity.

75. Secondly, it is urged that the petitioner's Bachelor of Arts degree has not been formally annulled or cancelled by the competent University authority, and in the absence thereof, the respondent-authorities lacked jurisdiction to invalidate the petitioner's appointment founded upon such qualification.

76. Thirdly, it is submitted that the entries contained in the tabulation register lend support to the marks claimed by the petitioner, and, therefore, any reliance placed upon the counterfoil to discredit the same is arbitrary and unsustainable in law.

77. Fourthly, it is contended that the impugned action is vitiated on account of gross and unexplained delay, inasmuch as the degree in question pertains to the year 2000, and the proceedings have been initiated after an inordinate lapse of time.

78. Lastly, it is argued that even assuming, without admitting, that there exists some discrepancy in the marks obtained, the petitioner would nonetheless retain the status of a graduate, and thus, the very foundation of the appointment cannot be said to be vitiated.

79. It has further been urged that the petitioner has rendered long years of unblemished service, which ought to be accorded due weight in equity while adjudicating the present controversy.

80. Upon consideration of the rival submissions advanced at the Bar, the following issues arise for determination before this Court:-

(i) whether the impugned action stands vitiated for want of a regular disciplinary inquiry in accordance with the applicable service rules;

(ii) whether the absence of a formal cancellation of the petitioner's degree by the competent University authority renders the impugned order unsustainable in law;

(iii) whether the findings recorded with regard to the alleged forged and manipulated marksheet suffer from perversity or legal infirmity;

(iv) whether the element of delay, coupled with the petitioner's long continuance in service, gives rise to any vested or equitable right in her favour; and

(v) whether the directions pertaining to recovery of salary and initiation of consequential proceedings are legally tenable.

81. The submission advanced on behalf of the petitioner is that a full-fledged departmental inquiry under the U.P. Government Servant (Discipline and Appeal) Rules, 1999 was a sine qua non for the impugned action is fundamentally misconceived and legally untenable.

82. The present case does not pertain to an instance of misconduct committed during the course of service; rather, it strikes at the very root of the petitioner's entry into service, which is alleged to have been secured on the basis of a tainted and fraudulent document. It is trite law that where the initial appointment itself is void ab initio, the employer is not obliged to undertake a detailed disciplinary inquiry akin to punitive proceedings contemplated under the service rules.

83. The Hon'ble Supreme Court has consistently enunciated the principle that fraud vitiates all solemn acts, and any appointment obtained by misrepresentation or by furnishing forged or fabricated documents is liable to be annulled without recourse to elaborate inquiry proceedings.

84. In the present case, the record reflects that the petitioner was issued repeated notices, furnished with the relevant materials, and afforded adequate opportunity to submit her explanation in respect of the allegations levelled against her. Despite the same, the petitioner has chosen to place reliance upon the tabulation chart to substantiate the correctness of her marksheet, which, in the considered opinion of this Court, is wholly misconceived.

85. In such circumstances, once it is established that the appointment was procured by playing fraud, the requirement of conducting a detailed departmental inquiry or affording any further opportunity pales into insignificance, the legal position in this regard being well settled.

86. The next limb of argument, namely, that in the absence of a formal cancellation of the degree by the University the employer is rendered powerless to act, does not commend acceptance and is liable to be rejected.

87. An employer is not only entitled, but is under a legal obligation, to satisfy itself as to whether a candidate fulfilled the prescribed eligibility conditions at the time of entry into service. Where the material on record demonstrably indicates that the marksheet relied upon by the candidate is manipulated, inconsistent, or otherwise unreliable, the employer cannot be compelled to await a formal annulment of the degree by the University authorities. The satisfaction of the employer, arrived at on the basis of a duly conducted inquiry and founded upon cogent material, with regard to fraud or misrepresentation, is sufficient to invalidate the appointment. In the present case, as already delineated hereinabove, the impugned order has been passed upon due consideration of the inquiry reports and other relevant materials on record.

88. Consequently, the submission advanced on behalf of the petitioner in this regard is devoid of merit and does not warrant acceptance.

89. As regards the evidentiary worth of the inquiry reports, the record unequivocally discloses that the issue was examined at multiple levels by competent authorities, including the inquiry committee constituted by the University, the report of the Controller of Examinations, as well as inputs received from the Special Task Force. The consistent and unbroken thread emerging from these materials is that the marks reflected in the petitioner's marksheet do not reconcile with the original academic record, particularly the counterfoil/award sheet, which constitutes the primary evidence.

90. The contention that the tabulation register alone ought to prevail is a manifest oversimplification of the evidentiary framework. It is a settled proposition of law that where discrepancies arise between primary and secondary records, primacy must be accorded to the original record, which in the present case is the counterfoil/award sheet, from which the tabulation register is prepared. In the present case, the marks recorded in the B.A. third-year marksheet are at variance with the counterfoil, and even the tabulation register bears signs of overwriting, thereby rendering it unreliable. A document derived from primary evidence, when itself stands vitiated by interpolation or alteration, cannot be accorded sanctity so as to override the primary record.

91. In such circumstances, it was well within the domain of the competent authority to examine all relevant records and arrive at a reasoned conclusion. This Court, in exercise of its writ jurisdiction, does not sit as an appellate forum to reappraise or reassess findings of fact, unless such findings are demonstrated to be perverse, arbitrary, or wholly unsupported by the record.

92. Learned counsel for the petitioner has failed to point out any such perversity or patent illegality in the findings so recorded and the inquiry report dated 30.09.2022 has not been challenged by the petitioner. Consequently, the challenge on this count is devoid of substance.

93. The plea advanced on behalf of the petitioner that the impugned action is vitiated on account of delay is equally devoid of merit and does not merit acceptance.

94. It is a settled proposition of law that fraud vitiates all proceedings and that there can be no limitation for the discovery and correction of a fraud. The moment such fraud comes to light, the competent authority is well within its jurisdiction to take appropriate corrective measures, irrespective of the lapse of time.

95. The mere length of service rendered by the petitioner cannot sanctify an appointment which was void ab initio. The Hon^{ble} Apex Court has time and again held that principles of equity cannot be invoked to perpetuate an illegality or to confer legitimacy upon an act tainted by fraud.

96. Accordingly, the petitioner cannot claim any vested or indefeasible right on the basis of long continuance in service, when the very foundation of such continuance stands vitiated.

97. Another submission advanced on behalf of the petitioner, to the effect that even upon reduction of marks the petitioner would still satisfy the eligibility criteria, is equally misconceived and liable to be rejected.

98. The controversy at hand does not rest merely upon the question of eligibility; rather, it goes to the very integrity and sanctity of the selection process. The submission of a document reflecting inflated or manipulated marks strikes at the root of fairness, transparency, and probity in public employment.

99. Even a marginal or seemingly insignificant manipulation cannot be countenanced, for any degree of falsification amounts to fraud. Once fraud is established, the entire selection stands vitiated, irrespective of whether the candidate may otherwise have fulfilled the minimum eligibility requirements.

100. Once an appointment is held to be void ab initio, the consequential directions for recovery of salary and initiation of criminal proceedings cannot be said to be without jurisdiction or authority of law. Such consequences are the natural corollaries of an appointment founded upon fraud or misrepresentation.

101. No doubt, in exceptional circumstances, the Court, in exercise of its equitable jurisdiction, may interfere with such consequential directions; however, no such mitigating or extraordinary circumstance has been demonstrated in the present case so as to warrant any indulgence.

102. In view thereof, the consequential directions contained in the impugned order also do not suffer from any legal infirmity. The issue in this regard stands authoritatively settled, inter alia, in the case of **Krishna Kant vs. State of U.P. & 2 Others, passed in Writ A No.10029 of 2025, 2025:AHC:186564**, wherein it has been held that once the very foundation of appointment is vitiated, all consequential actions flowing therefrom are legally sustainable.

103. Yet another submission has been advanced on behalf of the petitioner to the effect that the tabulation register constitutes the most authentic record and, therefore, any discrepancy vis-à-vis the counterfoil/award sheet ought to be disregarded.

104. Though the said contention may appear attractive at first blush, it does not withstand deeper judicial scrutiny and is liable to be rejected.

105. It is imperative to appreciate the hierarchical evidentiary value of academic records in the context of the present controversy. The counterfoil of the award sheet constitutes the original and primary record, prepared contemporaneously by the examiner at the time of evaluation, reflecting the marks actually awarded to the candidate. The tabulation register, on the other hand, is merely a compiled or derivative record, subsequently prepared on the basis of entries transcribed from such primary evidence, namely, the award sheet/counterfoil.

106. Thus, by its very nature, the counterfoil assumes the character of primary evidence, whereas the tabulation register partakes the character of secondary or derivative evidence. The settled legal position is that where primary evidence is available, it must be accorded primacy, and any reliance upon secondary evidence must necessarily yield thereto, particularly in a situation where discrepancies between the two come to light.

107. The Hon'ble Supreme Court, in the case of **State of Bihar v. Radha Krishna Singh and others, (1983) 3 SCC 118**, has emphasized the evidentiary superiority of primary records over derivative material, holding that entries made in original records contemporaneously carry greater probative value than subsequently prepared compilations. Similarly, in **LIC of India and another v. Ram Pal Singh Bisen, (2010) 4 SCC 491**, it has been reiterated that secondary evidence cannot prevail over primary evidence when the latter is available and trustworthy.

108. In the present case, therefore, once the counterfoil/award sheet being the foundational and contemporaneous record discloses a variance with the marks reflected in the tabulation register and the marksheet relied upon by the petitioner, the latter cannot be accorded precedence so as to override the former. The contention to the contrary is, thus, legally untenable.

109. It is a well-settled principle of law that primary evidence constitutes the best evidence, and recourse to secondary evidence is permissible only in the absence of the former or under exceptional and duly explained circumstances.

110. Applying the aforesaid doctrine to the facts of the present case, once the original award sheet/counterfoil is available on record, it assumes evidentiary primacy and is required to be accorded greater probative value than any compiled register, tabulation chart, or derivative record, which is admittedly prepared on the basis of such primary evidence itself.

111. This position assumes greater significance in the present case, where the tabulation chart, apart from being a secondary record, is also tainted by overwriting and interpolation, thereby further eroding its credibility. In such circumstances, no reliance can be placed upon a derivative record so as to override or displace the sanctity of the primary record.

112. Accordingly, the counterfoil/award sheet, being the best evidence available, must prevail.

113. In the present case, the entire controversy centres around the discrepancy between the marks recorded in the petitioner's marksheet and those reflected in the counterfoil/award sheet. The petitioner seeks to place reliance upon the tabulation register, contending that it corroborates the marks claimed by her. However, such reliance is wholly misplaced and legally untenable for the reasons noted hereinafter.

114. The tabulation register is admittedly a derivative record, prepared on the basis of entries transcribed from the counterfoil/award sheet. If the primary source itself reflects marks at variance with those recorded in the marksheet, any subsequent entry inconsistent therewith is rendered inherently suspect and devoid of probative value.

115. Acceptance of the tabulation register in preference to the counterfoil would amount to elevating a derivative record above its very source, which is impermissible in law and contrary to settled principles of evidence. It is, therefore, axiomatic that the authenticity of the marks must be tested at the level of the original and contemporaneous record, namely, the award sheet/counterfoil.

116. Once a discrepancy stands established between the entries recorded in the counterfoil, being the primary and contemporaneous record, and those reflected in the mark sheet produced by the petitioner, the only logical and legally sustainable inference that emerges is that the mark sheet does not constitute a faithful or accurate reflection of the marks actually awarded.

117. Such a divergence, in the absence of a plausible and satisfactory explanation, inevitably gives rise to a presumption that the document relied upon by the petitioner is either not genuine or has been subjected to interpolation or manipulation. The evidentiary value of the counterfoil, being the foundational record, cannot be diluted by a subsequent document which is demonstrably inconsistent with it.

118. In the case at hand, the petitioner has conspicuously failed to furnish any cogent, credible, or convincing explanation so as to reconcile the apparent inconsistency between the primary record and the mark sheet in question. The absence of any such explanation fortifies the conclusion that the mark sheet relied upon by the petitioner lacks authenticity and cannot be accorded any evidentiary credence.

119. Placing reliance upon the proceedings of the Examination Committee dated 21.08.2024, it is evident that the inquiry report dated 30.9.2022 was merely placed before the Committee for its consideration. The minutes unequivocally record that no decision was taken by the Examination Committee on the said report.

120. In such circumstances, the impugned order, having been passed solely on the basis of the aforesaid inquiry report without there being any deliberation, approval, or decision by the competent Examination Committee cannot be sustained in the eyes of law. The absence of a formal

decision by the competent body renders the reliance upon the said report wholly untenable and legally unsustainable.

121. Accordingly, where the statutory or competent authority has consciously refrained from arriving at any conclusion on the inquiry report, any action founded exclusively thereupon stands vitiated, being arbitrary and devoid of due application of mind.

122. This Court is of the considered opinion that a detailed counter affidavit has been filed on behalf of Deen Dayal Upadhyay Gorakhpur University, Gorakhpur, through its Registrar as well as the Controller of Examinations, placing on record the entire material to demonstrate that the impugned action has been taken by the competent authority strictly in accordance with the provisions of the U.P. State Universities Act, 1973.

123. The records so produced clearly evince that a conscious and reasoned decision has been arrived at by the competent authority after due consideration of the inquiries conducted for the purpose of verifying the genuineness of the petitioner's mark sheet. The decision-making process, thus, cannot be said to suffer from any procedural irregularity or legal infirmity.

124. In view thereof, the submission advanced on behalf of the petitioner that no decision was taken by the Examination Committee on the earlier report is wholly misconceived and devoid of merit. Such an argument does not withstand judicial scrutiny and, in fact, has no legs to stand in the face of the material placed on record.

125. Learned counsel for the petitioner has placed reliance upon the judgment of the Hon'ble Supreme Court in **Mansaram v. S.P. Pathak and others, 1984 (1) SCC 125** wherein it has been observed that the exercise of statutory powers must be undertaken within a reasonable time, and that inordinate and unexplained delay may render such action legally unsustainable.

126. However, the aforesaid judgment is clearly distinguishable and has no application to the facts of the present case. It is a settled proposition of law that fraud vitiates all solemn acts, and that no limitation operates against fraud. The discovery of fraud at any stage confers jurisdiction upon the competent authority to take appropriate corrective measures.

127. The Hon'ble Apex Court has consistently held that equity cannot be invoked to perpetuate an illegality, nor can a person be permitted to derive benefit from a fraudulent act. Once fraud is detected, the authorities are not only empowered but duty-bound to initiate inquiry and take consequential action, irrespective of the lapse of time.

128. In such circumstances, the principle of "reasonable time" as enunciated in **Mansaram (supra)** pales into insignificance, inasmuch as the present case pertains to allegations of fraud, where the overriding consideration is to uphold the sanctity of public records and prevent abuse of process.

129. Accordingly, the reliance placed by the petitioner upon the aforesaid judgment is misplaced and does not advance his case in any manner.

130. The judgment in **Radhe Shyam Yadav & Another v. State of Uttar Pradesh & Others, (2024) 11 SCC 770**, as relied upon by learned counsel for the petitioner, enunciates authoritative principles governing fraudulent appointments, suppression of material facts, and the legal consequences flowing therefrom in matters of public employment.

131. The ratio of the said decision may be succinctly encapsulated thus: an appointment secured by practicing fraud or on the basis of forged or fabricated documents is void ab initio. Such foundational illegality is incurable and cannot be sanctified by the mere efflux of time. Equitable considerations, including long years of service or alleged hardship, are wholly inapplicable and cannot be invoked to shield or legitimize an inherently void appointment.

132. The Hon'ble Apex Court has further held that the employer retains the inherent authority to annul such an appointment at any stage upon detection of fraud, and the doctrines of delay and laches do not operate as a bar in such cases.

133. The said judgment thus reinforces the settled legal position that fraud vitiates all solemn acts, and any benefit obtained by deceit is liable to be withdrawn irrespective of the passage of time or length of service rendered by the beneficiary.

134. Placing reliance upon the judgment in **Riyazul Hasan v. State of Uttar Pradesh & Others, 2025:AHC:223273**, learned counsel for the petitioner has contended that no regular departmental inquiry has been conducted, despite the petitioner being a duly appointed permanent teacher. It is thus urged that the impugned order stands vitiated for non-compliance with the procedure prescribed under the relevant statutory framework, including the Rules of 1999 and the U.P. Basic Education Staff Service Rules, 1973, and is consequently arbitrary and violative of the principles of natural justice.

135. The submission, however, is misconceived and untenable in the facts of the present case.

136. It is by now a well-settled principle of law that fraud vitiates all solemn acts, and any appointment obtained on the basis of forged or fabricated documents is void ab initio. In such cases, the very foundation of the appointment being non est, the requirement of holding a full-fledged departmental inquiry pales into insignificance.

137. The Hon'ble Supreme Court in **A.P. State Financial Corporation v. M/S GAR Re-Rolling Mills and another, (1994) 2 SCC 647** and **S.P. Chengalvaraya Naidu v. Jagannath, (1994) 1 SCC 1** has categorically held that a person who has obtained any benefit by practicing fraud is not entitled to any equitable relief, and such an act renders the transaction a nullity in the eyes of law.

138. Further, in the case of **R. Vishwanatha Pillai v. State of Kerala and others, (2004) 2 SCC 105**, the Hon'ble Apex Court held that where an appointment is secured on the basis of a false caste certificate, the same is void from inception, and no opportunity of hearing or detailed inquiry is required prior to cancellation, as the incumbent had no legal right to the post.

139. Similarly, in the case of **Bank of India and another v. Avinash D. Mandivikar and others, (2005) 7 SCC 690**, it was held that an employee who obtains appointment by producing false documents cannot claim protection of natural justice to perpetuate such illegality.

140. The principle has been reiterated in **Chairman and Managing Director, FCI and others v. Jagdish Balaram Bahira and others, (2017) 8 SCC 670** wherein it has been held that once fraud is established, the question of affording further opportunity becomes irrelevant, as the appointment itself is void.

141. In view of the aforesaid settled legal position, this Court is of the considered opinion that no detailed departmental inquiry or prior opportunity of hearing is mandatorily required in cases where the appointment is founded upon forged or non-genuine documents, and the fraud stands substantiated on the basis of objective material on record.

142. The writ Court, in exercise of its jurisdiction under Article 226 of the Constitution of India, would not ordinarily interfere with such action unless it is demonstrated that the decision is perverse, wholly arbitrary, or based on no evidence whatsoever. In the present case, no such infirmity has been established.

143. Accordingly, the contention raised by the petitioner, premised upon alleged violation of procedural safeguards, is devoid of merit and liable to be rejected.

144. In view of the foregoing discussion, this Court is of the considered opinion that the impugned order does not suffer from any illegality, arbitrariness, or perversity so as to warrant interference in exercise of jurisdiction under Article 226 of the Constitution of India.

145. Accordingly, the writ petition, being devoid of merit, is liable to be dismissed and is hereby **dismissed**.

(2026) 4 ILRA 1287
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 16.04.2026

BEFORE

THE HON'BLE SAURABH SHYAM SHAMSHERY, J.

Writ A No 12905 of 2010

Jagdamba Prasad Pandey

...Petitioner

Versus

State of U.P. & Ors.

...Respondents

Issue for Consideration

(1) Scope of writ jurisdiction to interfere with the findings of disciplinary authority in the matter arising out of charge of serious misconduct of carrying passengers without ticket.

Headnotes

(A) Service law – Termination – Disciplinary proceeding – Charge leveled was that the petitioner, while working as Conductor, did not issue tickets to 59 passengers in bus though he filled pay-bills – Defense that he was not able to distribute tickets though after making count of passengers, he filled pay-bills and received the ticket money also, therefore, there was no loss of Corporation, was taken – Further plea that no passengers has given any statement, was taken – Permissibility – Disciplinary Authority observed that petitioner has sufficient time to distribute tickets as bus was checked after about 12 kilometers from starting point – Scope of writ jurisdiction felt into consideration: (E-1)

Held: This Court cannot sit as Appellate Court to consider whether evidence was sufficient or not except in a case when findings are perverse which is not a case in hand. Carrying passengers without ticket is a serious misconduct and in this regard, Court takes note of above referred judgments and since petitioner has failed to provide any reasonable explanation that under which circumstances, without issue tickets to passengers, he could fill pay-bills in advance, therefore, this Court does not find any reason to interfere with impugned order in limited writ jurisdiction. [Para 16]

Case Law Cited

MD, North-East Karnataka Road Transport Corpn. v. K. Murti, (2006) 12 SCC 570; Bhupinderpal Singh Gill vs. State of Punjab and others, 2025 SCC Online SC 113 – **referred to.**

List of Keywords

Inspection, Carrying passenger without ticket, Inquiry, Charge sheet, Show Cause Notice, Disciplinary proceeding, Reply, Major punishment, Termination, Ticket money, Pay-bill, Disproportionate, Reasonable explanation, Perverse, Writ Jurisdiction.

Case Arising From

Termination order dated 15.02.2005 passed by Assistant Regional Manager and Order dated 03.02.2010 passed by appellate authority.

Appearances for Parties

Advs. for the Appellant: Diwakar Mishra, Raj Narayan Tiwari, Shyamdhara Pandey

Advs. for the Respondents: Ajit Kumar Singh (C.S.C.), Mritunjay Mohan Sahai

(Delivered by Hon'ble Saurabh Shyam Shamshery, J.)

1. Heard Sri Shyamdhara Pandey, learned counsel for petitioner and Sri M.M. Sahai, learned counsel for respondent-Road Corporation.

2. The petitioner was a Conductor with respondent-Corporation. On 23.06.2004 when he was discharging duties as Conductor of Vehicle No. UP-42-T/1633 from Faizabad to Akbarpur, an inspection was conducted wherein it was found that he has not issued tickets to 59 passengers in bus though he has filled paybills.

3. In aforesaid circumstances, petitioner was served with a charge sheet and inquiry report dated 19.09.2004 was submitted. Subsequently, a second show cause notice was issued by Assistant Regional Manager, Akbarpur passed an order of punishment dated 15.02.2005 whereby petitioner was terminated from service. Subsequently, petitioner has filed a representation before Regional Manager, Faizabad and vide order dated 09.11.2006, punishment order was set aside and matter was remitted back for fresh consideration.

4. In aforesaid circumstances, inquiry was conducted afresh and vide inquiry report dated 04.03.2009, the charge was found proved in part. For reference, relevant part of order is quoted below :-

"अधोहस्ताक्षरी द्वारा रा सम्पूर्ण प्रकरण पत्रावली का विधिवत अवलोकन किया गया। निरीक्षण के समय बस में कुल 59 यात्री यात्रा कर रहे थे जिसकी टिकट वाइज मागर् पत्र पर पिचालक द्वारा प्रविष्ट कर दी गयी थी जिसे निरीक्षण कतार एवं आरोपी द्वारा स्वीकार किया गया है। आरोपी के पेट में दर्द होने के कारण टिकट पर कहां से कहां तक अंकित नहीं किया गया जबकि टिकट का यात्री सहित यात्रा रत यात्रियों के पास उपलब्ध था यदि आरोपी की मनसा दूसरिहती तो उनको देय टिकटों का नम्बर वाइज अंकन मागर् पत्र पर नहीं करता। आरोपी का दावित्व था कि यात्रियों को टिकट बनाकर उपलब्ध कराने के उपरांत मागर् पत्र पर प्रविष्ट करने के बाद बस संचालित कराता लेकिन ऐसा न कर केवल यात्रियों की संख्या मागर् पत्र पर करके बिना टिकट बनाये वाहन संचालित करा दिया गया जिसके लिए आरोपी दोषी प्रतीत होता है।

अतः उक्त विवेचना एवं प्रकरण पत्रावली के आधार पर मैं इस निष्कर्ष पर पहुँचता हूँ कि श्री जगदम्बा प्रसाद पाण्डेय पिचालक (आरोपी) अकबरपुर डिपो जो वर्तमान में शाहगंज डिपो में कार्यरत है पर लगाया गया आरोप आंशिक रूप से सिद्ध पाया जाता है।

5. The Disciplinary Authority thereafter issued a show cause notice along with a disagreement note, though admittedly, no specific reason was assigned therein and petitioner was asked to submit his reply within 15 days. The petitioner submitted a reply and asked respondents to provide reasons for disagreement. Accordingly, second notice was issued on 07.08.2009 wherein concerned respondent provided reasons for disagreement. Relevant part thereof is quoted below :-

"2- आपके उक्त प्रार्थना पत्र के क्रम में अवगत कराना है कि रिपोटर् कतार की मृत्यु हो जाने के कारण प्रकरण के द्वितीय जांच में उनकी बयान नहीं लिया गया है। आपने अपने आरोप पत्र के उत्तर में निरीक्षण स्थल की दूरी डेढ़ से 02 किमी० बताया गया है, जबकि पूर्व में हुई जांच में जांच अधिकारी, द्वारा रा प्रतिपरीक्षण के समय रिपोटर् कतार से पूछे गये प्रश्न के उत्तर में अकबरपुर से निरीक्षण स्थल की दूरी 12 किमी० बताया गया है, जिसमें विरोधाभास है। प्रकरण में अभिलेखनीय आधार पर जांच आख्या तैयार की गयी है। अतः आपको अन्तम रूप से सूचित किया जाता है, कि कारण बताओ नोटिस का उत्तर 03 दिन के अन्दर प्रेषित करें, अन्यथा प्रकरण में एकपक्षीय कार्यवाही कर दी जायेगी।

6. Admittedly, petitioner has not submitted any reply within prescribed period and he submitted a belated reply on 01.09.2009 whereas on same day, impugned order was passed, whereby a major punishment of termination from service was passed. Relevant part of said order is mentioned hereinafter :-

"मेरे द्वारा रिपोटर् कतार की रिपोटर्, जाँच आख्या प्रतिपरीक्षण के समय आये तथ्यों का सम्यक अवलोकन किया गया, और पाया कि आरोपी द्वारा रा अपने आरोप पत्र के उत्तर में लिखा है कि यात्रियों से पूछ कर उनकी संख्या नुसार मागर् पत्र पर प्रविष्ट अकबरपुर से बसखारी कर दी गयी थी।

वही रिपोर्टकर्तार ने अपनी रिपोर्ट में लिखा है कि वाहन का भौतिक निरीक्षण किया जा रहा था, तभी आरोपी द्वारा यात्रियों को भड़का दिया गया। जिससे यात्री हंगामा करने लगे। जिसके कारण आरोपी से टिकट तुरन्त नहीं लिया जा सका, और स्थिति को देखते हुए ये आरोपी के कथनानुसार टिकटों की प्रविष्टि भी माग्न पत्र पर आरोपी से ही करवानी पड़ी, और यात्रियों के दवाब के कारण माग्न पत्र के अनुसार उसकी क्लोजिंग भी निरीक्षण कर्तार द्वारा करनी पड़ी। आरोपी द्वारा कारण बताओ नोटिस के उत्तर के साथ सामुदायिक स्थल केन्द्र अतरौलिया आजमगढ़ की दवा की पचीर संलग्न की है, जो दिनांक 22.06.04 की है। साथ ही जब आरोपी के पेट में दस्त था तो दिनांक 23.05.04 को फैजाबाद से बुदनपुर जाते समय डिपो पर तैनात उपधकारियों/अधकारियों को बताना चाहिये था, परन्तु आरोपी द्वारा ऐसा कुछ भी नहीं बताया गया। प्रकरण की द्वितीय जांच में आरोपी ने निरीक्षण स्थल की दूरी डेढ़ से 02 कि०मी० बताया है। जब कि पूर्व में हुई जांच अधिकारी द्वारा प्रतिपरीक्षण के दौरान रिपोर्ट कर्तार से पूछे गये। प्रश्न के उत्तर में अकबरपुर से निरीक्षण स्थल की दूरी 12 कि०मी० बताया गया है। जैसा कि पत्रावली में रिपोर्टकर्तार द्वारा बताया गया है कि निरीक्षण स्थल से अकबरपुर की दूरी 12 कि०मी० है। इसी बीच कुछ की नामक पेपर स्टापेज है। जो अकबरपुर से 08 कि०मी० की दूरी पर है। आरोपी का उत्तर दायित्व था कि बस में बैठे यात्रियों को नगर सीमा के अन्दर ही टिकट बनाकर और माग्न पत्र पर प्रविष्टि करके ही वाहन को आगे बढ़े परन्तु उनके द्वारा 12 कि०मी० की दूरी तक एक भी टिकट नहीं बनाया गया। बस स्टेशन से एक पेपर स्टापेज पार करके 12 कि०मी० की दूरी निरीक्षण स्थल से टिकट बनाने का कोई औचित्य नहीं है। जैसा कि आरोपी ने यह भी स्वीकार किया है कि निरीक्षण स्थल तक कोई भी टिकट नहीं बनाया गया था। इस प्रकार परिचालक भ्रष्टाचार में संलिप्त हो करके विभागीय नियमों एवं निदेशों के विरुद्ध है। जिसके कारण आरोपी दोषी है। आरोपी द्वारा द्वितीय जांच में कारण बताओ नोटिस का उत्तर भी प्रस्तुत नहीं किया है। आरोपी द्वारा कारण बताओ नोटिस का उत्तर न देना स्पष्ट करता है कि कारण बताओ नोटिस में दिया गया दण्ड उसे स्वीकार है। मेरे अभिमत में प्रस्तावित दण्ड के अनुसार दण्डादेश पारित किया जाना उचित है।

अतः श्री जगदम्बा प्रसाद पाण्डेय, परिचालक अकबरपुर डिपो वतर्मान शाहगंज डिपो को कारण बताओ नोटिस में प्रस्तावित दण्ड को पारित करते हुए ये निलम्बन काल का अवशेष वेतन जब्त करते हुए ये सेवा से प्रथक किया जाता है।

7. The petitioner thereafter approached this Court by filing a Writ Petition No. 58141/2009 which was disposed of vide order dated 10.11.2009 with liberty to file an appeal being alternative remedy.

8. Accordingly, petitioner filed an appeal before Regional Manager, UPSRTC, Azamgarh Region, Azamgarh which was dismissed vide order dated 03.02.2010 and relevant part of it is mentioned below :-

"प्रकरण पत्रावली प्राप्त होने पर मेरे द्वारा प्रकरण से संबंधित रिपोर्ट जारी आरोप पत्र आरोपपत्र के उत्तर जांच अधिकारी की जांच आख्या जारी कारण बताओ नोटिस, प्रत्यावेदन एवं प्राप्त आख्या सहित सम्पूर्ण प्रकरण पत्रावली का गम्भीरता पूर्वक गहन अध्ययन किया गया। औरपाया कि चेकिंग के समय विजन टिकटों की प्रविष्टि प्रत्यावेदन श्री पाण्डेय द्वारा माग्न पत्र पर की गयी उनमें जो टिकट निरीक्षण के द्वारा रोके गये, सभी खाली (ब्लैंक) थे। और निरीक्षण स्थल तक उक्त टिकटों के यात्री वास्तव

में बिना टिकट ही थे और प्रकरण से अपने आपको बचाने हेतु यात्रियों को बहकाना भी इसी तारतम्य में स्पष्ट समझ में आता है। अतः मेरे अनुसार प्रत्यावेदनको दिया गया दण्ड उचित है।

अतः श्री जगदम्बा प्रसाद पाण्डेय भूतपूर्व पिरचालक शाहगंज डिपो द्वारा प्रेषित प्रत्यावेदनबलहीन पाये जाने के कारण निरस्त (रिजेक्ट) किया जाता है।"9. Aforesaid orders dated 01.09.2009 and 03.02.2010 are under challenge in this writ petition.

10. Learned counsel for petitioner has argued vehemently and referred orders passed by respondents annexed in writ petition to the effect that on date of inspection, the petitioner was suffering with stomach pain and inspection was conducted within two kilometers from starting point of bus, therefore, he was not able to distribute tickets though after making count of passengers, he has filled pay-bills and has received the ticket money also, therefore, there was no loss of Corporation. Since author of inspection report was meanwhile expired, therefore, report was not proved during subsequent inquiry. None of passengers has given any statement and punishment was shockingly disproportionate.

11. Per contra, learned counsel for respondent-Corporation has supported impugned order and submitted that it was a case where disciplinary authority has made a disagreement to inquiry report submitted in second round of disciplinary proceedings and has made a specific reason in second notice, however, petitioner has not submitted any reply within stipulated time, therefore, on basis of material available, it was found that petitioner has committed misconduct that admittedly he was carrying 59 passengers without ticket and without any reasonable explanation with specific finding that inspection was conducted after about 12 kilometers from starting point of bus and not after 2 kilometers as alleged by petitioner. Therefore, there was no explanation for not providing tickets even after such a long journey.

12. I have considered above submissions and perused the records.

13. The Supreme Court in **MD, North-East Karnataka Road Transport Corpn. v. K. Murti, (2006) 12 SCC 570** has held that carrying passengers without ticket is a serious misconduct which could invite major punishment of termination. Relevant paragraph of said judgment is quoted below :-

"8. The learned counsel for the appellant, at the time of hearing, placed strong reliance on the two decisions of this Court, one in *Regional Manager, Rajasthan SRTC v. Ghanshyam Sharma [(2002) 10 SCC 330 : 2003 SCC (L&S) 714]* which was also a case of bus conductor carrying passengers without issuing tickets. This Court, in the above case, held that carrying the passengers without tickets amounts to dishonesty or grave negligence and for such misconduct punishment of removal from service is justified. **This Court also further observed that the Labour Court was not justified in directing the reinstatement with continuity of service but without back wages. This Court has also relied upon a judgment in Karnataka SRTC v. B.S. Hullikatti [(2001) 2 SCC 574 : 2001 SCC (L&S) 469]. In the said judgment, this Court has held that in such cases where the bus conductors carry passengers without ticket or issue tickets at a rate less than the proper rate, the said acts would inter alia amount to either being a case of dishonesty or of gross negligence and such conductors were not fit to be retained in service because such inaction or action on the part of the conductors results in financial loss to the Road Transport Corporation. This Court has also observed that in cases like the present, orders of dismissal should not be set aside.** The learned counsel for the appellant also cited *Divisional Controller, N.E.K.R.T.C. v. H. Amaresh [(2006) 6 SCC 187 : 2006 SCC (L&S) 1290]*. In this case, this Court was considering the

case of misappropriation of a small amount of State Road Transport Corporation's fund by a conductor and held it a grave act of misconduct, which resulted in financial loss to the Corporation. This Court also held that punishment of dismissal from service awarded by the disciplinary authority did not call for any interference by the Labour Court or the High Court and hence the order of reinstatement passed by the High Court was set aside. **This Court also in a catena of decisions held that the Tribunal should not sit in appeal over the decision of any employer unless there exists a statutory provision in this behalf. This Court also observed that the High Court gets jurisdiction to interfere with the punishment in the exercise of its jurisdiction under Article 226 of the Constitution only when it finds that the punishment imposed is shockingly disproportionate to the charges proved."**

14. In the first round of proceedings, a representation of petitioner was considered by the higher authority and a fresh inquiry report was sought. Accordingly, a fresh inquiry report was submitted and charge was found proved in part, however, Disciplinary Authority has made a disagreement on a factual aspect that petitioner has sufficient time to distribute tickets as bus was checked after about 12 kilometers from starting point, he filled pay-bills without issuing tickets.

15. The petitioner is not able to deny aforesaid either in disciplinary proceedings or before this Court. The petitioner is also not able to deny that in normal circumstances, tickets are issued at first instance and pay-bills are filled subsequently and not vice versa. During inquiry, due process was followed. The petitioner was granted sufficient time to submit reply of notice of disagreement, however, he failed to do so.

16. The Appellate Authority has also rejected the appeal by a reasoned order. It is well settled that in cases of disciplinary proceedings, this Court cannot sit as Appellate Court to consider whether evidence was sufficient or not except in a case when findings are perverse which is not a case in hand. Carrying passengers without ticket is a serious misconduct and in this regard, Court takes note of above referred judgments and since petitioner has failed to provide any reasonable explanation that under which circumstances, without issue tickets to passengers, he could fill pay-bills in advance, therefore, this Court does not find any reason to interfere with impugned order in limited writ jurisdiction and for that Court takes note of a judgment of Supreme Court in **Bhupinderpal Singh Gill vs. State of Punjab and others, 2025 SCC Online SC 113.**

17. Accordingly, writ petition has no force, hence, **dismissed.**

(2026) 4 ILRA 1292
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 24.04.2026

BEFORE

THE HON'BLE KARUNESH SINGH PAWAR, J.

Writ A No 14466 of 2025

Akash Singh

...Petitioner

Versus

State of U.P. & Ors.

...Respondents

Issue for Consideration

(1) Validity of the order of cancellation of selection passed on the grounds of pendency of three criminal cases, out of which one was quashed by the High Court and other two cases entail the offences, which do not involve moral turpitude.

Headnotes

(A) Service law – Cancellation of selection – Post of Constable (Civil Police) – Three criminal cases were registered, which were truthfully disclosed by the petitioner – Out of these cases, one FIR stood quashed by the High Court and two remaining cases entail offences, which does not involve moral turpitude and are punishable with a maximum sentence of up to seven years – While quashing FIR, High Court observed that both parties had withdrawn all cases instituted against each other and the dispute between the parties was essentially of a commercial nature – Effect – Applicability of principle laid down in Avtar Singh's case felt into consideration: (E-1)

Held: In respect of the two cases, applying the tests laid down by the Hon'ble Supreme Court in various judgments, the nature of allegations does not prima facie indicate offences involving moral turpitude affecting society at large. The allegations against the petitioner are yet to be adjudicated and are subject to determination during trial – Youthful indiscretions and minor offences ought not to result in branding a person as a criminal for life and that the approach of the State should be reformatory rather than punitive, and applying the said principles to the present case, the pendency of two criminal cases, wherein the role assigned to the petitioner is general in nature, does not constitute a valid ground to deny appointment to the petitioner, particularly when he is not a convict and the allegations in the said cases are yet to be adjudicated during trial. [Para 28 and 30]

Case Law Cited

Avtar Singh vs. Union of India, (2016) 8 SCC 471; State Bank of India and Others vs. P. Soupramaniane, (2019) 18 SCC 135 – **referred to.**

List of Acts

U.P. Police Constable and Head Constable Service Rules, 2017 – Rule 15(6).

List of Keywords

Selection, Criminal cases, Right to cancel the candidature, Document verification, Medical examination, Charge sheets, Criminal antecedents, Moral turpitude, Adjudication, Conviction, Youthful indiscretion, Minor offences, Reformatory, Punitive.

Case Arising From

Impugned order dated 03.09.2025 passed by the Superintendent of Police, Deoria.

Appearances for Parties

Advs. for the Appellant: Utsav Mishra.

Advs. for the Respondents: Maneesh Pratap Singh(SC).

(Delivered by Hon'ble Karunesh Singh Pawar, J.)

1. Heard Sri Utsav Mishra, learned counsel for the petitioner and Sri Maneesh Pratap Singh, learned Standing Counsel appearing for the State.

2. By means of the present petition, the petitioner has assailed the impugned order dated 03.09.2025, whereby his selection/candidature has been cancelled by respondent No. 6, Superintendent of Police, Deoria.

3. Brief facts of the case are that pursuant to the advertisement dated 23.12.2023 issued by the U.P. Police Recruitment and Promotion Board, Lucknow, applications were invited for the post of Constable (Civil Police) through direct recruitment. In the said advertisement, under Clause 3.5, it was provided that a prospective candidate who is found guilty of an offence involving moral turpitude shall not be eligible for appointment to the post of Constable (Civil Police).

4. Clause 3.5 of the said advertisement is extracted hereunder:-

टिप्पणी

संघ सरकार या किसी राज्य सरकार या किसी स्था नीय प्राधिकारी द्वारा या संघ सरकार या किसी राज्य सरकार के स्वामित्व धीन या नियंत्रणधीन किसी नियम या निकाय द्वारा पदच्युत व्यक्ति सेवा में किसी पद पर नियुक्ति के लिये पात्र नहीं होंगे। नैतिक अधमता के किसी अपराध के लिए दोष सिद्ध व्यक्ति भी सेवा में किसी पद पर नियुक्ति के लिये पात्र नहीं होंगे।”

5. It is submitted that under Clause 8(2) of the advertisement dated 23.12.2023, the U.P. Police Recruitment and Promotion Board reserved the right to cancel the candidature of a candidate in case any vital information, such as pendency of a criminal case, polygamy, etc., is found against a prospective candidate. The petitioner, possessing all requisite qualifications, applied for the post of Constable (Civil Police) pursuant to the aforesaid advertisement. The written examination was conducted in the month of August, 2024, wherein the petitioner was declared successful and his name finds place at Serial No. 57107 of the selection list.

6. Thereafter, the petitioner appeared for document verification before the competent authority and was found successful. Subsequently, vide letter dated 11.04.2025 issued by the Additional Superintendent of Police/Nodal Officer (Direct Recruitment-2023), District Sultanpur, the petitioner was directed to appear for medical examination in terms of Rule 15(6) of the U.P. Police Constable and Head Constable Service Rules, 2017.

7. In compliance thereof, the petitioner appeared for medical examination on 23.04.2025, wherein he was required to fill Police Form No. 92, which mandates disclosure of all criminal antecedents. The petitioner accordingly submitted an affidavit dated 24.05.2025, disclosing all three criminal cases pending against him, along with the fact that he has not been convicted in any of the said cases.

8. The details of the three cases are as under:-

"1. FIR/Case Crime No. 364 of 2021 under Sections 352, 504 IPC & Section 4/10 of Forest Conservation Act, Police Station-Gosaiganj, District-Sultanpur.

2. FIR/Case Crime No. 13 of 2022 under Sections 323, 504, 506 IPC and Section 3(1)(Da) & 3(1)(Dha) of SC/ST Act, Police Station-Gosaiganj, District-Sultanpur.

3. FIR/Case Crime No. 711 of 2023 under Sections 406, 419, 420, 467, 468 & 471 IPC, Police Station-Kotwali Nagar, District-Sultanpur."

9. Vide letter dated 30.05.2025, issued by the Additional Superintendent of Police, Headquarters of the Director General of Police, U.P., Lucknow, the petitioner was allotted District Deoria for appointment to the post of Constable (Civil Police). However, in the meantime, the impugned order dated 03.09.2025 came to be passed by respondent No. 6, whereby the candidature/selection of the petitioner has been cancelled on the recommendation of respondent No. 4, District Magistrate, Sultanpur, as well as on account of non-issuance of a 'No Objection Certificate' by the Superintendent of Police, Sultanpur, declaring the petitioner ineligible for appointment.

10. Submission of learned counsel for the petitioner is that the impugned order has been passed on the ground that out of the three criminal cases registered against the petitioner, in two cases charge-sheets have been filed, while in one case, i.e. FIR/Case Crime No. 711 of 2023 under Sections 406, 419, 420, 467, 468 and 471 IPC, the allegations involve an offence of moral turpitude. It is submitted that in the said case, a final report has already been submitted, though no decision has yet been taken by the competent trial Court. However, on the basis of such criminal antecedents, coupled with the fact that in the other two cases charge-sheets have been filed, and treating FIR/Case Crime No. 711 of 2023 as involving moral turpitude and pending before the trial court, the impugned order has been passed read with the Government Order dated 28.04.1958.

11. Learned counsel for the petitioner submitted that with regard to FIR/Case Crime No. 711 of 2023 under Sections 406, 419, 420, 467, 468 and 471 IPC, a Criminal Misc. Writ Petition No. 6276 of 2023 (Smt. Deepa Singh vs. State of U.P. and Others) was filed which, after exchange of pleadings, was allowed vide judgment and order dated 01.02.2024, whereby the said FIR, registered at Police Station Kotwali Nagar, District Sultanpur, came to be quashed. He submits that the very basis for passing the impugned order is the aforesaid FIR. The impugned order, as contained in Annexure No. 1, records that since a final report has been submitted by the police in the said case and the same is pending consideration before the trial court, and no decision has yet been taken by the court concerned, the candidature/selection of the petitioner has been cancelled.

12. Submission is that FIR/Case Crime No. 711 of 2023 was quashed vide judgment and order dated 01.02.2024 passed in Criminal Misc. Writ Petition No. 6276 of 2023, whereas the impugned order has been passed subsequently on 03.09.2025. It is submitted that while passing the impugned order, the authorities have failed to consider that the said FIR/Case Crime No. 711 of 2023 had already been quashed by a Division Bench of this Court and no appeal has been preferred by the State against the said judgment. It is, thus, submitted that the very basis on which the impugned order has been passed no longer survives, inasmuch as FIR/Case Crime No. 711 of 2023 is no longer in existence.

13. It is submitted that the remaining cases, i.e. FIR/Case Crime No. 364 of 2021 under Sections 352 and 504 IPC and Section 4/10 of the Forest Conservation Act, Police Station Gosaiganj, District Sultanpur, entails offences punishable with a maximum sentence of up to three years. So far as FIR/Case Crime No. 13 of 2022 under Sections 323, 504, 506 IPC and Section 3(1)(Da) & 3(1)(Dha) of SC/ST Act, Police Station Gosaiganj, District Sultanpur is concerned, it is submitted that only general and sweeping allegations have been levelled against all the accused

persons, and no specific role has been attributed to the petitioner. The said offences are punishable with a maximum sentence of up to seven years.

14. In support of his argument, learned counsel for the petitioner relied upon the judgment passed by the Hon'ble Supreme Court in **Avtar Singh vs. Union of India, (2016) 8 SCC 471**.

15. It is submitted that the FIR/Case Crime No. 711 of 2023 is not under moral turpitude. In this regard, attention of the Court has been invited towards a finding given by the Division Bench of this Court while quashing the said FIR on paragraph 8 and 9 of the judgment and order dated 01.02.2024 passed in Criminal Misc. Writ Petition No. 6276 of 2023.

16. Learned Standing Counsel for the State has opposed the aforesaid contention. He submits that the FIR/Case Crime No. 711 of 2023 falls under the category involving moral turpitude.

17. Perused the record so also the impugned order including the law on the issue.

18. A perusal of the counter affidavit filed by the State particularly paragraph 20 it appears that the FIR/Case Crime No. 711 of 2023 under Sections 406, 419, 420, 467, 468 & 471 IPC, Police Station-Kotwali Nagar, District-Sultanpur, falls under the category of cases involving moral turpitude in which although the final report was submitted to the trial Court concerned on 25.02.2025, the case remains pending in the trial Court concerned and petitioner has not yet been acquitted of the said case involving moral turpitude and therefore the impugned order has been passed. Except this there is no specific pleadings have been made in the counter affidavit filed by the State.

19. This Court has noticed that petitioner in paragraph 51 of the writ petition has given an instance of various candidates as many as six names against whom criminal cases are pending have been given appointment. However, while filing the counter affidavit no reply has been given in paragraph 27 of the counter affidavit.

20. The Hon'ble Supreme Court in **Avtar Singh (supra)**, while considering the issue of pending criminal cases at the stage of recruitment, laid down guidelines in paragraph 38, which is as under:-

"38. We have noticed various decisions and tried to explain and reconcile them as far as possible. In view of the aforesaid discussion, we summarise our conclusion thus:

38.1. Information given to the employer by a candidate as to conviction, acquittal or arrest, or pendency of a criminal case, whether before or after entering into service must be true and there should be no suppression or false mention of required information.

38.2. While passing order of termination of services or cancellation of candidature for giving false information, the employer may take notice of special circumstances of the case, if any, while giving such information.

38.3. *The employer shall take into consideration the government orders/instructions/rules, applicable to the employee, at the time of taking the decision.*

38.4. *In case there is suppression or false information of involvement in a criminal case where conviction or acquittal had already been recorded before filling of the application/verification form and such fact later comes to knowledge of employer, any of the following recourses appropriate to the case may be adopted:*

38.4.1. *In a case trivial in nature in which conviction had been recorded, such as shouting slogans at young age or for a petty offence which if disclosed would not have rendered an incumbent unfit for post in question, the employer may, in its discretion, ignore such suppression of fact or false information by condoning the lapse.*

38.4.2. *Where conviction has been recorded in case which is not trivial in nature, employer may cancel candidature or terminate services of the employee.*

38.4.3. *If acquittal had already been recorded in a case involving moral turpitude or offence of heinous/serious nature, on technical ground and it is not a case of clean acquittal, or benefit of reasonable doubt has been given, the employer may consider all relevant facts available as to antecedents, and may take appropriate decision as to the continuance of the employee.*

38.5. *In a case where the employee has made declaration truthfully of a concluded criminal case, the employer still has the right to consider antecedents, and cannot be compelled to appoint the candidate.*

38.6. *In case when fact has been truthfully declared in character verification form regarding pendency of a criminal case of trivial nature, employer, in facts and circumstances of the case, in its discretion, may appoint the candidate subject to decision of such case.*

38.7. *In a case of deliberate suppression of fact with respect to multiple pending cases such false information by itself will assume significance and an employer may pass appropriate order cancelling candidature or terminating services as appointment of a person against whom multiple criminal cases were pending may not be proper.*

38.8. *If criminal case was pending but not known to the candidate at the time of filling the form, still it may have adverse impact and the appointing authority would take decision after considering the seriousness of the crime.*

38.9. *In case the employee is confirmed in service, holding departmental enquiry would be necessary before passing order of termination/removal or dismissal on the ground of suppression or submitting false information in verification form.*

38.10. *For determining suppression or false information attestation/verification form has to be specific, not vague. Only such information which was required to be specifically mentioned has to be disclosed. If information not asked for but is relevant comes to knowledge of the employer*

the same can be considered in an objective manner while addressing the question of fitness. However, in such cases action cannot be taken on basis of suppression or submitting false information as to a fact which was not even asked for.

38.11. Before a person is held guilty of suppressio veri or suggestio falsi, knowledge of the fact must be attributable to him."

21.It is not in dispute between the parties that at the time of Medical Examination, the petitioner truthfully disclosed all the three criminal cases registered against him, out of which FIR/Case Crime No. 711 of 2023 stood quashed by a Division Bench of this Court vide judgment and order dated 01.02.2024 passed in Criminal Misc. Writ Petition No. 6276 of 2023. So far as the remaining two cases are concerned, both entail offences punishable with a maximum sentence of up to seven years.

22.It is evident that the sole ground taken by the respondents while passing the impugned order is the pendency of FIR/Case Crime No. 711 of 2023 and the final report submitted therein, stated to be pending adjudication before the trial court and the petitioner has not been acquitted in the said case. Petitioner placed on record the judgment and order dated 01.02.2024 passed by the Division Bench quashing the aforesaid FIR, the respondents, while filing the counter affidavit, have neither specifically denied nor they have bothered to address on this point.

23.This Court further notices that while quashing FIR/Case Crime No. 711 of 2023, the Division Bench, in its judgment dated 01.02.2024, has recorded a categorical finding that both parties had withdrawn all cases and complaints instituted against each other. It has also been observed, inter alia in paragraph 9 of the said judgment, that the dispute between the parties was essentially of a commercial nature.

24.The Hon'ble Supreme Court, in **State Bank of India and Others vs. P. Soupramaniane, (2019) 18 SCC 135**, while dismissing the appeal filed by the State and affirming the judgment of the High Court, has held that even in cases of conviction, it cannot be said that every instance of assault or simple hurt would necessarily fall within the category of offences involving moral turpitude.

25.Relevant observations made in paragraph 16 of the judgment are extracted hereinafter:-

"16. There can be no manner of doubt about certain offences which can straightaway be termed as involving moral turpitude e.g. offences under the Prevention of Corruption of Act, the NDPS Act, etc. The question that arises for our consideration in this case is whether an offence involving bodily injury can be categorised as a crime involving moral turpitude. In this case, we are concerned with an assault. It is very difficult to state that every assault is not an offence involving moral turpitude. A simple assault is different from an aggravated assault. All cases of assault or simple hurt cannot be categorised as crimes involving moral turpitude. On the other hand, the use of a dangerous weapon which

can cause the death of the victim may result in an offence involving moral turpitude. In the instant case, there was no motive for the respondent to cause the death of the victims. The criminal courts below found that the injuries caused to the victims were simple in nature. On an overall consideration of the facts of this case, we are of the opinion that the crime committed by the respondent does not involve moral turpitude. As the respondent is not guilty of an offence involving moral turpitude, he is not liable to be discharged from service."

26. In the present case, out of the three criminal cases, FIR/Case Crime No. 711 of 2023 has already been set aside by a Division Bench of this Court vide judgment and order dated 01.02.2024 passed in Criminal Misc. Writ Petition No. 6276 of 2023. The State, being a party to the said proceedings, has neither controverted nor made any comment with regard to the said judgment while filing the counter affidavit. The said judgment, therefore, appears to have attained finality, as no contrary stand has been taken by the respondents in the counter affidavit.

27. So far as the remaining two cases are concerned, the offences alleged therein entail a maximum sentence of up to seven years. It is well settled that no straightjacket formula can be applied in such matters, and the trials in both the cases are still pending.

28. In respect of the said two cases, applying the tests laid down by the Hon'ble Supreme Court in various judgments, the nature of allegations does not prima facie indicate offences involving moral turpitude affecting society at large. The allegations against the petitioner are yet to be adjudicated and are subject to determination during trial.

29. It is further relevant to note that out of the three cases, FIR/Case Crime No. 711 of 2023 has already been quashed by the Division Bench of this Court vide judgment and order dated 01.02.2024, wherein a categorical finding has been recorded that the dispute between the parties was essentially commercial in nature and has already been settled between them.

30. Thus, considering the judgment of the Hon'ble Supreme Court in **Avatar Singh (supra)**, wherein, while referring to Commissioner of Police vs. Sandeep Kumar, it has been observed in paragraphs 8 and 9 that youthful indiscretions and minor offences ought not to result in branding a person as a criminal for life and that the approach of the State should be reformatory rather than punitive, and applying the said principles to the present case, the pendency of two criminal cases, wherein the role assigned to the petitioner is general in nature, does not constitute a valid ground to deny appointment to the petitioner, particularly when he is not a convict and the allegations in the said cases are yet to be adjudicated during trial.

31. In view of the aforesaid discussion, the impugned order dated 03.09.2025 passed by the respondent No. 6, contained in Annexure No. 1, is hereby quashed. The respondent No. 6 is directed to issue the appointment letter to the petitioner forthwith. Such appointment shall, however, be subject to the final outcome of the criminal trials in the said two cases.

32.Resultantly, the writ petition succeeds and is **allowed**.

(2026) 4 ILRA 1300
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 15.04.2026

BEFORE

THE HON'BLE SHEKHAR B. SARAF, J.
THE HON'BLE ABDHESH KUMAR CHAUDHARY, J.

Writ C No. 1637 of 2026

Nanhe Lal

...Petitioner

Versus

State of U.P. & Ors.

...Respondents

ISSUE FOR CONSIDERATION

Whether the death of the petitioner's wife, caused by knife wounds inflicted by unknown assailants, falls within the ambit of "accidental death" covered under the Mukhyamantri Kisan Evam Sarvhit Bima Yojna?

HEADNOTES

Civil Law – Constitution of India – Article 226:- Writ Petition under Article 226 – against the impugned rejection order whereby his claim under the *Mukhyamantri Kisan Evam Sarvhit Bima Yojna* was rejected – petitioner's wife died due to knife wounds inflicted by unknown assailants while cutting grass in the field – postmortem report indicates that her death was caused due to knife wound – he claimed compensation with a request that her death should be treated as accidental under the scheme – he relied on earlier scheme also – rejection – writ petition - State opposed, arguing that the scheme's eligibility clause specifically enumerates covered accidental events and does not extend to murder - Court held that, the present Mukhyamantri Yojna is distinct from the earlier scheme – and a murder or an incident of like nature as is narrated in the present facts and circumstances is not an accident as envisaged under the Mukhyamantri Yojna for availing compensation – held - murder cannot be treated as an accident under the scheme – though the scheme is beneficial but limited to its defined scope – hence, writ petition fails and is dismissed – however, court clarified that the petitioner may explore other government schemes for relief.

(Para – 8, 9, 10)

WP Dismissed. (E-11)

CASE LAW CITED

Smt. Bindu Devi v. State of U.P. & Others, WRIT-C No. 35148 of 2017, decided on 15.02.2019 (Division Bench, Allahabad High Court).

LIST OF ACTS

Constitution of India - Mukhyamantri Kisan Evam Sarvhit Bima Yojna.

LIST OF KEYWORDS

Accidental death, insurance claim, murder, knife wound, ejusdem generis, beneficial scheme, eligibility clause, rejection order, writ petition, dismissed.

CASE ARISING FROM

Order dated 30.11.2024 rejecting petitioner's claim under the Mukhyamantri Kisan Evam Sarvhit Bima Yojna.

APPEARANCE OF PARTIES

Counsel for Appellant(s): Shri Zoheb Ahmed, Shravan Kumar, Tauseef Ali Ansari.

Counsel for Respondent(s): Ms. Deepshikha, Chief Standing Counsel.

(Delivered by Hon'ble Shekhar B. Saraf, J.
&
Hon'ble Abdhesh Kumar Chaudhary, J.)

1. Heard learned counsel for the petitioner and Ms. Deepshikha, learned Chief Standing Counsel for the State-respondent.

2. This is a writ petition under Article 226 of the Constitution of India, wherein the writ petitioner is aggrieved by the order dated November 30, 2024 by which the claim of the petitioner under the Mukhymantri Kisan Evam Sarvhit Bima Yojna (hereinafter referred to as the "the Mukhymantri Yojna") has been rejected on the ground that the petitioner did not fall within the said Mukhymantri Yojna.

3. The facts of the case are that the petitioner's wife, namely, Nanhki Sharma died on October 6, 2016 as a result of knife wound while she was cutting grass in the field. The facts reveal that certain unknown assailants murdered the wife of the petitioner and the post-mortem report indicates that death was caused due to knife wound.

4. The petitioner relied on the Yojna that indicates that accidents 'bima'/insurance should be provided to the following persons

:-

"भाग-1 व्यक्तिगत दुर्घटना बीमा :- परिवार के मुखिया/रोटी अर्जक: की रेल/रोड/वायुयान से दुर्घटना, किसी भी टकराव, गिरने के कारण चोट, गैस रिसाव, सर्प काटने, बिच्छू नेवला, छिपकली काटने से मरना, सिलेण्डर फटने के कारण विकलांगतां या मृत्यु, विस्फोट, कुत्ता काटने, जंगली जानवर के काटने से मरना, जलना, डूबना, बाढ़ में बह, जाना, किसी भी प्रकार से हाथ पैर कट जाना एवं विषालता आदि दुर्घटना में शामिल हैं। व्यक्तिगत दुर्घटना बीमा के अन्तर्गत केवल परिवार का मुखिया/ रोटी अर्जक आच्छादित है।"

5. *A subsequent clarification to the Yojna has stated that* if the person was under the influence of alcohol, committed suicide or was involved in any illegal activities during which the accident takes place, the same would not be treated as an accidental death.

6. The petitioner relied upon a judgment of the Division Bench of this Court dated 15th February, 2019 passed in **WRIT - C No. - 35148 of 2017(Smt. Bindu Devi Vs. State Of U.P. And 2 Others)** in which the Court had allowed the claim of the petitioner therein under the Scheme of Samajwadi Kisan & Sarvhit Bima Yojana Kisan Accident Insurance Policy. In that case, the death of the petitioner-husband had taken place due to injuries caused by knife wound.

7. Upon perusal of the present Mukhymantri Yojna, we are of the view that the events provided under the Eligibility Clause are specific and benefit can only be provided if the deceased falls within the said eligibility criteria. It may be noted that the present Mukhymantri Yojna is different from the Scheme that was in operation and was interpreted by the Co-ordinate Bench in **Smt. Bindu Devi (Supra)**. Thus, the said Co-ordinate Bench Judgment does not come to the aid of the petitioner.

8. Further, upon a perusal of the above Mukhymantri Yojna, we are of the view that accidental death caused due to railways, roadways and air travel would be included in the present scheme. If a person meets with an accident on the railway tracks, or on any road or dies in a plane crash, the same benefit would be available to the relatives of the deceased. However, this accidental claim cannot be extended to cases where persons are murdered. Even though, loosely termed one may treat a murder as an accidental phenomenon, however such accidents are not covered under the said Mukhymantri Yojna. The eligibility criteria has been specifically defined and the same can be interpreted for events which are ejusdem generis to the events enumerated therein. Surely, a murder or an incident of like nature as is narrated in the present facts and circumstances, is not an accident as envisaged under the Mukhymantri Yojna for availing compenstion.

9. No doubt, the said Mukhymantri Yojna is a beneficial scheme/Yojna, which provides for financial help to the needy, however, the object behind the said scheme is loud and clear, inasmuch it not only mentions the scheme is applicable for uncertain and unfortunate events, but also enumerates these events which ought to have happened with any person, before the relatives can become eligible for benefit under the said scheme. The said Mukhymantri Yojna is not applicable due to death covered by any reason, except as provided in the scheme/Yojna itself.

10. In light of the same, we are unable to grant any relief to the petitioner and as such the present writ petition fails. We make it clear that the petitioner may be eligible for other benefits under various other schemes of the Government as may be prevalent on the date of the death of the deceased and may avail the same in accordance with law.

11. Accordingly, the writ petition is **disposed of**.

(2026) 4 ILRA 1302
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 10.04.2026

BEFORE

THE HON'BLE SIDDHARTH NANDAN, J.

Writ C No. 1656 of 2026

Committee Of Management Janta Janardan Shiksha Sadan Inter College Tilaon & Anr.

...Petitioners

Versus

State of U.P. & Ors.

...Respondents

ISSUE FOR CONSIDERATION

Whether the decision of the Regional Level Committee (constituted under G.O. dated 19.12.2000 in aid of Section 16A-(7) of the Intermediate Education Act, 1921) taken by only two members, with one acting in dual capacity, is valid in law; and whether quorum defect vitiates the order.

HEADNOTES

Civil Law – Constitution of India – Article 226 – Intermediate Education Act, 1921 – Section 16A-(7) - Societies Registration Act, 1860 – Section 4(B): - Writ Petition under Article 226 - filed against orders of the Regional Level Committee and order of the District Inspector of Schools and seeking quashing thereof and further for mandamus to permit petitioner Committee of Management to function on strength of valid election dated 24.07.2024 approved on 26.07.2024 - Facts reveal long-standing disputes over elections of *Janta Janardan Shiksha Samiti* institution, with multiple writ petitions and directions since 2017 - whether the Regional Level Committee could decide with only two members, one acting in dual capacity, in absence of quorum mandated by G.O. dated 19.12.2000 - Petitioner pleaded violation of quorum, dual capacity signing, non-supply of adverse material, and disregard of earlier directions - respondents invoked doctrines of necessity, silence, and substantial compliance, contending no prejudice was caused - Court finds that, Regional Level Committee – quorum requirement – dual capacity signing – doctrine of necessity – doctrine of silence – dissent as integral to judicial process – decentralization of powers – transparency in management disputes - quorum defect fatal, dissent indispensable, and alternatives available for substitution - stress decentralization and transparency as objectives of G.O. 19.12.2000 - held, impugned orders are not sustainable and hence set aside with directions to reconstitute RLC with proper quorum, decide afresh within three weeks, and government to issue SOP for such contingencies – direction issued for compliance - Writ petition allowed accordingly.

(Para – 56, 57, 58, 60, 61, 62)

WP Allowed. (E-11)

CASE LAW CITED

State of U.P. v. Babu Ram Upadhyay, AIR 1961 SC 751
Deepak Yadav v. State of U.P., 2022 AHC-Lko-41271
CCE v. Hari Chandra Shri Gopal, (2011) 1 SCC 236
Election Commission of India v. Dr. Subramanian Swamy, (1996) 4 SCC 104
Smt. Kamla Devi v. State of U.P., 2014 (8) ADJ 525 (DB)
State of A.P. v. Dr. Mohanjit Singh, 1988 Suppl. SCC 562
Arshad Ahmad v. State of Chhattisgarh, W.A. No. 31 of 2022 (decided 01.08.2023)
X v. O/O Speaker of the House of People, 2026 (2) ADJ 523 (SC)
State of U.P. v. Sudhir Kumar Singh, (2021) 19 SCC 706
Committee of Management Shri D.C. Vedic Inter College v. State of U.P., Writ-C No. 7644 of 2025
Committee of Management Kakori Shaheed Inter College v. State of U.P., Writ-C No. 24221 of 2025.

LIST OF ACTS

Constitution of India - Intermediate Education Act, 1921 - Societies Registration Act, 1860.

LIST OF KEYWORDS

Writ Petition – Quorum defect, dual capacity, doctrine of necessity, doctrine of silence, dissent, transparency, decentralization, Regional Level Committee, Committee of Management disputes, natural justice.

CASE ARISING FROM

Challenge to orders dated 08.08.2025 (Regional Level Committee) and 02.09.2025 (District Inspector of Schools, Mirzapur) concerning rival elections of Committee of Management of *Janta Janardan Shiksha Samiti* institution.

APPEARANCE OF PARTIES

Counsel for Appellant(s): - Shri Prabhakar Awasthi, Sr. Counsel with Shri Saurabh Tripathi and Shri Chandra Jeet Yadav,
Counsel for Respondent(s): - Shri R.K. Ojha, Sr. Counsel with Shri Satya Prakash Rai and Shri Vashishtha Dhar Shukla for respondent no. 5 and Shri Kartikeya Saran, Additional Advocate General with Standing Counsel for State.

(Delivered by Hon'ble Siddharth Nandan, J.)

1. With the consent of the parties, since the question is purely legal in nature, the present writ petition is being decided at the admission stage.

2. Heard Shri Prabhakar Awasthi, learned Senior Counsel assisted by Shri Saurabh Tripathi, Advocate and Shri Chandra Jeet Yadav, Advocate on behalf of the petitioner. Shri R.K. Ojha, learned Senior Counsel assisted by Shri Satya Prakash Rai, Advocate and Shri Vashishtha Dhar Shukla, Advocate on behalf of respondent no.5 and Shri Kartikeya Saran, learned Additional Advocate General along with learned Standing Counsel for the State-respondents.

3. The present writ petition has been filed with the following reliefs:

“ i. Issue a writ, order or direction in the nature of Certiorari calling for the records of the case and to quash the impugned order dated 08.08.2025 passed by the Regional Level Committee, respondent no. 2 (Annexure no. 1 to the writ petition).

ii. Issue a writ, order or direction in the nature of Certiorari calling for the records of the case and to quash the impugned order dated 02.09.2025 passed by the District Inspector of Schools, Mirzapur, (Annexure no. 2 to the writ petition).

iii. Issue a writ, order or direction in the nature of Mandamus commanding the respondents to permit the petitioner Committee of Management to continue to discharge day-to-day affairs of the Institution on the strength of valid election having been held on 24.07.2024 which has been approved by the District Inspector of Schools on 26.07.2024.”

4. Shri Prabhakar Awasthi, learned Senior Counsel has assailed the order dated 08.08.2025 to submit that in District Mirzapur, a society in the name and style of □Janta Janardan Shiksha Samiti□, was registered under the provisions of Societies Registration Act, 1860 in the year 1973.

5. The aforesaid society initially established a Junior High School, which was subsequently upgraded as High School and thereafter as an Intermediate School. The Junior High School was under grand-in-aid and the High School Section and Intermediate, is not under the grand-in-aid of the State Government.

6. Certain dispute arose, with respect to the Committee of Management, which led to filing of various writ petitions and eventually vide order dated 19.09.2017 passed in Lal Chandra Singh vs. State of U.P. and others²; this Court found that the parties are at variance, as to whether, there has been a determination of the Members of the General Body of the Society; and as contemplated by Section 4B of the Act, pursuant to the directions given by this Court in Writ-C No.25100 of

4 All. Committee Of Management Janta Janardan Shiksha Sadan Inter College Tilaon & Anr. Vs. State of U.P. & Ors.

2017, vide order dated 19.09.2017, the writ petition was disposed of, by requiring the Regional Level Committee to examine, whether there has been a determination of the General Body as contemplated by Section 4B of the Act or not.

7. In compliance of the observations made by this Court, the Regional Level Committee proceeded to pass an order dated 20.12.2017, discarding the election dated 09.04.2017; which was a subject matter of challenge in Writ-C No.3861 of 2018; and vide order dated 30.01.2018, the writ petition was partly allowed with the following directions:

“(a) The order dated 20.12.2017 passed by the Regional Level Committee to the extent it refuses to accord approval to the election dated 09.04.2017 is affirmed;

(b) the order impugned dated 20.12.2017 to the extent it determines the electoral college of the institution as comprising of 30 members with a direction to hold election with the said 30 members general body is hereby set aside;

(c) the Regional Level Committee shall undertake a fresh exercise to determine the general body of the Institution in the light of the observations and the directions contained in the order dated 19.09.2017 passed in Writ-C No.43472 of 2017. The said exercise shall be completed within a period of eight weeks from the date of furnishing certified copy of this order upon the Joint Director of Education, Vindhaychal Region, Mirzapur. The parties concern would be at liberty to file their respective evidences to enable the Regional Level Committee to effectively conclude the aforesaid exercise.

(d) The fresh elections, alleged to have been held on

21.01.2018, shall abide the result of the decision taken by the Regional Level Committee pursuant to the direction given herein above.”

8. Eventually, the District Inspector of Schools vide order dated 18.04.2018, approved the election of one Virendra Pratap Singh, as Manager and the Regional Level Committee vide its order dated 10.07.2018, approved the list of 13 Members as submitted by Shri Virendra Pratap Singh; and being aggrieved against the aforesaid orders one Lal Chandra Singh filed Writ-C No.28345 of 2018, specifically raising a ground that the Regional Level Committee is repeatedly not following the directions issued by this Court, for determining the list of valid members of the society, as per directions/observations made by this Court on 19.09.2017 and 30.01.2018, in true spirit. This Court issued notices to the respondents vide its order dated 21.08.2018 in Writ-C No.28345 of 2018 and against the same a Special Appeal No.840 of 2018 was preferred which was disposed of vide order dated 11.09.2018, to decide the writ petition expeditiously.

9. Subsequently, one Shri Awadh Narain Singh filed Writ-C No.34780 of 2019 with a prayer that his signatures be attested as Manager, which petition was disposed of vide order dated 01.11.2019 that District Inspector of Schools, Mirzapur, may decide the representation of the petitioner, for attestation of the signature of the newly elected Manager of the Institution. However, the District Inspector of Schools vide its order dated 09.01.2021 discarded the election set up by

Shri Awadh Narain Singh and directed for fresh elections. Subsequently, elections were held on 23.01.2021, wherein, Shri Lal Chandra Singh is said to be elected as Manager and his signatures were attested and approved on 01.02.2021.

10. Being aggrieved by the aforesaid orders, Shri Virendra Pratap Singh filed Writ-C No.10788 of 2021, which is pending. The term of the Committee of Management being 3 years, is said to have expired on 22/23.01.2024; but it has been alleged that one Shri Virendra Pratap Singh had set up an election dated 17.12.2023 and the District Inspector of Schools attested his signatures vide order dated 16.02.2024; and against which Writ-C No.16396 of 2024 was filed and an interim order has been granted on 31.05.2024 and subsequently an order of single operation has been passed on 21.06.2024.

11. Rival election has been set up by the petitioner's Committee of Management on 24.07.2024, which has also been approved by the District Inspector of Schools vide its order dated 26.07.2024; where after Writ-C No.16396 of 2024 was rendered infructuous, vide order dated 05.09.2024 as the term of the earlier Committee of Management had expired on 23.01.2024; and thereafter fresh election had also taken place, which was approved by the District Inspector of Schools.

12. The order of the District Inspector of Schools dated 26.07.2024, was challenged by Shri Virendra Pratap Singh in Writ-C No.32375 of 2024, which was disposed of by this Court vide order dated 13.11.2024, granting liberty to approach the Regional Level Committee.

13. In pursuance of the order of this Court dated 13.11.2024, notices were issued by the Joint Director of Education on 30.01.2025, fixing 06.02.2025. It transpires that on the basis of a report of the District Inspector of Schools dated 29.07.2025 and the objection of Shri Virendra Pratap Singh dated 06.05.2025 (which the petitioner alleges were never supplied to him), the impugned order dated 08.08.2025 has been passed. Thereafter, the consequential order has also been passed by the District Inspector of Schools, Mirzapur on 02.09.2025, approving and attesting the signatures of respondent no.6.

14. Hence, the present writ petition.

Issues

15. As a preliminary issue has been raised by Shri Prabhakar Awasthi, learned Senior Counsel, the following issue is framed, as such:-

(i) Since, as per the Government Order dated 19.12.2000, a three Member, Regional Level Committee has been constituted, in aid to Section 16A(7) of the Intermediate Education Act, 1921; whether in absence of any one Member, the decision taken by the remaining two Members, will be a valid decision; and for a want of Quorum, can be said to be in substantial compliance of the Government Order dated 19.12.2000; and further whether the doctrine of necessity or doctrine of silence, can be invoked in aid to the decision of the Regional Level Committee (as constituted by the Government Order dated 19.12.2000).

Discussion

16. Shri Prabhakar Awasthi, learned Senior Counsel has argued that perusal of the impugned order dated 08.08.2025, will clearly indicate that the Joint Director of Education, Vindhyaachal Mandal, Mirzapur has appended his signature in dual capacity of (i) Joint Director of Education; and (ii) Deputy Director of Education; and as such the impugned order dated 08.08.2025 along with consequential order dated 02.09.2025 is liable to be vitiated, as neither the quorum was complete nor there was substantial compliance, pertaining to the quorum of the committee, as envisaged under the Government Order dated 19.12.2000.

17. It is an admitted fact that Deputy Director of Education, who was a Member of the Regional Level Committee, Vindhyaachal Mandal, Mirzapur, was transferred and one Shri Uday Bhan, Joint Director of Education, Vindhyaachal Mandal, Mirzapur, was given the additional charge on 06.03.2025, i.e. much prior to the passing of the order dated 08.08.2025; and the said fact has not been disputed by the State-respondents.

18. Shri Prabhakar Awasthi, learned Senior Counsel has placed heavy reliance on the following extract of the Government Order dated 19.12.2000, which is reproduced below:

“ शासन स्तर पर निरन्तर यह शिकायतें प्राप्त हो रही हैं कि माध्यमिक शिक्षा अधिनियम 1921 एवं वेतन वितरण अधिनियम 1971 द्वारा प्राप्त अधिकारों का कतिपय अधिकारियों द्वारा दुरुपयोग किया जा रहा। इसलिए मण्डलीय संयुक्त शिक्षा निदेशक की अध्यक्षता में एक सीमित का गठन किया जाता है जिसमें मण्डलीय उप शिक्षा निदेशक तथा संबंधित जनपद के जिला विद्यालय निरीक्षक सदस्य होंगे।

यह समिति निम्नलिखित प्रकरणों पर विचार करेगी:-

- 1- प्रबन्धकों के हस्ताक्षर प्रमाणित करना।*
- 2- वेतन वितरण अधिनियम के अन्तर्गत साधिकार नियंत्रक की नियुक्ति।*
- 3- समस्त प्रकार के प्रबन्धकीय विवाद*
- 4- शिक्षकों के वरिष्ठता संबंधी विवाद*
- 5- वेतन अनुमन्यता से संबंधित समरूप प्रकरण न्यायालयीय प्रकरणों को छोड़कर।*

यह समिति उक्त प्रकरणों का परीक्षण करने के उपरान्त अपनी संस्तुति उस अधिकारी को प्रस्तुत करेगी, जो अधिनियमों के अन्तर्गत इन कार्यों को करने के लिए अधिकृत है। इस समिति की माह में दो बार नियमित रूप से बैठकें आयोजित होंगी। न्यायालयीय प्रकरणों पर उक्त समिति अपनी संस्तुति शिक्षा निदेशक को प्रेषित करेगी जिनकी आख्या एवं संस्तुति प्राप्त होने पर शासन द्वारा कार्यवाही हेतु निर्देश दिया जायेगा।”

19. He has submitted that the Government Order dated 19.12.2000 has been issued in aid to Section 16A-(7) of the Act, 1921; and placing heavy reliance on the aforementioned extract of the

Government Order dated 19.12.2000, he has submitted that the necessity for issuance of the Government Order dated 19.12.2000, arose on account of the fact, that the Government was continuously receiving complaints, with respect to the Prescribed Authorities/Competent Authorities under the □Intermediate Act, 1921□ and □U.P. High School and Intermediate Colleges (Payment of Salary of Teachers and other Employees) Act, 1971□; who were allegedly misusing their powers and therefore with an object to de-centralize the powers of the prescribed authorities, the Regional Level Committee was constituted, under the Chairmanship of the □Regional Joint Director of Education□, in which □Regional Deputy Director of Education□ and the □District Inspector of Schools□ of the concerned district, shall be the Members.

20. He has further submitted that in spite of the fact that the powers/functions of different authorities, were provided under the aforementioned enactments, the following functions were assigned to the Regional Level Committee:-

(a) Attesting the signatures of the Manager (which is otherwise the function/power of the District Inspector of Schools)

(b) Appointment of Authorized Controller (which is otherwise the function/power of the Joint Director of Education)

(c) All Management related disputes (which is otherwise the function/power of the Joint Director of Education,

(d) Seniority disputes of the teachers (which is to be determined by the Manager and against the same the appeal lies before the Joint Director of Education)

(e) Salary Approvals, except court cases

21. He has further submitted, to buttress his argument, that though different prescribed authorities, were nominated for the exercise of powers with respect to the aforementioned domains, which is now to be exercised by the Regional Level Committee; but in spite of the same, the Government has issued the Government Order in purported exercise of Article 162 of the Constitution of India with an object to bring transparency and decentralize the decision making process, bringing efficiency; and in case any one Member of the Regional Level Committee, does not participate in the proceedings, the order is liable to be vitiated, since the very objective to decentralize the powers and to bring in more transparency, as well as, accountability, shall be defeated.

22. He has further argued that the plain reading of the Government Order, clearly spells out the objective and the necessity of complete quorum, and nothing can be read into the said Government Order; and as such the Committee can only function with the presence of all the three Members, but for a situation, there is an impossibility, to complete the quorum.

23. Per contra, Shri Kartikeya Saran, learned Additional Advocate General has submitted that though it is not disputed that the Joint Director of Education, Vindhyachal Mandal, Mirzapur

was acting in a dual capacity of Deputy Director of Education (Intermediate), Vindhyaachal Mandal, Mirzapur as well; but merely on account of non-availability of the Deputy Director of Education, the impugned order dated 08.08.2025 cannot be said to be vitiated. He has laid stress on the fact that the Government Order dated 19.12.2000, itself requires that the Regional Level Committee shall meet at least twice within a month and the said contemplation is evident of the fact, that the disputes which are to be decided and within the domain of the Regional Level Committee, by virtue of the Government Order dated 19.12.2000, are itself of urgent nature; and out of 18 regions in the State of U.P., there are more than 8 regions, where one of the three Members are not available; and as such considering the urgency to the resolution of the disputes of the Committee of Management, as enumerated in the Government Order itself, it is of paramount importance that the Regional Level Committee, continues to function, unless there is an alternative available; and hence he submits that the Doctrine of Necessity is attracted in the present case.

24. He has further submitted that though the object for issuing the Government Order, in question, apart from increasing efficiency in the administration of Educational Institution, was also distribution of the work, by referring certain issues to the Regional Level Committee; but in absence of any allegations of mala fides or by not raising any objections, regarding the incompetence of the Regional Level Committee, on account of non-compliance of the quorum and the decision having been taken unanimously, there has been a substantial compliance. He submits that it is trite law that the Government Order cannot override a statute, however since there is no mandatory stipulation as regard the requirement of a quorum in Section 16A(7) of the Act, 1921, the composition of the Committee is not mandatory but directory.

25. He has relied upon the decision of the Constitution Bench in **State of U.P. and others vs. Babu Ram Upadhyay**³, to submit that where the statute does not provide for a contingency of the non-compliance with the provision, the provision shall always be directory; but the Court may ascertain the real intention of the legislature, by examining entire scheme of the Act. For ready reference para-29 of **Babu Ram Upadhyay** (supra) is reproduced below :

“29. The relevant rules of interpretation may be briefly stated thus: When a statute uses the word "shall", prima facie, it is mandatory, but the Court may ascertain the real intention of the legislature by carefully attending to the whole scope of the statute. For ascertaining the real intention of the Legislature the Court may consider, inter alia, the nature and the design of the statute, and the consequences which would follow from construing it the one way or the other, the impact of other provisions whereby the necessity of complying with the provisions in question is avoided, the circumstance, namely, that the statute provides for a contingency of the non-compliance with the provisions, the fact that the non-compliance with the provisions is or is not visited by some penalty, the serious or trivial consequences that flow therefrom, and, above all, whether the object of the legislation will be defeated or furthered.

(emphasis supplied) “

26. He further relies upon the decision in the case of **Deepak Yadav vs. State of U.P. and others**⁴, to submit that where the Government Order also do not prescribe the consequence of non-

compliance, the same shall only be directory and not mandatory. For ready reference para-34 of the Deepak Yadav (supra) is reproduced below:

“34. The provisions of Government Orders dated 9th May, 1997 and 1st August, 1997 are only to ensure that a public servant is not harassed and is not faced with baseless and false allegations. It is not the mandate of the said Government Orders that no preliminary inquiry can proceed unless and until the complaint is given on affidavit. It is only a measure as to filter baseless and motivated complaints and to provide guidelines to the authorities to see that a person making complaint is serious about his complaint and there is substantial material in the same and is not made with oblique motive without having any basis. The said Government Orders also do not prescribe the consequences of non compliance and therefore, this Court is of the considered view that the said Government Orders are, only 'guidelines' and are directory and not mandatory. [...]

(emphasis supplied)”

27. Therefore, insisting upon the strict compliance with the composition of the Committee, as prescribed in the Government Order, will only be a futility and an empty formality, which will militate against the object of the Government Order, i.e. to introduce fairness and efficiency in the resolution of disputes, pertains to the administration and management of the Institution.

28. He has relied upon a decision of a Constitution Bench in **CCE vs. Hari Chandra Shri Gopal**⁵, to submit that applying the □Doctrine of substantial compliance□, the question whether the requirements relate to the □substances□ or □essence□ of the statute is to be seen and if the strict adherence to those requirement is a pre-condition. For ready reference para-24 of **Hari Chandra Shri Gopal** (supra) is reproduced below:

“34. The test for determining the applicability of the substantial compliance doctrine has been the subject of a myriad of cases and quite often, the critical question to be examined is whether the requirements relate to the "substance" or "essence" of the statute, if so, strict adherence to those requirements is a precondition to give effect to that doctrine. On the other hand, if the requirements are procedural or directory in that they are not of the "essence" of the thing to be done but are given with a view to the orderly conduct of business, they may be fulfilled by substantial, if not strict compliance. In other words, a mere attempted compliance may not be sufficient, but actual compliance with those factors which are considered as essential”

(emphasis supplied)”

29. He lastly submits that the Government Order dated 19.12.2000 is silent on the issue, as to what recourse is to be taken in case any one of the Members of the three Member Committee is indispensable.

30. Per contra, Sri Prabhakar Awasthi, learned Senior Counsel appearing for the petitioner has submitted that the □Doctrine of necessity□ can only be invoked when there is an □impossibility□ in meeting out the contingencies of completion of the quorum; while the remaining two Members of the Committee of Management had an option to seek guidance from the

Government, and by way of nomination of a member from the neighboring region, till the time regular appointment is made to the said post and the concerned Member by its designation is available, the Government could have made a "stop gap" arrangement; and as such the "doctrine of necessity" is not attracted in the present case, since a plausible re-course was available, to the chairman of the RLC, to meet the mandate of the G.O. dated 19.12.2000, which holds the field.

31. As far as, the "Doctrine of Silence" being referred is concerned, it is linked to the "living tree doctrine" i.e. to fill the gaps to meet out the contingencies which may arise due to "silence" in the enactment or the Government Order; and the purpose is to keep the provision of law relevant and effective, by allowing the Courts to fill gaps where the enactment does not explicitly provide for a situation. However, the interpretation must be objective, based on constitutional principles rather than subjective judicial satisfactions.

32. Learned counsel for the petitioner has also relied upon a decision of the coordinate Bench of this Court dated 04.04.2025 in **Committee of Management Shri D.C. Vedic Inter College and another vs. State of U.P. and others**⁶ to submit that in an identical circumstances, where the quorum of the "Regional Level Committee" was incomplete, direction was issued to the District Inspector of Schools, to remit the records to the Regional Level Committee, who shall decide the dispute of the parties, with complete quorum. He has also submitted that the issue of prejudice was also raised in the aforesaid decision but the same was rejected and the matter was remitted back, since the constitution of the "Regional Level Committee" was not proper, inasmuch as instead of three Members, only two Members heard the matter.

33. He has also relied upon a decision of this Court dated 08.10.2025 in **Committee of Management Kakori Shaheed Inter College and another vs. State of U.P. and others**⁷ wherein, also the issue as to whether one of the Member could act in dual capacity, to complete the quorum on the ground of necessity arose but however keeping the said issue open, the writ petition was disposed of with a direction that a fresh decision shall be taken by the Regional Level Committee, comprising of all the three Members.

34. In order to meet the aforesaid arguments, Shri Kartikeya Saran, learned Additional Advocate General has placed reliance on the judgment of the Apex Court in the case of **Election Commission of India and another vs. Dr. Subramaniam Swamy and another**⁸ specifically on paras-15, 16 and 17, which is being reproduced hereinbelow:

"15. The next question then is if the Chief Election Commissioner, for reason of possible bias, is disqualified from expressing an opinion, how should the Election Commission conduct itself? As pointed out earlier Shri Sanghi, the learned counsel for the appellant, has very frankly and with his usual fairness stated that the Chief Election Commissioner preferred this appeal only because he genuinely believed that the scheme of Article 324 did not conceive of a decision by majority, but if the Court comes to the conclusion that a decision can be reached without the Chief Election Commissioner participating in decision-making in the special circumstances of the case, the latter is not at all keen or anxious to hear and adjudicate upon the matter at issue before the Election Commission. We are quite conscious of the high office the Chief Election Commissioner occupies. Ordinarily we would be loath to uphold the submission of bias but having regard to the

wide ramification the opinion of the Election Commissioner would have on the future of Ms J. Jayalalitha, we think that the opinion, whatever it be, should not be vulnerable. The participation of the Chief Election Commissioner in the backdrop of the findings recorded by the learned Single Judge as well as the Division Bench of the High Court would certainly permit an argument of prejudice, should the opinion be adverse to Ms J. Jayalalitha. Therefore, apart from the legal aspect, even prudence demands that the Chief Election Commissioner should recuse himself from expressing any opinion in the matter. However, the situation is not so simple, it is indeed complex, in that, what would happen if the two Election Commissioners do not agree and there is a conflict of opinion between them? That would lead to a stalemate situation and the Governor would find it difficult to take a decision based on any such opinion. In such a situation, can the doctrine of necessity be invoked in favour of the Chief Election Commissioner?

16. We must have a clear conception of the doctrine. It is well settled that the law permits certain things to be done as a matter of necessity which it would otherwise not countenance on the touchstone of judicial propriety. Stated differently, the doctrine of necessity makes it imperative for the authority to decide and considerations of judicial propriety must yield. It is often invoked in cases of bias where there is no other authority or Judge to decide the issue. If the doctrine of necessity is not allowed full play in certain unavoidable situations, it would impede the course of justice itself and the defaulting party would benefit therefrom. Take the case of a certain taxing statute which taxes certain perquisites allowed to Judges. If the validity of such a provision is challenged who but the members of the judiciary must decide it. If all the Judges are disqualified on the plea that striking down of such a legislation would benefit them, a stalemate situation may develop. In such cases the doctrine of necessity comes into play. If the choice is between allowing a biased person to act or to stifle the action altogether, the choice must fall in favour of the former as it is the only way to promote decision-making. In the present case also if the two Election Commissioners are able to reach a unanimous decision, there is no need for the Chief Election Commissioner to participate, if not the doctrine of necessity may have to be invoked.

17. We think that is the only alternative in such a situation. We are, therefore, of the opinion that the proper course to follow is that the Chief Election Commissioner should call a meeting of the Election Commission to adjudicate on the issue of disqualification of Ms J. Jayalalitha on the grounds alleged by Dr Swamy. After calling the meeting he should act as the Chairman but then he may recuse himself by announcing that he would not participate in the formation of opinion. If the two Election Commissioners reach a unanimous opinion, the Chief Election Commissioner will have the opinion communicated to the Governor. If the two Election Commissioners do not reach a unanimous decision in the matter of expressing their opinion on the issue referred to the Election Commission, it would be necessary for the Chief Election Commissioner to express his opinion on the doctrine of necessity. We think that in the special circumstances of this case this course of action would be the most appropriate one to follow because if the two Election Commissioners do not agree, we have no doubt that the doctrine of necessity would compel the Chief Election Commissioner to express his views so that the majority opinion could be communicated to the Governor to enable him to take a decision in accordance therewith as required by Article 192(1) of the Constitution. "

35. He has contended that in the aforesaid decision, the Apex Court was seized with an issue regarding the participation of the Chief Election Commissioner as a Member/Chairman of the Committee, in the background of the findings of the learned Single Judge, as well as, the Division Bench, to the effect that his participation may cause prejudice and may be adverse to Ms. J. Lalita; but in spite of the aforesaid, the Apex Court had opined that the proper course to be followed is that the Chief Election Commissioner, should call the meeting of the Election Commission, to adjudicate the issue of disqualification of Ms. J. Lalita; and after calling upon the meeting he may recuse himself and in case if the two Election Commissioners do not reach a unanimous decision in the matter of expressing their opinion, invoking the doctrine of necessity, the Chief Election Commissioner may also express his opinion.

36. Learned Additional Advocate General has also placed reliance on the ratio of the case in **Smt. Kamla Devi vs. State of U.P. and others**⁹ to rely upon paras-15, 16, 17 and 18, which is reproduced below:

"15. In accordance with the provisions of Adhiniyam 1961, elected members of Zila Panchayat shall constitute an electoral college to participate and cast their vote in the meeting called to consider the Motion of No Confidence in Pramukh or Up-Pramukh of Kshettra panchayat. There is no dispute between the parties on the fact that all the members, who participated in the meeting of No Confidence were elected members of Zila Panchayat. The only point of issue between them is that 11 members, details of whom, have been set out in paragraph 14 of the writ petition, who had undisputedly not subscribed to the oath or affirmation and participated and voted of the meeting of No Confidence, could have done so and their participation and voting was invalid, on account of their having not subscribed to oath or affirmation.

16. The provisions of Adhiniyam 1961 do not contain any provision with respect to any oath or affirmation by any of the elected member of Kshettra panchayat. Since no such provision exists in the Adhiniyam, there is also no consequence provided for not subscribing or affirmation to oath. The provisions for subscribing to oath or affirmation by a Pramukh or elected member of Kshettra panchayat was introduced for the first time by the Uttar Pradesh Kshettra Panchayats and Zila Panchayats (Oath of Office of Adhyaksha or Pramukh Etc.) Rules 1994 framed in exercise of powers conferred by Uttar Pradesh (Kshettra Panchayats and Zila Panchayats) Adhiniyam, 1961. The relevant provision of the Rules pertaining to oath or affirmation, in case of elected member of Zila Panchayat is contained in Rule 3 (3), which is as under.

"3- Manner of taking oath or affirmation.

(1)

(2)

(3) The members of Zila Panchayat and Kshettra Panchayat before taking their seats for the first time as such members shall make or subscribe oath or affirmation, in the case of member of Zila Panchayat before the Adhyaksha and in his absence before the Mukhya Adhikari and in the

case of members of the Kshettra Panchayat before the Pramukh and in his absence before the Khand Vikas Adhikari, in the form set out in the Appendix."

17. The 1994 Rules does not provide for any consequence of not taking oath or affirmation by a member. The Adhiniyam of 1961 also neither prescribes any provision for any oath to be taken or the affirmation to be made nor it prescribes any consequence for such an omission.

18. In the absence of any provision in the Adhiniyam of 1961 or the Rules prescribing any consequence for omission to subscribe to oath or affirmation, it cannot be held that such a member ipso facto loses his membership or in any manner becomes disqualified to either participate or vote in the meeting of No Confidence. His status, despite having failed to subscribe to oath or affirmation, continues to be that of an elected member and he continues to be a member of the electoral college. Participation of such member would neither render the meeting of No Confidence illegal nor vote cast by such member/members is liable to be excluded."

Conclusion

37. In the humble opinion of this Court, facts on which the □doctrine of necessity□ was invoked in the case of **Election Commission of India (supra)**, was on account of the fact that there was only one "Chief Election Commissioner" and there was no other authority, who could have stepped in his shoes; and he was also to act upon as a Chairman of the Committee, and in the contingency, there was no unanimous decision, there was no other option but to seek his opinion also, to break the tie; and therefore the invocation of □doctrine of necessity□ was imperative.

38. As far as the ratio of the case in **Smt. Kamla Devi (supra)** is concerned, wherein, in the proceedings of no-confidence motion, in which there was provision under the U.P. Kshetra Panchayat and Zila Panchayat Adhiniyam, 1961, that the elected Member of the Zila Panchayat shall constitute an electoral college to participate and cast their vote, in a meeting in pursuance of a no-confidence motion, the Court was confronted with a question that, whether an elected Member of the Zila Panchayat can cast his vote, without subscribing to the oath or affirmation in view of the provisions of U.P. Kshettra Panchayats and Zila Panchayats (Oath of Office of Adhyaksh or Pramukh etc) Rules, 1994.

39. The Division Bench of this Court had opined that since there was no provision in the Rules, 1994 which provides for the consequence, for not subscribing or affirmation to oath and the requirement under the Adhiniyam, 1961 also did not prescribe any provision for any oath to be taken or affirmation to be made and as such the omission in the said enactments, towards the consequence, would be construed to the effect that an elected Member, who is a Member of the electoral college, can participate in the meeting, in pursuance of a no confidence motion.

40. In the facts of the present case though in the Government Order dated 19.12.2000, no consequence is provided, in case the quorum is not complete; but looking at the objective and the necessity which arose before the State Government, for the issuance of the Government Order dated 19.12.2000 i.e. to de-centralize the powers from a single authority, by constituting a RLC,

which was required to look into the various issues; and would include the Joint Director of Education, the Deputy Director of Education and the District Inspector of Schools of the district arose. The same is indicative of the fact, that the powers has to be divested from the single authority, to be exercised by a three Member Committee.

41. The role of the Joint Director of Education as a Chairman of the Committee, along with the Regional Deputy Director of Education and the concerned District Inspector of Schools of the district, cannot be merged or else, the very objective of the Government Order dated 19.12.2000 would fail and as such the ratio of the judgment of Kamla Devi (supra) also cannot come to the rescue of the State, as it was on a different set of facts, not applicable in the facts of the present case.

42. At this stage, I think it appropriate to refer to the judgment in the case of State of Andhra Pradesh and another vs. Dr. Mohanjit Singh and others¹⁰; wherein, a Government Order dated 21.09.1976 was under consideration, which provides for a Selection Committee, consisting of two representative of the Management, two Professors or Readers representing the University and a representative of the Director of Education. A situation arose, that in the meeting for selection, the representative of Director Higher Education was not present, though two representative of the Management and that of the University participated; however the absent Members subsequently agreed with the selection.

43. In the aforesaid circumstances, the Apex Court considered the objective of the Government Order, concluding that the government order made it clear that the Selection Committee is intended to function as a body; and in case all the Members are present at the selection there would have been a scope for exchange of views, when the candidates appeared and the selection would have been in terms of the scheme; but in absence of the quorum, the Selection Committee cannot function, as per the scheme envisaged by the government order.

44. I may also refer to a decision rendered by the High Court of Chhattisgarh at Bilaspur in **Writ Appeal No.31 of 2022 decided on 01.08.2023 (Arshad Ahmad vs. State of Chhattisgarh and others)**, wherein the constitution of a Permanent Lok Adalat was under consideration and the object of there being a non-judicial member, in tribunal like Permanent Lok Adalat was being considered. In the said background, the concept of dissent or dissenting view was considered, to hold a sacramental place in a judicial process.

45. In the words of William Brennan, *“dissent” contribute to the integrity of the (Judicial) process not only by directing attention to perceived difficulties with the majority’s opinion but also by contributing to the market place of competing ideas*: which means that when a composite body, having full quorum is contemplated under the scheme, the entire concept recognizes adjudication by the three Member Tribunal and the object of the government order, in question, clearly perceives the two authorities, who are otherwise also provided under their respective statute to determine the issues: but apart from the said two authorities another authority to be the Regional Deputy Director of Education, was contemplated as a member of the three Member Committee constituting the Regional Level Committee; and accordingly unless all the three Members are present but for any unavoidable reasons leading to an impossible situation, to fulfill

the quorum; and he becomes irreplaceable, till then, it is imperative that all the three Members participate in the meeting and discharge their duties; since the concept of "dissent", hold a sacramental place in the judicial process.

46. The judgment of the 3 Judges Bench of the Apex Court in **Election Commission of India** (supra) was referred with affirmation recently in the case of **X vs. O/O Speaker of the House of People and others**¹¹ to which we now gainfully refer to. It is also noteworthy that the judgment in the case of X (supra) also refers to a quote, from the preface of the celebrated work of Michael Foley's in "Silence of Constitution", which is reproduced below:

"Abeyances refer to those constitutional gaps which remain vacuous for positive and constructive purposes. They are not, in any sense, truces between two or more defined positions, but rather a set of implicit agreements to collude in keeping fundamental questions of political authority in a state of irresolution. Abeyances are, in effect, compulsive hedges against the possibility of that which is unresolved being exploited and given meanings almost guaranteed to generate profound division and disillusionment. Abeyances are important, therefore, because of their capacity to deter the formation of conflicting positions in just those areas where the potential for conflict is most acute. So central are these abeyances, together with the social temperament required to sustain them, that when they become the subject of heightened interest and subsequent conflict, they are not merely accompanied by an intense constitutional crisis, they are themselves the essence of that crisis."

In Part II, Chapter Four, the author has also dealt with the constitutional gaps and the arts of prerogative. To the extent relevant, it reads as follows (p. 82):

"Gaps in a constitution should not be seen as simply empty space. They amount to a substantial plenum of strategic content and meaning vital to the preservation of a constitution. Such interstices accommodate the abeyances within which the sleeping giants of potentially acute political conflict are communally maintained in slumber. Despite the absence of any documentary or material form, these abeyances are real, and are an integral part of any constitution. What remains unwritten and indeterminate can be just as much responsible for the operational character and restraining quality of a constitution as its more tangible and codified components."

47. In the facts of the present case, an inescapable conclusion is to the effect that though the "doctrine of silence" can be read into a statute or the Government Order in this case, to fill up certain gaps but the Court has to be conscious to the objectives of the said enactment or the policy; and in case anything has to be read into i.e. the words which are not there, there has to be a dominating necessity or it would lead to violence to the said statute; as such nothing is to be added to or taken from the statute. There seems to be a silence in the Government Order, on the question, when it comes to a contingency, where one of the Member is not available but in the said circumstances it also cannot be construed that the remaining members or one of the Members, while acting in a dual capacity can undertake on to themselves, the role of the third member. Presence of every member, by its designated post, envisages a meaningful discussion and an opinion, in which case, there is a possibility to sway the opinion of other members; and more so over, the "dissenting opinion" may reflect the integrity and transparency, in the decision making

process. The mere fact that the two members, gave a unanimous decision, cannot overcome the lacuna, of non-fulfillment of the quorum; but for a situation, leading to "impossibility" to do so.

48. The argument of the respondents that since the decision was a unanimous decision and even if the third Member was present, it would have not made any difference to the ultimate conclusion; also cannot be accepted because when a proceeding encapsulates the presence of a third Member by virtue of its position/post, the expertise which it may bring to the proceedings, cannot be ignored or taken over by any other Member of the Committee; as such unless situation arises where there is an impossibility of a substitution or nomination, the "doctrine of necessity" cannot be invoked, as already stated herein above.

49. The Committee could have easily sought for a guidance from the Government, who could have nominated a "Deputy Director of Education" of a neighboring region, to fill in the gap, so that the objective of the Government Order for adjudication by a three Member Committee, could have been achieved and without any violence to the policy decision, itself. Even if it is a unanimous decision, the value of the "dissent" cannot be undermined, as the presence and participation of each member is a mandate, which contribute to the integrity of the process; and any interpretation to the contrary would only do violence, to the objective of the Government Order.

50. In the last leg of argument though the learned Additional Advocate General has placed reliance on the judgment of Apex Court in the case of **State of U.P. and others vs. Sudhir Kumar Singh and others**¹² relying on para-42.3 and 42.5 to contend that no prejudice has been alleged by the petitioner by the decision but he has fairly submitted that the said ratio is in context to the principles of natural justice. For ready reference para-42.3. and 42.5 is reproduced below:

" 42.3. No prejudice is caused to the person complaining of the breach of natural justice where such person does not dispute the case against him or it. This can happen by reason of estoppel, acquiescence, waiver and by way of non-challenge or non-denial or admission of facts, in cases in which the Court finds on facts that no real prejudice can therefore be said to have been caused to the person complaining of the breach of natural justice.

42.5. The "prejudice" exception must be more than a mere apprehension or even a reasonable suspicion of a litigant. It should exist as a matter of fact, or be based upon a definite inference of likelihood of prejudice flowing from the non-observance of natural justice."

51. Now we refer to the ratio in the judgment of **Babu Ram Upadhyay** (supra) as relied upon by the respondents to submit that the composition as envisaged under the Government Order dated 19.12.2000, is only "directory" and not "mandatory" in nature. It is not res integra that the usage of the word "shall" can also be construed to mean "may"; but however, as inferred by the Apex Court in the case of Babu Ram Upadhyay (supra) itself, for ascertaining the real intention of the legislature, the Court may consider, inter alia, the nature and design of the statute.

52. Accordingly, the argument of the learned Additional Advocate General, though at the first instance seems to be attractive that where the statute does not provide for a contingency of a penalty, of non-compliance with the provision, the said provision has to be interpreted as

□directory□ and not □mandatory□ in nature; but however, this Court cannot loose sight of the fact that the very necessity for bringing out the Government Order dated 19.12.2000, was on account of the fact that the decision which were being taken with respect to the subject matter of the Government Orders, by the concerned authorities as envisaged under the □Intermediate Act, 1921□ and □U.P. High Schools and Intermediate Colleges (Payment of Salary of Teachers and other Employees) Act, 1971□ was marred by instances of mala fides and colourable exercise of power; and therefore, with an object to de-centralize the powers, atleast with respect to crucial issues, which are fundamental to the running of an Institution or a college, a three Member □Regional Level Committee□ was created and the same also found approval from the various decisions of this Court, as well as, the Apex Court; and accordingly in case any necessity which may reduce the quorum of the Regional Level Committee, will be detrimental and a death blow, to the very object of the Government Order dated 19.12.2000.

53. The situation would have been different, if there is some technical difficulty in replacing any one of the three Regional Level Officer by the government, as was in the case of Election Commission of India (supra); but as fairly admitted by the learned Additional Advocate General that in case of a contingency, where one of three Members of the □Regional Level Committee□ is not available, it is always open for the government to make a nomination from a neighbouring region, as a □stop gap□ arrangement, to carry on the functioning of the Regional Level Committee; and even otherwise the recourse to Article 226 of the Constitution of India, seeking nomination from the government in certain circumstances, is also open.

54. I may also refer to the argument of the learned counsel for the petitioner that the Act, 1921 authorizes the □Joint Director of Education□ to look into the managerial disputes and the Act, 1971 authorizes the □District Inspector of Schools□; however the introduction of the □Deputy Director of Education□ in the □Regional Level Committee□, who is the only neutral Member and otherwise not vested with any functions; and as such his absence from the quorum of the Regional Level Committee, would do highest violence to the Government Order dated 19.12.2000.

55. The learned Additional Advocate General has submitted in response that admittedly, the □Joint Director of Education□ was having the charge of the □Deputy Director of Education□ and Joint Director of Education had issued notices on 30.01.2025 fixing 06.02.2025; whereafter though some hearings took place before the □Regional Level Committee□ with complete quorum, but subsequently on account of the transfer of the □Deputy Director of Education□ on 06.03.2025, the □Joint Director of Education□ was given the additional charge of □Deputy Director of Education□ and thereafter substantial hearing was done before the aforesaid two Members, of which the □Joint Director of Education□ was holding the dual charge of □Deputy Director of Education□; and no objection regarding the constitution of the Committee was made in the proceedings (though the same has been seriously disputed by learned counsel for the petitioner); however the said issue becomes inconsequential since the question of prejudice in that sense, is not an issue before this Court, simply for the reason, the shortage in quorum, itself does violence to the objective of the constitution of the Regional Level Committee and the opinion of □dissent□ which may influence the decision of the other two members, cannot be discarded, there being no situation of impossibility, to get a substitution, by nomination.

56. Shri R.K. Ojha, learned Senior Counsel appearing for the private respondents has submitted that since the constitution of the Regional Level Committee, is region specific, and in case the Regional Deputy Director of Education is not available, and the scheme does not contemplate transfer of the cases to any other region and the consequence of non-fulfillment of the quorum has also not been provided, there exist a situation of impossibility for fulfilling the quorum. He has further submitted that there is no power with the government to make any nomination as well; but he has fairly submitted that the remedy of Article 226 of the Constitution of India, is nevertheless available and the affected party could approach this Court seeking a nomination from the government, or for transfer of the case to a neighbouring region. He has fairly stated that the said contingency has to be addressed by the government but till such time, it is addressed, the doctrine of necessity may be invoked and in case government has given a dual charge to one individual, who participates in the proceedings of the Regional Level Committee, the same, cannot be invalidated. He has also submitted that the Government Order has not been issued merely in aid of Section 16A-7 of the Act, 1921 but other matters e.g. question of seniority etc. are the domain of the Regional Level Committee.

57. As far as, the first contention of Shri R.K. Ojha, learned Senior Counsel, to the effect that since the constitution of Regional Level Committee is region specific and if any Regional Member of the said Committee is not available, the case cannot be transferred to any other region or in absence of any other procedure, being provided in the Government Order dated 19.12.2000, there will be stalemate; this Court finds that the government is not bereft of its power to either transfer the adjudication to a neighbouring Regional Level Committee or to nominate an authority by way of a stop gap arrangement, to continue the proceedings before the Regional Level Committee. In case, any alternate or a procedure to address the issue is not provided under the government order; and there is a duty casted upon the Regional Level Committee, it could have easily sought for a guidance from the government or the parties seeking an adjudication before the Regional Level Committee, is also not remedy-less, for they could approach this Court under Article 226 of the Constitution of India, in a given case.

58. It is also pertinent to observe here, that merely because a majority opinion has been arrived at, also cannot be a basis, for holding a decision as valid, since the Doctrine of Dissent as considered herein above clearly postulates, the role of the third member, in the discussion and expression of his opinion, which may affect the decision making or opinion of other members, thereby changing the opinion of the majority in his favour; and in the said circumstances, it is held that the 3rd member's presence cannot be discarded and every effort is to be made, to achieve the object of the Government Order, unless there is a circumstance, of impossibility, where the Doctrine of necessity, will be applicable.

59. Another reason can be, in case a Regional Joint Director of Education is holding the charge of Regional Deputy Director of Education, it can also be said that, one individual alone, will form the majority, which will alone do violence to the objective of the Government Order dated 19.12.2000, which is to decentralize the power and bring transparency, also strengthening the integrity of the process.

Relief

60. In view of the aforesaid, I find that the impugned order dated 08.08.2025 cannot be sustained and is accordingly set aside, with the following directions:-

(i) The Joint Director of Education, Vindhyachal Mandal, Mirzapur, is directed to seek a nomination from the government within a period of two weeks from the date of receipt of the certified copy of this order, in case, till date no □Deputy Director of Education□ has taken charge.

(ii) Respondent no.1 on receipt of such a request, shall proceed to nominate Regional Deputy Director of Education, from a neighbouring region as an adhoc Member of the Regional Level Committee, Vindhyachal Mandal, Mirzapur.

(iii) On the constitution of the Regional Level Committee, Vindhyachal Mandal, Mirzapur as per the Government Order dated 19.12.2000, the Committee shall proceed to decide the issue within a period of three weeks from the date of aforementioned nomination, after adhering to the principles of natural justice and notice to all the parties concerned.

(iv) Respondent no.1 is directed to issue a circular to all the Regional Level Committees, constituted under the Government Order dated 19.12.2000, prescribing a procedure or a standard operating procedure (SOP), indicating the procedure to be followed by all the Regional Level Committees in the State of Uttar Pradesh, in case any one of the Members as contemplated under the Government Order dated 19.12.2000, is not available and ensure strict compliance of the same, keeping in mind, the observations and law discussed, herein above.

61. Registrar (Compliance) is directed to send a copy of this order to the respondent no.1- Principal Secretary, Ministry of Secondary Education, U.P. at Lucknow for necessary compliance; and issuance of directives/standard operating procedure, to be followed by □Regional Level Committees□ in the aforesaid contingencies.

62. Before parting with the judgment, a special mention of Ms. Pratibha Verma (Research Associate), attached with my chamber is to be made, as she was instrumental in providing research and deserves appreciation by the Court for the same.

63. With the aforesaid observations/directions, the writ petition stands allowed. However, no order as to costs.

(2026) 4 ILRA 1320
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 30.04.2026

BEFORE

THE HON'BLE SARAL SRIVASTAVA, J.
THE HON'BLE MRS.GARIMA PRASHAD, J.

Writ C No. 8895 of 2026

Shri Krishna Nutrition India Pvt. Ltd. ...Petitioner
Versus
The Micro Small & Medium Enterprises & Anr. ...Respondents

ISSUE FOR CONSIDERATION

Matter pertains to whether an arbitral award passed by the Micro, Small and Medium Enterprises Facilitation Council under Section 18 of the Micro, Small and Medium Enterprises Development Act, 2006 can be challenged in writ jurisdiction under Article 226 on the grounds of absence of proper service and claim being barred by limitation despite availability of statutory remedy under Section 34 of the Arbitration and Conciliation Act, 1996.

HEADNOTE

Constitution of India, Art.226 – Micro, Small and Medium Enterprises Development Act, 2006, s.18 – Arbitration and Conciliation Act, 1996, s.34 – MSME Council passed award against petitioner – Petitioner challenged the award in writ jurisdiction on the ground that the award was passed without due service upon him and that the claim was barred by limitation as the last supply was made on 18.02.2017 whereas the reference was filed on 03.09.2020 – Maintainability of writ petition in view of availability of statutory remedy under Section 34 of the Arbitration and Conciliation Act, 1996.

Held: Proceedings under Section 18 of the 2006 Act culminate in an arbitral award and the statute itself provides a remedy under Section 34 of the Arbitration and Conciliation Act, 1996 – A party cannot bypass the statutory remedy and invoke writ jurisdiction to challenge such an award, particularly so as to avoid compliance with the requirement of pre-deposit under Section 19 of the 2006 Act – Court held that interference under Articles 226 and 227 in arbitral matters is extremely limited and can be exercised only in cases of patent perversity or exceptional circumstances – Court held that not every plea styled as one of “jurisdiction” can be entertained in writ jurisdiction – Where adjudication requires appreciation of evidence and determination of disputed questions of fact, such issues are required to be examined by the forum competent under the statute – Court held that where disputed questions of fact arise and an alternative remedy is available, the High Court should ordinarily decline to exercise writ jurisdiction.

Petitioner challenged the arbitral award on two grounds, namely, absence of proper service before the MSME Council and the claim being barred by limitation – Court held both these issues to be not pure questions of law but mixed questions of fact and law – Determination of proper service would require examination of mode of service, acknowledgment, addresses and related material, while plea of limitation would depend upon factual aspects such as date of supply, invoices, acknowledgments and course of dealings between parties – In the present case, Court did not find any manifest perversity – Issues raised required factual adjudication and did not fall within the narrow scope carved out by the Supreme Court – Whether a claim is barred by limitation depends upon factual determination and cannot be adjudicated in writ jurisdiction – Alleged improper service and ex parte proceedings are matters to be examined by the competent forum and do not render the award a nullity on the face of the record – Writ petition held not maintainable and dismissed – Petitioner left at liberty to avail such other statutory remedies as may be available in law. (E-5)

CASE LAW CITED

India Glycols Ltd. v. Micro and Small Enterprises Facilitation Council, (2018) 1 SCC 143;
 Serosoft Solutions Pvt. Ltd. v. Dexter Capital Advisors Pvt. Ltd., 2025 SCC OnLine SC 26;
 Sonali Power Equipments Pvt. Ltd. v. Chairman, Maharashtra State Electricity Board, 2025 SCC OnLine SC 1467;
 Jharkhand Urja Vikas Nigam Ltd. v. State of Rajasthan, (2021) 19 SCC 206;
 Tamil Nadu Cements Corp. Ltd. v. MSEFC, 2023 SCC OnLine Mad 4508;
 Union Territory of Ladakh v. Jammu and Kashmir National Conference, 2023 (12) SCALE 389;
 Lajja Ram v. Union Territory, Chandigarh, (2013) 11 SCC 235;
 Kalpraj Dharamshi v. Kotak Investment Advisors Ltd., (2021) 10 SCC 401;
 State Bank of India v. Rajesh Agarwal, (2023) 6 SCC 1.

List of Acts

Constitution of India;

Micro, Small and Medium Enterprises Development Act, 2006;
Arbitration and Conciliation Act, 1996.

List of Keywords

MSME Council; Arbitral award; Section 18 proceedings; Ex parte award; Proper service; Principles of natural justice; Limitation; Mixed questions of fact and law; Alternative remedy; Section 34 application; Writ jurisdiction; Patent perversity; Exceptional circumstances; Pre-deposit under Section 19; Maintainability of writ petition; Execution proceedings.

CASE ARISING FROM

Award dated 15.07.2021 passed by the Micro, Small and Medium Enterprises Facilitation Council, Kanpur under Section 18 of the Micro, Small and Medium Enterprises Development Act, 2006 directing the petitioner to pay Rs.24,15,835/- including interest.

Appearances for Parties

Advs. for the Petitioner: Nitin Chandra, Sudekchhit Pandey

Advs. for the Respondents:

(Delivered by Hon'ble Mrs.Garima Prashad, J.)

1. Heard learned counsel for the petitioner.

2. The present writ petition has been filed challenging the award dated 15.07.2021 passed by the Micro, Small and Medium Enterprises Facilitation Council, Kanpur (hereinafter referred to as the "MSME Council") under Section 18 of the Micro, Small and Medium Enterprises Development Act, 2006 (hereinafter referred to as the "2006 Act"), whereby the petitioner has been directed to pay a sum of Rs. 9,62,610/- along with interest of Rs. 14,53,225/-, totaling to Rs. 24,15,835/-.

3. Learned counsel for the petitioner submits that the impugned award has been passed ex parte and without due service upon the petitioner. It is stated that the petitioner came to know of the award only in the third week of April, 2025. Thereafter, the petitioner approached the Executing Court. An application was filed seeking recall of the order dated 13.03.2023, whereby the execution proceedings were directed to proceed ex parte. It is further stated that objections to the execution proceedings were filed on 13.06.2025. The said applications are presently pending adjudication.

4. It is further submitted that despite the pendency of the recall application and objections, the Executing Court is proceeding ahead with the execution proceedings without deciding the said applications, compelling the petitioner to invoke the writ jurisdiction of this Court under Article 226 of the Constitution of India.

5. Learned counsel for the petitioner contends that the MSME Council lacked jurisdiction as the claim was barred by limitation, the last supply having been made on 18.02.2017 and the reference having been filed on 03.09.2020. It is further contended that the proceedings before the MSME Council were conducted in violation of principles of natural justice as no proper service was effected and the award has been passed ex parte without affording opportunity of hearing.

6. In support of the aforesaid submissions, learned counsel for the petitioner has placed reliance upon several decisions, which shall be dealt with hereinbelow, one by one. On the strength of the said authorities, it is sought to be contended that where arbitral proceedings suffer from a fundamental jurisdictional infirmity or are vitiated by violation of principles of natural justice, the High Court may, in appropriate cases, exercise its jurisdiction under Articles 226 and 227 of the Constitution of India.

7. We have considered the submissions advanced by learned counsel for the petitioner and perused the record.

8. The challenge raised by the petitioner essentially rests on two grounds, namely, absence of proper service before the MSME Council and the claim being barred by limitation. Both these issues are not pure questions of law but are mixed questions of fact and law. Determination of proper service would require examination of mode of service, acknowledgment, addresses and related material, while the plea of limitation would depend upon factual aspects such as date of supply, invoices, acknowledgments and course of dealings between the parties.

9. It is well settled that not every plea styled as one of "jurisdiction" can be entertained in writ jurisdiction. Where adjudication requires appreciation of evidence and determination of disputed questions of fact, such issues are required to be examined by the forum competent under the statute.

10. Proceedings under Section 18 of the 2006 Act culminate in an arbitral award and the statute itself provides a remedy under Section 34 of the Arbitration and Conciliation Act, 1996. The Supreme Court in **India Glycols Ltd. v. Micro and Small Enterprises Facilitation Council, (2018) 1 SCC 143** has categorically held that a party cannot bypass the statutory remedy and invoke writ jurisdiction to challenge such an award, particularly so as to avoid compliance of the requirement of pre-deposit under Section 19 of the 2006 Act.

11. The reliance placed upon **Serosoft Solutions Pvt. Ltd. v. Dexter Capital Advisors Pvt. Ltd., 2025 SCC OnLine SC 26** is misplaced. The said judgment reiterates that interference under Articles 226 and 227 in arbitral matters is extremely limited and can be exercised only in cases of patent perversity or exceptional circumstances. In the present case, no such manifest perversity is demonstrated on the face of the record. The issues raised require factual adjudication and do not fall within the narrow scope carved out in **Serosoft (supra)**.

12. Insofar as reliance upon **Sonali Power Equipments Pvt. Ltd. v. Chairman, Maharashtra State Electricity Board, 2025 SCC OnLine SC 1467** is concerned, the said judgment merely lays down that the Limitation Act applies to arbitration proceedings under Section

18 of the 2006 Act by virtue of Section 43 of the Arbitration and Conciliation Act, 1996. However, whether a claim is barred by limitation depends upon factual determination and cannot be adjudicated in writ jurisdiction. The said decision does not permit bypassing of the statutory remedy under Section 34.

13. The judgment in **Jharkhand Urja Vikas Nigam Ltd. v. State of Rajasthan, (2021) 19 SCC 206** is clearly distinguishable. In the said case, the Supreme Court found that the MSME Council had failed to follow the mandatory statutory procedure and had not conducted arbitration in accordance with law, rendering the award a nullity. In the present case, no such foundational defect is apparent. The grievance raised pertains to alleged improper service and ex parte proceedings, which are matters to be examined by the competent forum and do not render the award a nullity on the face of the record.

14. In **Tamil Nadu Cements Corp. Ltd. v. MSEFC, 2023 SCC OnLine Mad 4508**, it has been observed that writ jurisdiction is not completely barred. However, the same judgment also reiterates that where disputed questions of fact arise and an alternative remedy is available, the High Court should ordinarily decline to exercise writ jurisdiction. The present case falls squarely within such a category.

15. The reliance upon Union Territory of Ladakh v. Jammu and Kashmir National Conference, 2023 (12) SCALE 389 to contend that in case of conflict of coordinate Bench decisions the earlier one must be followed, is of no assistance to the petitioner. There is no conflict requiring deviation from the law laid down in India Glycols (supra), which directly governs the issue involved.

16. The judgments in **Lajja Ram v. Union Territory, Chandigarh, (2013) 11 SCC 235, Kalpraj Dharamshi v. Kotak Investment Advisors Ltd., (2021) 10 SCC 401 and State Bank of India v. Rajesh Agarwal, (2023) 6 SCC 1** arise in entirely different statutory contexts. While they reiterate general principles relating to natural justice, delay and fairness, they do not dilute the settled position that where a specific statutory remedy is available against an arbitral award, the writ jurisdiction ought not to be invoked except in exceptional circumstances.

17. Acceptance of the petitioner's submission would result in every arbitral award being subjected to writ scrutiny on allegations of procedural irregularity, thereby rendering the statutory mechanism under Section 34 redundant, which is impermissible in law.

18. In the present case, the petitioner has already approached the Executing Court and has filed applications raising the very issues now sought to be urged before this Court. The petitioner also has a statutory remedy available in law to challenge the award. No exceptional circumstance has been made out so as to warrant interference under Article 226 of the Constitution of India.

19. In view of the aforesaid, this Court is of the considered opinion that the writ petition is not maintainable.

20. Accordingly, the writ petition is dismissed.

21. It is, however, directed that any applications filed by the petitioner before the Executing Court shall be considered and decided expeditiously in accordance with law, without being influenced by any observation made herein.

22. It is further provided that the petitioner shall be at liberty to avail such other statutory remedies as may be available in law.

23. No order as to costs.

(2026) 4 ILRA 1325
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 27.04.2026

BEFORE

THE HON'BLE SHEKHAR B. SARAF, J.
THE HON'BLE ABDHESH KUMAR CHAUDHARY, J.

Writ C No. 10703 of 2025

Sri Rajendra Prasad Singh ...Petitioner
M/S Arch Construction & Ors. Versus
...Respondents

ISSUE FOR CONSIDERATION

Whether the High Court under Article 226 can interfere with the interlocutory order passed by the Arbitral Tribunal under Section 16 of the Arbitration and Conciliation Act, 1996?

Whether the High Court, while appointing an arbitrator under Section 11(6), is required to adjudicate the issue of limitation?

Whether the Arbitral Tribunal erred in law by refusing to adjudicate the petitioner's preliminary objection on limitation under Section 16?

HEADNOTES

Civil Law – Constitution of India – Article 226 - Arbitration and Conciliation Act, 1996 - Sections 5, 11, 16, 34 - Limitation Act, 1963 - Article 137, Section 22 - Contract Act, 1872 - Section 28 - Code of Civil Procedure, 1908 - Section 9: -Writ Petition under Article 226 – for quashing the impugned order of the Sole Arbitrator - whereby the learned Arbitral Tribunal rejected the petitioner’s application moved under Section 16 of the Act, 1996 seeking termination of arbitration proceeding on the ground of limitation- partnership dispute - FIR for forgery - invocation of arbitration clause - appointment of arbitrator under section 11 of the Act, 1963 by High Court - The Arbitral Tribunal declined to decide limitation objection, holding that only the High Court could examine limitation at Section 11 stage - doctrine of competence-competence - The petitioner pleaded that limitation is a jurisdictional issue within the Tribunal’s domain - respondents countered that the Section 11 order is final and res judicata - Court finds that, the Tribunal abdicated its jurisdiction under Section 16, contrary to competence-competence doctrine - referral court under Section 11 confined to examining existence of arbitration agreement - Tribunal bound to rule on limitation – court held that, impugned order is patently illegal and perverse – therefore, impugned order quashed - writ petition allowed with direction to the Tribunal to adjudicate preliminary objections of limitation on merits expeditiously.

WP Allowed. (E-11)

CASE LAW CITED

Bhaven Construction v. Sardar Sarovar Narmada Nigam Ltd., (2022) 1 SCC 75,
 Ajay Madhusudan Patel v. Jyotrindra S. Patel, (2025) 2 SCC 147,
 Arif Azim Co. Ltd. Vs. Aptech Ltd. – (2024) 5 SCC 313,
 BSNL v. Nortel Networks (India) (P) Ltd. – (2021) 5 SCC 738;
 Geo Miller & Co. (P) Ltd. v. Rajasthan Vidyut Utpadan Nigam Ltd. – (2020) 14 SCC 643;
 SBI General Insurance Co. Ltd. v. Krish Spg. – (2024) 12 SCC 1;
 Uttarakhand Purv Sainik Kalyan Nigam Ltd. v. Northern Coal Field Ltd. – (2020) 2 SCC 455;
 S.B.P. & Co. v. Patel Engineering Ltd., (2005) 8 SCC 618,
 Duro Felguera, S.A. v. Gangavaram Port Ltd. – (2017) 9 SCC 729;
 Ittyavira Mathai v. Varkey Varkey – 1963 SCC OnLine SC 200;
 Deep Industries Ltd. v. ONGC, (2020) 15 SCC 706;
 Punjab State Power Corpn. Ltd. v. Emta Coal Ltd., (2020) 17 SCC 93;
 Interplay Between Arbitration Agreements under Arbitration Act, 1996 & Stamp Act, 1899, In re, (2024) 6 SCC 1;
 Vidya Drolia v. Durga Trading Corporation, (2021) 2 SCC 1,
 National Insurance Co. Ltd. v. Boghara Polyfab (P) Ltd., (2009) 1 SCC 267.

LIST OF ACTS

Constitution of India – Arbitration and Conciliation Act, 1996 - Limitation Act, 1963 - Contract Act, 1872 - Code of Civil Procedure, 1908.

LIST OF KEYWORDS

Writ Petition – Certiorari – arbitrational clause – preliminary objections – opportunity of hearing – ruling – Competence and jurisdiction – arbitral tribunal - Limitation – Jurisdiction - Section 11(6-A) - Section 16 Application - Minimal Judicial Interference – connotes – appointment of arbitration – mixed question of fact – jurisdictional issue of limitation - Res Judicata – allowed.

CASE ARISING FROM

Arbitration clause invoked by the respondent no.2 and moved an application under section 11 of the Act, 1963 for appointment of an arbitrator – Petitioner filed Section 16 application challenging jurisdiction on limitation grounds; rejected by Arbitral Tribunal.

APPEARANCE OF PARTIES

Counsel for Appellant(s): Shri Sri Tejas Singh, Sri Aakched Nath.
 Counsel for Respondent(s): Shri Ritesh Kumar Srivastava, Sri Alok Kumar Singh.

(Delivered by Hon'ble Shekhar B. Saraf, J.)

This is a writ petition under Article 226 of the Constitution of India for the issuance of a writ of certiorari seeking quashing of the order dated October 9, 2025, passed by a Sole arbitrator (hereinafter also referred to as the □Arbitral Tribunal/respondent no.3□) whereby the application filed by the petitioner under Section 16 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the □Act□) seeking termination of arbitration proceedings was rejected by Arbitral Tribunal on the ground that once the High Court had appointed an arbitrator under the provisions of Section 11 of the Act, the Arbitral Tribunal had no jurisdiction to adjudicate on the limitation aspect for appointing such arbitrator. In furtherance, the petitioner prays for the issuance of a writ

in the nature of certiorari terminating the entire arbitration proceedings pending before the Arbitral Tribunal.

FACTS

2. Factual matrix giving rise to this instant petition is delineated below:

a. The petitioner and Santosh Kumar Singh (hereinafter referred to as respondent no. 2) entered into a partnership deed dated September 13, 2013 to carry on business in the name of M/s. Arch Construction. Subsequently, an altercation arose between the petitioner and respondent no. 2 regarding payment in furtherance of work carried out for the Power Grid Corporation of India Limited. In this regard, the petitioner wrote a letter dated November 7, 2015, to ICICI bank informing it of the illegal operation of the account by the respondent no. 2, pursuant to which the aforesaid account in ICICI Bank bearing account no. 066605000653 was frozen by the bank.

b. The petitioner alleges that thereafter respondent no.2 opened another account in the name of Arch Construction in Union Bank of India, Narai Bandh Branch, Mau bearing account no. 4338010042423, by forging the signature of his father, petitioner and Ajay Singh (hereinafter referred to as respondent no.4). An application was also made before the Power Grid Corporation to release the payments for the work into the aforesaid account. The petitioner later discovered that the Power Grid Corporation of India Ltd. had made payment of the outstanding amounts into the accounts provided by respondent no.2.

c. Aggrieved by the aforesaid circumstances, the petitioner lodged an FIR No. 0620 of 2017 under Sections 406, 420, 467, 468, 471 and 506 of the Indian Penal Code, 1860 against respondent no.2. Subsequently, the Investigating Officer filed a charge-sheet against respondent no.2 under sections 420 and 406 of the Indian Penal Code, 1860 (corresponding to Section 318 and Section 316 of the Bharatiya Nyaya Sanhita, 2023 (BNS)). Pursuant thereto, respondent no.2 was arrested by the police.

d. Respondent no.2 had also issued security cheques of the due amounts to the petitioner, however, the same were dishonoured and as a result the petitioner filed a Complaint Case number 10531 of 2018 on December 17, 2018 before the Competent Court, Lucknow.

e. In the meantime, respondent no.2 sent a legal notice dated September 4, 2017 to the petitioner invoking arbitration clause to which the petitioner replied vide letter dated September 10, 2017 advising respondent no. 2 to approach the High Court seeking appointment of an arbitrator for settlement of disputes through arbitration.

f. In pursuance thereof, respondent no.2 filed an arbitration application under Section 11 of the Act on May 31, 2023 before the High Court for the appointment of an arbitrator in which this Court vide order dated December 7, 2023 has ex-parte proposed respondent no.3 as the sole arbitrator.

g. Aggrieved by order dated December 7, 2023, the petitioner filed a recall application before the High Court and on the date of hearing, the petitioner's counsel was unavailable, therefore, the High Court rejected the recall application vide order dated July 11, 2025.

h. Upon receiving the consent of respondent no.3, the High Court allowed the arbitration application vide order dated August 5, 2025 whereby respondent no.3 was appointed as the sole arbitrator and arbitration proceedings commenced. During the course of the arbitration, the petitioner was granted time to file preliminary objections with regard to the maintainability of the arbitration proceedings.

i. Accordingly, the petitioner filed an application under Section 16 of the Act challenging the jurisdiction on the ground of limitation in filing the application under Section 11 of the Act for appointment of an arbitrator which was disposed of vide impugned order dated October 9, 2025 by the Arbitral Tribunal. The Arbitral Tribunal came to the finding that he had no jurisdiction to decide the said issue of limitation since the High Court had referred the matter to arbitration and as such it was concluded that the High Court had already decided on the said issue of limitation.

j. Aggrieved by the aforesaid order passed by the respondent no.3 rejecting the application filed under Section 16 of the Act the petitioner has now approached this Court.

CONTENTIONS OF PETITIONER:

2. Sri Tejas Singh and Sri Aakched Nath appearing on behalf of petitioner have made the following submissions:

a. Since the appointment of an arbitrator under Section 11(6) of the Act by the High Court is not specifically barred by the Limitation Act, 1963 (hereinafter referred to as "Act, 1963") the residuary provision namely Article 137 to Schedule I of the Act, 1963 applies which bars the initiation of proceedings in the court after the lapse of three years from the date on which the cause of action arises.

b. The cause of action arose on or before September 4, 2017, that is, from the date of invocation of arbitration by sending legal notice by respondent no. 2, and therefore the bar of limitation of three years commenced from that date.

c. Respondent no. 1 ought to have filed the application under Section 11 of the Act within the prescribed period of three years; however, the same was filed after approximately six years, rendering it highly time-barred. Consequently, the substantive claims of the respondents are also barred by limitation.

d. Since both the application under Section 11 of the Act and the underlying claim are time-barred, the continuation of arbitration proceedings is illegal and unsustainable.

e. Under Section 16(2) of the Act a plea regarding the lack of jurisdiction of the Arbitral Tribunal may be raised even if a party has participated in the appointment of the arbitrator.

f. The learned sole arbitrator erred in rejecting the petitioner's application under Section 16 of the Act on the ground that, post appointment of the arbitrator by the High Court, the Tribunal has no jurisdiction to examine limitation aspects even though the Arbitral Tribunal is empowered to rule on its own jurisdiction under Section 16 of the Act including issue of limitation, which is a preliminary issue before proceeding to adjudicate the claim.

g. The issue of limitation involves mixed questions of facts and law, which cannot be conclusively determined by the High Court at the stage of proceeding under Section 11 of the Act.

h. Arbitral Tribunal, observed that the respondent's plea of a continuing cause of action lacks merit, yet rejected the petitioner's application solely on jurisdictional grounds. Hence the impugned order is self-contradictory.

i. The finding of the Arbitral Tribunal that it can examine whether the claim is time-barred or not but cannot determine as to whether the application under Section 11 is time-barred or not is contrary to settled law and renders the impugned order illegal and perverse.

j. The High Court may exercise its writ jurisdiction against an order passed under Section 16 in cases where a party is left remediless or where bad faith/illegality is evident.

k. To buttress his argument counsel has placed reliance on the following cases:-

(i) *Bhaven Construction v. Sardar Sarovar Narmada Nigam Ltd.*¹

(ii) *Ajay Madhusudan Patel v. Jyotrindra S. Patel*²

(iii) *Arif Azim Co. Ltd. v. Aptech Ltd.*³

(iv) *BSNL v. Nortel Networks (India) (P) Ltd.*⁴

(v) *Geo Miller & Co. (P) Ltd. v. Rajasthan Vidyut Utpadan Nigam Ltd.*⁵

(vi) *SBI General Insurance Co. Ltd. v. Krish Spg.*⁶

(vii) *Uttarakhand Purv Sainik Kalyan Nigam Ltd. v. Northern Coal Field Ltd.*⁷

CONTENTIONS OF RESPONDENTS:-

3. Sri Ritesh Kumar Srivastava and Sri Alok Kumar Singh appearing on behalf of the respondents have made the following submissions:

a. An order passed by the High Court under Section 11 of the Act appointing an arbitrator is a judicial order having statutory finality under Section 11(7) of the Act. No appeal, including Letters Patent Appeal, lies against such an order and the only remedy against such an order is by

way of a Special Leave Petition under Article 136 of the Constitution of India before the Supreme Court.

b. Post the 2015 amendment, brought in force on the recommendation of Law Commission Report No. 246, the scope of judicial intervention under Section 11 has been curtailed; however the nature of power exercised and the order passed by the High Court under Section 11 continues to remain a judicial function.

c. Law Commission Report No. 246 refers to the role of the High Court in appointing arbitrators as a form of □judicial intervention□.

d. The order passed by the High Court appointing the arbitrator operates as *res judicata* between the parties and cannot be re-agitated or reviewed in subsequent proceedings.

e. The Arbitral Tribunal, being a creation of the High Court's order, cannot examine or sit in appeal over the validity of the High Court's judicial order, including on the issue of limitation.

f. Even assuming that the High Court passed the order under Section 11 of the Act without examining the issue of limitation, an order or decree passed beyond limitation is not a nullity and remains binding unless set aside by a Superior court. Since the order appointing the arbitrator has not been challenged before the Supreme Court, it has attained finality and remains legally valid.

g. Section 37 of the Act envisages remedy in the form of an appeal for a party aggrieved by an order accepting a plea that the arbitrator has no jurisdiction but a combined reading of Sections 16(5) and 16(6) of the Act enunciates that if a plea of lack of jurisdiction is rejected, the arbitral tribunal must continue with the proceedings and render an award, as the judicial interference at this stage is barred by Section 5 of the Act.

h. There are continuing breaches of contractual obligations hence, by virtue of Section 22 of the Act, 1963 the cause of action is continuous and the disputes remain alive.

i. The respondent has dissolved the partnership firm by notice, thereby, giving rise to fresh and subsisting disputes requiring adjudication. Post-dissolution, the respondent is entitled to seek rendition of accounts, examination of financial records, and winding up of the firm through arbitration. The cause of action for rendition of accounts has arisen during the pendency of arbitration and is intrinsically connected with the existing disputes.

j. It is in consonance with the objective of speedy and efficient dispute resolution that all disputes, including those that have subsequently arisen, be adjudicated by the same arbitral tribunal.

k. In view of the statutory bar and scheme of the Act, the present petition challenging the order passed under Section 16 of the Act is not maintainable.

1. To buttress his arguments, counsel has placed reliance on the following cases:

(i) S.B.P. & Co. vs Patel Engineering Ltd.⁸

(ii) Duro Felguera, S.A. v. Gangavaram Port Ltd.⁹

(iii) Ittyavira Mathai v. Varkey Varkey¹⁰.

ANALYSIS

4. After hearing the arguments canvassed by the learned counsel appearing on behalf of both the parties and scrutinizing the materials placed on record, the following issues arises for our consideration:

I. Whether the High Court under Article 226 of the Constitution of India exercising its writ jurisdiction can interfere in the interlocutory order passed by the sole arbitrator under Section 16 of the Act?

II. Whether the High Court before appointing the arbitrator under Section 11(6) of the Act is required to adjudicate on the jurisdictional issue of limitation?

III. Whether the Arbitral Tribunal erred in law by not adjudicating the preliminary objection as raised by the petitioner relating to its jurisdiction under Section 16 of the Act on the aspect of limitation of the application filed under Section 11 of the Act before the High Court?

5. The petitioner contends that the impugned order passed by the Arbitral Tribunal is perverse and illegal as the Tribunal while disposing of the application filed under Section 16 of the Act observed that the preliminary issue with regard to limitation cannot be adjudicated by the Tribunal before proceeding with the arbitration proceeding as only the High Court has jurisdiction to decide on the limitation aspects before appointing the arbitrator and once the High Court has found the dispute as live and subsisting, has appointed arbitrator in furtherance of it, the issue of limitation for appointment of arbitrator cannot be further adjudicated upon by the Tribunal. Moreover, the observation by the Arbitral Tribunal that only the issue of limitation with respect to the claim is required to be adjudicated by the Tribunal is perverse.

6. Per contra, the learned counsel appearing on behalf of respondents contends that the order appointing the arbitrator, passed by the High Court under Section 11 of the Act is a final judicial order by virtue of Section 11(7) of the Act, and the only remedy against such an order lies before the Supreme Court by way of a Special Leave Petition under Article 136 of the Constitution of India. The amendment of 2015, merely curtailed the scope of judicial intervention without altering the judicial nature of the order. Since the said order was never challenged before the Supreme Court, it has attained finality, operates as res judicata, and cannot be treated as a nullity merely on account of limitation. The respondent further contends that since Sections 16(5) and 16(6) of the Act mandate that upon rejection of a jurisdictional plea, the Arbitral Tribunal shall continue with the proceedings and make an award, no judicial interference at this interlocutory

stage is permissible under Section 5 of the Act, and the present writ petition is therefore not maintainable. Additionally, the respondent submits that the disputes are still live and subsisting by virtue of continuing contractual breaches attracting Section 22 of the Limitation Act, 1963. Moreover, since that the respondent has dissolved the partnership firm by notice dated December 18, 2025, gives rise to a fresh cause of action for rendition of accounts which has accrued during the pendency of the arbitration proceedings and which, in the interest of expeditious resolution, ought also to be adjudicated in the ongoing arbitration proceedings making it neither expedient nor legally permissible to terminate the pending arbitral proceedings.

7. One may keep in mind the fact that arbitration is one of the methods of alternative dispute resolution where parties themselves agree to refer their disputes to a neutral third party known as the arbitrator. The objective of arbitration is to provide speedy, efficient and binding resolution of disputes that have arisen between the parties with regard to their substantive obligations. Redfern and Hunter on International Arbitration encapsulated arbitration law succinctly as □it is to be expeditious where the law is slow, cheap where the law is costly, simple where the law is technical, a pacemaker instead of stirrer-up of strife□. Arbitration acts as an elixir to disputes.

8. The Act was enacted to consolidate and amend the law relating to domestic arbitration, international commercial arbitration and enforcement of foreign arbitral awards as also to define the law relating to the conciliation and for matters connected therewith or incidental thereto. It also brought orchestration to domestic as well as international commercial arbitration with the Model Law, the New York Convention and the Geneva Convention.

9. The Act replaced the pre-colonial as well as post-colonial laws such as Arbitration Act, 1940, the Arbitration (Protocol and Convention) Act, 1937 and the Foreign Awards (Recognition and Enforcement) Act, 1961. The United Nations Commission on International Trade Law (UNCITRAL) adopted the Model Law in 1985 to foster the development of a unified legal framework for fair and efficient settlement of disputes arising in international commercial arbitration. In pursuance, the General Assembly of the United Nations recommended all states to give due consideration to the Model Law in view of the desirability of achieving uniformity of the law in arbitration procedure and the specific needs of International Commercial arbitration practice.

10. The principle of arbitration autonomy is an indelible element of the burgeoning domain of arbitration law. Arbitral tribunals function in an autonomous way in the sense that they are constituted to give effect to the mutual intention of the parties to settle their disputes through a neutral and expert authority of their choice. Section 9 of the Code of Civil Procedure, 1908 bars the jurisdiction of Court from trying suits of civil nature of which the cognizance is either expressly or impliedly barred. However, Section 5 of the Act has an overriding effect as it ousts the judicial intervention in arbitration matters except where it is provided. Section 28 of the Contract Act, 1872 makes an agreement void if it restricts a party to a contract absolutely from enforcing their rights under or in respect of any contract by way of usual legal proceedings, but exception 1 to Section 28 of the Contract Act, 1872 provides an exception allowing parties to an agreement for enforcing their rights by way of legal proceeding by referring to arbitration instead of litigating in regular courts. Furthermore, Section 19 of the Act also liberated the Arbitral Tribunal from the clutches of

the procedure laid down in the Code of Civil Procedure Code, 1908 or the Evidence Act, 1872 thereby exhibiting the principle of judicial non interference and autonomy of Arbitral Tribunals.

11. A plethora of decisions have deliberated upon the scope of the intervention of the writ court with respect to the orders passed by the arbitral tribunal. The principle of minimal judicial interference denounces the writ court from intervening in the interlocutory order passed by an Arbitral Tribunal. Section 5 of the Act contains a non-obstante clause mandating that no judicial authority shall intervene in matters governed by Part I of the Act except where expressly provided. The Supreme Court in **Deep Industries Ltd. v. ONGC**¹¹ while dealing with an order of the High Court against the dismissal of an application filed under Section 16 of the Act by arbitral tribunal has categorically observed that dismissal of Section 16 application by Tribunal cannot be interfered with unless there is patent illegality in the inherent jurisdiction exercised by the Tribunal.

12. However, the writ court can interfere with the order passed by the arbitrator under Section 16 of the Act when the perversity in the order stares on the face. The dictum enunciated with regard **to the aforesaid principles find place in** Punjab State Power Corpn. Ltd. v. Emta Coal Ltd.¹² The relevant paragraph of the judgment is delineated below:

“4. We are of the view that a foray to the writ court from a Section 16 application being dismissed by the arbitrator can only be if the order passed is so perverse that the only possible conclusion is that there is a patent lack in inherent jurisdiction. A patent lack of inherent jurisdiction requires no argument whatsoever □ it must be the perversity of the order that must stare one in the face.”

13. The Supreme Court in **Bhaven Construction** (Supra) laid down a two-pronged test for warranting interference by writ court under Article 226 of the Constitution of India. Firstly, one of the parties is left remediless under the statute; secondly, a clear □bad faith□ is shown by one of the parties. The relevant paragraph of the judgment is quoted hereinbelow:

“18. In any case, the hierarchy in our legal framework, mandates that a legislative enactment cannot curtail a constitutional right. In Nivedita Sharma v. COAI [Nivedita Sharma v. COAI, (2011) 14 SCC 337 : (2012) 4 SCC (Civ) 947] , this Court referred to several judgments and held : (SCC p. 343, para 11)

“11. We have considered the respective arguments/submissions. There cannot be any dispute that the power of the High Courts to issue directions, orders or writs including writs in the nature of habeas corpus, certiorari, mandamus, quo warranto and prohibition under Article 226 of the Constitution is a basic feature of the Constitution and cannot be curtailed by parliamentary legislation □ L. Chandra Kumar v. Union of India [L. Chandra Kumar v. Union of India, (1997) 3 SCC 261 : 1997 SCC (L&S) 577] . However, it is one thing to say that in exercise of the power vested in it under Article 226 of the Constitution, the High Court can entertain a writ petition against any order passed by or action taken by the State and/or its agency/instrumentality or any public authority or order passed by a quasi-judicial body/authority, and it is an altogether different thing to say that each and every petition filed under Article 226 of the Constitution must be entertained by the High Court as a matter of course ignoring the fact that the aggrieved person has

an effective alternative remedy. Rather, it is settled law that when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation.”

(emphasis supplied)

It is therefore, prudent for a Judge to not exercise discretion to allow judicial interference beyond the procedure established under the enactment. This power needs to be exercised in exceptional rarity, wherein one party is left remediless under the statute or a clear □bad faith□ shown by one of the parties. This high standard set by this Court is in terms of the legislative intention to make the arbitration fair and efficient.’

14. Drawing from **Punjab State Power Corporation Ltd.** (Supra) to **Bhaven Construction** (Supra) three conditions for warranting interference by writ court may be culled out: the party challenging the order is completely without remedy under the Arbitration Act; one of the parties has acted in clear bad faith; the order of tribunal under Section 16 is completely perverse on its face meaning that the perversity is so manifest and so glaring that it stares the court on the face and requires immediate intervention to prevent a gross miscarriage of justice.

15. To answer the first issue one may look into the impugned order passed by the Arbitral Tribunal. The relevant part of the order is extracted hereinbelow:

.....In the case in hand the respondents are challenging the limitation to file application under Section 11 of the Act and not the limitation to file claim which is yet to be filed. The High Court while passing order on the petition under Section 11(6) on 7.12.23, observed that there are live and subsisting disputes between the parties, which means that the court was satisfied that the petition under Section 11(6) of the Act, was within time. Thus, there is no occasion for this tribunal to go into the same issue again. The issue of limitation to file claim, is well within the jurisdiction of this tribunal but so far as the limitation to file application under Section 11 of the Act is concerned, the same has become final when the High Court found that there was live and subsisting dispute between the parties.

I am therefore of the considered opinion that this tribunal while exercising jurisdiction under section 16 of the Act, cannot examine as to whether the High Court had jurisdiction under Section 11 to appoint arbitrator or not. However, this tribunal would be competent enough to see as to whether the claim referred by the claimants is within time and is maintainable. If this tribunal comes to the conclusion that the claim is barred by limitation, it would have no jurisdiction to proceed with the matter, that this can be done only after filing of the claim and objection by the respondents.

In the result the application of the respondents for terminating the arbitration proceedings on the ground of limitation to file application under Section 11 of the Act before the High Court, is rejected. However, it will be open for the respondents to raise issue of limitation to file claim, when the same is filed by the claimants.”

16. As per Section 16 of the Act, the Arbitral Tribunal has power to rule on its own jurisdiction. Section 16 of the Act is delineated below:

“Section 16: Competence of arbitral tribunal to rule on its jurisdiction.

(1) The arbitral tribunal may rule on its own jurisdiction, including ruling on any objections with respect to the existence or validity of the arbitration agreement, and for that purpose,□

(a) an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract; and

(b) a decision by the arbitral tribunal that the contract is null and void shall not entail ipso jure the invalidity of the arbitration clause.

(2) A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence; however, a party shall not be precluded from raising such a plea merely because that he has appointed, or participated in the appointment of, an arbitrator.

(3) A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings.

(4) The arbitral tribunal may, in either of the cases referred to in sub-section (2) or sub-section (3), admit a later plea if it considers the delay justified.

(5) The arbitral tribunal shall decide on a plea referred to in sub-section (2) or sub-section (3) and, where the arbitral tribunal takes a decision rejecting the plea, continue with the arbitral proceedings and make an arbitral award.

(6) A party aggrieved by such an arbitral award may make an application for setting aside such an arbitral award in accordance with section 34.□

17. In the aforesaid order Arbitral Tribunal has abnegated to exercise jurisdiction under Section 16(2) of the Act on the ground that it does not have jurisdiction to decide with respect to the issue of limitation for filing application under Section 11(6) of the Act before the High Court on the reasoning that the above issue of limitation is the sole jurisdiction of the High Court which cannot be re-visited by the Tribunal.

18. The *raison d'être* of the Tribunal cannot be countenanced in law as the same will make one of the parties to arbitration remediless as there is no remedy against the rejection order passed by the arbitrator under Section 16(5) of the Act and the party shall be left with no remedy but to wait till the passing of the final award and file an application for setting aside of the award under Section 34 of the Act.

19. The doctrine of competence-competence enshrined under Section 16 of the Act empowers an arbitral tribunal to rule on its own jurisdiction which makes it crystal clear that all the issues of jurisdiction which includes the issue of deciding its jurisdiction on the ground of limitation for appointing an arbitrator should be adjudicated upon by the Tribunal and the Tribunal cannot shrug off from its own jurisdiction merely with the reasoning that once the reference court has appointed an arbitrator, the jurisdiction of limitation for appointment of arbitrator has already been adjudicated upon which need not be reagitated during the arbitration proceedings as being barred by *res judicata*. One may look into the very recent judgment of the Supreme Court in **Interplay Between Arbitration Agreements under Arbitration Act, 1996 & Stamp Act, 1899, In re13** wherein the Court has observed that Section 16 of the Act is intended to give effect to the doctrine of competence-competence. The relevant paragraphs of the judgment are quoted hereinbelow:

‘130. This position has now undergone a complete metamorphosis in the present legislation. Section 16 of the Arbitration Act, which is based on Article 16 of the Model Law, recognises the doctrine of competence-competence in Indian arbitration law.

131. Section 16 empowers the Arbitral Tribunal to rule on its own jurisdiction, including ruling on any objections with respect to the existence or validity of arbitration agreement. Importantly, the parties have a right under Sections 16(2) and 16(3) to challenge the jurisdiction of the Arbitral Tribunal on grounds such as the non-existence or invalidity of the arbitration agreement. The Arbitral Tribunal is obligated to decide on the challenge to its jurisdiction, and where it rejects the challenge, it can proceed with the arbitral proceedings and make an arbitral award. It is the principle of procedural competence-competence which recognises the power of an Arbitral Tribunal to hear and decide challenges to its jurisdiction. Once the Arbitral Tribunal makes an arbitral award, Section 16(6) allows the aggrieved party to make an application for setting aside the award under Section 34. Sections 16(5) and 16(6) further show that Parliament has completely ousted the jurisdiction of Courts to interfere during the arbitral proceedings □ courts can intervene only after the tribunal has made an award. Thus, Section 16 is intended to give full effect to the procedural and substantive aspects of the doctrine of competence-competence.”

(Emphasis added)

20. Moreover, Section 16(2) of the Act does not preclude a party from raising any jurisdictional plea merely because he has participated in the appointment of an arbitrator or he himself has appointed an arbitrator.

21. In our view, the reasoning of the arbitrator that once the High Court had referred the matter to the arbitrator, the Arbitral Tribunal cannot examine the jurisdictional issue with regard to application filed under Section 11 of the Act being time barred goes against the settled principles of law that even if the High Court referred the matter to arbitration, the Arbitral Tribunal under Section 16 of the Act had the power to decide on its own jurisdiction. The Arbitral Tribunal is the forum for deciding all issues that the parties may raise including the issues of limitation that may have not been raised by the parties at the time of order passed by the High Court under Section 11 of the Act. Keeping in mind Section 11(6-A) of the Act that is still operational, the duty of the High

Court is restricted to examining the existence and validity of the arbitration agreement and nothing more. Even if the High Court refers the matter to the Arbitral Tribunal under Section 11 of the Act, the Tribunal has the power under Section 16 of the Act to hold that there is no valid and subsisting arbitration agreement. The issue of limitation being a jurisdictional point can be raised at any point. In the present case the jurisdictional point with regard to limitation vis-a-vis the time barred application under Section 11(6) of the Act was required to be adjudicated upon by the Tribunal. The logic of the Tribunal that since the matter has been referred by the High Court, the point of limitation cannot be re-looked into by the Tribunal is without any basis in law and against the principle of competence-competence as well as the provisions of Section 16(2) and Section 16(3) of the Act.

22. Before finally deciding on the issue as to whether the writ court shall have jurisdiction to intervene in the present matter, one may look into a neoteric position of law as laid down in a three-judge bench judgment of the Supreme Court in **Ajay Madhusudan Patel** (Supra) wherein the Court has meticulously observed the transition brought into effect by the amendment of 2015 with the addition of Section 11(6-A) of the Act that limits the scope of reference court to decide the preliminary issue and leaves all issues open to be decided by the Arbitral Tribunal. The relevant paragraphs of the judgment are quoted hereinbelow:

“76. The position of law that emerges from the aforesaid discussion can be summarised as follows:

76.1.SBP & Co. [SBP & Co. v. Patel Engg. Ltd., (2005) 8 SCC 618 : (2005) 128 Comp Cas 465] expanded the scope of the Court's power under Section 11 while empowering the referral courts to decide several preliminary issues. Boghara Polyfab [National Insurance Co. Ltd. v. Boghara Polyfab (P) Ltd., (2009) 1 SCC 267 : (2009) 1 SCC (Civ) 117] went to the extent of identifying three categories of preliminary issues that may arise for consideration in an application under Section 11. Of these, in the first category which had to be mandatorily decided by the referral court, the question whether there was an arbitration agreement and whether the party who has applied under Section 11 of the 1996 Act is a party to such an agreement, was also included.

76.2. The insertion of Section 11(6-A) through the 2015 Amendment to the 1996 Act stipulated that the courts under Section 11 shall confine their examination to the ☐existence☐ of an arbitration agreement. It legislatively overruled the decisions in SBP & Co. [SBP & Co. v. Patel Engg. Ltd., (2005) 8 SCC 618 : (2005) 128 Comp Cas 465] and Boghara Polyfab [National Insurance Co. Ltd. v. Boghara Polyfab (P) Ltd., (2009) 1 SCC 267 : (2009) 1 SCC (Civ) 117] by virtue of its non obstante clause.

76.3.Duro Felguera [Duro Felguera, S.A. v. Gangavaram Port Ltd., (2017) 9 SCC 729 : (2017) 4 SCC (Civ) 764] , in clear terms, clarified the effect of the change brought in by Section 11(6-A) and stated that all that the courts need to see is whether an arbitration agreement exists ☐ nothing more, nothing less.

76.4.Vidya Drolia [Vidya Drolia v. Durga Trading Corpn., (2021) 2 SCC 1 : (2021) 1 SCC (Civ) 549] endorsed the prima facie test in examining the existence and validity of an

arbitration agreement both under Sections 8 and 11, respectively. However, it was clarified that in cases of debatable and disputable facts and reasonably good arguable case, etc. the Court may refer the parties to arbitration since the Arbitral Tribunal has the authority to decide disputes including the question of jurisdiction. It was further stated that jurisdictional issues concerning whether certain parties are bound by a particular arbitration under the group-company doctrine, etc. in a multi-party arbitration raise complicated questions of fact which are best left to the tribunal to decide.

76.5. In *Interplay, In re* [Interplay Between Arbitration Agreements under A&C Act, 1996 & Stamp Act, 1899, *In re*, (2024) 6 SCC 1] the position taken in *Vidya Drolia* [Vidya Drolia v. Durga Trading Corpn., (2021) 2 SCC 1 : (2021) 1 SCC (Civ) 549] was clarified to state that the scope of examination under Section 11(6) should be confined to the ☐existence of the arbitration agreement☐ under Section 7 of the 1996 Act and the ☐validity of an arbitration agreement☐ must be restricted to the requirement of formal validity such as the requirement that the agreement be in writing. Therefore, substantive objections pertaining to existence and validity on the basis of evidence must be left to the Arbitral Tribunal since it can ☐rule☐ on its own jurisdiction.

76.6. *Krish Spg. [SBI General Insurance Co. Ltd. v. Krish Spg., (2024) 12 SCC 1 : 2024 SCC OnLine SC 1754]* cautioned that the courts delving into the domain of the Arbitral Tribunal at the Section 11 stage run the risk of leaving the claimant remediless if the Section 11 application is rejected. Further, it was stated that a detailed examination by the courts at the Section 11 stage would be counterproductive to the objective of expeditious disposal of Section 11 application and simplification of pleadings at that stage.

76.7. *Cox & Kings [Cox & Kings Ltd. v. SAP India (P) Ltd., (2024) 4 SCC 1 : (2024) 2 SCC (Civ) 1 : (2024) 251 Comp Cas 680]* specifically dealt with the scope of inquiry under Section 11 when it comes to impleading the non-signatories in the arbitration proceedings. While saying that the referral court would be required to prima facie rule on the existence of the arbitration agreement and whether the non-signatory party is a veritable party to the arbitration agreement, it also said that in view of the complexity in such a determination, the Arbitral Tribunal would be the proper forum. It was further stated that the issue of determining parties to an arbitration agreement goes to the very root of the jurisdictional competence of the Arbitral Tribunal and can be decided under its jurisdiction under Section 16. ☐

94. Once the Arbitral Tribunal is constituted, it shall be open for the respondents to raise all the available objections in law, and it is only after (and if) the preliminary objections are rejected that the tribunal shall proceed to adjudicate the claims of the petitioners. ☐”

(Emphasis added)

23. The amendment of 2015, after insertion of 11(6-A) to the Act legislatively overruled the broadened position of law prevailing prior to 2015 amendment when the Court could also go into preliminary questions such as stale claims, accord and satisfaction having been reached

amongst all others [see: **(SBP & Co. (Supra) and National Insurance Co. Ltd. v. Boghara Polyfab (P) Ltd.**¹⁴. Although the 2019 amendment to the Act omitted Section 11(6-A), the omission has not yet been notified, and therefore, Section 11(6-A) still remains as part of the Act and remains operative as on date. Ergo, the law laid down in **Duro Felguera (Supra), Vidya Drolia v. Durga Trading Corporation**¹⁵, **Interplay, In Re (Supra), SBI General Insurance Co. Ltd. v. Krish Spg.**¹⁶, **Cox & Kings Ltd. v. SAP India (P) Ltd.**¹⁷ holds the field.

24. Although the Supreme Court in **Bhaven Construction (Supra)** has cautioned the writ court not to exercise discretion beyond the procedure established under the enactment, the Supreme Court in the same breath has stated that this power may be exercised in exceptional rarity. Combining this principle with the dictum enunciated in **Punjab State Power Corporation Ltd. (Supra)** that when an order is passed wherein there is a patent lack of inherent jurisdiction, the writ court may intervene. In our view, we are duty bound to examine whether the arbitrator while deciding an application under Section 16 of the Act had acted within its jurisdiction. When the arbitrator chooses to abrogate and abdicate his jurisdiction and comes to a wrong finding that he does not have jurisdiction to decide a particular point contrary to principles established in law, the arbitrator at such point is acting in a patently illegal manner. In the present case, the Arbitral Tribunal has in a crystal clear manner abdicated its responsibility to decide on its own jurisdiction that it is required to do under Section 16 of the Act. As pointed out in the judgment of **Ajay Madhusudan Patel (Supra)**, once the Arbitral Tribunal is constituted, it shall be open for the respondents to raise all the available objections in law and it is only after the preliminary objections are rejected, that the Tribunal shall proceed to adjudicate the claims of the parties to arbitration. In the present case, the arbitrator has specifically held that he does not have power and/or jurisdiction to decide on a point of limitation. In our view, this abdication stares at our face and the perversity of the order compels us to intervene in the present matter.

25. With regard to the arguments of the respondent on the conjoint reading of Section 5 read with Section 16(5) and Section 16(6) of the Act, that mandates that once a decision has been taken rejecting the application under Section 16 of the Act, the only remedy left to the party is to wait for the arbitration award and thereafter challenge it by way of an application under Section 34 of the Act, is required to be dealt with by me. In our view, looking at first principles, it is clear that Section 16(2) of the Act categorically states that the Tribunal shall deal with the issue of jurisdiction and a party shall not be precluded from raising such a plea merely because that he has appointed or participated in the appointment of the arbitrator. Keeping in mind the principles laid down in **Ajay Madhusudan Patel (Supra)**, it is clear that all issues including that of jurisdiction have to be ruled upon by the arbitrator himself. In fact, the judgement indicated above clearly forbids the referral Court from going into the aspect of jurisdiction except with regard to the existence or validity of the arbitration agreement. All other points are clearly left for the arbitrator to decide as he has the power to rule on his own jurisdiction. Limitation being an arbitrable issue, the arbitrator is bound to decide the same as this issue is directly in relation to his jurisdiction.

26. Furthermore, the very fact that Sections 16(5) and 16(6) of the Act state that once the decision is taken with regard to rejecting the plea, the arbitrator is required to continue with the arbitration proceedings and make an award that can only be challenged by way of an application for setting aside of the award under Section 34 of the Act, makes it mandatory for the arbitrator to

not be reticent and taciturn with regard to his own jurisdiction. It is upon the arbitrator to decide on its own jurisdiction that includes the issue of limitation. One has to keep in mind the fact that the principle of competence-competence requires the arbitrator to decide on its own jurisdiction and the principle of *res judicata* with regard to the referral Court do not come into play before the Arbitral Tribunal. In fact, the Courts have consistently held that it is the Arbitral Tribunal that decides on its own jurisdiction and not the referral Court.

27. In light of the above, we are of the view that the order of the Tribunal is patently illegal, perverse and the Tribunal has failed to exercise the inherent jurisdiction entrusted upon it. In light of the same, the first question is answered in the affirmative in the facts and circumstances of the case.

28. Proceeding to the second issue with regard to the scope of jurisdiction of the referral court in appointing an arbitrator, the *lex lata* subsequent to insertion of Section 11(6-A) to the Act, is that the Supreme Court or as the case maybe the High Court whilst considering any application under Section 11(4) to 11(6) is to confine itself to examination of existence of the arbitration agreement, nothing more, nothing less and leave all other preliminary issues including the issue with regard to limitation for appointment of an arbitrator to be decided by the Tribunal. Ergo, answering the second issue in the negative, we may reiterate the principle of autonomy and competence-competence that allows the Arbitral Tribunal to rule on its own jurisdiction by virtue of Section 16 of the Act and confines the jurisdiction of referral court under Section 11 of the Act for the appointment of arbitrator to the existence of a valid arbitration agreement. When the High Court does look into the issue of limitation and rejects the reference to arbitration, the aggrieved party may approach the Supreme Court by way of a Special Leave Petition under Article 136 of the Constitution of India. Per Contra, when the High Court does not delve into the issue of limitation, the aggrieved party has two choices: either for filing a Special Leave Petition before the Supreme Court or filing an objection challenging the jurisdiction of the Arbitral Tribunal on the grounds of limitation under Section 16 of the Act before the Tribunal.

29. A cumulative dealing with the first two issues, will answer the third issue. One may look into a treasure-trove decision in the field of arbitration law by a seven-judge Constitution Bench of the Supreme Court (coram: **Dr. D.Y. Chandrachud C.J.** and Sanjay Kishan Kaul, Sanjiv Khanna, B.R. Gavai, Surya Kant, J.B. Pardiwala, and Manoj Misra, JJ.) in **Interplay, In Re** (Supra), wherein the court has reaffirmed that the legislative policy under Section 11(6) of the Act by the High Court is one of minimal judicial interference and maximum delegation of jurisdictional questions. The Court has observed that separability presumption contained in Section 16 of the Act gives effect to the doctrine of competence-competence allowing the Arbitral Tribunal to assume and decide on its own jurisdiction. The relevant paragraphs of the judgment are quoted hereinbelow:

“120. In view of the above discussion, we formulate our conclusions on this aspect. First, the separability presumption contained in Section 16 is applicable not only for the purpose of determining the jurisdiction of the Arbitral Tribunal. It encapsulates the general rule on the substantive independence of an arbitration agreement. Second, parties to an arbitration agreement mutually intend to confer jurisdiction on the Arbitral Tribunal to determine questions as to

jurisdiction as well as substantive contractual disputes between them. The separability presumption gives effect to this by ensuring the validity of an arbitration agreement contained in an underlying contract, notwithstanding the invalidity, illegality, or termination of such contract. Third, when the parties append their signatures to a contract containing an arbitration agreement, they are regarded in effect as independently appending their signatures to the arbitration agreement. The reason is that the parties intend to treat an arbitration agreement contained in an underlying contract as distinct from the other terms of the contract; and Fourth, the validity of an arbitration agreement, in the face of the invalidity of the underlying contract, allows the Arbitral Tribunal to assume jurisdiction and decide on its own jurisdiction by determining the existence and validity of the arbitration agreement. In the process, the separability presumption gives effect to the doctrine of competence-competence.

G. The doctrine of competence-competence

123. The doctrine of kompetenz-kompetenz (also known as competence-competence), as originally developed in Germany, was traditionally understood to imply that arbitrators are empowered to make a final ruling on their own jurisdiction, with no subsequent judicial review of the decision by any court. [Fouchard, Gaillard, Goldman on International Commercial Arbitration, Emmanuel Gaillard and John Savage (Eds.), (1999) 396.] However, many jurisdictions allow an Arbitral Tribunal to render a decision on its jurisdiction, subject to substantive judicial review. [Gary Born, International Arbitration Law and Practice (3rd Edn., 2021) 1143.]

124. It is a well-recognised principle of public international law that a legal authority possessing adjudicatory powers has the right to decide its own jurisdiction. [Interpretation of the Greco-Turkish Agreement of December 1st, 1926, In re, 1928 SCC OnLine PCIJ 5] Similarly, it is a general rule of international arbitration law that an Arbitral Tribunal has the power to determine its own jurisdiction. The ability of an Arbitral Tribunal to determine its own jurisdiction is an important facet of arbitration jurisprudence because it gives effect to the separability presumption. The separability presumption insulates the arbitration agreement from the defects of the underlying contract, and thereby ensures the sustenance of the tribunal's jurisdiction over the substantive rights and obligations of the parties under the underlying contract even after such a contract is put to an end. The doctrine of competence-competence allows the tribunal to decide on all substantive issues arising out of the underlying contract, including the existence and validity of the arbitration agreement.

131. Section 16 empowers the Arbitral Tribunal to rule on its own jurisdiction, including ruling on any objections with respect to the existence or validity of arbitration agreement. Importantly, the parties have a right under Sections 16(2) and 16(3) to challenge the jurisdiction of the Arbitral Tribunal on grounds such as the non-existence or invalidity of the arbitration agreement. The Arbitral Tribunal is obligated to decide on the challenge to its jurisdiction, and where it rejects the challenge, it can proceed with the arbitral proceedings and make an arbitral

award. It is the principle of procedural competence-competence which recognises the power of an Arbitral Tribunal to hear and decide challenges to its jurisdiction. Once the Arbitral Tribunal makes an arbitral award, Section 16(6) allows the aggrieved party to make an application for setting aside the award under Section 34. Sections 16(5) and 16(6) further show that Parliament has completely ousted the jurisdiction of Courts to interfere during the arbitral proceedings □ courts can intervene only after the tribunal has made an award. Thus, Section 16 is intended to give full effect to the procedural and substantive aspects of the doctrine of competence-competence.

153. The decisions of this Court in *Patel Engg. [SBP & Co. v. Patel Engg. Ltd., (2005) 8 SCC 618]* and *Boghara Polyfab [National Insurance Co. Ltd. v. Boghara Polyfab (P) Ltd., (2009) 1 SCC 267 : (2009) 1 SCC (Civ) 117]* allowed for greater judicial interference at the pre-arbitral stage. In effect, the Referral Courts were encouraged to conduct mini trials instead of summarily dealing with the preliminary issues. This was also noted by the Law Commission of India, which observed that judicial intervention in the arbitral proceedings is a pervasive problem in India leading to significant delays in the arbitration process. [Law Commission of India, 246th Report (2014).] The Law Commission recognised that one of the problems plaguing implementation of the Arbitration Act was that Section 11 applications were kept pending for years by the Courts. To remedy the situation, the Law Commission proposed changing the then existing scheme of the power of appointment being vested in the □Chief Justice□ to the □High Court□ and the □Supreme Court□. It also clarified that the power of appointment of arbitrators ought not to be regarded as a judicial act.

154. Significantly, the Law Commission observed that there was a need to reduce judicial intervention at the pre-arbitral stage, that is, prior to the constitution of the Arbitral Tribunal. Accordingly, it proposed limiting the scope of the judicial intervention at the referral stage under Sections 8 and 11 of the Arbitration Act □to situations where the Court/Judicial Authority finds that the arbitration agreement does not exist or is null and void□. The Law Commission suggested insertion of sub-section (6-A) under Section 11 which would read:□Any appointment by the High Court or the person or institution designated by it under sub-section (4) or sub-section (5) or sub-section (6) shall not be made only if the High Court finds that the arbitration does not exist or is null and void.□ In light of the recommendations of the Law Commission, Parliament passed the Arbitration and Conciliation (Amendment) Act, 2015 (□the 2015 Amendment Act□) to incorporate Section 11(6-A).

155. The Statement of Objects and Reasons of the 2015 Amendment Act states that sub-section (6-A) is inserted in Section 11 to provide that the Supreme Court or the High Court while considering application under sub-sections (4) to (6) □shall confine to the examination of an arbitration agreement□. With the coming into force of the 2015 Amendment Act, the nature of preliminary examination at the referral stage under Section 11 was confined to the existence of an arbitration agreement. It also incorporates a non obstante clause which covers □any judgment, decree or order of any court□. By virtue of the non obstante clause, Section 11(6-A) has set out a new position of law, which takes away the basis of the position laid down by the previous decisions of this Court in *Patel Engg. [SBP & Co. v. Patel Engg. Ltd., (2005) 8 SCC 618]* and *Boghara*

Polyfab [National Insurance Co. Ltd. v. Boghara Polyfab (P) Ltd., (2009) 1 SCC 267 : (2009) 1 SCC (Civ) 117] . It is also important to note that Parliament did not incorporate the expression "or is null and void" as was suggested by the Law Commission. This indicates that Parliament intended to confine the jurisdiction of the Courts at the pre-arbitral stage to as minimum a level as possible.

167. Section 11(6-A) uses the expression "examination of the existence of an arbitration agreement". The purport of using the word "examination" connotes that the legislature intends that the Referral Court has to inspect or scrutinise the dealings between the parties for the existence of an arbitration agreement. Moreover, the expression "examination" does not connote or imply a laborious or contested inquiry. [P. Ramanatha Aiyar, The Law Lexicon (2nd Edn., 1997) 666.] On the other hand, Section 16 provides that the Arbitral Tribunal can "rule" on its jurisdiction, including the existence and validity of an arbitration agreement. A "ruling" connotes adjudication of disputes after admitting evidence from the parties. Therefore, it is evident that the Referral Court is only required to examine the existence of arbitration agreements, whereas the Arbitral Tribunal ought to rule on its jurisdiction, including the issues pertaining to the existence and validity of an arbitration agreement. A similar view was adopted by this Court in Shin-Etsu Chemical Co. Ltd. v. Aksh Optifibre Ltd. [Shin-Etsu Chemical Co. Ltd. v. Aksh Optifibre Ltd., (2005) 7 SCC 234]

229. The discussion in preceding segments indicates that the Referral Court at Section 11 stage should not examine or impound an unstamped or insufficiently stamped instrument, but rather leave it for the determination by the Arbitral Tribunal. When a party produces an arbitration agreement or its certified copy, the Referral Court only has to examine whether an arbitration agreement exists in terms of Section 7 of the Arbitration Act. The Referral Court under Section 11 is not required to examine whether a certified copy of the agreement/instrument/contract discloses the fact of payment of stamp duty on the original. Accordingly, we hold that the holding of this Court in SMS Tea Estates [SMS Tea Estates (P) Ltd. v. Chandmari Tea Co. (P) Ltd., (2011) 14 SCC 66 : (2012) 4 SCC (Civ) 777] , as reiterated in N.N. Global (2) [N.N. Global Mercantile (P) Ltd. v. Indo Unique Flame Ltd., (2023) 7 SCC 1 : (2023) 3 SCC (Civ) 564] , is no longer valid in law."

30. In the present case, the arbitrator has declined to decide the preliminary objection of limitation, not rejected the same on merits but has relinquished the very jurisdiction to decide it. For the sake of clarity, the relevant part of the order passed by the arbitrator is once again extracted below for the sake of clarity:

"The Hon'ble Supreme Court has held in the case of The Uttarakhand Purv Sainik Kalyan Nigam Ltd. Vs. Northern Coal Field Ltd. (Manu/SC/1634/2019) that in the proceedings under Section 11 of the Act, the court is only required to see the existence of arbitration clause in the agreement, the parties to the agreement and that one of the parties has refused to appoint arbitrator. No other issue such as validity of the agreement, limitation etc. are to be seen by the arbitrator and not by the court at pre-reference stage.

In the case referred to above, the High Court had refused to appoint arbitrator on the ground that the claim was barred by limitation. The Supreme Court held that after the amendment in Section 11 of the Act, this power can be exercised by the tribunal only and not by the High Court in the proceedings under Section 11 of the Act.

Thus, from analysis of the position of law on the issue, I am of the view that while considering the issue of limitation in relation to a petition under Section 11(6) of the Act, the court should satisfy on two aspects, first whether the petition under Section 11(6) of the Act, is barred by limitation, and secondly whether the claim sought to be arbitrated, is dead claim and thus barred by limitation on the date of commencement of proceedings.

In the case in hand the respondents are challenging the limitation to file application under Section 11 of the Act and not the limitation to file claim which is yet to be filed. The High Court while passing order on the petition under Section 11(6) on 7.12.23, observed that there are live and subsisting disputes between the parties, which means that the court was satisfied that the petition under Section 11(6) of the Act, was within time. Thus, there is no occasion for this tribunal to go into the same issue again. The issue of limitation to file claim, is well within the jurisdiction of this tribunal but so far as the limitation to file application under Section 11 of the Act is concerned, the same has become final when the High Court found that there was live and subsisting dispute between the parties.

I am therefore of the considered opinion that this tribunal while exercising jurisdiction under section 16 of the Act, cannot examine as to whether the High Court had jurisdiction under Section 11 to appoint arbitrator or not. However, this tribunal would be competent enough to see as to whether the claim referred by the claimants is within time and is maintainable. If this tribunal comes to the conclusion that the claim is barred by limitation, it would have no jurisdiction to proceed with the matter, that this can be done only after filing of the claim and objection by the respondents.

In the result the application of the respondents for terminating the arbitration proceedings on the ground of limitation to file application under Section 11 of the Act before the High Court, is rejected. However, it will be open for the respondents to raise issue of limitation to file claim, when the same is filed by the claimants.”

31. The Arbitral Tribunal has accepted that limitation is a jurisdictional issue within its domain and recorded that the continuing cause of action of the respondent has no force but has still refused to decide the point of limitation on a perfunctory whim that he has no jurisdiction. An order that records a legal position, accepts it, and then acts contrary to it without any reasoning is inherently contradictory and completely perverse on the face of the record. The relevant part of the order that substantiates the aforesaid analysis is quoted hereinbelow for the sake of clarity:

“The judgments of the Supreme Court also make it clear that the period of limitation to file an application under Section 11, is 3 years from the date of refusal to appoint the arbitrator or from the date when cause of action arises, in view of this, the argument of the claimants that the cause of action is still continuing, has no force, but at the same time this tribunal while exercising

power under Section 16 of the Act, can examine as to whether the claim of the claimants is within time but so far as the jurisdiction of the High Court to entertain application under section 11 of the Act is concerned, this Tribunal cannot examine as to whether the High Court had jurisdiction to entertain the application under section 11 of the Act. The respondents had every occasion to appear before the high court and file objection as to the limitation to file application under section 11 of the Act for appointment of arbitrator but on both the occasions, the respondents failed to appear and oppose the application on the ground of limitation.”

32. In light of the principles laid down in **Interplay, In Re (Supra) and Ajay Madhusudan Patel (Supra)**, we are of the considered view that the Tribunal has erred in law in declining to adjudicate on the jurisdictional issue of limitation for appointing the arbitrator in spite of being duty bound and obligated to decide on its own jurisdiction.

CONCLUSION

33. Upon sifting through a catena of judgments of the Supreme Court and applying the said dictum to the present case, we are of the considered view that the present case is one of the rarest cases warranting interference by writ court in light of the findings given above.

34. The power of the High Court being a reference court under Section 11 of the Act is of minimal interference and maximum delegation and the jurisdiction of the High Court in appointing an arbitrator under Section 11 is confined to examination of arbitration clause in the agreement and the Court at this stage should not get lost in thickets and decide disputed and mixed questions of fact such as the limitation for appointing the arbitrator. Moreover, as per P. Ramanatha Aiyar, The Law Lexicon [(2nd Edn., 1997) 666] the expression “examination” does not connote or imply a laborious or contested inquiry. On the other hand, Section 16 provides that the Arbitral Tribunal can “rule” on its jurisdiction, including the existence and validity of an arbitration agreement. A “ruling” connotes adjudication of disputes after admitting evidence from the parties. Ergo, it is evident that the referral court is only required to examine the existence of arbitration agreements, whereas the Arbitral Tribunal ought to rule on its jurisdiction, including the issues pertaining to the limitation for appointment of an arbitrator under Section 11 of the Act and the Tribunal has erred in law in declining to adjudicate on the jurisdictional issue of limitation for appointing arbitrator under Section 16 despite having the competence and jurisdiction to rule on the same.

35. In light of the above, the impugned order dated October 9, 2025 passed by the Arbitral Tribunal rejecting the petitioner's application under Section 16 of the Act, is hereby quashed and set aside.

36. The Arbitral Tribunal is directed to adjudicate upon the issue relating to limitation for appointment of arbitrator under Section 11(6) of the Act as a preliminary objection under Section 16 of the Act, on merits after granting an opportunity of hearing to the parties, in accordance with law.

37. The Arbitral Tribunal shall decide the said preliminary objections expeditiously.

38. It is clarified that this Court has expressed no opinion on the merits of the limitation issue, and all the contentions of both parties are left open to be raised and decided before the Arbitral Tribunal.

39. The writ petition is allowed in the aforesaid terms. There shall be no order as to costs.

40. I would like to acknowledge the consummate arguments made by counsel appearing on behalf of both the parties and for the diligent spadework in preparation of the notes of arguments. I would also go amiss if I did not acknowledge the significant contribution and appreciate my Research Associate Ms. Saumya Patel for her in-depth research and assistance provided to me.

(2026) 4 ILRA 1346
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 06.04.2026

BEFORE

THE HON'BLE SARAL SRIVASTAVA, J.
THE HON'BLE MRS. GARIMA PRASHAD, J.

Writ C No. 10803 of 2026

Aseen

...Petitioner

Versus

State of U.P. & Ors.

...Respondents

ISSUE FOR CONSIDERATION

Whether, and to what extent, the rights guaranteed under Articles 25 and 26 extend to the conduct of congregational religious activities, whether on public land or private premises.

HEADNOTE

Constitution of India – Arts. 25 and 26 – Prayer/Namaz on public land and private premises – Claim for security/protection and permission to offer Namaz at alleged private property – State case that land recorded as public land and petitioner seeking to introduce regular large scale congregational prayers – Scope of protection under Arts. 25 and 26:

Held: (i) Public land is meant for common use, and no individual or group can claim a right to use it as an exclusive or recurring religious space; the State is bound to ensure equal access and cannot permit preferential or exclusive use of such land.

(ii) The right to practise religion is subject to public order, including access, movement and peaceful living, and cannot be exercised in a manner that interferes with these rights of others.

(iii) Private property may be used for personal and limited religious activity so long as it remains genuinely private, occasional and non-disruptive; however, once such use extends to regular or organized congregational activity involving persons beyond a limited private sphere, it falls outside the protected domain and may attract regulatory control.

(iv) Where such activity in the private property becomes regular, organized or large in scale, it may amount to a change in the nature of use of the premises and is subject to applicable laws, including planning and local regulations.

(v) The introduction or expansion of a religious use or practice not previously prevalent, particularly where it disturbs the existing social balance, is not protected under Articles 25 and 26. The State is not required to wait for actual disruption and may take reasonable preventive measures where such activity is likely to affect public life. [Para 20]

Allegations of interference, threats and collusion were general in nature and not supported by any material – Land in question recorded as public land – Even assuming the land to be private, petitioner was seeking to introduce regular congregational gatherings including persons from within and outside the village – Earlier, Namaz was offered only on specific occasions such as Eid – Expansion beyond a limited private sphere falls outside the protected domain and is subject to regulation – No enforceable legal right made out – Writ petition dismissed. [Paras 21, 22, 23, 24, 25] (E-5)

CASE LAW CITED

Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Shirur Mutt, 1954 SCR 1005.

M. Ismail Faruqui v. Union of India, (1994) 6 SCC 360.

Tehseen S. Poonawalla v. Union of India, (2018) 9 SCC 501.

Munazir Khan v. State of U.P. & Others, Writ-C No. 5996 of 2026.

Pastor Selvakumar Samu v. State of U.P., Writ-C No. 32058 of 2024.

Marantha Full Gospel Ministries v. State of U.P., Writ-C No. 1097 of 2026.

Emmanuel Grace Charitable Trust v. State of U.P., Writ-C No. 1080 of 2026.

List of Acts

Constitution of India;

List of Keywords

Freedom of religion; Articles 25 and 26; Public order; Public land; Private premises; Namaz; Congregational religious activities; Private prayer; Religious gatherings; Regulatory control; Public consequences; Social harmony; Preventive measures; No enforceable legal right.

CASE ARISING FROM

Pending representation for security/protection and permission to offer Namaz at alleged private property

Appearances for Parties

Advs. for the Petitioner: Intekhab Alam Khan, Janardan Singh.

Advs. for the Respondents: C.S.C.

(Delivered by Hon'ble Mrs. Garima Prashad, J.)

1. Heard learned counsel for the petitioner and learned Standing Counsel for the State.

2. The petitioner, by means of the present writ petition, has sought the following reliefs:

“(i) Issue a writ, order or direction in the nature of mandamus commanding the respondent authority to provide security/protection and permission of the prayer (Namaz) at the private premises (i.e. area 82.80 sqr mtr of Abadi Land) of petitioner situated at Village Ikona, Pargana Rajpura, Tehsil Gunnaur, District Sambhal.

“(ii) Issue a writ, order or direction in the nature of mandamus commanding the respondent no.2/District Magistrate Sambhal to consider and pass the appropriate order upon the representation dated 15.11.2005 pending before him within stipulated period, otherwise petitioner shall suffer irreparable loss and injury.”

3. The petitioner’s case is that Namaz has been offered on a piece of land at Village Ikona, District Sambhal, which he claims to be his private property. He alleges that the respondent authorities are restraining such prayers. The petitioner asserts ownership over the land on the basis of a registered gift deed dated 16.06.2023, and contends that the restraint violates his fundamental rights under Articles 19, 25, 26, 27 and 28 of the Constitution, as persons professing Islam are entitled to offer Namaz without interference.

4. It is further alleged that such interference is arbitrary and is being carried out in collusion with certain social elements, thereby obstructing the petitioner and other persons from offering prayers. Reliance has been placed upon the decisions of the coordinate benches of this Court in *Munazir Khan v. State of U.P. & Others (Writ-C No. 5996 of 2026)*, *Pastor Selvakumar Samu v. State of U.P. (Writ-C No. 32058 of 2024, decided on 19.03.2025)*, *Marantha Full Gospel Ministries v. State of U.P. (Writ-C No. 1097 of 2026, decided on 27.01.2026)* and *Emmanuel Grace Charitable Trust v. State of U.P. (Writ-C No. 1080 of 2026, decided on 27.01.2026)* to contend that prayers can be conducted on private premises without requiring prior permission.

5. *Per contra*, learned Standing Counsel submits, on the basis of written instructions, that the land in question, being Khata No. 613, Gata No. 629, is recorded as Abadi land falling under Category Shreni-6(2), i.e. land meant for public use, and that the petitioner has no ownership rights over the same. The said gift deed dated 16.06.2023 allegedly executed by one Deen Mohammad in favour of the petitioner, in respect of an area of 82.80 sq. meters, does not disclose any Gata number, Khata number or identifiable revenue particulars, and is based only on vague boundary descriptions. It therefore cannot confer any legal title upon him.

6. It is also brought on record that as per the report of the Sub-Divisional Magistrate, Namaz has traditionally been offered at the said location only on the occasion of Eid, and that no restriction has been imposed on such established practice. The petitioner, however, is attempting to introduce regular large scale congregational prayers by inviting persons from within and outside the village.

7. It is further brought on record that Village Ikona has a mixed population and has remained peaceful for decades. Even the petitioner, in his own representation, has acknowledged that villagers have been living harmoniously for more than 50 years. The photographs annexed with

the petition themselves demonstrate that Namaz has been offered only on specific traditional occasions such as Eid.

8. Learned Standing Counsel has further relied upon several Government Orders dated 16.07.2024, 16.08.2024, 24.03.2025 and 11.02.2026, all of which consistently mandate that while religious practices are to be respected, no new traditions or non-traditional activities shall be permitted and that established practices must be adhered to in order to maintain public order.

9. It has further been submitted that even with respect to Hindu festivals like Holika Dahan, it has been specifically directed that such ceremonies shall be conducted only at traditional sites and not in public thoroughfares or new locations, thereby reinforcing the consistent administrative policy of preservation of established traditions.

10. Having considered the submissions, the issue that arises for consideration is:

“Whether, and to what extent, the rights guaranteed under Articles 25 and 26 extend to the conduct of congregational religious activities, whether on public land or private premises”

11. Freedom, in a constitutional society, is always accompanied by responsibility towards others. The Constitution protects the right to practice religion, but it also makes it clear that this right is subject to public order, morality and health. It is not an unlimited right. It cannot be exercised in a way that affects others or disturbs the normal functioning of public life. As is often said, one person’s freedom ends where it begins to affect someone else.

12. When it comes to public land, the position is straightforward. Public land is meant for everyone and is controlled by law. No individual can claim a right to use it for regular religious gatherings. Such use affects movement, access and safety, and in appropriate situations, communal equilibrium; it must therefore be regulated. It is the State’s obligation to ensure equal access, civic order and non-discriminatory administration.

13. The law in this regard is well settled. In Commissioner, ***Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Shirur Mutt***, 1954 SCR 1005, the Supreme Court recognized protection in matters of religion, but made it equally clear that the right is not dissociated from the constitutional limitations expressly written into Article 25. In ***M. Ismail Faruqui v. Union of India***, (1994) 6 SCC 360, it was observed that Namaz may be offered anywhere, which means that no particular place can be claimed as a matter of right.

14. In ***Tehseen S. Poonawalla v. Union of India***, (2018) 9 SCC 501, the Supreme Court emphasised the importance of maintaining social harmony, civic peace and the rule of law and reminded that courts must be mindful of the practical impact of their decisions. Where a claim to hold religious congregation on public land has the potential to create social tension, the constitutional court must ensure that the conditions necessary for peaceful coexistence are maintained.

15. In this context, it must be recognised that existing lawful practices, long-regulated arrangements, or permissions granted for limited or specific purposes may stand on their own footing; but no new or unilateral claim can be founded merely on religion or personal preference. The State is constitutionally entitled, and in appropriate cases duty bound, to prevent the use of public land without lawful authority.

16. The position in respect of private property stands on a different footing. Private prayer, family worship, and such limited devotional activity as remains genuinely internal to the premises ordinarily fall within the protected domain of Articles 25 and 26. This protection, however, is confined to activity that is truly private, occasional, and non-disruptive. It does not extend to transforming any private premises into a de facto public religious venue.

17. Once the activity assumes such a congregational character, it is no longer merely a matter of inward faith. It begins to produce external consequences: it may draw repeated attendance, including persons beyond the immediate household, affect ingress and egress, create traffic and parking concerns, alter the character of the locality, generate noise, require policing, and in sensitive areas, create the possibility of inter-community tension. At that stage, the activity assumes a public or quasi-public dimension. It is not that the private property loses all protection, but that the use of such property, to that extent, no longer remains purely private for constitutional purposes and becomes amenable to reasonable regulation.

18. This position is consistent with the decisions relied upon by the petitioner. In *Munazir Khan vs. State of U.P. & Others*, *Pastor Selvakumar Samu vs. State of U.P.*, *Marantha Full Gospel Ministries vs. State of U.P.* and *Emmanuel Grace Charitable Trust vs. State of U.P.*, the Court protected bona fide prayer within private premises and held that such personal religious exercise cannot be arbitrarily interfered with. However, those decisions cannot be read as laying down that organized or regular congregational activity on private premises is wholly immune from regulation. They recognise a limited protection, namely where prayer remains confined to a private, non-disruptive setting. Where the activity extends beyond that sphere and begins to affect the public domain, lawful regulation follows. These decisions do not confer a right to convert private premises into an unregulated congregational space.

19. Further, the law does not require the authorities to wait for an actual disturbance to occur. Where an activity is likely to affect public order, the State is entitled to act in advance. The test is not the religious nature of the activity, but its public consequences. This approach is consistent with the constitutional principle of secularism, which requires equal treatment of all religions and equal application of law. While the State must permit private worship, it is equally bound to regulate activities that affect public order, whether on public land or on private premises. Maintaining this balance is essential to the working of Articles 25 and 26 in a constitutional system.

20. In light of the above discussion, the issue so framed stands answered in the following terms:

(i) Public land is meant for common use, and no individual or group can claim a right to use it as an exclusive or recurring religious space; the State is bound to ensure equal access and cannot permit preferential or exclusive use of such land.

(ii) The right to practise religion is subject to public order, including access, movement and peaceful living, and cannot be exercised in a manner that interferes with these rights of others.

(iii) Private property may be used for personal and limited religious activity so long as it remains genuinely private, occasional and non-disruptive; however, once such use extends to regular or organized congregational activity involving persons beyond a limited private sphere, it falls outside the protected domain and may attract regulatory control.

(iv) Where such activity in the private property becomes regular, organized or large in scale, it may amount to a change in the nature of use of the premises and is subject to applicable laws, including planning and local regulations.

(v) The introduction or expansion of a religious use or practice not previously prevalent, particularly where it disturbs the existing social balance, is not protected under Articles 25 and 26. The State is not required to wait for actual disruption and may take reasonable preventive measures where such activity is likely to affect public life.

21. Turning to the facts of the present case, the material on record does not support the claim advanced by the petitioner. The pleadings in the writ petition are vague and lack material particulars. No specific incident, date, time or identifiable act attributable to any authority has been disclosed. The allegations of interference, threats and collusion with unnamed persons are general in nature and are not supported by any material. Such pleadings do not meet the standard required for invoking the jurisdiction of this Court under Article 226 of the Constitution.

22. On the basis of the material placed on record, this Court finds that the land in question is recorded as public land. The claim of ownership rests entirely on a purported gift deed dated 16.06.2023, which does not contain basic land particulars such as Gata or Khata numbers and is based only on vague boundary descriptions. Such a document does not establish any identifiable title and cannot displace the revenue record.

23. Even otherwise, if the land is assumed to be private, the petitioner is not entitled to the relief sought. The record shows that he is not protecting an existing practice, but seeking to introduce regular congregational gatherings, including persons from within and outside the village. It is admitted that Namaz was earlier offered only on specific occasions such as Eid. This expansion beyond a limited private sphere falls outside the protected domain and is subject to regulation.

24. In these circumstances, no enforceable legal right is made out. This Court cannot grant relief on such a basis, particularly where the matter has implications for public order and social harmony.

25. Accordingly, the writ petition is dismissed. No order as to costs.

(2026) 4 ILRA 1352
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 17.04.2026

BEFORE

THE HON'BLE ARINDAM SINHA, J.
THE HON'BLE PRASHANT KUMAR, J.

Writ C No. 12447 of 2026

Bhullan Singh & Ors.

...Petitioners

Versus

State of U.P. & Ors.

...Respondents

ISSUE FOR CONSIDERATION

Whether the petitioners are entitled to compensation for diminution of land value and RoW corridor area under the Government of India guidelines dated 15.10.2015 and 14.06.2024, despite the State of U.P. not implementing the later guidelines ?

HEADNOTES

Civil Law – Constitution of India - Articles 21, 226 – Electricity Act, 2003 – Section 38, 42(2), 67, 68, 76, 164, 176(2)(ii)(e): - Writ Petition under Article 226 - filed for quashing the impugned order, whereby authority rejected the petitioners' claim for compensation – as well as seeking mandamus to award compensation for tower base and RoW corridor as per Union guidelines - Petitioners, landowners in Shamli, contended that towers and high tension lines diminished land value and compensation was denied despite Ministry of Power guidelines of 2015 and 2024 - The authority rejected representation stating only 2015 guideline was implemented and 2024 guideline not adopted - Petitioners pleaded that valuable rights were curtailed without acquisition - citing *Kerala SEB v. Livisha*. Respondents argued 2025 guideline applies only to inter-State lines and objected that writ not maintainable - Court finds that, State cannot selectively implement Union guidelines, recognizes diminution of land value as compensable, and directs compensation as per GO dated 14.06.2024 – held, impugned order quashed, writ petition allowed - respondents to pay compensation within four weeks.

(Para – 31, 35, 36, 38)

WP Allowed. (E-11)

CASE LAW CITED

Kerala State Electricity Board v. Livisha and Others, (2007) 6 SCC 792.

LIST OF ACTS

Constitution of India - Electricity Act, 2003 - Telegraph Act, 1885.

LIST OF KEYWORDS

Writ Petition, Right of Way (RoW), Transmission Line, Tower Base Compensation, Diminution of Land Value, Ministry of Power Guidelines, Public Interest Project, Compensation, Circle Rate, Market Value, Allowed.

CASE ARISING FROM

Cancellation of petitioner's highest bid in e-auction dated 17.02.2026 for mining lease in Arazi no. 12MI, Village Chakalathia, Tehsil Chunar, District Mirzapur.

Impugned order dated 19.03.2026 by District Magistrate cancelling auction and fresh notification dated 20.03.2026.

APPEARANCE OF PARTIES

Counsel for Appellant(s): - Shri Manoj Kumar Singh, Rajesh Kumar Singh,
Counsel for Respondent(s): - Shri Pankaj Kumar Shukla, Shri Raj Mohan Upadhyay, Additional Chief Standing Counsel.

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

Factual Matrix

1. The instant writ petition has been preferred by four petitioners who all are owners of a land situated in District Shamli where they have the crops and trees planted on the land. Over this land, the respondent Nos.2 and 3 are setting up a High Tension Electricity Transmission Line and because of which the petitioners suffer from the loss of crops, trees and devaluation of the land. As far as trees are concerned, certain compensation has been awarded but no compensation has been awarded for the corridor area over which the high tension wire passes through (known as Right of Way, 'RoW'). The Government of India through Ministry of Power had issued certain guidelines by means of a Government Order (in short, 'G.O.') dated 15.10.2015 which provides for payment of compensation towards damages with regard to RoW for transmission lines as well as for the tower base area.

2. As per G.O. dated 15.10.2015, 85% of the land value has to be paid by the District Magistrate on the tower base area on which the heavy metallic tower is set up. Further, a compensation towards diminution of land value (in the width of RoW corridor due to laying of transmission line) was to be awarded which was subject to the maximum 15% of the land value as determined on circle rate/ guideline value/ Stamp Act rate.

3. The Government of India through Ministry of Power issued another guideline vide G.O. dated 14.06.2024 for payment with regard to RoW for transmission lines wherein the compensation for the tower base area was increased to 200 % and the land value for RoW corridor area was increased to 30% of the land value.

4. Again the Government of India through Ministry of Power issued another circular on 21.03.2025 providing a supplementary guideline for payment of compensation with regard to RoW for transmission line of inter-state high voltage electricity lines.

5. The respondent authorities while determining the compensation of trees and crops coming under the transmission line area failed to follow the guidelines and provided no compensation for the RoW of corridor area. The petitioners made several representations to the respondents but no heed was paid to it.

6. Aggrieved by this situation, the petitioners preferred a writ petition being Writ-C No.20077 of 2025 (Pradeep Kumar and others vs. State of U.P. and others) which was disposed of by a Division Bench of this Court vide order dated 04.11.2025 with the following directions:-

"5. Considering the facts and circumstances of the case and without going into the merits of the case, we dispose off the writ petition permitting each petitioners to file separate representation under Rule 3 (2) of the Works of Licensees Rules, 2006 ventilating their grievances before the respondent nos. 5-District Magistrate, Shamli & respondent no.6-District Magistrate, Saharanpur along with a certified copy of this order within a period of one month from today. In case any such representation is filed by the petitioners, concerned respondent authority shall pass separate orders on the representation of each petitioners strictly in accordance with law after giving due notice and opportunity of hearing to each petitioners within a period of two months thereafter."

7. As per the directions given by this Court, the petitioners preferred representation on 21.11.2025 and 21.01.2026 to the respondents raising the grievance and requested the respondents for compensation of land, trees and the damage crops. The respondents by the help of police force opened the high tension electricity line on 05.02.2026.

8. On 10.03.2026, the respondent No.4 disposed of the representation filed by the petitioners wherein he stated that the State had implemented the earlier G.O. dated 15.10.2015 but however, since the G.O. dated 14.06.2024 issued by the Ministry of Power has not been implemented by the State and no compensation has been awarded to them. It has been further stated that since the transmission line was not inter-state transmission line hence, the G.O. dated 21.03.2025 will not be applicable.

9. The order dated 10.03.2026 by which the representation of the petitioners was rejected has been assailed by means of the instant writ petition. The petitioners had made the following prayer:-

"(i) Issue a writ, order or direction in the nature of certiorari quashing the impugned order-dated 10.03.2026 (Annexure No.1) passed by respondent no.4.

(ii) Issue a writ, order or direction in the nature of mandamus directing the respondent authorities to provide the compensation to the petitioners of their land coming in ROW Corridor Area, adequate compensation for trees and crops of the petitioners being damaged in the construction of Transmission Line of 220 KV and trees still standing within the Corridor Arca as per the prescribed rate of forest department and as per guidelines issued by Union of India, Ministry of Power, New Delhi vide its circular/government orders-dated 15th October, 2015, 14.06.2024 and 21.03.2025

(iii) Issue a writ, order or direction in the nature of mandamus directing to the respondent authorities not to supply the electricity through aforesaid transmission line without cutting/removing the trees standing below the transmission line."

10. Learned counsel for the petitioners submits that the transmission company has erected towers and the high voltage transmission line over the land of the petitioners and a meager compensation had been given for the crops, trees and tower base area although the compensation should have been awarded as per the latest G.O. However, nothing has been awarded towards the

compensation for the RoW of the high tension wire. He further submits that the value of the land has drastically diminished because of the overhead wires and restriction of carrying on any other activities under the wire.

11. He further submits that the issue of compensation has been considered by the Government of India vide G.O. dated 15.10.2015 wherein some compensation had been awarded for the tower base area and over the RoW. The Government of India re-visited the issue of compensation and again issued a G.O. on 14.06.2024 wherein the compensation of the tower base area had been increased to 200 % of the land value and for right of way the compensation was increased to 30% of the land value. This G.O. has not been implemented by the State of U.P. in spite of clear direction of the Government of India vide G.O. dated 14.06.2024 and a G.O. dated 21.03.2025 which lays down the guidelines for compensation.

12. He further submits that the petitioners had earlier moved a writ petition wherein this Court vide order dated 04.11.2025 had directed that the representation of the petitioners shall be decided within one month. From the orders of this Court, a representation was filed on 21.11.2025 however, no decision was taken on it within the stipulated time. On the contrary, during the pendency of this representation before the authorities, the authorities forcibly lay down the overhead cables without complying the orders of this Court and thereafter, rejected the representation of the petitioners by means of the impugned order. He further submits that action taken by the respondents are completely illegal and contrary to the norms laid down by the Government of India and as such the same may be set aside and a just and proper compensation should have been awarded to the petitioners.

13. He further submits that because of laying high tension cables, the value of the land of the petitioners below the wire and adjacent to the RoW have been permanently diminished and nothing can come up under that. The land of the petitioners cannot be put to any other beneficial use.

14. He further submits that the guideline issued by the Government of India had been followed in many States in toto, hence there was no reason for the State of U.P. to deny the compensation to the petitioners which had already been sanctioned by the Government of India.

15. Learned counsel for the petitioners further submits that there are provisions of compensation under the applicable Electricity Act and the Telegraph Act which are applicable in this field. Notifications had been issued by the Government of India through Ministry of Power wherein the Government relies that a just and proper compensation should be paid to the farmers however, the same has been refused by the respondents to the present petitioners.

16. Mr. Raj Mohan Upadhyay, learned Additional Chief Standing Counsel appears on behalf of State. He draws attention to supplementary guidelines dated 21.03.2025 issued by Government of India and demonstrates from it, applicability of the guidelines have been confined to inter state transmission systems and further submits that the transmission line in this case is not an inter-state transmission line, hence the G.O. dated 21.03.2025 would not be applicable. Relied upon applicability clause in the supplementary guidelines is reproduced below.

"1. Applicability: These supplementary guidelines shall apply to Inter-State Transmission System lines only in cases where landowners have objected to the compensation because the Circle Rates are below the Market Rates. State Governments may adopt these guidelines in their entirety or issue their own modified guidelines. These guidelines shall apply in cases where State Governments have yet to specify the manner of determination of market value of land."

(emphasis supplied)

Moreover, State Governments have discretion regarding their applicability.

17. Mr. Pankaj Kumar Shukla, learned advocate appears on behalf of respondent nos.2 and 3 submits that the writ petition is not maintainable as the petitioners have remedy of revision. Without prejudice he submits, the guidelines are not in any way enforceable through the writ Court. He opposes the writ petition and seeks dismissal of the writ petition.

18. Heard Mr. Rajesh Kumar Singh, learned counsel for the petitioners, Mr. Raj Mohan Upadhyay, learned Additional Chief Standing Counsel appears on behalf of State, Mr. Pankaj Kumar Shukla, learned advocate appears on behalf of respondent nos.2 and 3 (the transmission company) and perused the records.

19. In this field, in the the year 1910 the Indian Electricity Act, 1910 was first enacted thereafter, the Electricity Supply Act in 1948 and then Electricity Regulation Commission Act, 1998 was enacted.

20. Initially, the entire field of electricity was in the hands of Government however, later on this field of electricity was bifurcated in generation, transmission, distribution, trading and use of electricity in India. The private operators were also inducted to achieve the objects of the Act and thereafter, the Electricity Act, 2003 was enacted repealing the earlier Acts.

21. One of the key objectives of 2003 Act was promoting competition within its framework and allowed private sector participation in power generation, supply and distribution of electricity in India. The relevant Section of Electricity Act is as follows:-

"Section 38 of the Electricity Act lays down as follows:-

"Central Transmission Utility and functions.- (1) The Central Government may notify any Government company as the Central Transmission Utility: Provided that the Central Transmission Utility shall not engage in the business of generation of electricity or trading in electricity: Provided further that the Central Government may transfer, and vest any property, interest in property, rights and liabilities connected with, and personnel involved in transmission of electricity of such Central Transmission Utility, to a company or companies to be incorporated under the Companies Act, 1956 to function as a transmission licensee, through a transfer scheme to be effected in the manner specified under Part XIII and such company or companies shall be deemed to be transmission licensees under this Act.

(2) The functions of the Central Transmission Utility shall be –

(a) to undertake transmission of electricity through inter-State transmission system;

(b) to discharge all functions of planning and co-ordination relating to inter-State transmission system with –

(i) State Transmission Utilities;

(ii) Central Government;

(iii) State Governments;

(iv) generating companies;

(v) Regional Power Committees;

(vi) Authority;

(vii) licensees;

(viii) any other person notified by the Central Government in this behalf;

(c) to ensure development of an efficient, co-ordinated and economical system of inter-State transmission lines for smooth flow of electricity from generating stations to the load centres;

(d) to provide non-discriminatory open access to its transmission system for use by-

(i) any licensee or generating company on payment of the transmission charges; or (ii) any consumer as and when such open access is provided by the State Commission under sub-section

(2) of section 42, on payment of the transmission charges and a surcharge thereon, as may be specified by the Central Commission:

*Provided that such surcharge shall be utilised for the purpose of meeting the requirement of current level cross-subsidy: Provided further that such surcharge and cross subsidies shall be progressively reduced I[***] in the manner as may be specified by the Central Commission: [***]*

Provided also that the manner of payment and utilisation of the surcharge shall be specified by the Central Commission:

Provided also that such surcharge shall not be leviable in case open access is provided to a person who has established a captive generating plant for carrying the electricity to the destination of his own use."

22. Part VIII of the Electricity Act, 2003 deals with 'Works' which only encompasses two Sections i.e. Sections 67 and 68. Section 67 deals with the determination and payment of compensation of rent to the person affected by the work carried out under this Section. Section 68 deals with overhead lines. Section 76 of the Electricity Act, 2003 grants power to the Central Government to make rules.

23. Further, Section 164 of the Electricity Act, 2003 provides that the appropriate Government may confer upon any public officer, licensee or any other person engaged in supplying of electricity, any of the powers which the telegraph authority possesses under the Act of 1885 with respect to placing of telegraph lines and poles as provided under the Telegraphic Act.

24. Section 176 (2)(ii)(e) of the Electricity Act, 2003 lays down as follows:-

"the works of licensees affecting the property of owner or occupier under sub-section (2) of Section 67;"

The effect of this Section is that the provisions of both the Acts will be applicable while determining the compensation of the land on which the overhead wire passes through (right of way) and the poles and towers were installed. The instant case is regarding the compensation to be awarded for the losses suffered by the land owners on which the transmission lines passes.

25. The transmission lines basically have two components, firstly, the towers installed on the ground and secondly, the overhead wires which passes over the land of private individuals which is also known as land corridor over which the wire hangs. Once a tower is erected on the field/land of an individual and the wire gone through his property, the potential of land diminish. There are certain restrictions which are imposed on the owner of the land like no structures can be build under and around the right of way, no trees can be planted and nothing can come up on that land in future.

26. Under the power granted under the Electricity Act and the Rules, the Government of India through Ministry of power had issued a G.O. on 15.10.2015 which provides compensation to the land owners over which the high tension wires passes through and which causes the land to loose its value, this order states as follows:-

(i) Compensation @ 85% of land value as determined by District Magistrate, or any other authority based on Circle rate/Guideline value/Stamp Act rates for tower base area (between four legs) impacted severely due to installation of tower/pylon structure;

(ii) Compensation towards diminution of land value in the width of Row corridor due to laying of transmission line and imposing certain restriction would be decided by states as per categorization of land in different places of states, subject to a maximum of 15% of land value as determined based on Circle rate/Guideline value/Stamp Act rates;

(iii) In areas where landowner/owners have been offered/accepted alternate mode of by concerned compensation corporation/Municipality under Transfer Development Right (TDR)

policy of State, the licensee/utility shall deposit compensation amount as per (i) & (11) above with the concerned corporation/Municipality/Local Body or the State Government,

(iv) For this purpose, the width of RoW Corridor shall not be more than that prescribed in para. 1.3 (of the Report of the Committee for Payment of Compensation in Regard to the Right of Way for Transmission Lines) and shall not be less than the width directly below the conductors."

27. Since there was certain hiccups, the Government of India, through Ministry of Power again issued a comprehensive guideline for award of compensation to the land owners who suffer from loss of land value because of setting of the transmission line over the land. The Notification dated 14.06.2024 issued by The Ministry of Power is as follows:-

"COMPENSATION GUIDELINES FOR TRANSMISSION LINES

(1) Applicability: *The compensation shall be payable only for transmission lines supported by a tower base of 66 kv voltage level and above, and not for sub- transmission and dishibution lines below 66 kV.*

(2) Authority for determination of Compensation: *District Magistrate/District collector/Deputy commissioner shall be the authority for determining the compensation.*

(3) Determination of compensation: *The compensation shall ordinarily be based on the circle rate/Guideline value/stamp Act rates of the land, except where the market rate exceeds the circle rate/Guideline value/Stamp Act rates. In such instances, the land value shall be determined based on the prevailing market rate as ascertained by the District Magistrate/District Collector/Deputy Commissioner in the manner as may be specified by the state Government. The determined land value shall serve as the basis for compensation and shall be promptly communicated by the respective District Magistrate/District Collector/Deputy Commissioner.*

(4) Tower Base compensation: *Compensation for the tower base area shall be 200% of the land value. The tower base area shall be the area enclosed by the four legs of the tower at ground level, plus an additional one (1) meter extension on each side.*

(5) RoW Corridor compensation: *The compensation amount for Right-of-way (RoW) corridor shall be 30% of the land value. Land within the RoW corridor, as defined in Schedule VII of the Central Electricity Authority (Technical Standards for construction of Electrical Plants and Electric Lines) Regulations, 2022 (Annex-I), shall be eligible for compensation. This compensation will address the potential diminution of land value due to the presence of overhead lines or underground cables within the RoW corridor. No construction activity of any kind would be permitted within the Row of the transmission line. states/UTs may decide higher rate depending on the area and urgency of the work.*

(6) Alternate compensation: *In areas where land owner/owners have been offered/accepted alternate mode of compensation by Corporation/Municipality concerned under Transfer of Development Rights (TDR) policy of the State/UT, the licensee /utility shall deposit*

compensation amount as per (4) to (5) above with the corporation/ Municipality/ Local Development Authority or the State Government concerned.

*(7) **Areas with Row constraints:** when laying transmission lines in areas with hoW constraints, various technologies can be considered to optimize the use of space. These technologies are outlined in the Central Electricity Authority (Technical Standards for Construction of Electrical Plants and Electric Lines) Regulations, 2022. Some options include: steel pole structures, narrow-based lattice towers, multi-circuit and multi-voltage towers, single-side stringing with lattice or steel poles, XLPE underground cables, Gas Insulated Lines (GIL), compact towers with insulated cross arms, Voltage Source Converter (VSC) based High Voltage Direct Current (HVDC) systems, and more. A cost matrix comparing these technologies is attached in Annex-II for reference by implementing agencies. This matrix can help them choose the most cost-effective option for each project.*

*(8) **Landowner Identification:** During the check survey conducted at the execution stage, the names of landowners whose property falls within the transmission line's Right-of-Way (RoW) will be documented. This process shall adhere to the Regulation 84(8) of the Central Electricity Authority (Technical Standards for Construction of Electrical Plants and Electric Lines) Regulations, 2022.*

*(9) **Compensation Payment:** Compensation payment shall be one-time and upfront. Whenever possible, compensation will be paid through various digital payment methods, such as the Aadhaar Enabled Payment System (AEPS) and Unified Payments Interface (UPI).*

*(10) **Standard Operating Procedure (SOP):** States/UTs and transmission developers should refer to the Standard Operating Procedure (SOP) at Annex-III for detailed guidelines."*

28. Thereafter, the Government of India had issued a supplementary guideline on 21.03.2025 for determination of market value and the right of way, compensation for inter-state transmission lines. The relevant portion of the Notification dated 21.03.2025 is as follows:-

"SUPPLEMENTARY GUIDELINES FOR DETERMINATION OF MARKET RATE AND ROW COMPENSATION FOR ISTS LINES

1. Applicability: *These supplementary guidelines shall apply to Inter-State Transmission System lines only in cases where landowners have objected to the compensation because the Circle Rates are below the Market Rates. State Governments may adopt these guidelines in their entirety or issue their own modified guidelines. These guidelines shall apply in cases where State Governments have yet to specify the manner of determination of market value of land.*

2. Committee for Market Rate Determination: *The market rate of land shall be determined by the following Market Rate Committee (MRC) based on the valuation by independent land valuers:*

i. District Magistrate/District Collector/Deputy Commissioner or his/her nominee (not below Sub-Divisional Magistrate) ? Chair

ii. Representative of land owners ? Member

iii. Nominee of ISTS Transmission Service Provider (TSP) – Member

The District Magistrate/District Collector/Deputy Commissioner may co-opt upto two additional members as may be required.

3. Land Valuation Methodology:

(1) MRC shall appoint two valuers-one nominated by the TSP and the other by the representative of landowners. The MRC shall engage the land valuers empanelled by the Insolvency and Bankruptcy Board of India (1881) as per the list available at website of IBBI (<https://ibbi.gov.in>). The valuers should preferably be from the same State or, if an adequate pool of valuers is not available, from adjoining States. The reference market rate shall be determined as specified below.

(i) If the difference in the market rates worked out by valuers is less than 20% over the lowest value, then average value of the two valuations shall be taken as the reference market rate.

(ii) If the difference exceeds 20%, MRC may negotiate the reference market rate.

(iii) Else, or if negotiation fails, then MRC shall engage a third valuer, and the reference market value shall be determined as the average of the two closest valuations.

(2) The assessed reference market rate shall serve as the basis for determination of market rate by the MRC.

(3) The professional fee/charges of the land valuers shall be borne by the TSP and shall form part of the Row compensation cost. 4.

Compensation Rates: *(1) The compensation for tower base shall be as per RoW guidelines dated 14.06.2024.*

(2) The compensation amount for Right-of-Way (RoW) corridor shall be as follows for ISTS lines:

i. 30% of the land value in rural areas.

ii. 60% of the land value in municipal corporations and metropolitan areas notified by the State Government. iii. 45% of the land value for municipalities, nagar panchayats and all other urban planning areas notified by the State Government.

5. *The District Collector may allow the construction of ISTS lines to proceed without obstruction on the condition that compensation would be paid based on the market rate determined by the MRC. The market rate determination should ideally be completed within one month from the date of application by TSP.*

6. ***Pass through by CERC:*** *If the actual Row compensation paid by the TSP due to implementation of these guidelines or the extant guidelines /policy of the appropriate government differs from the base Row compensation determined for the ISTS Scheme as per Tariff Based Competitive Bidding (TBCB) Guidelines, the same shall be eligible for pass through under Change in Law (CIL) by the Central Electricity Regulatory Commission."*

29. It is clear that setting up of the transmission line is a public interest project which can be put at par with other public projects like setting up a dam or building a road. In the other infrastructure projects land is acquired by the Government and handed over to the licensee and a compensation is paid to the owner of the land however, in this case land has not been acquired but at the same time, a number of restrictions have been imposed on the land owners. For example, they cannot have trees on that area and no construction can be carried out in the RoW area and there are several other restrictions which the owners have to face for the land adjoining the RoW with the result the value of the land is drastically diminished. The Government refuses to pay a compensation on the ground that the land has not been acquired however, without even acquiring the land all the valuable rights of the land owners are being taken away from the land owners and that too without providing any compensation.

30. Since the land remains a State subject, number of States have come up with notification/circular where the methodology proposed is at variance with the guidelines issued by the Ministry of Power. The State of Uttar Pradesh has come out with the guideline that only 85% of the land value would be paid for the tower base and nothing would be paid for the land corridor area/RoW.

31. The Ministry of Power had given a guideline to the States and several States have implemented the same wherein they provide certain compensation for the land corridor area/RoW however, since it was a guideline, the State of U.P. chooses to provide nothing towards the compensation for the loss of valuable rights of the land owners.

32. The Hon'ble Supreme Court in the matter of **Kerala State Electricity Board v. Livisha and Others** reported in (2007) 6 SCC 792, had observed as follows:

"9. Both telegraph lines and electric lines are required to be drawn over the agricultural land and other properties belonging to third parties. In drawing such lines, the entire land cannot be acquired but the effect thereof would be diminution of value of the property over which such lines is drawn.

The amount of compensation is required to be determined keeping in view the purpose and object of the statute. There cannot be any fixed formula therefor or the other. Although

undoubtedly one formula laid down may assist the Board and/or the Reference Court to apply the same, but there cannot be a hard-and-fast rule in this behalf. A fixed formula for determining the amount of compensation although may make the task of the Land Acquisition Officer or the Reference Court easier but in our opinion each case is required to be taken on its own merit. We may hasten to add that the purpose and object of the Act and the methodology laid down therein for the purpose thereof should be the guiding factor.

The situs of the land, the distance between the high voltage electricity line laid thereover, the extent of the line thereon as also the fact as to whether the high voltage line passes over a small tract of land or through the middle of the land and other similar relevant factors in our opinion would be determinative. The value of the land would also be a relevant factor. The owner of the land furthermore, in a given situation may lose his substantive right to use the property for the purpose for which the same was meant to be used."

33. Since the issue of compensation of the land which lies on the RoW of high tension wire has already been addressed by the Central Government, hence it is imperative on the State Government to follow the same in toto. The procedure of calculating the compensation has been given in the G.O. dated 15.10.2015, G.O. dated 14.06.2024 and in G.O. dated 21.03.2025, which makes mandatory to pay the compensation affront to the owners on whose land the high tension wires passes through and the tower base are erected.

34. The Government Order issued by the Government of India through the Ministry of Power, must have effect on the State. There is no available material to form a reasonable basis for the State of Uttar Pradesh to have exercised discretion in the negative, to distress of affected land holders. The respondents are directed to follow the guidelines issued by the Government of India through the Ministry of Power vide G.O. dated 14.06.2024 (since it is not an inter-state transmission line, hence the G.O. dated 21.03.2025 would not be applicable in this case). Therefore, the respondents herein are bound to pay compensation as per the G.O. dated 14.06.2024. Even the Government of India recognizes that upfront compensation should be paid before the transmission lines are set up. However, in this case in spite of the direction of this Court to decide the representation in four weeks, the representation was kept pending and it is only after using the police force when the wires on the petitioners' land was set up and energized, the representation was dealt with and rejected.

35. The respondents herein, cannot be selective in implementing the G.O. issued by the Government of India. As per the G.O. dated 06.09.2018 numbered as Letter No.2023/24-P-3-2018 issued by the State of U.P., the earlier G.O. dated 15.10.2015 of the Government of India was implemented by the State however, the State very conveniently fails to implement the other G.O. dated 14.06.2024. The State cannot be choosy and selective when it comes to the grant of compensation to the farmers whose land has been forcefully been used and the value of the land has been drastically diminished.

36. In this case, the transmission line is not an inter-state line hence, the respondents are directed to grant compensation as per the guidelines issued by the Government of India vide G.O. dated 14.06.2024 passed by the Ministry of Power.

37. In view of aforesaid facts and circumstances of the matter, the impugned order dated 10.03.2026 is quashed and this writ petition is **allowed**.

38. This compensation shall be paid within a period of four weeks from communication of this judgment to respondent no.2, to be made by petitioners.

(2026) 4 ILRA 1364
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 06.04.2026

BEFORE

THE HON'BLE NEERAJ TIWARI, J.
THE HON'BLE MRS. GARIMA PRASHAND, J.

Writ C No. 12679 of 2022

Afjaal Ahmad & Anr.

...Petitioners

Versus

State of U.P. & Ors.

...Respondents

ISSUE FOR CONSIDERATION

Whether repeated reopening of caste verification proceedings against the petitioners, despite closure by competent authorities and absence of locus standi of respondent no.5, is legally sustainable?

HEADNOTES

Civil Law – Constitution of India – Article 226: - Writ Petition under Article 226 - against order passed by Regional Level Committee as well as State Level Committee - seeking quashing of repeated caste verification proceedings - Petitioners, belonging to OBC category namely *Bhishti Abbasi* - had notified as an OBC caste by the Gazette Notification – their caste certificates issued by competent authority – complaint filed – enquiry - upheld twice by the District Level Committee and the complaint dismissed as baseless by the State Government in 2015 - after the death of the original complainant, his son (respondent no.5) pursued successive appeals without authorisation - leading to repeated reopening - Petitioners pleaded harassment, lack of locus standi, and violation of finality - Respondent no.5 alleged fraud and misuse of reservation benefits - Court finds that, no fraud was established, substitution was unauthorised, and repeated reopening is impermissible once competent authorities and the State Government have closed the matter – held, (i) the impugned orders suffer from arbitrariness and are unsustainable in law and against the principle of finality – (ii) third-party locus standi in service matters is barred absent prima facie fraud – hence, impugned orders are quashed - proceedings closed - District Level Committee's findings upholding caste certificates remain operative - writ petition allowed.

WP Disposed of. (E-11)

CASE LAW CITED

Kumari Madhuri Patil v. Addl. Commissioner, Tribal Development, (1994) 6 SCC 241.

Dayaram v. Sudhir Batham, (2012) 1 SCC 333.

Chairman & Managing Director, FCI v. Jagdish Balaram Bahira, (2017) 8 SCC 670.

Dr. Duryodhan Sahu v. Jitendra Kumar Mishra, (1998) 7 SCC 273.
Hari Bansh Lal v. Sahodar Prasad Mahto, (2010) 9 SCC 655.
Shakila Begum Faiyazuddin v. State of Maharashtra, (2003) 8 SCC 49.
Raju Ramsing Vasave v. Mahesh Deorao Bhivapurkar, (2008) 9 SCC 54.

LIST OF ACTS

Constitution of India - Gazette Notification dated 06.08.1997 (OBC list) - Right to Information Act, 2005.

LIST OF KEYWORDS

Writ Petition, Certiorari, Caste certificate, OBC verification, locus standi, repeated enquiry, fraud on Constitution, Bhishti Abbasi, finality, harassment, substitution of complainant, service jurisprudence, Allowed.

CASE ARISING FROM

orders of State Level and Regional Level Caste Scrutiny Committees (27.11.2020, 18.12.2016, 18.07.2017) and pending proceedings before District/Regional Committees, Prayagraj.

APPEARANCE OF PARTIES

Counsel for Appellant(s): - Shri Sri V.K. Singh, Senior Advocate assisted by Sri Navin Kumar Sharma,
Counsel for Respondent(s): - Shri Anand Bhaskar Srivastava, Standing Counsel, Sri Aushim Luthra with Ms. Utkarshni Singh.

(Delivered by Hon'ble Mrs. Garima Prashad, J.)

1. Heard Sri V.K. Singh, learned Senior Advocate assisted by Sri Navin Kumar Sharma, learned counsel for the petitioners, Sri Anand Bhaskar Srivastava, learned Standing Counsel for the State and Sri Aushim Luthra with Ms. Utkarshni Singh, learned counsel for the respondent No.5.

2. The present writ petition has been filed seeking the following reliefs:

i) Issue a writ, order or direction in the nature of certiorari to quash the impugned order dated 27.11.2020 (Annexure No.10 to this writ petition) passed by Respondent No.2 (State Level Caste Scrutiny Committee, Lucknow).

ii) Issue a writ, order or direction in the nature of certiorari to quash the impugned order dated 18.12.2016 and 18.07.2017 (Annexure No.8 and 9 to this writ petition) passed by respondent No.3 (Regional Level Caste Scrutiny Committee, Prayagraj).

iii) Issue a writ order or direction in the nature of certiorari to quash the proceedings pending before Regional Level Caste Scrutiny Committee, Prayagraj as well as District Level Caste Scrutiny Committee, Prayagraj in respect of the caste verification of the petitioners.

3. Learned Senior Advocate appearing for the petitioners submits that both the petitioners belong to the Other Backward Class category, namely Bhishti Abbasi, which has been notified as an OBC caste by Gazette notification dated 06.08.1997. A caste certificate to that effect was also issued by the competent authority in favour of petitioner no.2.

4. It is submitted that the dispute arose from a complaint dated 14.12.2011 filed by one Late Nazmuddin before the State Government alleging that the caste certificates of the petitioners

were not genuine. Acting upon the said complaint, the State Government by order dated 10.02.2012 directed the District Level Caste Scrutiny Committee, Prayagraj to conduct an enquiry regarding the validity of the caste certificates and submit its report.

5. Pursuant to the said direction, the District Level Committee conducted an enquiry and by order dated 03.04.2014 found the complaint to be baseless and upheld the validity of the caste certificates of the petitioners. It is further submitted that apart from the said enquiry, a departmental enquiry was also conducted regarding the caste certificate of petitioner no.2 which culminated in an order dated 16.05.2012 declaring the certificate to be valid.

6. During the pendency of the proceedings, the original complainant Late Nazmuddin died on 17.03.2013. Thereafter, his son Zafaruddin (respondent no.5) filed an appeal before the Regional Level Caste Scrutiny Committee. The Regional Level Committee by order dated 27.05.2015 recorded that the order dated 03.04.2014 passed by the District Level Committee was correct and required no interference, however it directed the District Level Committee to examine certain additional documents produced by respondent no.5. In compliance thereof, the District Level Committee again examined the matter and by order dated 20.01.2016 reiterated its earlier findings and refused to interfere with its order dated 03.04.2014.

7. It is further submitted that the State Government itself by order dated 28.04.2015 dismissed the complaint dated 14.12.2011 as false and baseless. The said decision was communicated to the District Magistrate, Prayagraj by letter dated 30.06.2015 and by order dated 04.08.2015 directions were issued to terminate the caste dispute proceedings against the petitioners.

8. Despite the aforesaid orders, respondent no.5 again preferred an appeal before the Regional Level Committee against the order dated 20.01.2016. The Regional Level Committee by order dated 18.12.2016 allowed the appeal without considering the earlier government orders closing the proceedings. The petitioners thereafter filed a review application which was partly allowed by order dated 18.07.2017, however the Regional Level Committee again directed the District Level Committee to re-examine the matter. Thereafter, respondent no.5 approached the State Level Caste Scrutiny Committee which by order dated 27.11.2020 directed the Regional Level Committee to reconsider the matter.

9. Learned Senior Advocate submits that the issue regarding the caste status of the petitioners has already been examined repeatedly by the competent authorities. The District Level Committee twice upheld the caste certificates of the petitioners, the Regional Level Committee initially affirmed the same, and the State Government itself by orders dated 28.04.2015 and 04.08.2015 closed the proceedings.

10. It is further submitted that in response to an application under the Right to Information Act, the State Government by communication dated 27.09.2018 clarified that no order had been passed permitting substitution of the complainant after the death of Late Nazmuddin nor was any authority directed to conduct repeated enquiries. Reliance is also placed on a further communication dated 12.09.2022 issued by the Deputy Secretary, State of U.P., wherein it has been stated that the complaints against the petitioners regarding their caste certificates were found

baseless and the matter had already been concluded and consigned to record. It is therefore submitted that the continued proceedings initiated at the instance of respondent no.5, who has no locus in the matter, amount to harassment of the petitioners and the impugned orders are liable to be quashed.

11. Per contra, learned counsel appearing for respondent no.5 submits that the petitioners have obtained an interim order dated 31.08.2022 by suppressing material facts. It is submitted that the petitioners concealed that an appeal had already been filed against the order dated 18.07.2017 and therefore approached this Court without clean hands. It is contended that a person who seeks equitable relief under Article 226 must disclose all material facts and suppression thereof is sufficient ground for dismissal of the writ petition.

12. It is further submitted that the petitioners have fraudulently obtained caste certificates showing themselves as belonging to the Bhishti Abbasi OBC category despite actually belonging to the general category. By using the said certificate, the petitioners allegedly secured a government post meant for members of the backward class.

13. Learned counsel for the respondent no.5 further submits that documentary evidence including educational records of the petitioners and the caste status of their biological relatives indicate that the family has never belonged to the Bhishti Abbasi community.

14. It is further contended that the objection regarding locus standi raised by the petitioners is misconceived. Reliance is placed upon the decision in *Shakila Begum Faiyazuddin v. State of Maharashtra (2003) 8 SCC 49 and Raju Ramsing Vasave v. Mahesh Deorao Bhivapurkar, (2008) 9 SCC 54*, wherein it has been observed that the validity of an appointment obtained on the basis of a caste certificate is a matter of public importance and the Court can examine such issues even if raised by a third party in order to prevent fraud on the Constitution.

15. Learned Standing Counsel appearing for the State submits that pursuant to the complaint dated 14.12.2011 the State Government by order dated 10.02.2012 directed the District Magistrate, Prayagraj to conduct an enquiry through the District Level Caste Scrutiny Committee regarding the validity of the caste certificate of the petitioners. In compliance thereof, the District Level Committee conducted the enquiry and submitted its report dated 03.04.2014 to the State Government.

16. The State Government thereafter by order dated 28.04.2015 dismissed the complaint dated 14.12.2011 as baseless and consigned the matter to record. The said decision was communicated to the District Magistrate, Prayagraj by order dated 04.08.2015 directing termination of the caste dispute proceedings against the petitioners.

17. It is further submitted that the State Government by order dated 12.09.2022 again communicated to the Commissioner, State Tax and the District Magistrate, Prayagraj that the matter had already been concluded and no justification exists for conducting a fresh enquiry.

18. After hearing learned counsels for the parties and perusing the material on record, this Court finds that the controversy in the present writ petition revolves around the legality of repeated reopening of caste verification proceedings initiated against the petitioners despite the issue having been examined on multiple occasions by the competent authorities and the State Government itself having recorded findings that the complaint was baseless.

19. From the record it emerges that the entire proceedings originated from a complaint dated 14.12.2011 submitted by one Late Nazmuddin before the State Government alleging that the caste certificates of the petitioners were not genuine. Acting upon the said complaint, the State Government by order dated 10.02.2012 directed the District Level Caste Scrutiny Committee, Prayagraj to conduct an enquiry regarding the validity of the caste certificates of the petitioners and to submit its report to the Government.

20. Pursuant to the said direction, a detailed enquiry was conducted by the District Level Committee and an order dated 03.04.2014 was passed wherein the complaint was found to be baseless and the caste certificates of the petitioners were found to be valid. The record further indicates that apart from the enquiry conducted by the District Level Committee, a departmental enquiry was also conducted in respect of the caste certificate of petitioner no.2 and the same too culminated in an order dated 16.05.2012 declaring the caste certificate to be valid.

21. It is also not in dispute that during the pendency of the proceedings, the original complainant Late Nazmuddin died on 17.03.2013. Thereafter, his son Zafaruddin, who is respondent no.5 in the present writ petition, sought to continue the proceedings by filing an appeal before the Regional Level Caste Scrutiny Committee. The Regional Level Committee by order dated 27.05.2015 recorded that the order dated 03.04.2014 passed by the District Level Committee was correct and did not warrant interference. However, while recording the said finding, it remanded the matter to the District Level Committee directing it to examine certain additional documents that had been produced at the appellate stage by respondent no.5.

22. In compliance with the said direction, the District Level Committee again examined the matter and by order dated 20.01.2016 reiterated its earlier finding and refused to interfere with its order dated 03.04.2014. The State Government itself thereafter passed an order dated 28.04.2015 dismissing the complaint of Late Nazmuddin as false and baseless. The said decision was communicated to the concerned authorities and further directions were issued on 04.08.2015 to terminate the caste dispute proceedings against the petitioners. A communication dated 30.06.2015 issued by the Commissioner, Commercial Tax, U.P., Lucknow also recorded that the State Government had already closed the proceedings relating to the caste certificates of the petitioners.

23. Despite the aforesaid orders and the repeated findings recorded in favour of the petitioners, respondent no.5 again preferred an appeal before the Regional Level Committee against the order dated 20.01.2016. The Regional Level Committee by order dated 18.12.2016 allowed the appeal and reopened the issue. Subsequently, upon a review application filed by the petitioners, the Regional Level Committee by order dated 18.07.2017 modified its earlier order but again directed the District Level Committee to examine the matter afresh. Thereafter, respondent no.5 approached

the State Level Caste Scrutiny Committee which by order dated 27.11.2020 directed the Regional Level Committee to reconsider the matter.

24. The consequence of the aforesaid orders is that despite the issue having been examined repeatedly by the competent authorities and even after the State Government itself had recorded a categorical finding that the complaint was baseless and the proceedings stood closed, the matter continued to be remanded from one authority to another resulting in the same issue being reopened again and again.

25. This Court finds substance in the submission advanced on behalf of the petitioners that such repeated reopening of the proceedings cannot be permitted once the competent authorities as well as the State Government itself have examined the matter and closed the complaint. Administrative and quasi-judicial proceedings cannot be permitted to continue indefinitely as that would defeat the principle of finality and would result in unnecessary harassment of the parties.

26. The law relating to verification of caste status stands authoritatively laid down by the Hon'ble Supreme Court in **Kumari Madhuri Patil v. Addl. Commissioner, Tribal Development, (1994) 6 SCC 241**, wherein a detailed mechanism was prescribed for scrutiny of caste certificates through Scrutiny Committees. The said position has been subsequently explained and reaffirmed in **Dayaram v. Sudhir Batham, (2012) 1 SCC 333**, wherein it has been emphasized that the determination of caste status must be undertaken by the competent scrutiny authorities and cannot be left open to indefinite reconsideration.

27. A necessary corollary of the above principle is that once the issue of caste verification has been duly examined by the competent authorities in accordance with law, and findings have been recorded, such proceedings must attain finality. Repeated reopening of the same issue, particularly on the same set of allegations, would defeat the very purpose of constituting scrutiny committees and would lead to uncertainty and harassment.

28. In this regard, it is well settled that repeated enquiries into the validity of a caste certificate are impermissible, except in exceptional circumstances where the earlier determination is shown to be vitiated by fraud or was rendered without jurisdiction or without proper enquiry.

29. There can be no dispute with the proposition that a false caste claim amounts to a fraud on the Constitution, as held in **Chairman & Managing Director, FCI v. Jagdish Balaram Bahira, (2017) 8 SCC 670**. However, the said principle cannot be invoked in a mechanical manner. Mere allegations of fraud, without any fresh or cogent material, cannot justify repeated reopening of proceedings which have already been concluded by the competent authorities and accepted by the State Government.

30. In the present case, there is no such finding of fraud recorded by any competent authority despite multiple enquiries. The record clearly demonstrates that the issue was examined by the District Level Committee, then reaffirmed upon reconsideration, further considered by the Regional Level Committee, and thereafter the State Government itself, upon due consideration, declared the complaint to be baseless and directed closure of proceedings. □

31. Further, the State Government has clarified that it had neither authorised the substitution of any person after the death of the original complainant nor directed the authorities to conduct repeated enquiries. Moreover, the Government Order dated 12.09.2022 categorically records that the matter has already been examined and closed, and that no further enquiry is required.

32. Once the State Government itself has accepted the findings and consigned the matter to record, and the issue has already been examined repeatedly by the competent scrutiny authorities, it could not have been reopened or remanded in the absence of any fresh material or jurisdictional infirmity in the earlier proceedings. The impugned action, therefore, cannot be sustained in law as it permits repeated re-agitation of a concluded issue.

33. Such action is clearly contrary to the settled principles of finality, certainty and fairness in administrative and quasi-judicial decision-making. Permitting such repeated reopening would render the entire statutory scrutiny mechanism otiose and expose individuals to perpetual uncertainty. □

34. As regards the objection relating to locus standi of respondent no.5, it is undisputed that the original complaint was filed by Late Nazmuddin who admittedly died on 17.03.2013. After his death, the proceedings were sought to be pursued by his son, respondent no.5. The material on record indicates that respondent no.5 is a resident of the same village, but he has not demonstrated any direct legal injury arising out of the caste certificates of the petitioners. □

35. It is well settled that service matters cannot ordinarily be agitated at the instance of a third party, as held by the Hon^{ble} Supreme Court in *Dr. Duryodhan Sahu v. Jitendra Kumar Mishra*, (1998) 7 SCC 273, and *Hari Bansh Lal v. Sahodar Prasad Mahto*, (2010) 9 SCC 655, wherein it has been categorically held that strangers have no locus standi to challenge appointments or service benefits and such disputes are essentially between the employer and the employee. The present dispute, being essentially in the realm of service benefits arising out of caste certification, falls squarely within the aforesaid principle.

36. It is contended by the respondent no.5 that issues relating to false caste claims may be raised even by a third party in view of their public importance, as observed by the Hon^{ble} Supreme Court in *Shakila Begum (supra) and Raju Ramsing (supra)* wherein it has been held that although ordinarily a third party may lack standing, the Court can intervene in exceptional cases where fraud is apparent. The proposition is not in dispute. However, both the aforesaid decisions operate in a limited field. In *Shakila Begum (supra)*, the Hon^{ble} Supreme Court intervened in peculiar facts where there was prima facie material indicating fraud and misuse of reservation benefits, thereby justifying departure from the general rule of locus standi. Similarly, in *Raju Ramsing (supra)*, it was held that issues of caste fraud affecting public employment or electoral rights may be examined in view of their public importance.

37. However, neither of the aforesaid decisions lays down that a private individual can perpetually re-agitate a matter which has already been examined and concluded by the competent statutory authorities. Both judgments proceed on the existence of prima facie material indicating fraud or illegality warranting judicial scrutiny. In the present case, no such circumstance exists. On the contrary, the issue has been examined repeatedly by the competent scrutiny committees as well

as by the State Government, and all authorities have consistently recorded findings in favour of the petitioners. In absence of any fresh material or demonstrated fraud, the reliance placed upon the aforesaid decisions is misconceived and does not justify repeated reopening of concluded proceedings.

38. Even assuming that respondent no.5 could initially bring the issue to notice, he cannot be permitted to sustain successive rounds of proceedings in the absence of any fresh material or legal justification. In the present case, respondent no.5 is only a co-villager and has not demonstrated any direct legal injury and, therefore, does not fall within the category of an aggrieved person in service jurisprudence. More importantly, the State Government itself has categorically clarified that no substitution of the complainant was permitted and no further enquiry was warranted. In such circumstances, the continuation of proceedings at his instance is wholly unjustified.

39. In these circumstances, the Court is of the view that the impugned orders dated 18.12.2016 and 18.07.2017 passed by the Regional Level Caste Scrutiny Committee and the order dated 27.11.2020 passed by the State Level Caste Scrutiny Committee cannot be sustained in law, as they result reopening an issue which has already attained finality. The impugned orders, therefore, suffer from arbitrariness and are unsustainable in law.

40. Accordingly, the impugned order dated 27.11.2020 passed by the State Level Caste Scrutiny Committee, Lucknow as well as the orders dated 18.12.2016 and 18.07.2017 passed by the Regional Level Caste Scrutiny Committee, Prayagraj are hereby quashed.

41. Consequently, the proceedings pending before the Regional Level Caste Scrutiny Committee, Prayagraj and the District Level Caste Scrutiny Committee, Prayagraj in respect of the caste verification of the petitioners shall stand closed. The findings recorded by the District Level Committee in its orders dated 03.04.2014 and 20.01.2016 declaring the caste certificates of the petitioners to be valid shall remain operative.

42. The writ petition is, accordingly, allowed.

43. No order as to costs.

(2026) 4 ILRA 1371
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 21.04.2026

BEFORE

THE HON'BLE MANISH KUMAR NIGAM, J.

Writ C No. 13932 of 2026

Neeraj Singh & Anr.

State of U.P. & Ors.

...Petitioners
Versus
...Respondents

ISSUE FOR CONSIDERATION

Whether a writ of *quo warranto* can be issued against duly appointed public officials (Tehsildar, Kanungo, Lekhpal, SHO, etc.) for alleged misuse of authority in forcibly delivering possession of private land during pendency of civil litigation.

HEADNOTES

Civil Law – Constitution of India – Article 32, 226: - Writ Petition under Article 226 - filed against State authorities (respondent no. 4 to 8), seeking relief of *quo warranto* and *mandamus* for restoration of possession of ancestral property allegedly handed over by Tehsildar, Kanungo, Lekhpal, and police officials (respondent no. 4 to 8) to private respondents during pendency of civil suit - Petitioners pleaded that respondents 4 - 8 misused their office and exercised jurisdiction beyond authority – Scope and limits of writ of *quo warranto* - court finds that, (i) writ of *quo warranto* lies only to test validity of appointment to public office, not against illegal exercise of power – (ii) respondents hold valid public office and the grievance relates to alleged misuse of power, which cannot be remedied by *quo warranto* – held - writ of *quo warranto* is a proceedings by which a person is asked to state by what authority he supports his claim to a particular office and it is not like a writ of certiorari or writ of mandamus – hence, writ petition is wholly misconceived, and is dismissed – however, it will be open for the petitioner to avail the remedy available under law for redressal of grievances..

(Para – 10, 11, 12)

WP Dismissed. (E-11)

CASE LAW CITED

University of Mysore v. C.D. Govinda Rao, AIR 1965 SC 491
B.R. Kapoor v. State of Tamil Nadu, (2001) 7 SCC 231

LIST OF ACTS

Constitution of India - Registration of Births and Deaths Act, 1969 - Uttar Pradesh Registration of Births and Deaths Rules, 2002

LIST OF KEYWORDS

Writ Petition, Quo warranto, Mandamus, Usurpation of office, Illegal exercise of power, Possession, Civil suit pending, extraordinary remedy, Misconceived petition, dismissed, remedy.

CASE ARISING FROM

Case is arising out from forcible possession of ancestral property (Khasra No. 551, area 1.1450 hectare, Mauja Viruhuni, District Auraiya) allegedly facilitated by public officials during pendency of civil suit.

APPEARANCE OF PARTIES

Counsel for Appellant(s): - Shri Ganesh Mani, Ram Chandra Solanki,
Counsel for Respondent(s): - C.S.C.

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

1. This petition has been filed for the following reliefs:-

"i. A writ order or direction in the nature of Quo-warranto against the respondent 4 to 8 under which capacity, they provide forcefully possession of the land belonging to the petitioner of Khasra No.551 Area About 1.1450 hectare to the respondent no.9 to 11.

ii. A writ order or direction in the nature of Mandamus directing the respondent no.2 and to take appropriate action against respondent no.4 to 8 for misusing their post for providing

forcefully possession to the respondent no.9 to 11 of the ancestral property of Khasra No.551 area about 1.1450 hectare situated at Mauja Viruhuni, Pargana Ajeetmal, District-Auraiya.

iii. A writ order or direction in the nature of Mandamus directing respondent no.4 to 8 to provide possession of property of Khasra No.551 area about 1.1450 hectare situated at Mauja Viruhuni, Pargana Ajeetmal, District-Auraiya to the petitioner with immediate effect from the respondent no.9 to 11."

2. The petitioners in this petition have asked for a writ of quo warranto against respondent Nos. 4 to 8, i.e. Avinash Kumar posted as Tehsildar, Tehsil- Ajeetmal, District-Auraiya, Ram Naresh Gupta posted as Kanungo, Tehsil- Ajeetmal, District-Auraiya, Ankit posted as Area Lekhpal, Village-Biruhani, Tehsil-Ajeetmal, District-Auraiya, Lalit Tripathi posted as Station House Officer of Police Station Ajeetmal, District-Auraiya and Ram Putra Yadav, Chawki Atju, Police Station Ajeetmal, District-Auraiya.

3. Before considering the question involved in the writ petition, it would be appropriate to consider the law as to writ of quo warranto.

4. Quo warranto is a judicial remedy against an intruder or usurper of an independent substantive public office or franchise or liberty. The writ of quo warranto is an ancient common law remedy of prerogative in nature.

5. Quo warranto is a civil action available to determine right to public office, franchise, or liberty. It is a remedy to test the right of the person to hold an office or franchise or exercise some right or privilege, the powers of which are derived from the State. Articles 32 and 226 of the Constitution of India confers jurisdiction on the Supreme Court and all High Courts to control executive action in the matter of making appointment to public offices against its statutory provisions. They also protect a citizen from being deprived of public office to which he may have a right.

6. In case of **The University Of Mysore And Anr vs C. D. Govinda Rao And Anr; AIR 1965 Supreme Court 491**, the Supreme Court has held as under:-

"Broadly stated, the quo warranto proceeding affords a judicial enquiry in which any person holding an independent substantive public office, or franchise, or liberty, is called upon to show by what right he holds the said office, franchise or liberty; if the inquiry leads to the finding that the holder of the office has no valid title to it, the issue of the writ of quo warranto ousts him from that office. In other words, the procedure of quo warranto confers jurisdiction and authority on the judiciary to control executive action in the matter of making appointments to public offices against the relevant statutory provisions; it also protects a citizen from being deprived of public office to which he may have a right. It would thus be seen that if these proceedings are adopted subject to the conditions recognised in that behalf, they tend to protect the public from usurpers of public office; in some cases, persons, not entitled to public office may be allowed to occupy them and to continue to hold them as a result of the connivance of the executive or with its active help, and in such cases, if the jurisdiction of the courts to issue writ of quo warranto is properly invoked,

the usurper can be ousted and the person entitled to the post allowed to occupy it. It is thus clear that before a citizen can claim a writ of quo warranto, he must satisfy the court, inter alia, that the office in question is a public office and is held by usurper without legal authority, and that necessarily leads to the enquiry as to whether the appointment of the said alleged usurper has been made in accordance with law or not."

7. In case of **B.R. Kapoor vs State Of Tamil Nadu And Anr; 2001 (7) SCC 231**, the Supreme Court held:-

"Besides the above, many High Courts as well as this Court have taken the view that a writ of quo warranto lies against a person, who is called upon to establish his legal entitlement to hold the office in question..... On being called upon to establish valid authority to hold a public office, if the person fails to do so, a writ of quo warranto shall be directed against such person. It shall be no defence to say that the appointment was made by the competent authority, who under the law is not answerable to any Court for anything done in performance of duties of his office. The question of fulfilling the legal requirements and qualifications necessary to hold a public office would be considered in the proceedings, independent of the fact as to who made the appointment and the manner in which appointment was made." (para No. 82 at page No. 317 of the judgment).

8. Quo warranto is an extraordinary remedy which law does not offer with liberal hand. It must be exercised sparingly and with utmost care, caution, and circumspection. A writ of quo warranto is not a writ of course. It is at the discretion of the Court to grant or to refuse the relief considering the facts and circumstances of the case.

9. Coming to the facts of the present case, the relief of quo warranto has been claimed by the petitioners against respondent Nos. 4 to 8 on the ground that respondent Nos. 4 to 8 without any authority of law and during pendency of civil suit put respondent Nos. 9 to 11 in possession of the property in question on 09.01.2026. It has also been stated in the writ petition that respondent Nos. 4 to 8 committed gross illegality in putting respondent Nos. 9 to 11 in possession over the ancestral property of the petitioners during pendency of the original suit. Respondent Nos. 4 to 8 have overlooked the legal provision as well as neglected the pendency of litigation. It has also been stated that respondent Nos. 4 to 8 have exercised jurisdiction beyond their power and are liable to be punished and prayed that in view of these facts, the court may graciously be pleased to issue a writ of quo warranto against respondent Nos. 4 to 8, as to under which capacity, they provided forcible possession of the land belonging to the petitioners to respondent Nos. 9 to 11. Averments noted above are made in paragraph Nos. 14, 15, 16, 19, and 22 of the writ petition.

10. In my opinion, the prayer made in the writ petition is wholly misconceived. The writ of "quo warranto" is not a substitute for mandamus or injunction nor for an appeal or writ of error, and is not to be used to prevent an improper exercise of power lawfully possessed, and its purpose is solely to prevent an officer or corporation or persons purporting to act as such from usurping a power which they do not have. A writ of quo warranto is a proceeding by which a person is asked to state by what authority he supports his claim to a particular office. It is not like a writ of certiorari or writ of mandamus.

11. From the averments made in the writ petition, it appears that the petitioners are aggrieved by the illegal action of respondent Nos. 4 to 8 for illegal exercise of power. Petitioners have remedy other than writ of quo warranto as the scope of writ of quo warranto is entirely different. The illegal action of the respondents can be challenged in appropriate proceedings but not in a writ of quo warranto.

12. In view of the discussions made above, I am of the view that the writ petition is wholly misconceived and is dismissed.

13. However, it will be open for the petitioners to avail the remedy available for redressal of their grievances, and dismissal of this petition will not come in their way, in case, any proceedings are initiated by the petitioners.

(2026) 4 ILRA 1375
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 10.04.2026

BEFORE

THE HON'BLE SIDDHARTH NANDAN, J.

Writ C No. 14707 of 2025

Vimal Singh

...Petitioner

Versus

U.O.I. & Ors.

...Respondents

ISSUE FOR CONSIDERATION

whether statutory birth certificate can be doubted and substituted by medical opinion.

HEADNOTES

Civil Law – Constitution of India – Article 226 - Registration of Births and Deaths Act, 1969 – section – 12, 17 - Uttar Pradesh Registration of Births and Deaths Rules, 2002 – Rule – 8(3): - Writ Petition under Article 226 - filed seeking mandamus for admission in Class VI at Jawahar Navodaya Vidyalaya - Petitioner relied on statutory birth certificate showing date of birth - falling within eligibility criteria - respondents denied admission, based on CMO's ossification test opining i.e. age as 16 years - whether statutory birth certificate can be doubted and substituted by medical opinion - Petitioner pleaded validity of certificate under Registration of Births and Deaths Act; respondents objected citing medical report - Court finds that, ossification test is advisory with ± 2 years variance, statutory certificate carries presumption of validity unless cancelled or proved forged - authorities cannot discard statutory documents on whims - denial violates Right to Education Act – held, petitioner entitled to admission - respondent no. 4 directed to admit petitioner in Class VI for session 2026-27 - respondent no. 2 is directed to circulate instructions to all Navodaya Vidyalyas to rely on statutory documents first, and medical opinion only in absence thereof - writ petition disposed of with compliance directions.

(Para – 7, 9, 10, 11, 14, 15, 17)

WP Disposed of. (E-11)

CASE LAW CITED

Jaya Mala v. Home Secretary, J&K (1982) 2 SCC 538

Vishnu Alias Undrya v. State of Maharashtra (2006) 1 SCC 283

Jarnail Singh v. State of Haryana (2013) 7 SCC 263

LIST OF ACTS

Constitution of India - Registration of Births and Deaths Act, 1969 - Uttar Pradesh Registration of Births and Deaths Rules, 2002

LIST OF KEYWORDS

Writ Petition – Birth certificate validity, ossification test, statutory presumption, school admission, Navodaya Vidyalaya, medical opinion, age determination, Class-VI Admission, PM Shri School, Gram Panchayat, Chief Medical Officer, Statutory Presumption, Right to Education.

CASE ARISING FROM

The denial of admission to Class-VI for the academic session 2026-27 at PM Shri School Jawahar Navodaya Vidyalaya, Duredi, Banda, despite the petitioner fulfilling the prospectus eligibility criteria based on his Gram Panchayat birth certificate.

APPEARANCE OF PARTIES

Counsel for Appellant(s): - Shri Chandra Prakash Awasthi

Counsel for Respondent(s): - Shri Anant Kumar Tiwari (for respondents 1, 2 & 4), learned Standing Counsel (for respondents 3 & 5).

(Delivered by Hon'ble Siddharth Nandan, J.)

1. Heard Shri Chandra Prakash Awasthi, learned counsel for the petitioner, Shri Anant Kumar Tiwari, learned counsel for the respondent nos. 1, 2 and 4 as well as learned Standing Counsel for the State-respondents no. 3 and 5.

2. The present writ petition has been filed with the following prayer:

"(A). Issue a writ order or direction in the nature of mandamus commanding the respondent No.4 to admitting the petitioner in Class-VIth in PM Shri School Jawahar Navodaya Vidyalaya Duredi, Banda.

(B) Issue a writ order or direction in the nature of mandamus commanding the respondent No.4 to keep vacant one seat in class-Vi for the petitioner in the said institution.

(C). Issue any suitable writ order or direction which this Hon'ble Court may deem fit and proper under the facts and circumstances of the case."

3. Learned counsel for the petitioner has submitted that the birth certificate issued by the Gram Panchayat, Bantharee, Banda specifically records the date of birth of the petitioner to be 01.07.2013. He has also relied on the prospectus for admission to Class-VI in PM Shri School Jawahar Navodaya Vidyalaya, wherein under the eligibility clause, more particularly in Clause 4.2, it has been mentioned that a candidate seeking admission must not be born before 01.05.2013 or after 30.07.2015. In view of the aforesaid, he submits that the date of birth of the petitioner is 01.07.2013 and the birth certificate issued by the Government has a presumption of its validity and unless the same is cancelled or the presumption is dislodged, the date of birth of the petitioner could not have been doubted.

4. Per contra, Shri Anant Kumar Tiwari, Advocate, relying upon Para-29 of the counter affidavit, has submitted that the Chief Medical Officer, Banda, through his letter dated 16.04.2025 though indicated that the age could be in variance of six months to one year, in the medical verification of the age of a candidate, he has given a report that the petitioner's age is about 16 year (wrongly transcribed as 15 year in Para-29). In view of the aforesaid, the petitioner could not have been given the admission.

5. On a pointed query to the learned counsel for the respondent, as to whether the birth certificate issued by the Gram Panchayat, Bantharee, as annexed with the affidavit filed along with aforesaid writ petition (Annexure-2), has been controverted, he submits on the basis of the counter affidavit that the same has not been contradicted.

6. The issue which arises for consideration before this Court is that once a document which has been issued under a statutory provision and the same being admitted, whether under the scheme which is beneficial in nature, is it open to the authorities to doubt the age of a student and seek for a medical report from the Chief Medical Officer.

7. It is trite law that the ossification test, based on which the CMO submits his report, cannot be said to be accurate and it has been considered to be having an accuracy of $\square$ 2 years (Ref: ***Jaya Mala Vs. Home Secretary, Government of Jammu & Kashmir and Others; reported in (1982) 2 SCC 538 and Vishnu Alias Undrya Vs. State of Maharashtra; reported in (2006) 1 SCC 283***).

8. In the case of ***Vishnu Alias Undrya (supra)***, while the date of birth was being determined on the basis of the available evidences, the Apex Court had opined that the date of birth registered in the municipal corporation coupled with the statement of the parents is a determining factor. The correct date of birth, where unimpeachable document, is corroborated by even an oral statement, the ossification test based opinion of medical officer, which is really of an advisory character cannot take precedence over the date of birth recorded in the municipal corporation. Even as per the doctor's opinion in the ossification test for determination of age, the age varies.

9. The Apex Court in the case of ***Jarnail Singh Vs. State of Haryana, reported in (2013) 7 SCC 263***, also examined the issued and held that in Juvenile Justice (Care and Protection of Children) Act, 2015, the matriculation (or equivalent) certificate of a child concerned is a highest rated option, in the scheme of Rule, 12(3); and in case said certificate is available, no other evidence can be relied upon, and only in absence of such a certificate other records of date of birth can be looked into i.e. the date of birth entered into the school first attended by the child; and thereafter in absence of such entry, Rule 12(3) postulates reliance on a birth certificate issued by a Corporation or a municipal authority or a Panchayat. Yet again, if such a certificate is available then no other material whatsoever, is to be taken into consideration, for determining the age of the child concerned, as the said certificate would conclusively determine the age of the child; and only in absence of any of the aforesaid document, the determination of age of a child concerned, can be on the basis of "medical opinion".

10. It is noteworthy that the birth certificate is issued under Section 12/17 of the Registration of Births and Deaths, Act, 1969 read with Rule 8(3) of the Uttar Pradesh Registration of Births and Deaths Rules, 2002; and as such it has the presumption of its validity under law; and at no point of time the said presumption has been dislodged by the respondent and the certificate admittedly has not been cancelled.

11. In view of the aforesaid fact, this Court is of the opinion that unless and until, a document which has been issued under a statutory provision, is either cancelled or an element of forgery is proved, it shall have a binding effect on the authorities; and it is not within the domain of the authorities concerned, to doubt the certificate issued under a statutory provision, on its own whims and fancies.

12. The said observation is also in view of the fact that the ossification test which the CMO conducts, as per the certificate itself, records that the opinion of age is based on general appearance and the respondents also admits in their counter affidavit that, there could be a variance of six month to one year in the medical verification of the age of a candidate, i.e. in Paragraph No. 29 of the counter affidavit dated 21.11.2025.

13. In view of the aforesaid, the denial by the respondent no.4 to admit the petitioner in Class-VI in PM Shri School Javahar Navodaya Vidyalaya, Duredi, Banda is not in consonance with the mandate of Right to Education Act, 2009; and accordingly the respondent no.4 is directed to admit the student (petitioner herein) in Class-VI, for the academic session 2026-27, as it is the case of the petitioner that he is not studying anywhere, without any further delay.

14. This Court finds that a number of writ petitions are being filed, on account of the rejection of the candidature solely based on a medical opinion, discarding the documents which have been issued by the competent authorities under a statutory provision; therefore, I deem it appropriate that a direction may be issued to Respondent No.2- to circulate amongst all the schools which are governed by them i.e. "Navodaya Vidyalaya", to only seek for a medical opinion, in case the following documents are not available: (i) Matriculation certificate (or equivalent) issued by the competent authorities/Board.

(ii) Documents evidencing date of birth entered into the school first attended by the child, duly attested by the Principal, of the said school.

(iii) Birth certificate issued by the Corporation or Municipal Authority or a Panchayat.

15. However, the aforesaid documents are subject to their verification, if any doubt arises regarding their genuineness, for which the concerned School authorities, may send the said documents within two weeks of application, to their issuing authorities/Board, who shall be required to respond within a maximum period of one month, from the date of receipt of such request, from the School, where the child had applied for admission.

16. With the aforesaid observation and direction, the writ petition stands *disposed of*.

17. Registrar (Compliance) is directed to send a copy of this order to Respondent No.2, for necessary compliance.

(2026) 4 ILRA 1379
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 24.04.2026

BEFORE

THE HON'BLE AJIT KUMAR, J.
THE HON'BLE MRS. SWARUPAMA CHATURVEDI, J.

Writ C No. 19391 of 2023

South East U.P. Power Transmission Comp. Ltd.	...Petitioner
Versus	
Prescribed Authority & Ors.	...Respondents

ISSUE FOR CONSIDERATION

- (i) Whether IBC overrides the electricity laws and regulations, thereby barring the respondent authorities from raising demands for the pre-resolution period after the resolution plan is duly approved and implemented.
- (ii) Whether the respondent authorities are entitled to receive separate notice of the CIRP and whether they had information to provide them opportunity to file their claims.
- (iii) Whether the respondent authorities could raise demand for their statutory dues after implementation of resolution plan, while they have neither filed their claim during CIRP nor objected to the resolution plan before NCLT

HEADNOTE

Insolvency and Bankruptcy Code, 2016 – ss. 3(6), 15, 31, 238 – Electricity Act, 2003 – ss. 173, 174 – Corporate Insolvency Resolution Process (CIRP) – Electricity dues pertaining to pre-CIRP period – Demand notices issued after approval and implementation of resolution plans – Distribution licensees sought recovery of electricity dues pertaining to the period prior to approval of the resolution plans – Contention that electricity dues being statutory in nature could not stand extinguished and that Electricity Act would prevail – Validity:

Held: Section 238 of the IBC, being a subsequent legislation, contains a clear and unambiguous non obstante clause giving it primacy over all other laws in case of inconsistency. Though the Electricity Act occupies a special field and contains its own overriding provisions, the legislative intent underlying Section 238 of the IBC ensures that, in matters of insolvency, the provisions of the IBC shall prevail notwithstanding any inconsistency with the Electricity Act, including Sections 173 and 174 thereof.

Court reiterated that the objective of the IBC is to ensure that the successful resolution applicant takes over the corporate debtor on a clean slate, free from past liabilities except those specifically incorporated in the resolution plan. Consequently, all claims not forming part of the approved resolution plan stand extinguished and cannot thereafter be revived or enforced.

Court held that while the respondents are not precluded from exercising their statutory powers in respect of post-resolution discoveries or continuing liabilities, they cannot be permitted to enforce claims which stand

extinguished by operation of law under the IBC. The contention that the Electricity Laws would prevail over the IBC was held to be unacceptable. The argument that electricity dues are statutory in nature and, therefore, cannot stand extinguished was also held to be unsustainable in view of the clear mandate of Sections 31 and 238 of the IBC.

Court further held that where no claim had been filed by the respondents during CIRP and no objection had been raised before the NCLT against the resolution plan, no fault could be attributed to the Resolution Professional. Publication made after following the procedure prescribed under the IBC constitutes sufficient notice to all stakeholders, and the respondent authorities are no exception so as to claim a separate notice.

In the instant case, the respondent authorities neither filed any claim in respect of the alleged electricity dues during the CIRP nor did such dues form part of the resolution plan approved by the Adjudicating Authority. The impugned demands, which sought to resurrect claims extinguished upon approval of the resolution plan, could not be permitted to be enforced under the guise of statutory recovery proceedings.

Demand notices quashed. However, the respondent authorities were granted liberty to issue fresh demand notices in respect of any dues arising for the post-resolution period, in accordance with law. (E-5)

(Paras 101 to 116)

CASE LAW CITED

Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta, (2020) 8 SCC 531;
Ghanshyam Mishra & Sons (P) Ltd. v. Edelweiss Asset Reconstruction Co. Ltd., (2021) 9 SCC 657;
RPS Infrastructure Ltd. v. Mukul Kumar, (2023) 10 SCC 718;
Paschimanchal Vidyut Vitran Nigam Ltd. v. Raman Ispat Pvt. Ltd., (2023) 10 SCC 60;
Ruchi Soya Industries Ltd. v. Union of India, (2022) 6 SCC 343;
Innoventive Industries Ltd. v. ICICI Bank, (2018) 1 SCC 407;
Torrent Power Ltd. v. Ashish Arjinkumar Rath, 2026 SCC OnLine SC 325;
Telangana State Southern Power Distribution Company Ltd. v. Srigdhaa Beverages, (2020) 6 SCC 404;
State Tax Officer v. Rainbow Papers Limited (2023) 9 SCC 545

List of Acts

Insolvency and Bankruptcy Code, 2016;

Electricity Act, 2003;

Uttar Pradesh Government Electrical Undertaking (Dues Recovery) Act, 1958.

List of Keywords

Corporate Insolvency Resolution Process; CIRP; Resolution Plan; Clean Slate Principle; Extinguishment of Claims; Electricity Dues; Statutory Dues; Operational Creditor; Public Announcement; Notice to Creditors; Section 31 IBC; Section 238 IBC; Overriding Effect; Binding Nature of Resolution Plan; Electricity Act; Pre-CIRP Liability; Post-Resolution Liability; Recovery Proceedings; Corporate Debtor; Insolvency Resolution.

CASE ARISING FROM

Demand notices issued to the petitioners for recovery of electricity dues pertaining to the period prior to commencement of the Corporate Insolvency Resolution Process (CIRP) of the concerned companies.

Appearances for Parties

Advs. for the Petitioner: Shubham Agarwal, Varad Nath; Pratik J. Nagar.

Advs. for the Respondents: **Krishna Agarwal, Narendra Kumar Tiwari; Ravi Anand Agarwal, Baleshwar Chaturvedi, C.S.C.**

(Delivered by Hon'ble Mrs. Swarupama Chaturvedi, J.)

For the convenience of exposition, this common order is divided into the following parts:-

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1. Both writ petitions, filed under Article 226 of the Constitution of India, arise out of a similar grievance, wherein the respective petitioners challenge the demand notices issued to them towards electricity dues pertaining to the period prior to the commencement of the Corporate Insolvency Resolution Process (hereinafter referred to as □CIRP□) of the concerned companies, which are resolved long ago after following due procedure prescribed under Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as □IBC□). In Writ C No.19391 of 2023, the petitioner seeks issuance of a writ, order or direction in the nature of certiorari for quashing the impugned demand notices, whereas in Writ C No.17846 of 2025, the petitioner, prays for issuance of a writ of certiorari to quash the impugned demand to the extent it pertains to the period prior to the approval of the resolution plan, and a writ of mandamus restraining the respondents from taking any coercive action pursuant to the said notices and subsequent actions.

2. Since the reliefs sought in both the petitions are substantially similar, and the matters arise out of a similar set of facts involving identical questions of law, both the petitions were taken up together for hearing and are being decided by this common order. However, the necessary facts pleaded in each writ petition, as well as the submissions advanced on behalf of the parties therein, are being noticed separately wherever required.

I

Factual Matrix

3. The factual matrix in Writ C No. 19391 of 2023 is that the Isolux Corsan Concesiones S.A. (hereinafter referred to as □Isolux□) has received a letter of intent dated 05.07.2011 by the Uttar Pradesh Power Transmission Company Limited (hereinafter referred to as □UPPTCL□) to establish a 765 kV transmission system on a Build-Own-Operate-Maintain & Transfer (BOOT) basis at Mainpuri-Bara line.

4. Pursuant thereto, the Petitioner company was incorporated as a special purpose vehicle in September 2011 to implement and operate the said transmission system, and its 100% shareholding was subsequently acquired by Isolux on 16.12.2011. In furtherance to this, on 20.01.2012, the petitioner entered into Transmission Service Agreements with the distribution licensees (hereinafter referred to as □DISCOMs□) in the State of Uttar Pradesh.

5. Thereafter, on 25.09.2013, the petitioner applied to Respondent No.1 seeking a 630 KVA, 33 kV auxiliary power supply at the 400/220 kV Rewa Road GIS Sub-station. On 04.01.2014, the petitioner informed UPPCL of its requirement for two 33 kV auxiliary sources for safe operations, specifically indicating that one such source was being drawn through the tertiary winding of Inter-Connecting Transformer-II (hereinafter referred to as □ICT-II□). Subsequently, an Electrical Energy Supply Agreement dated 18.04.2015 came to be executed between the petitioner and Respondent No.1.

6. In continuation thereof, the ICT-II was charged on 02.10.2015 and allegedly utilised as a source of auxiliary power. The Uttar Pradesh Electricity Regulatory Commission (UPERC) declared commercial commissioning of the transmission lines and substations with effect from 27.10.2017, which was communicated by UPPTCL to the petitioner on 19.07.2018.

7. Subsequently, the company has gone into the insolvency as the National Company Law Tribunal (hereinafter referred to as the □NCLT□), Allahabad Bench, vide its order dated 06.07.2020 initiated the CIRP against the company under the provisions of the IBC.

8. During the CIRP, Resurgent Power Ventures Pvt. Limited submitted a resolution plan on 19.07.2021, which was approved by the Committee of Creditors (hereinafter referred to as □CoC□) with a 100% vote on 08.03.2022. The NCLT formally approved this resolution plan vide its order dated 15.06.2022, and it was implemented on 15.09.2022. Following this, the UPERC approved the 100% change in shareholding to Resurgent Power on 29.07.2022.

9. The actual root of the dispute is the inspection dated 17.10.2022, when respondents conducted an inspection of the Rewa Road Sub-station, wherein it was observed and recorded in the minutes that no meter had been installed at the ICT-II tertiary, resulting in an absence of energy accounting since its charging from 02.10.2015. Consequently, Respondent No.1 installed a meter at the tertiary winding of ICT-II in 21.10.2022 to assess actual consumption. Thereafter, Respondent No.1 issued demand notices on 09.01.2023, 21.01.2023, and a notice on 04.02.2023, claiming an amount of Rs. 2,17,49,692.58/- for the auxiliary consumption of power from ICT-II spanning the period from 02.10.2015 to 01.12.2022.

10. The Petitioner opposed demand notices for the period prior to the approval of the resolution plan, sending reply dated 16.02.2023, and 02.03.2023, while simultaneously clearing the dues generated for the period after approval of the resolution plan on 15.06.2022 by the order passed by Ld. NCLT. On 17.05.2023, Respondent No.1 issued another demand notice dated 17.05.2023, alleging unauthorized use of electricity and indicating the probability of recovery proceedings to be initiated against the petitioner. Aggrieved by these actions, the Petitioner has approached this Court.

11. The factual background in Writ C No. 17846 of 2025 is that the petitioner, Tata Steel Limited (hereinafter referred to as □TSL□), is the successor-in-interest of Tata Steel BSL Limited (hereinafter referred to as □TSBSL□), formerly known as Bhushan Steel Limited (hereinafter referred to as □BSL□).

12. On 08.08.2011, the erstwhile BSL entered into an □Agreement for Supply of Electrical Energy□ with the Executive Engineer, Pashchimanchal Vidyut Vitran Nigam Limited (hereinafter referred to as □PVVNL□). The said agreement pertained to BSL's Pilkhuwa Stockyard, under which an industrial load connection (HV-2) category was sanctioned, and the supply of electricity commenced with effect from 01.10.2011.

13. On 03.07.2017, the State Bank of India (hereinafter referred to as □SBI□) initiated CIRP against the erstwhile BSL by filing a petition under Section 7, IBC before NCLT, New Delhi, Principal Bench. Ld. NCLT admitted the petition filed by the SBI on 26.07.2017 and appointed an Interim Resolution Professional (hereinafter referred to as □IRP□) while imposing moratorium as per procedure prescribed under IBC.

14. The IRP made public announcement inviting claims from all creditors as per procedural requirement under IBC. Subsequently, on 03.02.2018, TSL submitted its resolution plan, which was approved by the CoC on 20.03.2018. The NCLT approved TSL's resolution plan vide its order dated 15.05.2018. Following this approval, TSL acquired the control and business of BSL on 18.05.2018, and BSL's name was changed to Tata Steel BSL Limited (TSBSL) on 27.11.2018. The NCLT's approval was upheld after appeals against resolution plan got dismissed by the National Company Law Appellate Tribunal (hereinafter referred to as "NCLAT") on 10.08.2018 and the Supreme Court on 22.02.2021. Eventually, TSBSL was wholly amalgamated with TSL pursuant to the order dated 29.10.2021 passed by the learned NCLT, Mumbai Bench, with effect from 11.11.2021.

15. As appeared from records, on 11.03.2019, the erstwhile TSBSL officially intimated Respondent No. 2 about the completion of the CIRP and its takeover and thereafter deposited the requisite fee to change the consumer name from BSL to TSBSL in the electricity records. On 13.01.2023, officials of PVVNL conducted an inspection at the Pilkhuwa Stockyard, which gave rise to the present dispute. Based on the said inspection, Respondent No.2 issued the demand notice dated 09.03.2023 being Notice No. 8670, alleging that the petitioner was consuming electricity in excess of the sanctioned load and raising a demand of Rs. 1,15,33,801/-. In response, on 28.04.2023, the petitioner submitted its reply, bringing to the notice of the respondents the facts relating to CIRP and amalgamation, and also sought a two-week extension of time to furnish a detailed response.

16. On 29.04.2023, Respondent No.2 issued two more notices, being Notice Nos. 641 and 642. By notice no. 641, the petitioner's response was rejected on the ground that TSL was not competent to reply to the notice issued in the name of BSL and by notice no. 642, alleged that during the inspection dated 13.01.2023, the connection was found to be operating under the commercial load category (HV-1) instead of the sanctioned industrial category (HV-2). The said notices further directed the petitioner to appear for a hearing on 17.05.2023.

17. In response, the petitioner submitted a detailed reply dated 16.05.2023, reiterating that the stockyard was merely an extension of its Sahibabad Industrial Plant, thereby justifying classification under the (HV-2) and also asserting its legal contention that any demand relating to the period prior to approval of the CIRP on 15.05.2018 stood extinguished. Thereafter, PVVNL issued another letter dated 05.10.2023 fixing the matter for hearing on 18.10.2023, with the mention that ex-parte proceedings may be taken in the event of non-appearance. The petitioner again reiterated its stand in the letter dated 28.11.2023.

18. Following an order passed by PVVNL on 16.09.2024, determining the demand as final revenue, on 26.10.2024, Respondent No.2 issued the demand notice no. 6428, directing the Petitioner to deposit Rs. 1,15,33,801/- by 26.11.2024, failing which the recovery would be proceeded as an arrear of land revenue. Further, on 18.01.2025, notice no. 8148 was issued to the District Magistrate to initiate recovery proceedings. Consequently, on 05.02.2025, the Tehsildar, Hapur, Respondent No.3 issued the impugned recovery notice (RC No. 36) demanding the amount under the Uttar Pradesh Revenue Code (hereinafter referred to as "Revenue Code").

19. Upon receipt of the recovery citation, the petitioner sent a letter dated 20.02.2025, seeking a month-wise and year-wise calculation of the differential amount, disclosure of the precise basis for reclassification to (HV-1) category, and reiterating the applicability of the "clean slate" principle under the IBC, which makes the pre-CIRP unclaimed dues extinguished. Thereafter, on 21.03.2025, Respondent No.2 issued the demand notice, being Notice No. 10013, while stating that the department had not been formally informed of the CIRP and requiring the petitioner to undertake a formal change of name. Thereafter, the petitioner addressed letters dated 03.04.2025 to both PVVNL and the Tehsildar, placing on record the earlier intimations, including those made since 2019, and disputing the initiation of recovery proceedings.

II

Submissions on behalf of Petitioners

20. Having heard Sri Anurag Khanna, learned Senior Advocate assisted by Sri Varad Nath, as well as Ms. Sadhavi Kumar, learned counsel for the petitioner in Writ C No, 19391 of 2023 and Sri Devashish Bharukha, learned Senior Advocate assisted by Sri Pratik J. Nagar, learned counsel for the petitioner in Writ C No.-17846 of 2025, we find basic submissions advanced in both petitions has been that the impugned demand and recovery actions in both writ petitions are ex facie illegal, being in direct contravention of the respective approved resolution plans and the statutory scheme under the IBC.

21. Learned counsel appearing for the petitioner in Writ C No. 19391 of 2023 submitted that during the CIRP, neither any claim was filed by the respondent authorities in respect of electricity dues, nor was any representation or objection made by them during the pendency of CIRP proceedings. It is submitted that the CoC approved the resolution plan on 08.03.2022, which was subsequently approved by the NCLT on 15.06.2022. Neither any objection was filed by respondents against the resolution plan nor they assailed approved resolution plan at any stage.

22. Learned counsel representing petitioner in Writ C No. 19391 of 2023 further submitted that the law is well settled that the resolution plan approved by the CoC is binding upon all stakeholders. He relied upon clause 8 of the approved resolution plan, which is as follows:

"8. Waivers, Reliefs and Exemptions

8.1. The Resolution Applicant claimed various reliefs, waivers and concessions in the resolution plan. However, in our view, we cannot grant all such reliefs and concessions for the effective implementation of the Resolution Plan. As per the scheme of IBC read with the regulations made thereunder, and keeping the judicially settled position in view, we grant the reliefs, waiver and claims made by the Resolution Applicant in the following manner and only to this extent: -

a. After the payment of the dues to the creditors, as per the resolution plan, all the liabilities of the said stakeholders shall stand permanently extinguished after the approval of the resolution plan. We further hold that other claims including Government/Statutory Authority, whether lodged during CIRP or not, shall stand extinguished after the approval of the resolution plan. We further hold that contingent/unconfirmed dues shall also stand extinguished.

b. In view of the judgment of Ghanashyam Mishra & Sons Pvt Ltd v. Edelweiss Asset Reconstruction Company Ltd, where the Hon'ble Supreme Court held in para 95(i) that once a Resolution Plan is approved, a creditor cannot initiate proceedings for recovery of claims which are not part of the Resolution Plan. Therefore, all claims except provided in the plan shall stand permanently extinguished."

(emphasis supplied)

23. It was further submitted that after the approval of the resolution plan by the NCLT, respondent authorities conducted the inspection on 17.10.2022 at the premises of the petitioner. Later, respondents issued a demand notice dated 09.01.2023 demanding payment from 02.10.2015, which cannot be permissible in law as demand is raised for the pre-CIRP period.

24. It was submitted by the learned counsel that the petitioner has already discharged liabilities which pertain to the period after approval of the resolution plan, and the dispute in the present petition is confined to the demand raised for the pre-resolution period. Learned counsel relied upon Section 31 of the IBC, 2016 to buttress his submissions that the petitioner is not liable for the demand related to the pre-CIRP duration.

25. Sri Devashish Bharuka, learned Senior Counsel appearing in Writ C No. 17846 of 2025, submitted that while entertaining the writ petition on 29.05.2025, this Court granted interim protection to the petitioner and stayed recovery of demand relating to the period prior to 15.05.2018, and directed issuance of a revised demand confined to the period thereafter. In compliance thereof, a revised demand was issued by respondent authorities.

26. He further submitted that this Court, in its order dated 29.05.2025, also noted that the core issue for determination is whether the respondents were justified in raising demands for the pre- CIRP period despite its own fault of non-filing of claims during the CIRP and further not raising any objection till the approval of the resolution plan on 15.05.2018 by NCLT.

27. Learned counsel for the petitioners also placed reliance on judgements of the Supreme Court in Committee of Creditors of ***Essar Steel India Ltd. v. Satish Kumar Gupta (2020) 8 SCC 531*** and ***Ghanshyam Mishra & Sons (P) Ltd. v. Edelweiss Asset Reconstruction Co. Ltd. (2021) 9 SCC 657***.

28. Learned counsel for the petitioner appearing in Writ C No. 19391 of 2023 further submitted that pursuant to initiation of CIRP by NCLT, Allahabad Bench vide its order dated 06.07.2020, after following due procedure of CIRP, the resolution plan submitted by Resurgent Power Ventures Limited was approved on 15.06.2022 by NCLT and had since been implemented. Similarly, in Writ C No. 17846 of 2025, the approved resolution plan dated 15.05.2018 in respect of the erstwhile corporate debtor has attained finality and has been duly acted upon. In both cases, the approved resolution frameworks have not been challenged by the respondents when it could have been, and now the resolution is concluded.

29. It was submitted that in both petitions, substantial portion of the impugned demands pertains to the pre-CIRP period. In Writ C No. 19391 of 2023, the demand relates to the period prior to 15.06.2022, whereas in Writ C No. 17846 of 2025, the demand pertains to the period from 08.08.2011 to 15.05.2018. Relying on the "clean slate" doctrine read with Sections 31(1) and 238 of the IBC, 2016, it was contended that all such pre-CIRP debts and statutory dues stand extinguished upon approval of the resolution plan and cannot be revived or demanded thereafter.

30. Learned counsel for the petitioners submitted that Section 31 of the IBC makes the approved resolution plan binding on all stakeholders, including governmental and statutory authorities, and all claims not forming part of the approved resolution plan stand extinguished upon its approval. It is further emphasized that CIRP proceedings are in rem in nature and bind all stakeholders without requiring individual intimation. Reliance in this regard is placed on the judgement of the Supreme Court in *RPS Infrastructure Ltd. v. Mukul Kumar (2023) 10 SCC 718*.

31. It was further submitted that the respondents had acted arbitrarily in both matters. In Writ C No. 19391 of 2023, the petitioner's electricity connection was reclassified from industrial to commercial without any cogent basis or supporting material, and despite repeated requests dated 16.02.2022 and 02.03.2023, no meaningful breakup of the demand was supplied to the petitioner. In Writ C No. 17846 of 2025, similar arbitrariness is alleged in the assessment of demand without proper disclosure or transparency, rendering the impugned actions violative of principles of natural justice.

32. Further, it was submitted that CIRP being in rem proceedings, all stakeholders are deemed to have knowledge of its commencement and also the public announcement was duly made in compliance with Section 15 of the IBC read with Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (hereinafter referred to as "IBBI Regulation"), including publication in widely circulated newspapers. In this circumstance, respondent authorities, cannot plead ignorance of the CIRP proceedings and even if they do so, that cannot make any difference as per settled law on this issue.

33. It was further submitted that in both matters, the respondents are attempting to enforce pre-CIRP liabilities contrary to the approved resolution framework and established legal principles in this regard. Reliance is placed on Section 238 of the IBC, which gives overriding effect over the Electricity Act, 2003. It was also argued that Section 238 of the IBC contains a clear non-obstante clause giving overriding effect to the provisions of the Code over any other law for the time being in force.

34. The petitioners relied upon judgement in *Paschimanchal Vidyut Vitran Nigam Ltd. v. Raman Ispat Pvt. Ltd. (2023) 10 SCC 60*, where the Supreme Court has held that the waterfall mechanism provided under Section 53, makes it clear that the governmental dues rank subservient to those of secured, unsecured, and operational creditors.

35. Learned counsel further submitted that the respondents are "operational creditors" within the meaning of Sections 5(20) of the IBC, as the impugned demands constitute "claim" being "operational debts", and are therefore bound by the approved resolution plans. Since they

could not file claim within time, they cannot demand it after approval as well as implementation of the resolution plan. Petitioners finally reiterated that in both writ petitions, the respondents are seeking to enforce extinguished claims contrary to the statutory provisions of the IBC as well as established legal principles, and therefore impugned demand notices deserve to be quashed.

36. It was also submitted that the respondent authorities failed to file their claims during the time provided for the same by Resolution Professional during CIRP in both matters and, consequently, claims stand extinguished and cannot be revived after approval of the resolution plans.

III

Submissions on behalf of Respondents

37. Having heard Sri Sambhu Chopra, learned Senior Advocate assisted by Sri Narendra Kumar Tiwari, learned counsel for the respondents in Writ C No.-19391 of 2023 and Sri M. C. Chaturvedi, learned Senior Advocate assisted by Sri Ravi Anand Agarwal, learned panel counsel for respondents in Writ C No.-17846 of 2025. Learned counsel for the respondents in both petitions submitted that the writ petitions are misconceived and the impugned demands are fully justified in law as well as on facts. It was contended that the reliance placed by the petitioners on the doctrine of "clean slate" under the IBC is wholly misplaced, inasmuch as statutory dues and electricity charges owed to public authorities cannot be extinguished in the manner suggested. In support of this submission, counsel appearing for respective respondents, relied upon the judgments of the Supreme Court in *Telangana State Southern Power Distribution Company Ltd. v. Srighdaa Beverages, (2020) 6 SCC 404* and *State Tax Officer v. Rainbow Papers Limited (2023) 9 SCC 545*.

38. Learned counsel further submitted that a conjoint reading of the principles in above-mentioned judgments along with the provisions of the Electricity Act, 2003 and the applicable state electricity regulations makes it clear that statutory dues created by operation of law constitute secured debts and cannot be extinguished by referring to the IBC framework. It was further submitted that any resolution plan which ignores such statutory dues payable to governmental authorities is contrary to law and cannot bind respondent authorities.

39. Learned counsel further submitted that under the statutory scheme of the Electricity Act, 2003 and Electricity Supply Code, 2005, electricity dues constitute statutory charges having enforceable legal character and cannot be defeated by general application of the provisions of IBC.

40. It was also submitted that the Resolution Professional was under a statutory obligation under Section 29 of the IBC to prepare an accurate Information Memorandum reflecting all liabilities, disputes, and operational dues, including electricity dues. In both matters, the petitioners were continuously availing electricity supply, and such consumption ought to have been duly reflected in the CIRP records. He further submitted that the failure of the Resolution Professional to properly disclose and maintain proper account of such liabilities cannot operate to extinguish lawful dues of statutory authorities, and the CIRP process cannot be used as a mechanism to defeat actual consumption based liabilities.

41. It was further contended that the reliance placed by the petitioners on ***Ghanshyam Mishra & Sons (P) Ltd. (supra)*** is misconceived and distinguishable, as the said judgment does not deal with statutory dues secured by operation of law, but pertains to claims in the context of resolution proceedings where creditors had participated or had the opportunity to submit claims.

42. It was further submitted that the principles laid down in **Rainbow Papers (supra)** clarifies that statutory dues cannot be ignored in the resolution process and authorities cannot be deprived of their lawful dues merely due to approval of a resolution plan. He further submitted that petitioners cannot take advantage of their own non-disclosure during CIRP to defeat lawful claims arising from actual consumption of electricity.

43. Learned counsel for the respondent submitted that the petitioner in Writ C No. 19391 of 2023 had unauthorisedly drawn electricity through ICT-II tertiary connection without proper authorisation and metering arrangement. The same was discovered during inspection conducted on 17.10.2022, wherein it was found that electricity was being consumed through an undisclosed arrangement and was accordingly assessed.

44. It was submitted by the counsel that such unauthorised consumption continued for a prolonged period and liability for electricity consumption commenced from 02.10.2015 as it was duly reflected in the impugned demand notices. The inspection took place after approval of the resolution plan on 15.06.2022, the petitioner cannot rely upon the resolution plan to avoid liability for actual consumption.

45. It was further submitted that the petitioner continued correspondence in its own name even after the alleged takeover and also made payments under its earlier identity, thereby demonstrating continuity of liability. It was therefore submitted that the petitioner was attempting to evade statutory liability under the guise of insolvency proceedings, which is impermissible in law.

46. Regarding Writ C No. 17846 of 2025 learned counsel for the respondent submitted that the impugned demands were raised strictly in accordance with statutory provisions governing electricity supply and recovery of dues. It was urged by the counsel that Sections 173 and 174 of the Electricity Act, 2003 contain non-obstante clauses, and therefore the recovery proceedings are fully protected thereunder and the same is legally justified.

47. It was further submitted that as per Section 5 of the Uttar Pradesh Government Electrical Undertaking (Dues Recovery) Act, 1958, read with Rule 5 of Uttar Pradesh Government Electrical Undertaking (Dues Recovery) Rule, 1958 dues are recoverable as arrears of land revenue, and the petitioner continues to be a □consumer□ of the electricity connection originally issued to BSL.

48. Learned Senior Counsel for the respondents further submitted that Clause 5 of the supply agreement in between PVVNL and the petitioner in *Writ C No. 19391 of 2023*, creates a charge on the assets of the company. He further submitted that in terms of Section 100 of the

Transfer of Property Act, 1882, such charge is enforceable in law being a secured interest. Above mentioned Clause 5 is reproduced as under:

“5. The outstanding dues will be a charge on the assets of the company. Before sale is made, the outstanding dues will be cleared and, in the alternative the deed to agreement / sale will specifically mention the outstanding dues and the method of its payment.”

(emphasis supplied)

49. It was further submitted that the statutory framework under the Electricity Act, 2003, read with the Uttar Pradesh Government Electrical Undertaking (Dues Recovery) Act, 1958, governs recovery, and the expression □consumer□ includes any person supplied with electricity. The petitioner, being a continuing user of the same connection, was therefore liable for outstanding dues.

50. It was further submitted that inspection conducted on 13.01.2023 revealed that electricity was being consumed beyond the sanctioned load and that the industrial connection (HV-2) was being used for commercial purposes (HV-1). It was also submitted that stockyard operations were continuing both prior to and after the takeover, and the petitioner was admittedly paying current electricity bills under commercial tariff.

51. It was therefore submitted that differential tariff and consequential demand had been correctly raised on the basis of actual usage and classification, and the petitioner cannot avoid liability for consumption under an incorrect tariff category. It was further submitted that no crystallised claim existed during CIRP so far as the respondents are concerned, and therefore there was no occasion to file any claim before the Resolution Professional. It was also submitted that no notice of CIRP was received by the respondent authorities.

52. Learned counsel for the respondents further submitted that since the erstwhile company continued in the same name even after approval of the resolution plan by the NCLT - and its subsequent affirmation by the Appellate Tribunal and dismissal of the special leave petition by the Supreme Court - the liability is deemed to have continued. Consequently, the petitioner, being the successor entity, cannot avoid such liability.

53. Sri M.C. Chaturvedi, learned Senior Advocate appearing for the respondent authorities, further submitted that since the electricity connection was originally granted in the industrial category (HV-1) to BSL, the petitioner was not justified in utilising it for commercial purposes. It was submitted that this misuse was discovered during an inspection conducted on 13.01.2023, and accordingly the demand was raised. It was further submitted that once unauthorised use of electricity is established, the charges become recoverable from the date of such unauthorised use commenced.

54. It was lastly submitted that the calculation of the impugned demand is based on due inspection and verification, supported by the checking report and calculation sheets on record after full compliance of provisions of law. In view of the aforesaid, the impugned demands in both writ

petitions are justified, being based on actual consumption as well as statutory authority; therefore, both writ petitions are liable to be dismissed.

IV

Points for Determination

55. Having considered the facts of the case and the submissions advanced on behalf of the parties, following points arise for consideration in these writ petitions:

(i) Whether IBC overrides the electricity laws and regulations, thereby barring the respondent authorities from raising demands for the pre-resolution period after the resolution plan is duly approved and implemented.

(ii) Whether the respondent authorities are entitled to receive separate notice of the CIRP and whether they had information to provide them opportunity to file their claims.

(iii) Whether the respondent authorities could raise demand for their statutory dues after implementation of resolution plan, while they have neither filed their claim during CIRP nor objected to the resolution plan before NCLT.

V

Discussion and Analysis

56. The Supreme Court has analysed the scope of judicial review in insolvency cases in ***Torrent Power Ltd. v. Ashish Arjunkumar Rathi and Others, 2026 SCC OnLine SC 325***, where it was held that:

“14.7. Predictability and finality are thus essential to maintaining a robust insolvency regime. Judicial intervention beyond the narrow statutory confines undermines both predictability and finality. Recognising this, the IBC deliberately confines judicial review to strict statutory compliance under Sections 30(2) and 61(3). Respecting these limits will preserve the economic sense of the IBC and ensure that insolvency remains a predictable, time-bound, and market-driven process.”

57. Having regard to the settled legal position that the scope of judicial review over an approved resolution plan under the IBC is limited, and that the commercial wisdom of the CoC is ordinarily not open to judicial scrutiny, we proceed to examine issues arising for determination in these petitions.

(i) Overriding Effect of the IBC over Electricity Laws.

(a) Arrival of IBC

58. In the history of economic law reforms in India, bringing IBC holds a distinct place, as it introduced a consolidated, time-bound framework for insolvency resolution, replacing the earlier

fragmented regime of multiple forums and different laws. The legislative design of the IBC prioritises resolution and makes liquidation as a last resort; its main objective is to protect the economic value of the company and keep the corporate debtor as a going concern while under CIRP.

59. The basic feature of insolvency law framework is the finality accorded to an approved resolution plan by the Statute, including necessary provisions to minimize interference with the final resolution plan. Under IBC, once a plan is approved by the adjudicating authority, it is intended to bind all stakeholders - including governmental and statutory authorities - to ensure that the successful resolution applicant is not burdened with unforeseen or belated claims relating to the period preceding the resolution process.

60. Generally, the "clean slate principle" is being used to explain the status of the resolved company. This doctrine flows from the statutory architecture itself and is founded on the premise that all claims arising prior to the approval of the resolution plan must be submitted within the insolvency framework, failing which they stand extinguished upon approval of the plan. This ensures certainty, predictability, and viability of the resolution process.

61. Equally significant feature of the IBC is the collective mechanism of the insolvency process. It contemplates that all creditors, including statutory authorities, participate in the CIRP by filing their claims in a timely manner. The integrity of the process get ensured with the participation of all creditors while they file their respective claims, enabling the CoC to evaluate the corporate debtor's liabilities in an informed manner.

62. Against this statutory backdrop, it is necessary to examine that which law will have primacy and whether statutory authorities, having chosen not to file their claims in the CIRP, can bypass the resolution mechanism and raise demands post-approval of the resolution plan in respect of pre-CIRP dues. It also falls for consideration that whether such claims stand extinguished upon approval of the resolution plan, or whether the impugned demand notices can survive in law despite the absence of any objection having been raised by the respondents to the resolution plan, which was subsequently approved by the NCLT. It further falls for consideration whether such claims stand extinguished upon approval of the resolution plan, or whether the impugned demand notices can survive in law despite the absence of any challenge to the resolution plan, which was subsequently approved by the NCLT.

63. These questions go to the root of the sanctity of the insolvency process and the binding effect of an approved resolution plan under the IBC. With this backdrop, we proceed to examine the facts and issues arising in these writ petition.

(b) Interplay in between IBC and Electricity Laws.

64. After hearing learned counsel for the parties and upon perusal of the material on record, the first question that arises for consideration is the interplay between the provisions of the IBC and the Electricity Act, 2003, as well as other applicable electricity laws governing dues in the State of Uttar Pradesh. Since learned counsel appearing for both sides are ad idem that the grievance in the

present petitions is confined to demand notices raising claims pertaining to the pre-CIRP period, the consideration is accordingly limited to the legality and enforceability of such demands arising prior to the approval of the resolution plan.

65. Relevant provisions of the Electricity Act, 2003 require consideration, and in this regard, counsel appearing for respondent authorities relied upon Sections 173 and 174 of the Electricity Act, 2003, which are reproduced below:

“173. Inconsistency in laws. □ Nothing contained in this Act or any rule or regulation made thereunder or any instrument having effect by virtue of this Act, rule or regulation shall have effect in so far as it is inconsistent with any other provisions of the Consumer Protection Act, 1986 (68 of 1986) or the Atomic Energy Act, 1962 (33 of 1962) or the Railways Act, 1989 (24 of 1989).

174. Act to have overriding effect.- Save as otherwise provided in section 173, the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.”

66. To determine the primacy in between IBC and Electricity Act, 2003, similar provision of the IBC also require consideration. Learned counsel appearing for petitioners relied upon Section 238 of the IBC to assert primacy of IBC 2016 over The Electricity Act 2003. Section 238 IBC reads as under:

“238. Provisions of this Code to override other laws.

The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.”

67. Bare perusal of the Section 238 demonstrates a legislative mandate that the provisions of IBC shall prevail notwithstanding anything inconsistent contained in any other law for the time being in force. The effect of this provision is to accord primacy to the insolvency resolution mechanism, ensuring that in the event of any inconsistency or conflict with other statutory regimes, the mechanism and outcomes contemplated under the IBC cannot be diluted.

68. In addition to above, a reading of Section 31 of the IBC is also significant, which indicates that an approved resolution plan is binding on all stakeholders, including governmental and statutory authorities. Section 31 (1) of the IBC is reproduced below for easy reference:

“31. Approval of resolution plan. (1) If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force,

such as authorities to whom statutory dues are owed.] guarantors and other stakeholders involved in the resolution plan:

Provided that the Adjudicating Authority shall, before passing an order for approval of resolution plan under this sub-section, satisfy that the resolution plan has provisions for its effective implementation.

(2)...”

(emphasis supplied)

69. Conjoint reading of both provisions indicate that the statutory scheme of the IBC is designed to confer finality upon the resolution process by making the approved resolution plan binding on all stakeholders, and simultaneously through its overriding clause, it ensures that nothing should unsettle matters concluded therein to create problem for the resolved company after completion of CIRP. The legislative intent is thus to create a self-contained and comprehensive framework where all claims against the corporate debtor are required to be addressed during CIRP period only, so that upon approval of the resolution plan, the rights and liabilities stand conclusively determined.

70. We also consider it necessary to refer legal maxim, *□leges posteriores priores contrarias abrogant□*, which means wherever two enactments are irreconcilably inconsistent, the later enactment must prevail to the extent of such inconsistency. This principle of interpretation of statutes is generally applicable in a situation where two enactments appear to operate in the same field but got enacted in different timeline. It is a settled rule of statutory interpretation is that where there is a conflict between two statutes, the Court must first attempt a harmonious construction, however, where such reconciliation is not possible, the later enactment would prevail as per above-mentioned maxim.

71. In the light of above, if we read Section 238 of IBC, it clearly indicates the legislative intent to ensure that the insolvency resolution framework operates with primacy in the event of inconsistency. Hence, reliance on the provisions of Electricity Act, 2003 and UP Electricity Supply Code 2005 to contend that the pre-CIRP dues can be recovered after the company is resolved and the resolution plan is implemented, is completely misconceived.

72. The IBC is a subsequent and comprehensive legislation intended to consolidate and amend the laws relating to insolvency resolution, specifically focussing on revival of corporate debtors in a time-bound manner. The scheme of the Code would be rendered unworkable if past liabilities, not forming part of the resolution plan, were permitted to be raised by claimants relying upon any other Statute.

73. For ascertaining the legislative intent underlying the enactment of the IBC, we consider it appropriate to refer to its preamble, which was also analysed by the Supreme Court in ***Innovative Industries Ltd. v. ICICI Bank & Anr., (2018) 1 SCC 407***. It is settled beyond ambiguity that IBC was enacted to consolidate and amend the laws relating to reorganisation and insolvency resolution

of corporate persons, partnership firms, and individuals in a time-bound manner, keeping in view maximisation of assets value. It further seeks to balance the interests of all stakeholders while providing a waterfall mechanism for payment of dues.

74. The above provisions make it abundantly clear that the intent of Parliament was to ensure that a successful resolution applicant is not burdened with past liabilities which were not part of the resolution plan, as the same would deter prospective applicants and undermine the efficacy of the insolvency regime if there is sword of uncertain and unquantified dues is left hanging over their heads.

75. Thus, when Section 238 of the IBC is read in light of the objective of the Code and established legal principles, there remains no doubt that in the event of inconsistency between the IBC and any other statutes, including sector-specific enactments such as the Electricity Act, 2003, the provisions of the IBC would prevail.

76. The reliance placed by the respondents on the statutory character of electricity dues or the provisions of the Electricity Act cannot override the express mandate of the IBC. As a subsequent enactment, the IBC provides a comprehensive insolvency framework while accounting for all other existing laws. Therefore, the claims in question, which relate to any period prior to approval of the resolution plan are to be considered as extinguished.

(c) Principles Laid Down by the Supreme Court

77. The Supreme Court in ***Essar Steel India Ltd. Committee of Creditors v. Satish Kumar Gupta (2020) 8 SCC 531***, held that:

“107. For the same reason, the impugned NCLAT judgment [Standard Chartered Bank v. Satish Kumar Gupta, 2019 SCC OnLine NCLAT 388] in holding that claims that may exist apart from those decided on merits by the resolution professional and by the Adjudicating Authority/Appellate Tribunal can now be decided by an appropriate forum in terms of Section 60(6) of the Code, also militates against the rationale of Section 31 of the Code. A successful resolution applicant cannot suddenly be faced with □undecided□ claims after the resolution plan submitted by him has been accepted as this would amount to a hydra head popping up which would throw into uncertainty amounts payable by a prospective resolution applicant who would successfully take over the business of the corporate debtor. All claims must be submitted to and decided by the resolution professional so that a prospective resolution applicant knows exactly what has to be paid in order that it may then take over and run the business of the corporate debtor. This the successful resolution applicant does on a fresh slate, as has been pointed out by us hereinabove. For these reasons, NCLAT judgment must also be set aside on this count.”

78. This legal position has been further clarified by the Supreme court in ***Ghanshyam Mishra & Sons (P) Ltd. (supra)***, and held that once a resolution plan is approved under Section 31(1), it is binding on all stakeholders, including the Central Government, State Government, and local authorities. Claims not part of the plan are extinguished, ensuring no surprise claims are sprung on the successful resolution applicant. Relevant paragraphs of the judgment are as follows:

“93. As discussed hereinabove, one of the principal objects of the I&B Code is providing for revival of the corporate debtor and to make it a going concern. The I&B Code is a complete Code in itself. Upon admission of petition under Section 7 there are various important duties and functions entrusted to RP and CoC. RP is required to issue a publication inviting claims from all the stakeholders. He is required to collate the said information and submit necessary details in the information memorandum. The resolution applicants submit their plans on the basis of the details provided in the information memorandum. The resolution plans undergo deep scrutiny by RP as well as CoC. In the negotiations that may be held between CoC and the resolution applicant, various modifications may be made so as to ensure that while paying part of the dues of financial creditors as well as operational creditors and other stakeholders, the corporate debtor is revived and is made an on-going concern. After CoC approves the plan, the adjudicating authority is required to arrive at a subjective satisfaction that the plan conforms to the requirements as are provided in sub-section (2) of Section 30 of the I&B Code. Only thereafter, the adjudicating authority can grant its approval to the plan. It is at this stage that the plan becomes binding on the corporate debtor, its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan. The legislative intent behind this is to freeze all the claims so that the resolution applicant starts on a clean slate and is not flung with any surprise claims. If that is permitted, the very calculations on the basis of which the resolution applicant submits its plans would go haywire and the plan would be unworkable.

...

102. In the result, we answer the questions framed by us as under:

102.1. That once a resolution plan is duly approved by the adjudicating authority under sub-section (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the corporate debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the adjudicating authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan.

102.2. The 2019 Amendment to Section 31 of the I&B Code is clarificatory and declaratory in nature and therefore will be effective from the date on which the I&B Code has come into effect.

102.3. Consequently, all the dues including the statutory dues owed to the Central Government, any State Government or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the adjudicating authority grants its approval under Section 31 could be continued.”

79. The principle established by the Supreme Court in the aforementioned judgments is that a successful resolution applicant must be permitted to take over the corporate debtor on a □clean slate□ and the new entity should be free from past liabilities except those specifically

preserved in the resolution plan. The IBC is based on the principle that upon approval of a resolution plan, the corporate debtor emerges from insolvency in a renewed form, with its past liabilities crystallised and confined strictly to those recognised in the resolution plan.

80. The respondents' contention is that electricity dues, being statutory in nature, cannot be extinguished in such manner and that such dues constitute secured debts by operation of law is unacceptable. In support thereof, reliance had been placed by respondents on ***State Tax Officer (1) v. Rainbow Papers Ltd. (supra)***, and ***Telangana State Southern Power Distribution Co. Ltd. (supra)***, however, both judgements are distinguishable on their facts. This Court finds that while the aforesaid judgments recognise that certain statutory dues may be in the character of secured debts, the same cannot be read in a manner so as to dilute the overriding scheme of the IBC in the facts of these cases where the resolutions plans have already got implemented.

81. It is a settled legal principle that the corporate soul, once purged through the judicial resolution process under IBC, is a legally reborn entity that does not carry the burden of its past debts, therefore, even if the Corporate Debtor continues to operate under its old name, it cannot be held liable for extinguished dues that were not recognised in the NCLT approved resolution plan. In ***Ruchi Soya Industries Ltd. v. Union of India (2022) 6 SCC 343*** the Supreme Court held as follows:

"11. Admittedly, the claim in respect of the demand which is the subject-matter of the present proceedings was not lodged by Respondent 2 after public announcements were issued under Sections 13 and 15 IBC. As such, on the date on which the resolution plan was approved by the learned NCLT, all claims stood frozen, and no claim, which is not a part of the resolution plan, would survive."

82. In this regard, reference may be made to ***Paschimanchal Vidyut Vitran Nigam Ltd. (supra)***, wherein the Supreme Court considered the status of electricity dues in the context of the IBC and held that the IBC overrides the provisions of the Electricity Act, 2003, as section 238 of the IBC contains a non-obstante clause. The Supreme Court distinguished findings of ***Rainbow Papers (supra)*** and further held that:

"53. Rainbow Papers [STO v. Rainbow Papers Ltd., (2023) 9 SCC 545] did not notice the waterfall mechanism under Section 53-the provision had not been adverted to or extracted in the judgment. Furthermore, Rainbow Papers [STO v. Rainbow Papers Ltd., (2023) 9 SCC 545] was in the context of a resolution process and not during liquidation. Section 53, as held earlier, enacts the waterfall mechanism providing for the hierarchy or priority of claims of various classes of creditors. The careful design of Section 53 locates amounts payable to secured creditors and workmen at the second place, after the costs and expenses of the liquidator payable during the liquidation proceedings. However, the dues payable to the government are placed much below those of secured creditors and even unsecured and operational creditors. This design was either not brought to the notice of the Court in Rainbow Papers [STO v. Rainbow Papers Ltd., (2023) 9 SCC 545] or was missed altogether. In any event, the judgment has not taken note of the provisions

of IBC which treat the dues payable to the secured creditors at a higher footing than dues payable to the Central or the State Government."

....

57. Similarly, in *Duncans Industries Ltd. v. AJ Agrochem* [*Duncans Industries Ltd. v. AJ Agrochem*, (2019) 9 SCC 725 : (2019) 4 SCC (Civ) 669], Section 16-G of the Tea Act, 1953 which required prior consent of the Central Government (for initiation of winding-up proceedings) was held to be overridden by IBC. **In a similar manner, it is held that Section 238 IBC overrides the provisions of the Electricity Act, 2003 despite the latter containing two specific provisions which open with non obstante clauses (i.e. Sections 173 and 174).** The position of law with respect to primacy of IBC, is identical with the position discussed in *ABG Shipyard Liquidator [ABG Shipyard Liquidator v. Central Board of Indirect Taxes & Customs*, (2023) 1 SCC 472 : (2023) 1 SCC (Civ) 251] and *Duncans Industries [Duncans Industries Ltd. v. AJ Agrochem*, (2019) 9 SCC 725 : (2019) 4 SCC (Civ) 669] [refer also : *Innoventive Industries [Innoventive Industries Ltd. v. ICICI Bank*, (2018) 1 SCC 407 : (2018) 1 SCC (Civ) 356], *CIT v. Monnet Ispat & Energy Ltd. [CIT v. Monnet Ispat & Energy Ltd.*, (2018) 18 SCC 786 : (2019) 3 SCC (Civ) 252], *Ghanashyam Mishra & Sons (P) Ltd. v. Edelweiss Asset Reconstruction Co. Ltd. [Ghanashyam Mishra & Sons (P) Ltd. v. Edelweiss Asset Reconstruction Co. Ltd.*, (2021) 9 SCC 657 : (2021) 4 SCC (Civ) 638], and *Jagmohan Bajaj v. Shivam Fragrances (P) Ltd. [Jagmohan Bajaj v. Shivam Fragrances (P) Ltd.*, 2018 SCC OnLine NCLAT 413]]."

(emphasis supplied)

(ii) Notice of CIRP and non-submission of claims

(a) Nature of Electricity Dues under the IBC

83. Under IBC, the concept of a claim is intentionally broad, and it forms the foundation for determining the scope of liabilities in insolvency proceedings. Section 3(6) IBC defines a claim. The definition is significant, as it enables diverse liabilities, including statutory dues on corporate debtor. Thus, the statutory character of electricity dues as a claim, by itself, is not excluded from the ambit of the IBC, but once a resolution plan is approved, any claim pertaining to the period prior thereto, if not forming part of the resolution plan, can be claimed after the implementation of the resolution plan or the same is extinguished is to be determined.

84. In the light of IBC framework and judicially established principles, it cannot be accepted that liabilities pertaining to a period prior to the resolution can be permitted to resurface after conclusion of the CIRP, merely because they were not earlier quantified, and thereby burdening the resolved corporate entity. Permitting such an approach would defeat the finality attached to the resolution plan and undermine the very objective of revival by exposing the corporate debtor to uncertain and indeterminate liabilities. Accordingly, such claims cannot be imposed upon the resolved entity, irrespective of the fact that whether the entity continues under the same old name or a different one. Once the resolution plan has attained finality, a new entity is

born after implementation of the resolution plan, and the scope for judicial review also gets over qua that approved resolution plan.

85. Therefore, even if a distinction is to be drawn between claims which were in existence or ascertainable during CIRP but claims not filed, and those which were detected subsequently, the former would stand extinguished, the latter would be barred by application of the "clean slate" doctrine and consequently that will also get extinguished.

(b) Whether Public Announcement is sufficient notice under IBC

86. The next issue, which requires consideration is whether the respondent authorities had notice of the CIRP to file their claims. In this regard, Section 15 of the IBC, which also provides details regarding contents for the public announcement of initiation of CIRP, is to be read as follows:

"15. Public announcement of corporate insolvency resolution process. (1) The public announcement of the corporate insolvency resolution process under the order referred to in section 13 shall contain the following information, namely:-

(a) name and address of the corporate debtor under the corporate insolvency resolution process;

(b) name of the authority with which the corporate debtor is incorporated or registered;

(c) the last date for submission of claims, as may be specified;

(d) details of the interim resolution professional who shall be vested with the management of the corporate debtor and be responsible for receiving claims;

(e) penalties for false or misleading claims; and

(f) the date on which the corporate insolvency resolution process shall close, which shall be the one hundred and eightieth day from the date of the admission of the application under sections 7, 9 or section 10, as the case may be.

(2) The public announcement under this section shall be made in such manner as may be specified."

87. Bare reading of Section 15 of the IBC makes it clear that the Code contemplates mechanism and content for public notice, but it does not contemplate individual service of notice for informing stakeholders of the initiation of the CIRP. The provision mandates a public announcement containing complete particulars of the corporate debtor, the interim resolution professional, and significantly, the last date for submission of claims, along with consequences of non-compliance. Such announcement is required to be made in the manner prescribed under the regulations.

88. The nature of CIRP proceedings as proceedings in rem and the effect of public announcement have been considered by the Supreme Court in ***RPS Infrastructure Ltd. v. Mukul Kumar (2023) 10 SCC 718***. Supreme Court held that:

*“21. The second question is whether the delay in the filing of claim by the appellant ought to have been condoned by Respondent 1. The IBC is a time bound process. There are, of course, certain circumstances in which the time can be increased. The question is whether the present case would fall within those parameters. **The delay on the part of the appellant is of 287 days. The appellant is a commercial entity. That they were litigating against the corporate debtor is an undoubted fact. We believe that the appellant ought to have been vigilant enough in the aforesaid circumstances to find out whether the corporate debtor was undergoing CIRP. The appellant has been deficient on this aspect. The result, of course, is that the appellant to an extent has been left high and dry.**”*

(emphasis supplied)

89. From the aforementioned, it is established that individual notice to each creditor is not contemplated under the mechanism of IBC, and public announcement is treated as sufficient notice. Creditors are expected to act with necessary diligence and file their claims within the prescribed time during CIRP.

(c) Effect of non-filing of claim during CIRP

90. In the absence of any material to indicate procedural irregularity in the conduct of CIRP, the respondents, being commercial entities, cannot be permitted to plead ignorance from CIRP being the reason for not challenging the resolution plan at any stage till the resolution plan got approved by NCLT. Accordingly, if a claim existed and was capable of being filed during CIRP, failure to do so would result in its extinguishment upon approval of the resolution plan.

91. However, the submission advanced on behalf of the respondents that no crystallised claim existed during the CIRP also requires careful scrutiny. If stand of the respondents is that the liability did not realised during the subsistence of the CIRP and that the dues were discovered only after its conclusion, the question would arise whether such a claim was capable of being asserted within the CIRP framework pursuant to the public announcement inviting claims. If the claim was not in existence during CIRP, the same cannot be imposed as liability of the resolved corporate entity.

(iii) Maintainability of demand notices raised for pre-CIRP period

92. Applying the above discussed principles to determine that whether the respondent authorities can be permitted to raise demand for their statutory dues after implementation of resolution plan, while they have neither filed their claim during CIRP nor objected to the resolution plan before NCLT.

93. In the facts of Writ C No. 19391 of 2023, the demand has been raised pursuant to inspection dated 17.10.2022, i.e., much after approval of the resolution plan on 15.06.2022 and its effective implementation and therefore, the demand for the time period going back to the pre-CIRP period. To the extent the demand is of past dues which could have been determined prior to approval of the resolution plan and the claims could have been filed if the respondent authorities were vigilant, that demand would not be sustainable. However, to the extent demand arises from detection of unauthorised consumption revealed during inspection, and the same is for the consumption by the resolved company and after resolution plan got implemented, the dues are liable to be paid.

94. Similarly, in Writ C No. 17846 of 2025, the demand is based on inspection indicating excess load and misuse of tariff category. To the extent the demand pertains to continuing usage or post-resolution liability, it would not be hit by the resolution plan. However, any component of the demand related to the pre-CIRP period, which did not form part of the approved resolution plan, would liable to be set aside due to the same reasoning.

95. We are also of the view that even otherwise, the exercise of statutory power must conform to the principles of natural justice. In the present case, the grievance regarding not providing proper breakup and lack of clarity in the impugned demands assumes significance and the authorities are directed to act with fairness and transparency while making any such demand in future. Accordingly, the impugned demand notices are required to be tested not only on the touchstone of the IBC framework but also on compliance with principles of natural justice and procedural fairness.

96. Applying legal principles discussed above in the facts of Writ C No. 19391 of 2023, the admitted position is that the resolution plan was approved by NCLT on 15.06.2022. The inspection, however, was conducted thereafter on 17.10.2022, and the demand has been raised covering a period substantially prior to approval of the resolution plan. To the extent the impugned demand seeks recovery of dues relatable to the pre-resolution period, the same would fall within the ambit of claims required to be filed during the CIRP, and upon approval of the resolution plan, stands extinguished in view of Section 31 read with Section 238 of the Code.

97. Similarly, in Writ C No. 17846 of 2025, the impugned demands are stated to arise out of inspection leading to reclassification of tariff category and detection of alleged misuse of sanctioned load. To the extent such reclassification and consequential billing pertain to continuing usage or post-resolution conduct, the respondents statutory authority can proceed in accordance with the applicable electricity laws. However, any component of the demand attributable to the pre-resolution period, which was not incorporated in the approved resolution plan, would stand on a different footing and cannot be demanded contrary to the settled position of law under the IBC.

98. It is an undisputed fact that respondent authorities neither filed claim during the CIRP nor questioned the resolution plan at any stage, despite the same having attained finality not only from NCLT but also upheld by NCLAT and Supreme Court where other stakeholders assailed the same. The law is settled that once resolution plan, is approved by NCLT, it attains binding force on all stakeholders, including those who chose not to participate in the process. In such statutory

framework, permitting a belated claim to be raised after the culmination of the process would run contrary to the settled principles governing finality and sanctity of an approved resolution plan. Accordingly, claims not forming part of the CIRP or the approved plan cannot survive once the CIRP is concluded.

99. The Supreme Court has consistently held that the commercial wisdom of the CoC is decisive in matters relating to the resolution of the corporate debtor and is not ordinarily subject to judicial interference. In *Torrent Power Ltd., (supra)* the Supreme Court has held that the commercial wisdom of the CoC is paramount. It has further observed that:

“12.5. The issue is no longer res integra, the law having been settled that the commercial wisdom of the CoC enjoys primacy and cannot be supplanted by judicial review. Neither the NCLT, nor the NCLAT nor even this Court is empowered to substitute its assessment in place of the commercial decision arrived at by a requisite majority of the CoC.

13. The appeals before us typify the growing strategic use of the judicial system by unsuccessful resolution applicants, who seek to reopen almost every commercial decision under the guise of procedural impropriety. This converts the corporate resolution process into a protracted adversarial contest and erodes the value of the Corporate Debtor. Such an approach incentivises delay, rent-seeking, and strategic obstruction and is fundamentally inconsistent with the economic logic and statutory design of the IBC.

13.1. In the present case, the Resolution Plan stands approved by both the NCLT and the NCLAT and has since been implemented, leaving absolutely no scope for intervention by this Court.

13.2. In view of the foregoing, we do not find any merit in the appeals. With the above observations, these appeals are dismissed. Therefore, the Impugned Judgment dated 01.10.2024 passed by the NCLAT is affirmed.

14. Before parting, we wish to add a few words of caution. The IBC represents a conscious legislative choice to privilege speed, certainty, and creditor-driven decision-making over exhaustive judicial scrutiny. Experience shows that unsuccessful bidders will always try to spin commercial decisions of the CoC as procedurally faulty in order to secure a second shot through litigation by filing applications or making representations. However, courts need to remain vigilant against any temptation to expand the scope of review beyond the narrow boundaries prescribed by the IBC.

(emphasis supplied)

100. In both writs, the resolution plan contains a stipulation that all dues and liabilities not recognised therein shall stand extinguished upon approval of the plan. This statutory consequence binds the respondent authorities as well, who admittedly did not file any claim during CIRP, nor challenged the plan before its approval for omitting their dues. In view of this clear term within resolution plan, read with the binding effect of an approved resolution under the IBC, any demand

raised thereafter is clearly unsustainable. Furthermore, the claims referred by respondents were not crystallised during CIRP and were not mentioned in the resolution plan, they stand extinguished and the same cannot be allowed to be raised against the newly resolved company, which has started on the basis of resolution plan, finalized as per wisdom of CoC and duly approved by NCLT.

VI Conclusion

101. A conjoint reading of Sections 173 and 174 of the Electricity Act, 2003 shows that while Section 173 provides that the provisions of certain specified enactments shall not be affected, Section 174 expressly confers overriding effect on the Electricity Act over anything inconsistent contained in any other law for the time being in force, except to the limited extent carved out under Section 173. However, this overriding clause is itself subject to the operation of Section 238 IBC, which is a subsequent legislation containing a clear and unambiguous non obstante provision giving it primacy over all other laws in case of inconsistency. Accordingly, even though the Electricity Act occupies a special field and contains its own overriding provision, the legislative intent of Section 238 of the IBC ensures that, in matters of insolvency, the provisions of the IBC shall prevail notwithstanding any inconsistency with the Electricity Act, including Sections 173 and 174 thereof.

102. Thus, we are of the view that while the respondents are not precluded from exercising statutory powers in respect of post-resolution discoveries or continuing liabilities, they cannot be permitted to enforce claims which stand extinguished by operation of law under the IBC. The impugned demands are required to be examined and segregated accordingly for determining their enforceability wherever the same is not done. Supreme Court *in Paschimanchal Vidyut Vitran Nigam Ltd. (supra)* has held the primacy of IBC over electricity dues and as per this principle, all submissions made by respondents regarding claiming primacy of Electricity Laws over IBC are unacceptable.

103. The respondents argued to justify the impugned demands on the ground that electricity dues are statutory in nature and therefore it cannot get extinguished, this argument cannot be sustained in view of the clear mandate of Sections 31 and 238 of the IBC, and the law laid down by the Supreme Court in the judgments referred to above. The reliance *on Telangana State Southern Power Distribution Company Ltd. (supra) and Rainbow Papers Ltd. (supra)* are misplaced as the issues and factual matrix therein differ and do not detract from the binding effect of an already implemented resolution plan.

104. After implementation of resolution plan, arguments made by the respondents that the resolution plan having no mention of the electricity due is an inaccurate information and bad under Section 29 IBC, cannot be considered here. Resolution professional, while having no claim filed by respondents and no objection filed before NCLT against the resolution plan, cannot be blamed at this stage, especially when there is no dispute regarding any unpaid dues during CIRP. If respondents had any grievance against the resolution plan, the time to object the same ended right after the plan got approved by NCLT.

105. The IBC framework is based on the foundation that the corporate entity under resolution is an ongoing concern, and therefore, the resolution professional communicates with the same company name during CIRP. Respondents' submission that the claim is a continued claim because of communication with the same name is unacceptable, as the same does not make the resolved entity liable for any pre-CIRP unclaimed, unrecognised dues.

106. The arguments made by respondents that they did not receive notice of commencement of CIRP is also misplaced as the publication after following due procedure under IBC is sufficient notice to all stakeholders and the respondent authorities are not exception to it, who could demand a separate notice in this regard.

107. On the basis of submissions made by counsel appearing in both petitions, the impugned demand notices, in both the writ petitions, relate to electricity dues pertaining to a period prior to the approval of the respective resolution plans under the IBC, 2016. It is not in dispute that the CIRP had been duly initiated in accordance with law, that public announcement was made inviting claims, and that the resolution plans were thereafter approved by NCLT and have attained finality.

108. In such circumstances, the legal consequence flowing from Section 31 of the IBC, 2016 is that the approved resolution plan is binding on all stakeholders, including statutory authorities, and operates to extinguish all claims which were not filed during CIRP or which did not form part of the approved resolution plan. The said provision, read with the overriding effect contained in Section 238 of the Code, leaves no doubt that any attempt to enforce pre-CIRP claims outside the framework of the resolution plan is impermissible in law. Approved resolution plan conclusively determines all claims against the corporate debtor, leaving no scope for the enforcement of any claim outside the approved plan.

109. The Supreme Court in *Essar Steel India Ltd. (supra)* has clearly held that the objective of the IBC is to ensure that the successful resolution applicant takes over the corporate debtor on a clean slate, which is free from past liabilities except those specifically incorporated in the resolution plan. This principle has been reaffirmed in *Ghanshyam Mishra & Sons (P) Ltd. (supra)*, wherein it has been categorically held that all claims not forming part of the approved resolution plan stand extinguished and cannot be revived or enforced thereafter.

110. Applying the aforesaid settled legal position to the facts of the present case, it is manifest that the respondent authorities admittedly did not file any claim in respect of the alleged electricity dues during the CIRP, nor is it shown that such dues formed part of the resolution plan as approved by the Adjudicating Authority. The impugned demands, therefore, seek to resurrect claims which stood extinguished upon approval of the resolution plan and cannot be permitted to be enforced under the guise of statutory recovery proceedings.

111. Submissions regarding category under which the electricity is being used and the tariff etc., are not considered in this order for the reason that if any such demand is regarding pre-CIRP then the same cannot be claimed being extinguished claim and if the demand is regarding post

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resolution plan approval then the parties have got remedy under Electricity Act for which they are at the liberty to proceed.

112. Before parting, we consider it necessary to observe that the exercise of statutory power, even when otherwise available, must conform to the requirements of fairness, transparency, and procedural propriety. Not providing adequate breakup of amount, clarity in computation, and disclosure of the basis of classification or reassessment, as requested by the petitioners, cannot be ignored and may have a bearing on the legality of demand notices even if it get issued for the post resolution period.

113. Therefore, all the issues discussed above are concluded in the favour of petitioners.

114. In view of the above discussion and analysis, this Court is of the considered view that the impugned demand notices dated 09.01.2023, 21.01.2023, 04.02.2023 and 17.05.2023 in Writ C No. 19391 of 2023 and notices dated 09.03.2023, 18.01.2025 and 21.03.2023 in Writ C. No. 17846 of 2025, upto the extent of demand being made for pre-CIRP period, cannot be sustained in law and hence deserve to be quashed.

VII **Order**

115. These petitions succeed and are accordingly **allowed**. Impugned demand notices dated 09.01.2023, 21.01.2023, 04.02.2023 and 17.05.2023 in Writ C No. 19391 of 2023 and notices dated 09.03.2023, 18.01.2025 and 21.03.2023 in Writ C. No. 17846 of 2025 are hereby quashed. However, respondent authorities are at the liberty to issue fresh demand notice for any dues, which may have occurred for the post-resolution period, in accordance with law.

116. No order as to costs.

(2026) 4 ILRA 1405
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 27.04.2026

BEFORE

THE HON'BLE SIDDHARTH NANDAN, J.

Writ C No. 22704 of 2025

Committee of management of managing Committee of Hidaytul Muslimin School Prayagraj & Anr.
...Petitioners

Versus

State of U.P. & Ors.

...Respondents

ISSUE FOR CONSIDERATION

Whether a subsequent amendment introducing an alternative remedy of appeal constitutes a substantive change in law or is merely a procedural change; and in case the amendment of Section 25 of the Societies Registration Act, 1860 is substantive, whether it shall have retrospective application.

HEADNOTE

Societies Registration Act, 1860, s.25(1)(d) (inserted by U.P. Act No. 8 of 2022) – Society dispute – Prescribed Authority, by order dated 21.08.2021, rejected the claim of respondent no.4 raised by way of reference under Section 25(1) of the Act, 1860 – Respondent no.4 assailed the said order by filing Writ-C No. 33129 of 2021 – During pendency of the writ petition, amendment dated 18.07.2022 introduced a new provision, namely Section 25(1)(d), providing remedy of appeal before the Commissioner of the Division – Thereafter, Writ-C No. 33129 of 2021 was withdrawn on 27.04.2024 with liberty to pursue alternative remedies available under law – Respondent no.4 subsequently preferred appeal under Section 25(1)(d) against the order dated 21.08.2021 – Petitioners objected to maintainability of appeal contending that the amendment introducing the right of appeal was a substantive change in law and could not operate retrospectively – Objection rejected by Appellate Authority – Challenge in writ jurisdiction.

Held: Right of appeal is not merely a matter of procedure but is a matter of substantive right – Legal pursuit of a remedy by way of suit or appeal are steps in a series of proceedings and are to be regarded as one legal proceeding – Right of appeal is a statutory and vested right which accrues to a litigant from the date the lis commences – Once a lis commences, all rights get crystallized and no clog upon a likely appeal can be put unless the law is made retrospective expressly or by fair implication – Applicability of a right of appeal is governed by the law prevailing on the date of institution of the proceedings and not by the law subsequently brought into force.

Court held that the amendment dated 18.07.2022 introducing Section 25(1)(d) created a right of appeal which was otherwise not available and, therefore, constituted a substantive change in law – Intention to vest a right of appeal retrospectively cannot be presumed unless such intention is clearly manifested by express words or necessary implication – Since the amendment neither expressly nor by necessary implication provided retrospective operation, the remedy of appeal introduced by Section 25(1)(d) could not be invoked against an order passed by the Prescribed Authority on 21.08.2021 prior to the amendment.

Court further held that a superior court cannot vest jurisdiction in an authority which otherwise does not exist – Liberty granted by this Court to pursue alternative remedies available under law did not confer jurisdiction upon the appellate authority to entertain an appeal otherwise not maintainable – Appeal filed under Section 25(1)(d) against the order dated 21.08.2021 held not maintainable – Impugned order dated 10.06.2025 and entire proceedings initiated under Section 25(1)(d) quashed – Writ petition allowed. (E-5)

[Paras 15, 16, 18; Conclusion Nos. 1, 2, 3 and 6]

CASE LAW CITED

Nagendra Nath Dey v. Suresh Chandra Dey, AIR 1932 PC 165;
Colonial Sugar Refining Co. Ltd. v. Irving, (1905) AC 369;
Garikapati Veeraya v. N. Subbiah Choudhry, AIR 1957 SC 540;
Mukund Deo (Dead) by LRs v. Mahadeo, AIR 1965 SC 703;
Hoosein Kasam Dada (India) Ltd. v. State of M.P., (1953) 1 SCC 299;
Hitendra Vishnu Thakur v. State of Maharashtra, (1994) 4 SCC 602;
Chirag Ashiyana Pvt. Ltd. v. Smt. Santosh and Another, 2025 (12) ADJ 87;
Vithalbhai Nema Bhai Patel v. Commissioner of Sales Tax, AIR 1967 SC 344;
ECGC Ltd. v. Mokul Shriram EPC JV, (2022) 6 SCC 704;
Ganpat Rai Hira Lal v. Aggarwal Chambers of Commerce Ltd., (1952) 2 SCC 214;

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Janardan Reddy v. State, AIR 1951 SC 217;
State of Bombay v. Supreme General Films Exchange Ltd., AIR 1960 SC 980;
Chitra Srivastava v. Government of NCT of Delhi, (2006) 110 FLR 1171 (Del.).

List of Acts

Constitution of India;

Societies Registration Act, 1860;

Societies Registration (Uttar Pradesh Amendment) Act, 2021 (U.P. Act No. 8 of 2022).

List of Keywords

Right of appeal; Vested right of appeal; Substantive right; Procedural law; Retrospective operation; Prospective operation; Statutory appeal; Commissioner; Prescribed Authority; Election dispute; Alternative remedy; Appellate jurisdiction; Jurisdictional objection; Societies Registration Act.

CASE ARISING FROM

From the order dated 10.06.2025 passed by the Commissioner, Prayagraj Division, Prayagraj in Appeal No. 1105 of 2025 (Farid Javed Ansari v. Tariq Nihal Ansari), rejecting objection regarding maintainability of appeal under Section 25(1)(d) of the Societies Registration Act, 1860.

Appearances for Parties

Advs. for the Petitioner: Gautam Baghel, Rajesh Kumar Shukla.

Advs. for the Respondents: Ashutosh Chaubey, C.S.C., Pramod K. Gupta, Shailendra Kumar, Shivendu Ojha.

(Delivered by Hon'ble Siddharth Nandan, J.)

1. Heard Shri Gautam Baghel, learned counsel for the petitioners, Shri R.K. Ojha, learned Senior Counsel assisted by Shri Umang Chandra Gupta, Advocate holding brief of Shri Shivendu Ojha, learned counsel for the respondent no.4 and Shri Vaibhav Tripathi, learned Standing Counsel for the State-respondent nos. 1 to 3.

2. The present writ petition has been filed challenging the order dated 10.06.2025 passed by respondent no.2 in Appeal No. 1105 of 2025 (Farid Javed Ansari Vs. Tariq Nihal Ansari), by way of which the objection filed by the petitioner has been rejected; and further seeking quashing of the entire proceedings of Appeal No. 1105 of 2025 filed under Section 25(1) (d) of the Societies Registration Act, 1860 (hereinafter referred to as the "Act, 1860").

Facts

1. There is a society in the name and style of Managing Committee of Hidaytul Muslimin School, Prayagraj registered under the Act 1860 and is governed by its own by-laws, which has been renewed from time to time. The said society runs and administers a Madarsa, namely Hidaytul Muslimin School, Prayagraj, which is under grant-in-aid.

2. Certain disputes were raised regarding the elections of the Committee, leading to Writ-C No. 49987 of 2015 (Nihaluddin Ansari and Another Vs. State of U.P. and 10 Others) which was allowed vide order dated 08.04.2019, holding that the list of office bearers of Nihaluddin Ansari, has come to be registered continuously for more than a decade and the court does not find any illegality in the same.

3. Subsequently, the petitioner no.2 was elected as Manager on 14.07.2019 and the list of office bearers of committee of management was also approved vide order dated 12.06.2019; which was challenged by respondent no.3 (Farid Javed Ansari) in Writ-C No. 27312 of 2019 but the same was subsequently withdrawn on 20.02.2020, since the order dated 12.06.2019 was challenged before the prescribed authority by making a reference under Section 25(1) of the Act, 1860.

4. However the prescribed authority on 21.08.2021 rejected the claim of respondent no.4. Against the order dated 21.08.2021, respondent no. 4 filed Writ-C No. 33129 of 2021; but, no interim relief was granted, as the order dated 08.04.2015 had already attained finality upon dismissal of Writ-C No. 26908 of 2015; and eventually, the said writ petition was also withdrawn on 27.04.2024.

5. In between, the petitioner no. 2 was again elected as the Manager of the Society in the year 2024, and the list was duly approved by respondent no. 3 for the year 2024□25. Thereafter, learned counsel for the petitioner submits that the petitioner had no knowledge about the order dated 27.04.2024, whereby the writ petition was withdrawn with liberty to pursue alternative remedies available to him under law. For ready reference, the order dated 27.04.2024 is reproduced below:

“1. Sri Chaudhary N.A. Khan, learned Senior Advocate assisted by Sri Dinesh Shukla, learned counsel appearing for the petitioner prays that this case may be dismissed on the ground of alternative remedy.

2. Accordingly, this writ petition is dismissed with liberty to the petitioner to pursue his alternative remedies available to him under law.”

6. It is further stated that the petitioners came to know about the order dated 27.04.2024 only upon receipt of notice issued by respondent no. 2 in Appeal No. 1105 of 2024, purportedly issued in proceedings/Appeal under Section 25(1)(d) of the Societies Registration Act, 1860, preferred against the order dated 21.08.2021, passed by the Prescribed Authority.

7. The petitioner filed two objections before the Commissioner on 14.05.2025, raising specific grounds, firstly regarding the maintainability of the appeal, i.e. on jurisdiction issue; and secondly reliance was placed on the objections dated 21.04.2025, taking the ground of limitation, emphasizing the fact that the ground taken in the writ petition for explaining the delay in filing the appeal, i.e. for want of knowledge, is un-sustainable, as the petitioner being a practicing lawyer, was in know-how of the correct legal position.

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8. Furthermore, the petitioner submits that he had taken specific ground that the amendment dated 18.07.2022, introducing a remedy of appeal under Section 25(1)(d) of the Act, 1860, does not have a retrospective effect, and hence the appeal is not maintainable in the eyes of law. For the sake of convenience, Paragraph-7 of the objection dated 21.04.2025 is reproduced below:

“7. That, the appellant is dragging to the deponent in several litigations, regarding this, institution merely filing an Application, he is dragging from several years. The Amendment dated 18.07.2022 having no retrospective effect, under the law hence the Appeal is not maintainable in the eye of law.”

Submission on Law

Learned counsel for the petitioner has submitted that by way of the amendment dated 18.07.2022 in the U.P. Societies Registration Act, 1860 (**U.P. Act No. 8 of 2022**), a new provision, namely Section 25(1)(d), has been added by which an appellate court has been established, against the order passed by the Prescribed Authority under Section 25(1) of the Act, 1860; and the appellate power has been vested in the Commissioner of the Division, and the limitation prescribed for filing the appeal is one month from the date of communication of the order. A relevant extract of the notification dated 18.07.2022 is quoted below:

“No. 357 (2)/LXXIX-V-1-2022-1-ka-10-2021
Dated Lucknow, July 18, 2022

IN pursuance of the provisions of clause (3) of Article 348 of the Constitution of India, the Governor is pleased to order the publication of the following English translation of the Society Registrikaran (Uttar Pradesh Sanshodhan) Adhiniyam, 2021 (Uttar Pradesh Adhiniyam Sankhya 8 of 2022) as passed by the Uttar Pradesh Legislature and assented to by the President on July 7, 2022. The Vitt (Lekha-Pariksha) Anubhag 2 is administratively concerned with the said Adhiniyam.

*THE SOCIETIES REGISTRATION
(UTTAR PRADESH AMENDMENT) ACT, 2021
(UP. Act no 8 of 2022)
As passed by the Uttar Pradesh Legislature]
AN
ACT*

further to amend the Societies Registration Act, 1860 in its application to the State of Uttar Pradesh

IT IS HEREBY enacted in the Seventy-second Year of the Republic of India as follows:-

Short Title 1. This Act may be called the Societies Registration (Uttar Pradesh Amendment) Act, 2021

..

Amendment of

section 25 7. In the proviso to sub-section(1) of section 25 of the principal Act, after clause (c), the following clause shall be inserted, namely:-

(d) An appeal against an order made under this sub-section may be preferred to the Commissioner of the Division in whose jurisdiction the headquarter of the Society lies, within one month from the date of communication of such order:

Provided that the appellate authority may admit an appeal after the expiry of such period if the appellant satisfies the appellate authority that he had sufficient cause for not preferring the appeal within such period.□ ”

Issue

This Court, vide its order dated 31.03.2026, has framed the issue regarding maintainability of appeal under Section 25(1) (d) of the Act, 1860; and following point of determination is framed accordingly:-

(I) Whether, a subsequent amendment, introducing an alternative remedy of Appeal, constitutes a substantive change in law or is merely a procedural change; and in case the Amendment of Section 25 is substantive, whether it shall have retrospective application?

Since the issue raised is purely legal in nature, with the consent of the parties, the present petition is being decided at the admission stage itself.

Discussions

1. Shri Gautam Baghel, learned counsel for the petitioner, submits that the provision of appeal under Section 25(1)(d) of the Act, 1860 has been introduced by the legislature by way of U.P. Act No. 8 of 2022, vide notification dated 18.07.2022; and since the order of the Prescribed Authority was passed prior to the effective date of the aforementioned amendment, i.e., on 21.08.2021, the said provision of appeal cannot be applied retrospectively. He has further submitted that this Court, vide order dated 27.04.2024 passed in Writ-C No. 33129 of 2021 (Farid Javed Ansari vs. State of U.P. and Others), while dismissing the writ petition, merely granted liberty to the petitioner to pursue alternative remedies □available under law□. The Court did not vest any jurisdiction in the appellate authority to entertain an appeal, which is otherwise not available to the petitioner, under law; since the Amendment in question, being a substantive change of law, cannot operate retrospectively.

2. He has further submitted that the expression □appeal□ has not been defined in the Code. However, as per the dictionary meaning, an □appeal□ is an application or a petition to a higher

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authority or a court of law for reconsideration of a decision of a lower authority, or inferior court of law. (Ref: 1997 edition of the Chambers 21st Century Dictionary).

3. In **Nagendra Nath Dey vs. Suresh Chandra Dey**¹, wherein speaking for the judicial committee of the Privy Council, Shri Dinshaw Fardunji Mulla stated□□

“There is no definition of appeal in the Code of Civil Procedure but their Lordships have no doubt that any application by a party to an appellate court, asking it to set aside or revise a decision of a separate court is an appeal within the ordinary acceptance of the term □□..”

4. A further reference has been made to a decision in the case of **Colonial Sugar Refining Co. Ltd. vs. Irving**², to submit on the issue whether right of appeal is a substantive right or is only a matter of procedure and further whether the right of appeal could be crystalized by subsequent legislation or not.

5. It is trite law that the legal pursuit of a remedy, suit, appeal and second appeal are really the steps in a series of proceedings all connected by an intrinsic unity and are to be regarded as one legal proceedings; but as in the case of **Garikapati Veeraya vs. N. Subbiah Choudhry**,³ the Hon’ble Apex Court held, that the right of appeal is not a mere matter of procedure but is a substantive right. The said right exists as on and from the date the lis commences and such right is to be governed by the law prevailing on the date of the institution of the proceeding and not by the law that prevails on the date of its decision or on the date of filing of the appeal.

6. The Hon’ble Apex Court in the case of **Mukund Deo (Dead) by his legal representatives Kasibai and Others Vs. Mahadeo**⁴; held that it is true that as a general rule, alteration in law of procedure are retrospective, but a right of an appeal, to a particular forum is a substantive right; and is not lost by alteration in the law unless, the provision is made expressly in that behalf or a necessary implication arises.

7. Similarly, the Hon'ble Apex Court in the Case of **Hoosein Kasam Dada (India) Ltd. vs. State of M.P.**,⁵ held as following in Paragraph-24, which is as below:

"24. The above decisions quite firmly establish and our decisions in Janardhan Reddy v. State [Janardhan Reddy v. State, 1950 SCC 898 : 1950 SCR 940] and in Ganpat Rai v. Agarwal Chamber of Commerce Ltd. [Ganpat Rai v. Agarwal Chamber of Commerce Ltd., (1952) 2 SCC 214 : 1953 SCR 752] uphold the principle that a right of appeal is not merely a matter of procedure. It is a matter of substantive right. This right of appeal from the decision of an inferior tribunal to a superior tribunal becomes vested in a party when proceedings are first initiated in, and before a decision is given by, the inferior court."

8. Relying on the aforesaid judgments, Shri Gautam Baghel, Advocate submits, that the presumption is that a statute is prima facie prospective, unless it is expressly or by necessary implication made to have a retrospective operation.

9. In the case of ***Hitendra Vishnu Thakur vs. State of Maharashtra***,⁶ the Hon'ble Apex Court held as follows in Paragraph No. 26:

"26. The Designated Court has held that the amendment would operate retrospectively and would apply to the pending cases in which investigation was not complete on the date on which the Amendment Act came into force and the challan had not till then been filed in the court. From the law settled by this Court in various cases the illustrative though not exhaustive principles which emerge with regard to the ambit and scope of an Amending Act and its retrospective operation may be culled out as follows:

(i) A statute which affects substantive rights is presumed to be prospective in operation unless made retrospective, either expressly or by necessary intendment, whereas a statute which merely affects procedure, unless such a construction is textually impossible, is presumed to be retrospective in its application, should not be given an extended meaning and should be strictly confined to its clearly defined limits.

(ii) Law relating to forum and limitation is procedural in nature, whereas law relating to right of action and right of appeal even though remedial is substantive in nature.

(iii) Every litigant has a vested right in substantive law but no such right exists in procedural law.

(iv) A procedural statute should not generally speaking be applied retrospectively where the result would be to create new disabilities or obligations or to impose new duties in respect of transactions already accomplished.

(v) A statute which not only changes the procedure but also creates new rights and liabilities shall be construed to be prospective in operation, unless otherwise provided, either expressly or by necessary implication." □

10. At this juncture, we may also refer gainfully to a decision in the case of ***Chirag Ashiyana Pvt. Ltd. Vs. Smt. Santosh and Another***⁷; wherein this court referring to the various decisions held as follows:

29. The right of appeal is a substantive right and not merely a matter of procedure. It is a vested right and accrues in favour of the litigant on the date lis commences and although, it may be actually exercised when an adverse judgment is pronounced, such a right is governed by the law prevailing at the date of institution of the suit or proceeding and not by the law that prevails at the date of its decision or at the date of filing of appeal. It is well-settled that right of appeal arises when a proceeding is commenced and cannot be taken away by a subsequent legislation except by express provision or by necessary intendment to the contrary. Ram Singha v. Shankar Dayal, (1928) ILR 50 All. 965 (FB).

31. Again in case of Seth Nand Lal and another v. State of Haryana and others; AIR 1980 SC 2097, following the Anant Mill's case (supra) the Supreme Court stated "It is well-settled by

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several decisions of this Court that the right of appeal is a creature of a statute and there is no reason why the legislature while granting the right cannot impose conditions for the exercise of such right so long as the conditions are not so onerous as to amount to unreasonable restrictions rendering the right almost illusory".

32. Again in case of *Vijay Prakash D. Mehta and another v. Collector of Customs (Preventive), Bombay; (1988) 4 SCC 402*, the Supreme Court reiterated "the right to appeal is neither an absolute right nor an ingredient of natural justice the principles of which must be followed in all judicial or quasi-judicial adjudications. The right to appeal is a statutory right and it can be circumscribed by the condition in grant.....If the statute gives a right of appeal upon certain conditions, it is upon fulfillment of those conditions that right becomes vested and exercisable by the appellant."

33. In case of *Garikapatti Veeraya v. N. Subbiah Choudhury; 1957 AIR 540*, after referring to several leading decisions on the point, the Supreme Court observed that a vested right of appeal can be taken away only by a subsequent enactment, if it so provides either expressly or by necessary intendment and not otherwise. (Para 28 of the judgment).

34. Hon'ble Supreme Court in case of *Mukund Deo (Dead) represented by his legal representatives Kasibai and others v. Mahadeo and others, AIR1965 SC 703*, held that it is true that as a general rule, alteration in the law of procedure are retrospective, but a right of appeal to a particular forum is a substantive right and is not lost by alteration in the law unless, provision is made expressly in that behalf, or a necessary implication arises.

35. In view of the law laid down by the Hon'ble Supreme Court a right of appeal is a vested right and is governed by the statute which confers such right. In case the statute or the law which confers the right places certain conditions for exercise of such right, the said can be exercised only after the fulfillment of those conditions by the appellant. The Hon'ble Supreme Court while interpreting the right of appeal being substantive right has held to the extent that by a subsequent enactment (such as Court Fees Act), the right of the appellant cannot be impaired or made onerous by providing additional conditions by the subsequent Act. Unless, the subsequent Act providing for such a condition is made retrospective either expressly or by necessary intendment. "

11. The effect of amendment of law relating to appeal after commencement of lis was again, a subject matter of consideration before a Constitutional Bench in ***Vithalbhai Nema Bhai Patel vs. Commissioner of Sales Tax***,⁸ and the view taken in *Hoosein Kasam Dada (India) Ltd.* (supra) was reiterated, by stating that when a lis commences, all rights get crystallized and no clog upon a likely appeal can be put unless the law is made retrospective, expressly or by fair implication.

12. The maxim nova constitutio futuris formam imponere debet non praeteritis, i.e. □ a new law ought to regulate what is to follow, not the past □ exemplifies this legal position.

13. Recently, the Apex Court had the occasion to examine the practice and procedure viz. a viz. right of appeal and its nature and scope in ***ECCG Ltd. vs. Mokul Shriram EPC JV***, ⁹ wherein

giving reference to the case of *Hoosein Kasam Dada (India) Ltd. (supra)*, the Court held that the fact that the pre-existing right to appeal continues to exist must, in its turn, necessarily imply that the old law which created that right of appeal, must also exist to support the continuation of that the appeal; and that the old law must govern the exercise and enforcement of that right of appeal.

14. The observation in the case of Ganpat Rai Hira Lal Vs. Aggarwal Chambers of Commerce Ltd.,¹⁰ and *Janardan Reddy Vs. State*,¹¹ firmly established the principle that the right of appeal is not merely a matter of procedure. It is a matter of substantive right. This right of appeal, from the decision of an inferior tribunal to a superior tribunal, becomes vested in a party when proceedings are first initiated in, and before a decision is given by, the inferior court.

15. From the aforesaid, the discernable principle is that, firstly, the right of appeal is not a mere alteration in procedure but is a matter of substantive right; and secondly, once a pre-existing right of appeal is not destroyed by the amendment and continues to exist, post the amendment, **and it is equally applicable in a converse situation (Emphasis supplied)** where the lis, was prior to the amendment and the decision, as in the present case, is also prior to the amendment, creating a right of appeal by way of Amendment; and as such unless and until the amendment is made retrospective by the express words or necessary implication, it is trite law that the settled position prior to the amendment, cannot be permitted to be re-agitated by way of enforcing a right of appeal, which is otherwise not available, by a retrospective application.

16. The aforesaid view also find concurrence from a three Judge Bench judgment in *State of Bombay Vs. Supreme General Fils Exchange Ltd.*,¹² wherein it was held that an impairment of the right of appeal by putting a new restriction thereon or imposing a more onerous condition is not a matter of procedure only; it impairs or imperils a substantive right and an enactment which does so is not retrospective, unless it says so expressly or by necessary intendment.

17. Shri R.K. Ojha, learned Senior Counsel appearing for the respondents does not dispute the aforesaid propositions, but however submits that this court, vide its order dated 27.04.2024, passed in Writ-C No. 33129 of 2021 had given the liberty to the respondents to pursue his alternative remedy available to him under law. Therefore, he argues that the only remedy which was available to him at the time of the passing of the order dated 27.04.2024 was a remedy under Section 25(1)(d), and now since he has withdrawn his challenge, he shall be rendered remedy-less, if the appeal is held to be not maintainable; and accordingly submits that in view of the order dated 27.04.2024 passed by this court, the present writ petition is devoid of any merit.

18. The aforesaid argument is only noted to be rejected, since it is trite law that a superior court or for that matter any court, cannot vest jurisdiction in an authority, which otherwise does not exist and the respondents had withdrawn the proceedings, even if under a misapprehension of law, the appeal cannot be said to be maintainable.

19. Shri R.K. Ojha, learned Senior Counsel has also placed reliance on an order dated 26.03.2025 passed by this court in Writ-C No. 9039 of 2025, preferred by Farid Javed Ansari, which was disposed off, directing the appellate authority to decide the appeal within a period of four months. The aforesaid order dated 26.03.2025 also cannot come to the rescue of the

4 All. Committee of management of managing Committee of Hidaytul Muslimin School Prayagraj & Anr/415
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respondents, as while deciding the appeal, the appellate authority, ought to also have decided its own jurisdiction with respect to the order dated 21.08.2021; and as to whether the appeal was maintainable or not, which now this Court has held to be not maintainable.

Conclusion/Direction

1. In view of the various decisions of the Hon'ble Apex Court as well as this court, it is evident from long line of decisions, that the right of appeal is not merely a matter of procedure but is a substantive right and though legal pursuit of a remedy by way of suit or appeal, are steps in a series of proceedings and are to be regarded as one legal proceedings; however, the right to appeal is a statutory right and can only be enforced or taken away by an enactment; and its applicability, if is to be inferred with retrospectivity, the same has to be either expressly or by necessary implication has to be provided and not otherwise. The intention to vest right to appeal retrospectively, cannot be presumed, unless such intention is clearly manifested by expressed words or necessary implications.

2. The right of an appeal is a vested right which accrues to a litigant from the date the lis commences; and it is when a lis commences, all rights get crystalized and no clog upon a likely appeal can be put unless the law was made retrospective, expressly or by fair implication.

3. In the present case, the order passed under Section 25(1) of the Act, 1860 was admittedly passed on 21.08.2021 and the same was subjected to challenge in Writ-C No. 33129 of 2021 (Farid Javed Ansari Vs. State of U.P. and Others); which was withdrawn by the petitioner therein vide order dated 27.04.2024, with a liberty that he may seek such alternative remedy, which may be available to him under the law.

4. Now, the question arises that what is the nature of remedy that may be available to him under law and in case, the Writ-C No. 33129 of 2021 was withdrawn, under a misconception of law, what remedy may be available to the respondents; as this court is also conscious of the fact that no one should be rendered remedy-less.

5. In the eventuality, no remedy was available to the respondents against the order passed under Section 25(1) of the Act, 1860, it cannot be said that the remedy of Article 226 of the Constitution of India was not available to him, and in view of the fact that the said writ petition was dismissed with an observation that a liberty is available to the petitioner to pursue his alternative remedy, which otherwise was not available to him, the dismissal of the writ petition on the ground that there being an efficacious alternative remedy, may be an order, if the petitioner so advised, he may seek for a recall or review (*Ref: Chitra Srivastava Vs. Government of NCT of Delhi*)¹³. However, the aforesaid observation is in no way on the merits of the case and shall be independently dealt with, in case appropriate proceedings are set in motion. The said question, is left open, at this stage.

6. In view of the aforesaid, the impugned order dated 10.06.2025 passed by the Respondent no.2 in Appeal No. 1105 of 2025 (Farid Javed Ansari Vs. Tarik Nihal Ansari), along with entire

proceedings initiated under Section 25(1)(d) of the Act, 1860, is hereby quashed and the writ petition stands allowed.

7. However, no order as to costs.

(2026) 4 ILRA 1416
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 07.04.2026

BEFORE

THE HON'BLE IRSHAD ALI, J.

Writ C No. 22877 of 2016

Aman Ullah

...Petitioner

Versus

State of U.P. & Ors.

...Respondents

ISSUE FOR CONSIDERATION

Whether mere pendency of criminal cases or registration of FIRs, without allegations of misuse of firearm and despite acquittal, can justify cancellation of an arms license under Section 17(3) of the Arms Act, 1959?

HEADNOTES

Civil Law – Constitution of India – Article 226 - Arms Act, 1959 - Sections 17(3), 18) - Indian Penal Code, 1860 - Sections 307, 323, 504, 506: - Writ Petition under Article 226 - filed against impugned orders, cancelling petitioner's DBBL arms license and also seeking restoration thereof - Arms license cancellation - petitioner pleaded that FIRs registered against him were politically motivated, that he was acquitted in both criminal cases - there was no allegation of misuse of firearm - District Magistrate cancelled the license branding him "criminal minded" - Appellate authority upheld the order without considering acquittals or reply - whether mere pendency of FIRs, absent misuse, can justify cancellation under Section 17(3) of the Arms Act - Court finds that cancellation based on speculative likelihood of misuse, ignoring acquittals and reply, is arbitrary and perverse – pendency of criminal case cannot be sole ground - acquittal strengthens innocence - licensing authority must record cogent reasons – held, Licensing authority must record cogent reasons, speculative apprehension of misuse is arbitrary - Non-speaking orders ignoring reply and acquittal judgments are unsustainable - hence, impugned orders are set-aside, writ petition, allowed accordingly.

(Para – 9, 10)

WP Allowed. (E-11)

CASE LAW CITED

Writ-C No. 31473 of 2019 (Allahabad High Court, order dated 14.09.2022),
 State of U.P. v. Jaswant Singh (AIR 1968 SC 191).

LIST OF ACTS

Constitution of India - Arms Act, 1959 - Indian Penal Code, 1860.

LIST OF KEYWORDS

Arms license cancellation, FIR pendency, acquittal, misuse of firearm, arbitrary order, natural justice, likelihood of misuse, non-speaking order.

CASE ARISING FROM

Orders dated 23.09.2011 (District Magistrate, Sitapur) and 04.06.2016 (Appellate Authority) cancelling and upholding cancellation of petitioner's DBBL arms license No. 4315, Police Station Raniganj, District Pratapgarh.

APPEARANCE OF PARTIES

Counsel for Appellant(s): Shri Vijay Kumar.

Counsel for Respondent(s): Shri Rajiv Srivastava, Additional Chief Standing Counsel.

(Delivered by Hon'ble Irshad Ali, J.)

1. Heard Shri Vijay Kumar, learned counsel for the petitioner and Sri Rajiv Srivastava, learned Additional Chief Standing Counsel for the State-respondent.

2. By means of the present writ petition, the petitioner is challenging the orders dated 4.6.2016, passed by the respondent No.2 in Appeal No.4/2011-2012 (Amanullah v. State of U.P.) under Section 18 of the Arms Act, 1959 as well as order dated 23.9.2011, passed by the respondent No.3, District Magistrate, Sitapur, contained as Annexures-1 and 2 to the writ petition. Further prayer has been made for issuance of direction in the nature of mandamus commanding the respondents to restore the fire arms license of the petitioner bearing license No.4315 relating to Police Station Raniganj, District Pratapgarh.

3. Factual matrix of the case is that the petitioner was licensee of DBBL bearing license No.4315 relating to police station Raniganj, District Pratapgarh. A show cause notice was issued on 29.9.2009 to the petitioner under Section 17(3) of the Arms Act regarding cancellation of arms license of the petitioner on the ground of involvement of his gun in criminal case mentioned in the show cause notice that why his license may not be cancelled. The petitioner submitted his reply before the respondent No.2, denying the allegations levelled against him with the submission that the petitioner has never misused his gun, but due to village party bandi and enmity of land dispute, his gun has been falsely been shown in the above criminal case.

4. The respondent No.2, without going into the merit of the case and ignoring the reply of the petitioner, cancelled the arms license of the petitioner vide order dated 23.9.2011. Feeling aggrieved against the order of cancellation, the petitioner preferred an appeal before the respondent No.2 under Section 18 of Arms Act, which has also been dismissed without considering the argument advanced by the petitioner, vide order dated 2.9.2011.

5. Feeling aggrieved by the aforesaid impugned orders, the petitioner has filed the present writ petition.

6. Submission of learned counsel for the petitioner is that the petitioner was granted arms license for DBBL gun and FIR in the case Crime No.8/2005 under Section 307, 504 and 506 IPC and Case Crime No.57A/2003 at Police Station Raniganj, District Pratapgarh has been lodged. In the said FIR, neither the petitioner has been named, nor has been found involved in any manner and merely on lodging of the First Information Report, show cause notice was issued to the petitioner, asking him as to why his fire arms license be not cancelled as First Information Report has been registered against him. The petitioner denied the allegation vide reply dated 4.11.2009, submitting

that the First Information Report has been registered against him due to political reason and enmity with the respondents, on the basis of false allegations.

He next submits that the petitioner has been acquitted in Case Crime No.8/2005 by the learned Additional Sessions Judge, vide judgment and order dated 17.04.2009 (Annexure no.5 to the writ petition) and has also been acquitted in Case Crime No.57A/2003 by the learned Additional Chief Judicial Magistrate, Pratapgarh vide judgment and order dated 11.12.2001 (Annexure No.2 to the affidavit filed in support of the recall application)

7. Learned counsel for the petitioner stated that the petitioner was going to the sister's house alongwith his gun, which was kept by the police authority at police station and on the next date, when the petitioner went to take the gun, a First Information Report has been lodged. The District Magistrate, Pratapgarh, only recorded the fact that nature of the allegations levelled against the petitioner are serious and also that the petitioner is a criminal minded person and it cannot be denied that in future, he will not misuse the licensed weapon and looking to the aforesaid circumstances, cancelled the license of the petitioner, by means of an order dated 2.9.2011 against which, an appeal was filed, which was also dismissed vide order dated 4.6.2016.

8. The first question which arises for consideration before this Court is as to whether mere pendency of criminal case can be a ground for the respondents to cancel the arms license of the petitioner under the provisions of Arms Act ? A consistent view of this Court has been that merely on account of pendency of a criminal case fire arm's license cannot be cancelled. In Writ-C No.31473 of 2019 this Court by means of its order dated 14.9.2022 has held as under:-

"(8) In support of his submission, learned counsel for the petitioner has placed reliance on the judgments passed by this Court in the cases of Ram Murti Madhukar vs. District Magistrate, Sitapur [1998 (16) LCD-905], Ram Karpal Singh vs. Commissioner, Devi Patan Mandal, Gonda and Ors. [2006 (24) LCD 114] and Ram Prasad vs. Commissioner and Ors. decided on 07.02.2020 in Writ-C No. 56378 of 2006, wherein it has been held that mere pendency of criminal case or apprehension of misuse of arms are not sufficient grounds for passing the order of suspension or revocation of licence under Section 17 of the Act.

(9) In Ram Murti Madhukar (supra), this Court has held in paragraph no. 8, is quoted as under :-

(8) It is also well settled in law that mere pendency of criminal case or apprehension of abuse of Arms Act, are not sufficient ground for passing of the order of suspension or revocation of licence under Section 17 of the Act. A reference in this regard may be made to the decisions of this Court in Ganesh Chandra Bhatt v. D. M. Almora, AIR 1993 All 291"

(10) In the case of Ram Karpal Singh (supra), this Court has held as following in paragraph nos. 6 and 7 which are being reproduced hereunder:-

'6, Learned counsel for the petitioner had relied upon the two judgments of this Court reported in 2002 ACC; Habib v. State of U.P

7. Para 3 of the said judgment is reproduced as under:

"Para 3: The question as to whether mere involvement in a criminal case or pendency of a criminal case can be a ground for revocation of the license under Arms Act, has been dealt with by a Division Bench in this Court reported in Sheo Prasad Misra v. The District Magistrate, Basti and others, wherein the Division Bench relying upon the earlier decision reported in Mai Uddin v. Commissioner, Allahabad, found that mere involvement in criminal case cannot be in any way affect the public security or public interest and the order canceling or revoking the licence of fire arm has been set aside. The present impugned order also suffers from the same infirmity as was pointed out by the Division Bench in the above mentioned cases. I am in full agreement with the view taken by the Division Bench that these orders cannot be sustained and deserve to be quashed and are hereby quashed."

(11) This Court in the case of Ram Prasad (supra) has held as under. Relevant paragraphs of the said judgments i.e. 16,19,22,23,24,25,28,32 and 36 are being quoted hereunder:-

"16. The matter which requires consideration is, whether on the ground of pendency of the criminal case the petitioner's fire arm licence could be cancelled and his appeal could be dismissed, notwithstanding his acquittal on 17.1.2003. It also requires consideration if the ground in the impugned orders that if the petitioner's fire arm licence remain with the petitioner, it would not be in the public interest and public security, are justified for cancellation and based on substantial material."

19. In Masiuddin Vs. Commissioner, Allahabad Division, Allahabad and another reported in 1972 A.L.J. 573 this Court held in paragraph Nos. 4 and 7 as under:

"4. After a license is granted, the right to hold the license and possess a gun is a valuable individual right in a free country. The security of public peace and public safety is a valuable social interest. Section 17 shows that Parliament had decided that neither of the two valuable interests should unduly impinge on the other Section 17 seeks to establish a fair equilibrium between the two contending interests. It says: Hear the licensee first; and then cancel the license "if necessary for the security of the public peace or for public safety". True, there is no express provision for hearing. But the nature of the right affected, the language of Sec. 17, the grounds for cancellation, the requirement of a reasoned order and the right of appeal plainly implicate a fair hearing procedure. Jai Narain Rai v. District Magistrate, Azamgarh. While cancelling a licence, the District Magistrate acts as a quasi-judicial authority.

7. A license may be cancelled, inter alia on the ground that it is "necessary for the security of the public peace or for public safety" to do so. The District Magistrate has not recorded a finding that it was necessary for the security of the public peace or for public safety to revoke the license. The mere existence of enmity between a licensee and another person would not establish the "necessary" connection with security of public peace or public safety. There should be something more than mere enmity. There should be some evidence of the provocative utterances of the licensee or of his suspicious movements or of his criminal designs and conspiracy in

reinforcement of the evidence of enmity. It is not possible to give an exhaustive list of facts and circumstances from which an inference of threat to public security or public peace may be deduced. The District Magistrate will have to take a decision on the facts of each case. But in the instant case there is nothing in his order to indicate that it was necessary for the security of the public peace or for public safety to cancel the license of the petitioner. Mere enmity is not sufficient."

22. In Chhanga Prasad Sahu Vs. State of U.P. and others reported in 1984 AWC 145 (FB), after noticing the provisions of Section 17 (3) of the Arms Act the Full Bench in paragraph 5 held as follows:

"A perusal of abovementioned provisions indicates that the licensing authority has been given the power to suspend or revoke an arms licence only if any of the conditions mentioned in sub-clauses (a) to (e) of sub-section (3) of Section 17 of Act exists." sub section (5) of Section 17 makes it obligatory upon the licensing authority to, while passing the order revoking/suspending an arms licence, record in writing the reasons therefore and to, on demand, furnish a brief statement thereof to the holder of the license unless it considers that it will not be in the public interest to do so."

In paragraph-9 it has been emphasised as under:-

"it is true that in order to revoke/suspend an arms licence, the licensing authority has necessarily to come to the conclusion that the facts justifying revocation/suspension of licence mentioned in grounds (a) to (e) of section 17 exist"

23. In Ilam Singh v. Commissioner, Meerut Division and others [1987 ALL. L.J. 416] this Court held that under Section 17(3) (b) the licencing authority may suspend or revoke a licence if it becomes necessary for the security of public peace or public safety. In this case no report was lodged against the licensee indicating that he had used the gun in the incident which led to the breach of public peace or public safety. It was held that there must be some positive incident in which the petitioner participated and used his gun which led to breach of public peace or public safety and in the absence of the use of the gun by the licensee against the security of public peace or public safety the licence of the gun could not be suspended or revoked. The relevant paragraphs 4 and 5 of the judgment in Ilam Singh (supra) are being reproduced as under:

"4. Having heard the learned counsel for the petitioner I am of the view that the submissions raised by the learned counsel for the petitioner cannot be said to be without substance. Section 17(3) (b) of the Arms Act enacts that licensing authority may by order in writing suspend a licence or revoke the same if it becomes necessary for the security of public peace or the public safety. When once a person has been granted a licence and he acquires a gun, it becomes one of his properties. In the present case no incident of breach of security of the public peace or public safety at the behest of the petitioner has been pointed out. Even no report was lodged against the petitioner indicating that he used his gun in the incident which led to the breach of public peace or public safety. Even though some reports might have been lodged but that could not be said to be a sufficient reason to cancel the licence."

5. There must be some positive incident in which the petitioner participated and used his gun which led to the breach of the public peace or public safety. In the absence of the use of the gun by the petitioner against the security of public peace or public safety the licence of the gun of the petitioner was not liable either to be suspended or revoked. The licensing authority as well as the Commissioner committed errors on the face of the record in cancelling the licence of the gun held by the petitioner in utter disregard of the provisions of Section 17 (3) (b) of the Arms Act. In view of these facts the impugned orders cannot be sustained and deserves to be quashed."

24. In *Habib v. State of U.P. and others* [2002 (44) ACC 783] this Court held that mere involvement in a criminal case cannot in any way affect the public security or public interest and the order cancelling or revoking licence of fire arm was not justified. Paragraph 3 of this judgment reads as under:

"3. The question as to whether mere involvement in a criminal case or pendency of a criminal case can be a ground for revocation of the licence under Arms Act, has been dealt with by a Division Bench of this court reported in Sheo Prasad Misra Vs. The District Magistrate, Basti and others, wherein the Division Bench relying upon the earlier decision reported in Masi Uddin v. Commissioner, Allahabad, found that mere involvement in criminal case cannot in any way affect the public security or public interest and the order cancelling or revoking the licence of fire arm has been set aside."

25. In *Satish Singh v. District Magistrate, Sultanpur* 2009 (4) ADJ 33 (LB), this Court elaborately explained what is detrimental to the security of the public peace or public safety and held that mere involvement in criminal case cannot in any way affect the public security or public interest. Paragraphs 6 and 7 of *Satish Singh* case (*supra*) are being reproduced as under:

"6. A plain reading of section 17 indicates that the arms licence can be cancelled or suspended on the ground that the licensing authority deems it necessary for security of the public peace or the public safety. In the present case, while passing the impugned order, neither the District Magistrate nor the appellate authority has recorded the finding as to how and under what circumstance, the possession of arms licence by the petitioner, is detrimental to the public peace or the public security and safety. Merely because criminal case is pending more so, does not seem to attract the provisions of section 17 of the Arms Act. To attract the provisions of section 17 of the Arms Act with regard to public peace, security and safety it shall always be incumbent on the authorities to record a finding that how, under what circumstances and what manner, the possession of arms licence shall be detrimental to public peace, safety and security. In absence of such finding merely on the ground that a criminal case is pending without any mitigating circumstances with regard to endanger of public peace, safety and security, the provisions contained under Section 17 of the Arms Act, shall not satisfy."

7. Needless to say that right to life and liberty are guaranteed under Article 21 of the Constitution of India and the arms licences are granted for personal safety and security after due inquiry by the authorities in accordance with the provisions contained in Arms Act, 1959. The provisions of section 17 of the Arms Act with regard to suspension or cancellation of arms licence cannot be invoked lightly in an arbitrary manner. The provisions contained under Section 17 of the

Arms Act should be construed strictly and not liberally. The conditions provided therein, should be satisfied by the authorities before proceeding ahead to cancel or suspend an arms licence. We may take notice of the fact that any reason whatsoever, the crime rate is raising day by day. The Government is not in a position to provide security to each and every person individually. Right to possess arms is statutory right but right to life and liberty is fundamental guaranteed by Article 21 of the Constitution of India. Corollary to it, it is citizen's right to possess firearms for their personal safety to save their family from miscreants. It is often said that ordinarily in a civilised society, only civilised persons require arms licence for their safety and security and not the criminals. Of course, in case the government feels that arms licence are abused for oblique motive or criminal activities, then appropriate measures may be adopted to check such mal-practice. But arms licence should not be suspended in a routine manner mechanically, without application of mind and keeping in view the letter and spirit of Section 17 of the Arms Act."

28. In *Thakur Prasad Vs. State of U.P. and others* reported 2013(31) LCD 1460 (LB) this Court after referring to the earlier pronouncements in the case of *Ram Murli Madhukar Vs. District Magistrate, Sitapur* [1998 (16) LCD 905] and *Habib Vs. State of U.P.*, 2002 ACC 783, held in paragraphs 10 and 11 as follows:

"10. "Public peace" or "public safety" do not mean ordinary disturbance of law and order public safety means safety of the public at large and not safety of few persons only and before passing of the order of cancellation of arm license as per Section 17 (3) of the Act the Licensing Authority is under an obligation to apply his mind to the question as to whether there was eminent danger to public peace and safety involved in the case in view of the judgment given by this court in the case of *Ram Murli Madhukar v. District Magistrate, Sitapur* [1998 916) LCD 905], wherein it has been held that license can not be suspended or revoked on the ground of public interest (Jan-hit) merely on the registration of an F.I.R. and pendency of a criminal case."

11. Further, this Court in the case of *Habib v. State of U.P.* 2002 ACC 783 held as under:

"The question as to whether mere Involvement in a criminal case or pendency of a criminal case can be a ground for revocation of the licence under Arms Act, has been dealt with by a Division Bench of this Court in *Sheo prasad Misra Vs. District Magistrate, Basti and Others*, 1978 AWC 122, wherein the Division Bench relying upon the earlier decision in *Masi Uddin Vs. Commissioner, Allahabad*, 1972 ALJ 573, found that mere involvement in criminal case cannot, in any way, affect the public security or public interest and the order cancelling or revoking the licence of fire arm has been set aside. The present impugned orders also suffer from the same infirmity as was pointed out by the Division Bench in the above mentioned cases. I am in full agreement with the view taken by the Division Bench that these orders cannot be sustained and deserves to be quashed and are hereby quashed.

There is yet another reason that during the pendency of the present writ petition, the petitioner has been acquitted from the aforesaid criminal case and at present there is neither any case pending, nor any conviction has been attributed to the petitioner, as is evident from Annexure SA-I and II to the supplementary affidavit filed by the petitioner. In this view of the matter, the petitioner is entitled to have the fire-arm licence."

32. *In Ghanshyam Gupta v. State of U.P. and others [2016 (34) LCD 3035] this Court has again held that the necessary ingredients to invoke jurisdiction of the licencing authority in terms of Section 17 were clearly lacking and no finding had been returned on the basis of materials produced in that regard by the licencing authority, which must justify passing of the order of cancellation. Paragraph 9 of the said judgment is being quoted as under:*

"9. In a recent decision of Lucknow Bench of this court in Surya Narain Mishra v. Stae of U.P. and others, reported in 2015 (7) ADJ 510, similar view has been taken by this Court relying upon subsequent decisions. Para-14 of the judgment is reproduced:

"14. In the case of Raj Kumar Verma v. State of U.P., 2013 (80) ACC 231 this court in paragraph No.3 held as under:-

"The ground for issue of show-cause notice, suspension and ultimately cancellation of the licence is that one and precisely one criminal case was registered against the petitioner. The District Magistrate has also held that the petitioner has been enlarged on bail. He has gone further to observe that if the licence remained intact, the petitioner, may disturb public peace and tranquility. The same findings have been given by the Commissioner, Unmindful of the fact that this Court is repeating the law of the land, but the deaf ears of the administrative officers do not ready to succumb the law of the land. The settled law is that mere involvement in a criminal case without any finding that involvement in such criminal case shall be detrimental to public peace and tranquility shall not create the ground for the cancellation of Armed Licence. In Ram Suchi v. Commissioner, Devipatan Division reported in 2004 (22) LCD 1643, it was held that this law was relied upon in Balram Singh Vs. Satate of U.P. 2006 (24) LCD 1359. Mere apprehension without substance is simply an opinion which has no legs to stand. Personal whims are not allowed to be reflected while acting as a public servant.""

9. In the light of the aforesaid judgment, it is crystal clear that mere on account of First Information Report where evidently the fire arm was never used and there are no allegations of misuse of fire arms, license could not have been cancelled. The finding recorded by the District Magistrate, Sitapur that there is likelihood of misuse of fire arms by the petitioner, is also arbitrary and without there being any material to demonstrate that he is likely to misuse his fire arms. In absence of any material, the finding in this regard, is illegal and arbitrary.

10. The petitioner had criminal history of two case i.e. Case Crime No.8/2005 under Sections 307, 504, 506 IPC, Police Station Raniganj, District and Case Crime No.C57-A/ 2003 under Sections 323, 504 IPC, Police Station Raniganj, District Pratapgarh and in both the aforesaid cases, the petitioner has been acquitted vide judgment and order dated 17.04.2009 (Annexure no.5 to the writ petition) and judgment and order dated 11.12.2021 (Annexure No.2 to the affidavit filed in support of the recall application) respectively.

10. Considering the allegations levelled against the petitioner in show cause notice and also considering the finding of licensing authority in cancelling the arms license that there was violation of conditions of Arms Act are arbitrary, perverse and not based on any cogent reason. Reply of the petitioner has also not been taken into consideration while passing the impugned order of

cancellation as well as in the appeal filed by the petitioner, therefore, the order dated 4.6.2011, passed by the respondent No.2 as well as order dated 29.9.2011, passed by the respondent No.3 are arbitrary, perverse and not based on cogent reasons.

11. In the light of the reasons recorded hereinabove as also the fact that the petitioner has been acquitted in both the cases, the writ petition is allowed and the impugned orders dated 4.6.2016 and 23.9.2011 are hereby set aside.

12. No order as to costs.

(2026) 4 ILRA 1424
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 07.04.2026

BEFORE

THE HON'BLE AJIT KUMAR, J.
THE HON'BLE INDRAJEET SHUKLA, J.

Writ C No. 23348 of 2008

Central Bank Of India Khatauli, Muzaffarnagar ...Petitioner

Versus

State of U.P. & Ors.

...Respondents

ISSUE FOR CONSIDERATION

Whether the State authorities are legally entitled to levy collection charges upon the petitioner-Bank when no recovery was effected pursuant to the recovery certificate?

HEADNOTES

Civil Law – Constitution of India – Article 226, - Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 – Section 13(2), 13(4) : - Writ Petition under Article 226 – questioning the correctness of recovery citation and demand of 10% collection charges – petitioner Bank had lent loan to borrowers whose accounts turned NPA – statutory notices issued under Sections 13(2) and 13(4) of the SARFAESI Act – recovery proceedings initiated against borrowers – borrowers challenged before DRT - dismissed by tribunal with direction to resolve dispute amicably – meanwhile, district revenue authorities initiated recovery proceedings on request of Bank – subsequently, loan dues had already been liquidated by borrowers - petitioner Bank requested to State Authorities to return the recovery certificate, asserting no recovery was effected by State authorities – State relied on Board's order dated 14.08.2007 prohibiting direct acceptance of dues by Bank – petitioner argued order cannot operate retrospectively – whether collection charges can be levied without actual recovery – Court finds that no recovery was made, recovery certificate not returned, and demand of charges amounts to unjust enrichment contrary to law – held, impugned recovery certificate for collection charges without sanction of law would be against the fundamental principles of justice, equity and fair-play – hence, impugned recovery certificate is quashed and writ petition is allowed.

(Para – 13, 15, 16, 17)

WP Allowed. (E-11)

CASE LAW CITED

Maharajwa & Ors. v. State of U.P. & Ors., 2013 SCC OnLine All 14291 (Full Bench).

Mafatlal Industries Ltd. & Ors. v. Union of India & Ors., (1997) 5 SCC 536.
Indian Council for Enviro-Legal Action v. Union of India, (2011) 8 SCC 161.

LIST OF ACTS

Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970.
Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act).
U.P. Zamindari Abolition & Land Reforms Act, 1952.

LIST OF KEYWORDS

Writ Petition – Certiorari – SARFAESI Act – Loan - Recovery Certificate - Collection Charges - Doctrine of Unjust Enrichment – Equity – fair-play - Banking Recovery – Tehsildar - Liquidation of Loan - amicably - impugned recovery certificate - without sanction of law - fundamental principles of justice – quashed – allowed.

CASE ARISING FROM

Recovery citation dated 18.03.2008 issued by Tehsildar, Tehsil Jansath (now Khatauli), District Muzaffarnagar.

APPEARANCE OF PARTIES

Counsel for Appellant(s): - Shri Krishna Raj Singh Jadaun.
Counsel for Respondent(s): - Shri Chandra Prakash Yadav, C.S.C.

(Delivered by Hon'ble Indrajeet Shukla, J.)

Ref: Civil Misc. Delay Condonation Application No.02 of 2026

1. Cause shown for delay in filing the restoration application is sufficient. Delay in filing the restoration application is condoned.

2. The delay condonation application is accordingly allowed.

Ref: Civil Misc. Restoration Application No.03 of 2026

1. Cause shown is sufficient. The Restoration Application is allowed.

2. The order dated 16.09.2025 is recalled.

3. The Writ Petition is restored to its original number and status.

Ref: Writ Petition

1. Heard Shri Krishna Raj Singh Jadaun, learned counsel for the petitioner and Shri Chandra Prakash Yadav, learned Standing Counsel for the State respondents.

2. By means of instant writ petition, the petitioner has questioned the correctness of recovery citation dated 18.03.2008 issued by 4th respondent/Tehsildar, Tehsil Jansath now Khatauli, District Muzaffarnagar contained as Annexure No.10 to the writ petition.

3. The factual matrix giving rise to instant writ petition is, the petitioner is Nationalized Bank registered under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970. The petitioner-Bank lent a loan to M/s Deep Chand Sushil Kumar, Shri Sushil Kumar Jain, Neeraj Kumar Jain, Surendra Kumar Jain and Dhanendra Kumar Jain ((hereinafter referred to as "borrowers" for the sake of brevity) but their accounts turned Non-Performing Assets, as such statutory notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "SARFAESI Act" for the sake of brevity), was issued, which was followed by a notice for possession as envisaged under Section 13(4) of SARFAESI Act.

4. The recovery proceedings under SARFAESI Act were challenged by borrowers by means of a Securitisation Application No.33 of 2004 before the Debt Recovery Tribunal, Lucknow (herein after referred as "DRT"), and thereafter, a writ petition bearing Writ Petition No.2640 of 2004 was instituted before this Court at Lucknow. This Court directed the DRT, Lucknow to decide the interim relief application filed in Securitisation Application No.33 of 2004 but the DRT, Lucknow vide order dated 17.01.2005 dismissed the Securitisation Application No.33 of 2004 itself and directed the borrower and the bank to resolve their dispute amicably. They were in fact, directed to dispose of the immovable properties as detailed in the bank's notice under Section 13(2) & 13(4) of the SARFAESI Act dated 11.06.2003 and 26.08.2003 respectively, in all possible manner and strictly as per rules and regulations to get the reasonable fair price according to the present market rate at the earliest, so that claim of the respondent bank is satisfied properly.

5. The loan was liquidated by the borrower and this outstanding dues were satisfied, as such vide letter dated 17.03.2005 the petitioner-Bank requested the District Magistrate to return the recovery certificate so issued.

6. The letter dated 17.03.2005 issued by the bank was replied by the 4th respondent/Tehsildar concerned stating therein that return of recovery certificate is not feasible owing to recovery process set into motion through State machinery. Several reminders were also sent by the bank for return of recovery certificate but they remained of no avail.

7. Based on the report of Collection Amin, impugned recovery certificate dated 18.03.2008 was issued. The impugned recovery certificate is for realization of 10% demand raised by the bank, which is being termed as collection charges.

8. Submission advanced by learned counsel for the petitioner-bank is that the State authorities have not acted upon the recovery certificate issued against the original borrower and they have not effected the recovery as such and hence, they have no authority in law to ask for collection charges. Any demand of collection charges without effecting the recovery would be unlawful and arbitrary. The impugned recovery certificate asking for collection charges before any actual recovery had taken place at the end of State authorities, either through some coercive measure or through sale of property as stipulated under the rules framed under U.P.Z.A. & L.R. Act, 1952 is without authority of law.

9. Learned counsel for the petitioner in order to assail the recovery certificate asking for collection charges from the petitioner-Bank has relied upon the Full Bench decision of this Court rendered in the case of **Maharajwa and others Versus State of U.P. and others** reported in **2013 SCC OnLine All 14291**. The Hon'ble Full Bench was faced with following question of law:-

"Whether decision in Mange Ram v. State of U.P. in so far as it takes the view that there is no provision under any of the Acts for levying any collection charges for mere issuance of citation or sale proclamation is correct; or, the decision in Chinta Mani v. State of U.P., holding that provisions of subjection (2) of section 279 do not contain any provision for an absolute waiver of recovery charges where the citation has been issued under sub-section (1) and the charging section empowers the Collector to raise such demand subject to the rules and provision of Revenue Recovery Act (U.P. Act No. 37 of 2001); is correct."

10. The Hon'ble Full Bench replied the question so posed vide paragraph no.37, which is reproduced as under:-

"From the aforesaid decisions, it is absolutely clear that it has to be seen as to under what Act the recovery has been initiated. Whether it is under 1890 Act, 1950 Act or 1973 Act. If the recovery proceedings have been initiated under 1890 Act then in that event if the recovery is being made under section 3 of the Act then cost of recovery would be 10% of the amount stated in the certificate. However, if recovery certificate has been issued but no recovery had been made by the State authorities, who had issued the recovery certificate as for example the defaulter directly deposits the amount or the recovery certificate is withdrawn or cancelled for any reason whatsoever then in that event there is no question of charging any costs of recovery. At best the fee for the process mentioned in 1952 Rules can be levied. However, if the recovery certificate has been issued under section 5 of 1890 Act then there is no question of any cost of recovery being realised as the State Government has not yet issued any notification specifying any rate. If the recovery has been issued under 1973 Act then in that case realisation of recovery, charges by the State authorities can be made from the defaulter only where the entire amount had been recovered by the authorities of the State. If the recovery as arrears of land revenue is being made by invoking the provisions of 1950 Act then in that event the fee prescribed under 1952 Rules for various process for realisation of arrears of land revenue while selling moveable and immovable properties and also where properties are not sold alone is payable. It appears that this aspect of the matter was not brought to the notice of the Hon'ble Judges who decided the case of Chinta Mani (supra). We are, therefore, in respectful agreement with the view taken by this Court in the case of Mange Ram (supra) and hold that the decision in the case of Chinta Mani (supra) does not lay down the correct law. Before parting with the case, we may mention here that we have not gone into the question as to whether recovery charges of 10% fixed under section 3 of 1890 Act or the fee of 10% to be deposited by the bank while making an application under Rules 12 and 23 of 1975 Rules or the costs of recover @ 10% specified in 1975 Rules bears any correlation with the expenditure incurred by the State Government in recovering the dues as arrears of land revenue as there is no pleadings on this issue in the writ petition."

11. Countering the submissions advanced by counsel for the petitioner-Bank, learned Standing Counsel submits that after issuance of recovery certificate at the end of State authorities

the Bank cannot accept the defaulted outstanding amount from the borrower directly and it can only be accepted through State machinery. The deposition of defaulted outstanding amount directly to the bank was hit by the Board's order dated 14.08.2007 issued by the Commissioner and Secretary Board of U.P. Anubhag-II, Lucknow, which is contained as Annexure No.1 to the counter affidavit.

12. Responding to the submissions advanced by State counsel with respect to Board's Order dated 14.08.2007, it has been submitted by counsel for the petitioner that the Board's order dated 14.08.2007 cannot be permitted to operate retrospectively as the loan amount was liquidated way back in the year 2005 and a request for return of recovery certificate itself was made on 17.03.2005, which was deliberately been not responded to by State authorities and without deciding the request of bank for return of recovery certificate, levying any collection charge upon bank was clearly untenable.

13. Upon consideration of the rival submissions it comes out that the State authorities had not acted upon recovery certificate and in nutshell no recovery was made and at the same time the recovery certificate was not returned despite request made by the petitioner-Bank. Thus, if collection charges in the form of recovery certificate are allowed to be recovered, it would attract the doctrine of 'unjust enrichment', which is based on a maxim "Nemo Debet Locupletari Ex Aliena Jactura" (no person should be enriched at the expense of another). Even the State authorities cannot be permitted to derive benefit for which they are not legally entitled. No recovery as a tool of oppression is permissible. Permitting the State authorities to proceed for levy of collection charges would amount to taxing the Bank-petitioner and it is constitutional mandate that no tax shall be levied or collected except by authority of law. In given factual backdrop the State respondents utterly failed to demonstrate any provision of law for levying the collection charge as demanded by them by virtue of impugned recovery certificate. The doctrine of 'unjust enrichment' was subject matter of consideration of Hon'ble Supreme Court in the case of **Mafatlal Industries Ltd and Ors vs. Union of India (UOI) and Ors.** reported in (1997) 5 SCC 536 wherein 'unjust enrichment' has been deprecated.

14. The Apex Court in **Indian Council for Enviro Legal Action versus Union of India reported in 2011 (8) SCC 161** has defined the "Unjust Enrichment", as under:-

"UNJUST ENRICHMENT"

152. 'Unjust enrichment' has been defined by the court as the unjust retention of a benefit to the loss of another, or the retention of money or property of another against the fundamental principles of justice or equity and good conscience. A person is enriched if he has received a benefit, and he is unjustly enriched if retention of the benefit would be unjust. Unjust enrichment of a person occurs when he has and retains money or benefits which in justice and equity belong to another.

153. Unjust enrichment is "the unjust retention of a benefit to the loss of another, or the retention of money or property of another against the fundamental principles of justice or equity and good conscience." A defendant may be liable "even when the defendant retaining the benefit is

not a wrongdoer" and "even though he may have received [it] honestly in the first instance." (Schock v. Nash, A.2d, 232-33).

159. Unjust enrichment is basic to the subject of restitution, and is indeed approached as a fundamental principle thereof. They are usually linked together, and restitution is frequently based upon the theory of unjust enrichment. However, although unjust enrichment is often referred to or regarded as a ground for restitution, it is perhaps more accurate to regard it as a prerequisite, for usually there can be no restitution without unjust enrichment. It is defined as the unjust retention of a benefit to the loss of another or the retention of money or property of another against the fundamental principles of justice or equity and good conscience. A person is enriched if he has received a benefit, and he is unjustly enriched if retention of the benefit would be unjust. Unjust enrichment of a person occurs when he has and retains money or benefits which in justice and equity belong to another."

15. The State respondents did not attempt for realization of amount of recovery with promptitude and once same has been liquidated between borrower and the bank, asking for collection charges through impugned recovery certificate would be licensing, realization of an amount (collection charges) without sanction of law and same would be against the fundamental principles of justice, equity and fair-play.

16. Thus, if recovery certificate is issued but no recovery had been made by the State authorities, who had issued the recovery certificate and the defaulter directly deposits the amount and the recovery certificate is asked for withdrawal, withdrawn or even cancelled then in that event there is no question of charging any cost of recovery, permitting State authorities to realize cost of recovery/collection charges is clearly impermissible by doctrine of 'unjust enrichment'.

17. In view of the above, writ petition succeeds and is **allowed**. The impugned recovery certificate dated 18.03.2008 is quashed. No order as to cost.

(2026) 4 ILRA 1429
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 06.04.2026

BEFORE

THE HON'BLE IRSHAD ALI, J.

Writ C No. 30949 of 2017

Asgari Began

...Petitioner

Versus

State of U.P. & Ors.

...Respondents

ISSUE FOR CONSIDERATION

Whether cancellation of petitioner's fair-price shop licence was valid when reply was ignored.

Whether allotment of shop to Gram Pradhan's family member (respondent no. 6) violates Government Order dated 18.05.1999 ?

HEADNOTES

Civil Law – Constitution of India – Article 226 : - Writ Petition under Article 226 - seeking quashing of the impugned cancellation of fair-price shop licence orders passed by the Deputy Commissioner (Food) and District Supply Officer as well as impugned allotment in favour of respondent no.6 - petitioner was running fair-price shop since 2006 - repeated complaints - instigated by Gram Pradhan - despite clean chit in inquiries - licence was cancelled without considering reply, and shop allotted to Gram Pradhan's relative (respondent no.6) - petitioner pleaded violation of Government Order dated 18.05.1999 prohibiting allotment to family members of Gram Pradhan - respondents contended that respondent no. 6 is not family member of Gram Pradhan - Court finds that, during pendency of Writ Petition petitioner died and legal heirs are substituted - cancellation order passed casually without considering reply - appellate order mechanical - allotment to Gram Pradhan's relative illegal under Government Order - petitioner's death requires preference to legal heirs - impugned orders are not sustainable in the eyes of law - held, Quota granted to respondent no. 6 who is a family member of the Gram Pradhan is illegal and contrary to the Government Order - writ petition allowed with directions to Sub-Divisional Magistrate to re-allot shop giving preference to legal heirs of the petitioner within three months in accordance with Government Order.

WP Allowed. (E-11)

CASE LAW CITED

No case cited.

LIST OF ACTS

Constitution of India.

LIST OF KEYWORDS

Fair-price shop, cancellation, Gram Pradhan, family member, Government Order 1999, electoral roll, mechanical dismissal, legal heirs, allotment.

CASE ARISING FROM

Cancellation of fair-price shop licence by District Supply Officer, Sultanpur (05.07.2017).

Appeal dismissed by Deputy Commissioner (Food), Faizabad Division (14.11.2017).

Allotment of shop to respondent no. 6 dated 01.08.2017.

APPEARANCE OF PARTIES

Counsel for Appellant(s): Shri Alok Sharma.

Counsel for Respondent(s): Shri Sudhakar Mishra, counsel for respondent no.6, Shri Mohan Singh, counsel for Gaon Sabha.

(Delivered by Hon'ble Irshad Ali, J.)

1. Heard Shri Alok Sharma, learned counsel for the petitioner, learned Standing Counsel for the respondents-State, Shri Sudhakar Mishra, learned counsel for the respondent no.6 and Shri Mohan Singh, learned counsel for the respondent-Goan Sabha.

2. During course of submissions it has been pointed out that Officer (District Supply Officer, Sultanpur) who has passed the order impugned, has not been made party to the writ petition.

3. In view of the above, Shri Alok Sharma, learned counsel for the petitioner is permitted to implead the District Supply Officer as respondent no.8 in the array of parties.

4. The present writ petition has been directed against the order of cancellation dated 14.11.2017 passed by the Deputy Commissioner (Food), Faizabad Division, Faizabad and order dated 5.7.2017 passed by District Supply Officer, Sultanpur.

5. Factual matrix of the case is that the petitioner runs fair-price shop since 2006 to cardholders of the village in question. A complaint was filed against the petitioner at the behest of Gram Pradhan on 13.05.2016 and inquiry was initiated against the petitioner. The petitioner levelled certain charges. The petitioner submitted reply to the charges levelled against him stating therein that the Gram Pradhan due to enmity is continuously creating hindrance in proper functioning of the fair-price shop, therefore the petitioner sent letter to the authorities on 28.11.2016, 30.11.2016 and 14.12.2016.

Upon enquiry and after consideration of the reply submitted by the petitioner, vide order dated 20.12.2006 entire stock of the petitioner was found to be in order. The petitioner again wrote a letter to the S.D.M., Sultanpur informing him about illegality being committed by the Gram Pradhan on 18.1.2017. Vide order dated 7.2.2017 Gram Pradhan started pressurizing the authority to transfer cardholders to other shop.

In the meantime, another complaint was filed against the petitioner on 20.12.2016. The S.D.M. inquired into the said complaint and gave clean cheat to the petitioner vide report dated 18.4.2017. Another request was made by the petitioner to the authority for deputing an officer for peaceful distribution of foodgrains to the cardholders. The said letter was sent on 26.12.2016 and 15.5.2016 and an inquiry was done upon the complaint of the petitioner recorded in the report dated 23.5.2017 that the Gram Pradhan was restraining people from taking ration from the petitioner's shop.

Another report was submitted on 27.5.2017 wherein it was recorded that the people were not taking ration due to enmity of Gram Pradhan with the petitioner and also recorded that some unknown person tried to make hindrance in the distribution system even during the time of distribution officer was himself present on the spot.

Another complaint was filed against the Gram Pradhan by the anganwadi worker stating that the Gram Pradhan is coercing her and pressurizing her to verify false/ illegal ration cards. On 19.5.2017, certain individual at the behest of Gram Pradhan filed complaint against the petitioner.

The licence of the petitioner was suspended on 12.06.2017. The petitioner filed reply and the same was taken on record on 29.6.2017. A complaint was filed against the petitioner alleging the same fact on 4.7.2017. Immediately after the complaint dated 4.7.2017, the licence of the petitioner's shop was terminated without affording opportunity of hearing to the petitioner.

The petitioner filed appeal against the said order of cancellation on 10.7.2017. During pendency of the appeal, Gram Sabha passed resolution in favour of Smt. Sakeela Bano who is

relative of Gram Pradhan and living in the same house. The appeal of the petitioner has been dismissed in mechanical manner even without considering the facts and averments of the petitioner.

6. Learned counsel for the petitioner submits that reply submitted by the petitioner on four points which were not taken into consideration and in a hurried manner, the order was passed allotting shop to Gram Pradhan's family member i.e. Smt. Sakeela Bano.

In this regard, learned counsel for the petitioner has invited attention of this Court at page 31 of the paper-book and shown that on four charges reply was sought from the petitioner. In pursuance thereof, the petitioner replied annexing therewith necessary document to show that there is no irregularity as alleged in the show cause notice.

7. Learned counsel for the petitioner next submits that while passing the impugned order of cancellation of shop, no reply submitted by the petitioner was taken into consideration.

8. Learned counsel for the petitioner next submits that Government Order dated 18.5.1999 restrains the family members of the Gram Pradhan to hold licence of fair-price shop in their favour. For ready reference, clause 1.8 reads as under:

"1.8 ग्राम प्रधान या उप प्रधान के परिवार के सदस्यों / संबंधियों के पक्ष में उचित दर की दुकान के आवंटन का प्रस्ताव नहीं किया जायेगा। परिवार की परिभाषा निम्नलिखित मानी जायेगी — स्वयं स्त्री, पुत्र, अविवाहित पुत्री, माता, भाई या अन्य कोई सदस्य जो साथ में रहता हो तथा एक चूल्हे का बना खाना खाता हो।"

9. Learned counsel for the petitioner next submits that in view of the provisions referred hereinabove, Smt. Sakeela Bano would not have been granted fair-price shop's licence as she is member of family of the Gram Pradhan and is residing the same house i.e. House No.65.

In support of his submission, the petitioner invited attention of this Court towards electoral roll to show that House No.65 starts from page 109 from the bottom, at serial no.596 name of Smt. Sakeela Bano finds place and at serial no.608 name of Mahzveen finds place. This clearly demonstrates that Smt. Sakeela Bano who has been given quota of fair-price shop is family member of the Gram Pradhan, therefore she cannot be given quota of fair-price shop in view of the restricted provisions provided under the Government Order dated 18.5.1999.

10. Learned counsel for the petitioner next submits that the Appellate Authority has also not taken into consideration the aforesaid aspect of the matter despite the fact that the specific ground was taken in the memo of appeal, therefore the order passed by the Appellate Court is wholly illegal and not sustainable in the eyes of law.

11. Learned counsel for the petitioner lastly submits that the order of cancellation has been passed in a very cursory manner without considering the reply submitted by the petitioner and the appeal filed by the petitioner has also been decided without taking into consideration the grounds taken in the memo of appeal, therefore the orders passed by the District Supply Officer as well as by the Deputy Commissioner, Faizabad Division, Faizabad are not sustainable in the eyes of law.

12. On the other hand, Shri Sudhkar Mishra, learned counsel for the respondent no.6 submits that she is not member of family of Gram Pradhan, therefore the quota allotted to her is just and valid.

13. Shri Mohan Singh, learned counsel for the respondent- Gaon Sabha submits that while passing the impugned order of cancellation reply submitted by the petitioner was not properly taken into consideration.

14. Having heard the rival submissions of learned counsel for the parties, I have perused the material on record.

15. On perusal of the impugned order of cancellation, it is evident that reply was submitted by the petitioner in detail by annexing copy of the Board displaying required information under law but the same has not been considered by the District Supply Officer while passing the impugned order, therefore the order impugned dated 5.7.2017 has been passed in a very casual manner without taking into consideration the reply submitted by the petitioner, therefore the order impugned dated 5.7.2017 is not sustainable in the eyes of law.

16. Government Order referred hereinabove dated 18.5.1999 also reveals that no quota of fair-price shop can be allotted to the family member of Gram Pradhan and by annexing copy of the electoral roll, the petitioner has established that Smt. Sakeela Bano is family member of the Gram Pradhan, therefore, quota granted to Smt. Sakeela Bano is illegal and contrary to the Government Order referred hereinabove.

17. By means of the present writ petition, on the ground referred hereinabove, the petitioner has prayed to quash allotment order dated 1.8.2018 made in favour of Smt. Sakeela Bano who is family member of the Gram Pradhan.

18. In view of the reasons recorded above and facts and circumstances of the case, impugned order dated 4.11.2017 passed by the Deputy Commissioner, Faizaba Division, Faizabad (Annexure No.1 to the writ petition) and order dated 5.7.2017 passed by the District Supply Officer, Sultanpur and order of allotment of quota dated 1.8.2017 are hereby quashed.

19. Accordingly, this writ petition succeeds and is **allowed.**

20. After passing the order for quashing and allowing the writ petition, it has been pointed out that quota holder who is petitioner has died and legal heirs of the petitioner has already been arrayed as party to the writ petition, therefore, Sub-Divisional Magistrate, Baldiray, District Sultanpur is directed to hold a meeting in his presence and give preference to the legal heirs of family member of the deceased while issuing allotment of fair-price shop in accordance with Government Order dated 5.8.2019. The said exercise shall be completed within three months from the date of production of a certified copy of this order.

(2026) 4 ILRA 1434
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 24.04.2026

BEFORE

THE HON'BLE SIDDHARTH NANDAN, J.

Writ C No. 34106 of 2025

Khwaja Asher (Minor) Khwaja Shamshad Ahmad	...Petitioner
Versus	
State of U.P. & Ors.	...Respondents

ISSUE FOR CONSIDERATION

Whether a child seeking admission under Section 12(1)(c) of the Right of Children to Free and Compulsory Education Act, 2009 can be denied consideration merely because the application was submitted manually and not through the online portal.

HEADNOTE

Right of Children to Free and Compulsory Education Act, 2009, s.12(1)(c) – Constitution of India, Art. 21-A – Admission under 25% quota for children belonging to weaker sections and disadvantaged groups – Petitioner unable to upload the application form online – Manual application submitted before Basic Siksha Adhikari – State contended that for the purposes of admission for the Academic Session 2023-24, the procedure contemplated was only through online applications – Sustainability:

Held: Government Order dated 03.03.2016 specifically provides that where the parents are unable to apply through online mode, it casted a duty on the District Basic Siksha Adhikari to facilitate the filing of the manual application before him – Letter dated 20.01.2017 clearly states that as per the Government Order, the online procedure is “also” being implemented facilitating online application – Communication dated 30.01.2023 merely contemplates that an online application and lottery system has been started but does not indicate that Government Order dated 03.03.2016 has been amended or restrictions have been placed for making applications manually through Basic Siksha Adhikari – Since the Government Order dated 03.03.2016 was applicable for Academic Session 2023-24, it cannot be said that there was change in procedure subsequently. Court held that if the application under Section 12(1)(c) is mandated to be submitted only through online portal, the very object of the constitutional amendment and the Directive Principles of State Policy to provide free and compulsory education to children who are under privileged and are unable to complete their elementary education shall stand defeated – The very object of the Act, 2009 shall stand defeated if parents who are unable to apply through online mode are restrained from even making an application manually - Argument of the State that the application ought to have been made only through online mode rejected - Court directed that if applications are to be insisted through online mode only, the State Government must take upon itself the onerous duty to facilitate parents to file online applications through the office of Basic Siksha Adhikari. – State Government directed to consider issuance of a Standard Operating Procedure incorporating guidelines for processing online application forms through the office of Basic Siksha Adhikari for parents incapable of applying online for benefit of Section 12(1)(c) of the Act, 2009 [Paras 12, 13, 18, 21]

In the instant case the Respondent-Basic Siksha Adhikari directed to forthwith process the application of the petitioner [Paras 19] (E-5)

CASE LAW CITED

Nil

List of Acts

**Constitution of India;
Right of Children to Free and Compulsory Education Act, 2009.**

List of Keywords

Article 21-A; Free and compulsory education; Weaker sections; Disadvantaged groups; Section 12(1)(c); Nursery admission; Online application; Manual application; District Basic Siksha Adhikari; Government Order dated 03.03.2016; Educational rights; Neighbourhood school; 25% reservation; Elementary education; Standard Operating Procedure.

CASE ARISING FROM

Petition filed seeking issuance of writ of mandamus commanding the respondents, to admit the petitioner (minor) in class-Nursery giving the benefit of Section 12(1)(c) of Right of Children to Free and Compulsory Education Act, 2009

Appearances for Parties

Advs. for the Petitioner: Khwaja Shamshad Ahmad.

Advs. for the Respondents: C.S.C., Dharam Raj.

(Delivered by Hon'ble Siddharth Nandan, J.)

1. Heard Shri Khwaja Shamshad Ahmad, Petitioner representing Khwaja Asher (minor) and Shri Vaibhav Tripathi, learned Standing Counsel for the State-respondents.

2. The present writ petition has been filed seeking issuance of a writ of mandamus commanding the respondents to admit the petitioner in Class Nursery under Section 12(1)(c) of the Right of Children to Free and Compulsory Education Act, 2009 (hereinafter referred to as the 'Act, 2009'). For ready reference, Section 12(1)(c) of the Act, 2009 is reproduced below:

"12. Extent of school's responsibility for free and compulsory education.?(1) For the purposes of this Act, a school,?

(c) specified in sub-clauses (iii) and (iv) of clause (n) of section 2 shall admit in class I, to the extent of at least twenty-five per cent of the strength of that class, children belonging to weaker section and disadvantaged group in the neighbourhood and provide free and compulsory elementary education till its completion:

Provided that where a school specified in clause (n) of section 2 imparts pre-school education, the provisions of clauses (a) to (c) shall apply for admission to such pre-school education."

3. The case of the petitioner is that he had applied manually in the office of the Basic Siksha Adhikari, Prayagraj along with the letter dated 05.04.2023, expressing his inability to upload the form online, and therefore had requested the Basic Siksha Adhikari, Prayagraj to submit the same as per the provisions of the Government Order dated 03.03.2016. He has relied upon the Government Order dated 03.03.2016, wherein it has been provided that for admission, the parents of the child can apply in the office of District Basic Siksha Adhikari and further has relied upon the notification dated 06.02.2017 issued by the Additional Project Director, wherein also under Clause 2(d), it has been provided that for any reason an application cannot be made online, under the said circumstances, the same can be made through Block Siksha Adhikari. For ready reference, Section 2(d) of the notification dated 06.02.2017 is reproduced below:

"2. आवेदन पत्र का प्रेषण:-

(क)

(घ) अभिभावकों को ऑन लाईन आवेदन हेतु प्रोत्साहित किया जायेगा, तथापि यदि किन्हीं कारणों से कितपय

अभिभावकों द्वारा आवेदन हेतु ऑफ लाईन आवेदन किया जाता है, तो ऐसे प्रारंभिक आवेदन पत्रों को सम्बन्धित

खण्ड शिक्षा अधिकारी के माध्यम से सत्यापित कराकर वेब पोर्टल पर अपलोड करने की जिम्मेदारी सम्बन्धित

जिला बेसिक शिक्षा अधिकारी की होगी।

"4. In pursuance of the order of this court dated 09.04.2026, an affidavit of respondent no.2 has also been filed along with a copy of Government Order dated 03.03.2016 (wrongly transcribed as 03.03.2018 in the notification dated 30.01.2023) has been filed wherein it is provided that it is the duty of the District Basic Siksha Adhikari to forward the manual application, in case, the parents are not able to upload the same online. It also records that no child can be denied admission for whatsoever reason, as per the mandate of Section 12(1)(c) of the Act, 2009. It also provides that the admission has to be made in the school which is situated in the neighboring area or nearest to the residence of the child, in case schools are not available in the block in which the family resides.

5. Shri Vaibhav Tripathi, learned Standing Counsel has placed reliance on the letter of the Special Secretary to the State Project Director (Education For All) dated 20.01.2017, and submits that as per the Government Order dated 03.03.2016, the procedure for application under Section 12(1)(c) of the Act, 2009, has been made online.

6. However, a perusal of Paragraph no.3, of the letter dated 20.01.2017, clearly states that as per the Government order, the online procedure is "also" being implemented, facilitating online application. For ready reference, Paragraph No.3 is quoted below:

3- इस संबंध में मैं मुझे यह कहने का निर्देश हुआ है कि उक्त शासनादेशों में 7 निर्धारित वर्तमान प्रक्रिया को ऑन लाइन भी किए जाने का निर्णय लिया गया है। उक्त कार्य अत्यन्त महत्वपूर्ण है। कृपया इसे समयबद्ध रूप से कराने के लिए अपने स्तर से यथोचित कार्यवाही किया जाना सुनिश्चित करें। उक्त कार्य के लिए आप पूर्णतः उत्तरदायी होंगे।"

7. Thereafter, he places reliance on the letter dated 30.01.2023, to contend that for the purposes of admission for the Academic Session 2023-24, the procedure contemplated is only through online applications. Bare reading of the communication dated 30.01.2023, itself demonstrates that a note was made with respect to Government Order dated 03.03.2016 (wrongly transcribed as 03.03.2018 in the notification dated 30.01.2023), wherein it merely contemplates that an online application and lottery system has been started; but it does not in any manner indicate that the earlier Government Order dated 03.03.2016, has been amended or restrictions have been placed, for making applications manually through Basic Siksha Adhikari. Since the Government Order dated 03.03.2016, was applicable for the academic Session 2023-24, as evident from the letter dated 30.01.2023, it also cannot be said that there was change in procedure subsequently, as the same would not apply retrospectively.

8. At this juncture, the court also take note of the statement of objects and reasons and the 86th Amendment Act, 2002; whereby, Article 21-A has been inserted in the Constitution of India, for making provision for the Right of Children to Free and Compulsory Education. It casts an obligation on the appropriate Government to provide and ensure admission, attendance and completion of elementary education. It provides that every child has a right to be provided full time elementary education of satisfactory and equitable quality, in a formal school which satisfies certain essential norms and standards.

9. The Directive Principles of State Policy, which is part of the Constitution of India, also lays down that the State shall provide free and compulsory education to all the children up to the age of 14 years.

10. The Statement of Object and Reasons, takes note of the fact that the number of children, particular children from disadvantaged groups and weaker sections, who drop out of school before completing the compulsory elementary education, remains very large.

11. If the argument of the State is accepted, and the application which is to be made under Section 12(1)(c) of the Act, 2009; is mandated to be submitted only through online portal, this court is afraid that the very object of the constitutional amendment and the Directive Principles of State Policy, to provide free and compulsory education to children who are under privileged and are unable to complete their elementary education, shall stand defeated.

12. It is perhaps in view of the aforesaid objectives, the Government Order 03.03.2016, specifically provides that where the parents are unable to apply through online mode, it casted a duty on the District Basic Siksha Adhikari to facilitate the filing of the manual application before him, to enable the parents to apply for the provision of free and compulsory education, to his child.

13. The very object of the Act, 2009 shall stand defeated, if the parents who are unable to apply through online mode, are put to restrain by not even making an application manually; and as such the argument of the State that the application ought to have been made only through online mode cannot be accepted; and is accordingly rejected.

14. Before parting with the judgment, this court also takes note of the fact that in affidavit dated 24.04.2026 filed on behalf of the respondents, wherein on a query being raised by the court, in Para-13 of the said affidavit, it has been mentioned that for the Academic Session 2024-25 out of total 3760 children, who were allotted schools, only 2412 children took admission; and similarly, for the Academic Session 2025-26, out of total 3862 children, only 2527 children took admission i.e. more than 1300 children did not take admission, in both academic sessions.

15. The said fact is indicative of an inherent defect in the implementation of the benefits of the Act, 2009 and though the children are aspiring to seek the benefit of Section 12(1)(c) of the Act, 2009; but due to the defect in the allotment of schools, thousands of children are not able to take the benefit of the Act, 2009. The Government must also look into the reasons and should provide some remedial measure, so that the benefit is extended to maximum students. The allotment, should be made accordingly, so that children are encouraged to take admission and not forfeit the same.

16. I may also give reference to the data collated, and brought on record, in pursuance of the orders of this court, by way of the affidavit dated 24.04.2026, which indicates that in District Prayagraj, for the Academic Session, 2025-26, some schools have given admission under the benefit of Section 12(1)(c) of the Act, 2009, to a almost negligible number of students and does not meet the criteria of 25% admission; for example in Ananta Devi Girls Inter College, only one student has been given the benefit; in Astha Vidya Mandir, only two students have been given the benefit; in Bal Vikas Vidyalaya, only four students, and similarly the numbers are between 1 to 4 in each school is overwhelming in the entire list, brought on record by the respondents.

17. The court is also conscious of the fact that online mechanism may bring transparency and reduce the human inputs, which may invariably attract some irregular practices, with respect to allotment of schools; but that alone cannot be the basis of prohibiting any manual application; considering that majority of students and family are those who are underprivileged and disadvantaged groups, who may not always make an application online. Also the fact that none of the schools are meeting the criteria of providing 25% such admissions.

18. However, in case the applications are to be insisted through online mode only, the State Government must also take upon itself, the onerous duty to facilitate the parents, to file online application through the office of Basic Siksha Adhikari; and any other method, would defeat the very purpose of the Act, 2009.

19. In view of the aforesaid, Respondent no.2 - Basic Siksha Adhikari, Prayagraj is directed to forthwith process the application of the petitioner within a period of one week from today.

20. Learned Standing Counsel is directed to communicate this order to the Respondent No.2, so that needful may be done and the academic session which is about to ensue, is not lost.

21. Registrar (Compliance) is directed to send a copy of this order to Respondent No.1 to consider the observation and opinion of this court more specifically stated in Paragraph 12 to 19 ; and it shall be expected from the Respondent No.1 to further circulate this judgment to all the District Basic Siksha Adhikari, in the State of U.P., within a period of three weeks from today, for necessary compliance, and if deems fit, to issue a separate "standard operating procedure", incorporating the guidelines for processing the online applications form, through the office of Basic Siksha Adhikari for those parents, who are incapable of applying online for the benefit of Section 12(1)(c) of the Act, 2009, since belonging to weaker sections and disadvantaged groups; and for want of knowledge, expertise or facility, to apply online.

22. With the aforesaid observations and directions the writ petition stands *allowed*.

(2026) 4 ILRA 1439
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 17.04.2026

BEFORE

THE HON'BLE AJIT KUMAR, J.
THE HON'BLE INDRAJEET SHUKLA, J.

Writ C No. 34909 of 2023

Smt. Pushpa Devi

...Petitioner

Versus

State of U.P. & Ors.

...Respondents

ISSUE FOR CONSIDERATION

Whether employees of essential service departments such as electricity, water supply, telephone, and police, who discharged duties during the COVID-19 pandemic, are entitled to ex-gratia compensation under the State Government's scheme when they died due to COVID-19 infection?

HEADNOTES

Civil Law – Constitution of India – Article 14, 21, 226: - Writ Petition under Article 226 – for quashing impugned rejection order - whereby State Govt. rejected the ex-gratia compensation - petitioner's husband was assigned duties to maintain electricity supply during pandemic – who died due to COVID-19 infection – claim of compensation under COVID-19 ex-gratia compensation scheme, to the dependent of deceased employee of electricity department who died due to COVID-19 infection - claim rejected on ground that electricity duty not covered under "COVID duty" - Legal question before High Court that, whether essential service employees (like electricity, water, telephone, police) fall within scope of "COVID duty" under Government Order dated 11.04.2020 - Court finds that essential service employees contributed directly to containment, treatment, and protection during pandemic - narrow interpretation by State arbitrary and violative of Articles 14 and 21 – held - employees of essential services are deemed to be on COVID duty – therefore, rejection order unsustainable – quashed - writ petition allowed – direction issued to release ex-gratia compensation within 30 days

(Para – 7, 12, 13, 14)

WP Allowed. (E-11)

CASE LAW CITED

Writ-C No. 17575 of 2023 - Smt. Premlata Pandey v. State of U.P. & Ors., (Allahabad HC, 29.05.2023)

LIST OF ACTS

Constitution of India: Article 14 - Government Order dated 11.04.2020 (COVID-19 ex-gratia compensation scheme).

LIST OF KEYWORDS

COVID duty - ex-gratia compensation - essential services - electricity department - Article 14 - Article 21 - pandemic containment - right to life – arbitrariness - dignity – govt order – quashed – writ petition - allowed.

CASE ARISING FROM

Rejection order dated 28.07.2023 passed by the State Government denying ex-gratia compensation to the petitioner under the Government Order dated 11.04.2020 (COVID-19 ex-gratia compensation scheme).

APPEARANCE OF PARTIES

Counsel for Appellant(s): - Shri Ashutosh Kumar Tiwari, Ram Bilas Yadav.

Counsel for Respondent(s): - Shri P.K. Shahi (Additional Chief Standing Counsel), Shri Pankaj Srivastava (Standing Counsel), Shri Devesh Vikram (for respondent nos. 6 & 7)..

(Delivered by Hon'ble Indrajeet Shukla, J.)

1. Heard Shri Ram Bilas Yadav, learned counsel for the petitioner, Shri P.K. Shahi, learned Additional Chief Standing Counsel along with Shri Pankaj Srivastava, learned Standing Counsel for the State respondents and Shri Devesh Vikram, learned counsel for respondent nos.6 and 7.

2. By means of present petition under Article 226 of the Constitution of India the petitioner has questioned the decision taken by the State Government dated 28.07.2023 rejecting the claim of ex-gratia compensation to the dependent-petitioner on account of death of Viklesh Gaud due to covid-19.

3. It is argued by learned counsel appearing on behalf of the petitioner that the husband of the petitioner since was assigned duties in the electricity department to ensure continue supply of electricity, and died due to infection of covid-19, the claim of ex-gratia compensation could not have been rejected on the ground that the duties assigned to the deceased would not have been taken to be duty on covid-19.

4. It is contended by learned counsel for the petitioner that the word and expression 'covid roktham, upchar and vachav' i.e. containment of covid pandemic/covid-19 treatment and protection from infection of covid would not involve the electricity department as a department rendering services for the said object to be achieved.

5. It is contended that during pandemic covid-19 while the State medical machinery was running out of its existing strength to meet the requirement and even the private hospitals were being declared as covid hospitals in city areas and rural areas, the Primary Health Center and the Community Health Centers were involved, which required oxygen machines and other machines to be installed beside ventilators to be run on electricity, the electricity became as necessary as water resources and the medical resources.

6. It is contended that the continued electricity supply to be maintained to the hospitals, Primary Health Centers and Community Health Centers to make the machinery run properly to ensure that there is a proper care taking and treatment given to the covid patients and the containment of the covid pandemic also when the people were to undergo quarantine and the movement on public streets was absolutely restricted then continued water supply and electricity supply became indispensable.

7. Article 14 and 21, it is contended not only ensures that there is no arbitrariness on the part of the State authorities or administration including the medical department, its essential services that would include the electricity, telephone and water supply and this would also attract Article 21 of the Constitution of India where citizens have the fundamental right to life, not only with liberty but to live life with dignity. In a situation of pandemic where the entire State machinery had geared up to ensure that there was no much threat to the life of the ordinary citizens more especially in the rural areas and sub-urban areas where the medical facilities could not be provided properly even after efforts of their obligation at optimum level, non-supply of water and electricity would have had very adverse effect and would have made the life of the citizens miserable

8. Thus, according to counsel appearing for the petitioner, for the purposes of containment of pandemic covid-19, treatment of patients, who were covid affected and their protection, which were the three hallmark points to maintain an application for payment of ex-gratia compensation announced by the State Government, the duties assigned to the people, in the electricity department, water supply department, telephone department, police department and such other essential services departments would amount to and would be taken to be duty assigned in the covid period for the containment of covid-19, treatment and cure.

9. People may not realize in ordinary days the necessity of telephone services and such other essential services etc. but continued connectivity also played a great role not only in connecting the people, who were coming to their Village from far far away places but also ensuring immediate attention of the doctors for the remote areas. So the people who were working in these departments were equally deserve to be taken to have worked and discharged duties during covid to be defined as duty for covid containment cure and treatment.

10. Upon a pointed query being made to the learned Additional Chief Standing Counsel as to those, who were discharging their duties during pandemic covid-19, electricity department, water supply department, telephone department, police department and such other essential departments would not get covered, learned Additional Chief Standing Counsel could not show any material from the counter affidavit or otherwise could bring any such document, which would have justified the order passed by the State Government.

11. We have been apprised by coordinate bench judgement of this Court dated 29.05.2023 passed in the matter of **Smt. Premlata Pandey Versus State of U.P. and 3 others, Writ-C No.17575 of 2023**. The said writ petition has been allowed by the coordinate bench granting ex-gratia compensation to the dependent of deceased, who was working as Head Constable in the

police department and died during pandemic covid-19. Paragraph no.9 of the said judgement has held thus:-

"9. Husband of the petitioner, Head Constable Ashok Kumar Pandey while working at Civil Airport Gorakhpur was involved in enforcement of COVID-19 protocol by ensuring social distancing among the passengers as well as forcing them to undergo corona test. Admittedly, there is no other force or employees except the policemen at airport who are deputed for this specific purpose. The State cannot make artificial distinction among its employees to depriving one class of employees from getting ex gratia compensation on their death despite the fact that they had received corona infection on duty during COVID-19 period. Every policeman or other government employee who has been discharging his duty during COVID-19 period for enforcing COVID-19 protocol will be deemed to be performing duty for prevention and protection of COVID-19 as mentioned in Government Order dated 11.4.2020 and if he dies because of corona infection during discharge of his duty then his dependents will be entitled to receive ex gratia compensation as per Government Order dated 11.4.2020."

12. In view of the above and in our considered view as well the employees working in the electricity department, water supply department, telephone department, police department and such other essential services departments who worked during covid period would be taken to be on covid duty as their discharge of duties helped the State Government in containing the spread of pandemic covid-19 virus, treatment of the patients and their protection by keeping them in confinement.

13. In view of the above, we are unable to sustain the order passed by the State Government giving a very narrow interpretation to the covid duty only confining those people, who were specially assigned to discharge their duties in treatment of people physically in hospitals.

14. The writ petition succeeds and is **allowed**. The order dated 28.07.2023 passed by the State Government is hereby quashed. The State Government is directed to release the ex-gratia compensation to the petitioner within a period of 30 days from the date of presentation of certified copy of this order before it.

(2026) 4 ILRA 1442
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 16.04.2026

BEFORE

THE HON'BLE AJIT KUMAR, J.
THE HON'BLE INDRAJEET SHUKLA, J.

Writ C No. 37114 of 2023

Kamrunnisha

...Petitioner

Versus

State of U.P. & Ors.

...Respondents

ISSUE FOR CONSIDERATION

Whether the petitioner, widow/legal heir of original allottee of Quarter in question is entitled to restoration of possession and execution of transfer deed despite absence of allotment letter in official records?

HEADNOTES

Civil Law – Constitution of India – Article 226: -_Writ Petition under Article 226 – filed against State authorities, for relief of restoration of possession and execution of transfer deed in respect of Quarter in question - original allotment in favour of the petitioner’s husband – petitioner inherited rights - unauthorized occupants evicted – and further affirmed by High Court – lower authority’s finding recognized petitioner’s lawful entitlement – whether absence of allotment letter could defeat admitted allotment and possession rights – petitioner pleaded that respondents themselves admitted allotment - hence withholding possession is arbitrary – State objected alleging no allotment letter and unauthorized construction – Court finds State’s stand contradictory and failure to produce allotment list fatal, adverse inference drawn – weaving is hereditary and widow cannot be displaced – held, petitioner entitled to possession and transfer deed – writ petition allowed with direction to the respondents authorities to restore the possession in favour of the petitioner forthwith and execute the transfer deed in petitioner’s favour.

(Para – 23, 24, 27, 28, 29)

WP – Allowed. (E-11)

CASE LAW CITED

Writ-C No.27434 of 2014 (Kamrunnisha v. State of U.P.) – decided on Dt. 20.08.2014,
Writ-C No.42854 of 2014 (Shoeb & Juned v. State of U.P.) – decided on Dt. 19.05.2014,
Writ-C No.59769 of 2014 - (Mohd. Shoeb And Another Vs. State of UP and others) – decided on Dt. 11.11.2014,
Writ-C No.18178 of 2015 – (Kamrunnisha Vs State of UP and others) – decided on Dt. 27.04.2015.

LIST OF ACTS

Constitution of India

LIST OF KEYWORDS

Writ petition – Allotment – Possession – Trespass - Weaver Colony - Widow’s Right - Adverse Inference - Transfer Deed - Unauthorized Occupants - allowed.

CASE ARISING FROM

Encroachment on Quarter No.3, Bunkar Colony, Varanasi - eviction proceedings - refusal of State to restore possession to widow despite admitted allotment - Relevant Government Orders dated 17.03.1981, 18.10.1994, Notification dated 09.09.1994.

APPEARANCE OF PARTIES

Counsel for Appellant(s): - Shri Rakesh Kumar.

Counsel for Respondent(s): - Shri Pradeep Singh, Standing Counsel.

(Delivered by Hon’ble Indrajeet Shukla, J.)

Order on Civil Misc. Impleadment Application No.3/2024

1. None appears to press the application for impleadment.

2. Impleadment application is rejected.

Order on Civil Misc. Substitution Application No.8/2026

1. Application for substitution is allowed.
2. Let necessary correction /amendment be carried out.

Order on Writ Petition

1. Heard Mr. Rakesh Kumar, learned counsel for the petitioner and Sri Pradeep Singh, learned Standing Counsel for the State-respondents.

2. Present writ petition under Article 226 of the Constitution of India has been instituted by petitioner Kamrunnisha, being the wife/legal heir of late Mati Ullah (original allottee of Quarter no.3, Bunkar Colony, Nati Imli (Labour Colony Chauraha), District Varanasi with the following main prayers:

“(i) issue a writ, order or direction in the nature of Mandamus directing the respondents No.4 to give possession to petitioner over the locked part of Quarter No.3, Bunkar Colony, Nati Imli, (Labour Colony Chauraha), District-Varanasi, expeditiously.

(ii) issue a writ, order or direction in the nature of mandamus directing the respondent no.4 to take appropriate decision upon petitioner’s application dated 15.09.2015 (Annexure No.8 to the writ petition) in accordance with law within reasonable time.”

Factual Matrix

3. The factual matrix giving rise to the instant writ petition is delineated herein as under:

4. The facts as culled out from pleading of writ petition are that petitioner’s husband late Mati Ullah was allotted Quarter no.3 Bunkar Colony Nati Imli (Labour Colony Chauraha), District Varanasi by respondents under the State sponsored housing scheme launched for silk weavers. The petitioner’s husband was in possession and was continuously paying rent against the quarter no.3 allotted to him, admeasuring area 25 x 50 square feet. In the meantime, after death of petitioner’s husband, she being widow inherited the possessory rights. However, two persons namely Mohd. Shueb and Mohd. Juned forcibly grabbed possession over a small portion of Quarter no.3, initially allotted to petitioner’s husband.

5. Petitioner lodged a complaint on 21.09.2013 before the police for removal of the said unauthorised occupants and thereafter, filed two representations dated 26.02.2014 and 05.03.2014 addressed to the District Magistrate, Varanasi.

6. On the representation dated 05.03.2014, filed by petitioner, cognizance was taken by 4th respondent/Assistant Director, Handloom and Textile Industries, Varanasi Region, Varanasi and notices were issued to Mohd. Shueb and Mohd. Juned directing them to vacate their unauthorised occupation qua Quarter no.3.

7. Petitioner, thereafter, instituted Writ-C No.27434 of 2014 titled as Kamrunnisha Vs. State of U.P. and 5 others which was disposed of on 19.05.2014 by following below quoted order:

“From the records, it appears that the Assistant Director, Handloom & Textiles, Industries, Varanasi has issued a notice to the fifth and sixth respondents alleging that the aforesaid private respondents are in unauthorized occupation of Quarter No. 3 and calling upon them to vacate the premises failing which appropriate action would be taken in accordance with law.

Since a notice has been issued by the fourth respondent, we direct that the fourth respondent shall act in pursuance of the notice and pass appropriate orders strictly in accordance with law after furnishing the fifth and sixth respondents an opportunity of being heard, preferably within a period of two months of receipt of a certified copy of this order.”

8. After the order dated 19.05.2014 passed by co-ordinate bench of this Court in Writ C No.27434 of 2014, said Mohd. Shoeb and Mohd. Juned instituted Writ-C No.42854 of 2014 titled as Mohd. Shoeb & Another Vs. State of U.P and 4 others assailing the order dated 07.07.2014 passed by Assistant Director, Handloom and Textile Industries, Varanasi Region, Varanasi by which a direction was issued against them to vacate □the portion of Quarter in question□ within a period of one week, failing which, the Station Officer was directed to get the house vacated and possession of portion of house encroached to be handed over to Smt. Kamrunnisha (petitioner herein). The writ petition so filed by Mohd. Shoeb and Mohd. Juned was allowed vide order dated 20.08.2014. The relevant portion of the order passed in Writ C No.42854 of 2014 is extracted as under:

“In this view of the matter it will not be necessary to issue notice to the respondents and the petition can be disposed of at this stage.

As the order dated 7 July 2014 is not in accordance with the order dated 19 May 2014 passed by the Court, it deserves to be set-aside and is set-aside. A direction is□ issued□ to the Assistant Director to pass a fresh order strictly in accordance with the order dated 19 May 2014 passed by the Court in Writ Petition No. 27434 of 2014 filed by Smt. Kamrunnisha.

The writ petition is, accordingly, allowed to the extent indicated above.”

9. Fresh proceedings were undertaken before Assistant Director, Handloom and Textile Industries, Varanasi Region, Varanasi in compliance of order dated 20.08.2014 passed in Writ C No.42854 of 2014 and order dated 19.05.2014 passed in Writ C No.27434 of 2014. The 4th respondent/Assistant Director, Handloom & Textile Industries, Varanasi Region, Varanasi put the parties to notice and framed points of determination to the effect □whether the property in question which was allotted to original allottee late Mati Ullah, has been trespassed by Mohd. Shoeb and Mohd. Juned□ and the second point of determination was □whether on the basis of affidavits and material produced by Mohd. Shoeb and Mohd. Juned it can be construed that they are allottee of property in question i.e. Quarter No.3, Bunkar Colony, Nati Imli (Labour Colony Chauraha), District Varanasi

10. The 4th respondent/Assistant Director, Handloom & Textile Industries, Varanasi Region, Varanasi concluded vide order dated 18.10.2014 that Quarter No.3 was originally allotted to late Mati Ullah and despite meticulous examination of material put forth by Mohd. Shueb and Mohd. Juned they were found to be trespasser. The operative portion of order dated 18.10.2014 passed by 4th respondent/Assistant Director, Handloom & Textile Industries, Varanasi Region, Varanasi is extracted as under:

" आदेश

उपरोक्त विवेचना/ परीक्षण के अधीन उक्त प्रकरण में यह आदेश पारित किया जाता है कि उ० प्र० राज्य / उद्योग विभाग बुनकर की कालोनी नाटीईमली वाराणसी में स्थित क्वार्टर नं. ३ जो विभाग शासन द्वारा एलाटी स्व. मतीउल्ला के नाम आवंटित है, पर मु० शोएब व मु० जुनैद ने अनाधिकृत रूप से अवैध कब्जा किया है तथा कार्यालय द्वारा मु० शोएब व मु० जुनैद दोनों के नाम प्रेषित पत्र/ नोटिस पत्रांक 116 दिनांक 11.04.2014 पृष्ठ किया जाता है तथा मु० शोएब व मु० जुनैद को आदेशित किया जाता है कि आदेश प्राप्ति के एक सप्ताह के अंदर क्वार्टर नं. 3 बुनकर कालोनी नाटी ईमली वाराणसी को खाली कर दें। अन्यथा उक्त अवधि के व्यतीत होने के पश्चात आपके विरुद्ध आवश्यक कानूनी कार्यवाही की जायगी जिसकी पूर्ण जिम्मेदारी आपकी होगी।

(नितेश धवन)

**सहायक निदेशक हथकरघा एवं वस्त्रोद्योग,
वाराणसी"**

Submission Advanced by counsel for the petitioner

11. Learned counsel for the petitioner submitted that petitioner who is admittedly legal heir/widow of original allottee/occupant late Mati Ullah, filed an application for possession of portion of Quarter No.3, which was trespassed/encroached by Mohd. Shueb and Mohd. Juned but even after recovery of possession, same was not restored in favour of the petitioner. Thus, she filed another application on 15.09.2015 addressed to 4th respondent/Assistant Director, Handloom & Textile Industries, Varanasi Region, Varanasi.

12. The further submission advanced by counsel for the petitioner is that the respondents themselves have admitted the allotment of the quarter in question in favour of the petitioner's husband, late Mati-Ullah, by virtue of orders dated 11.04.2014 and 18.10.2014 passed by respondent no. 4, and therefore, the petitioner's lawful entitlement and right over Quarter No. 3 stands clearly established. But despite such clear admission by the competent authority, no document or material has been brought on record by the respondents to dislodge findings contained in the order dated 18.10.2014 passed by the 4th Respondent.

13. Once the allotment/occupation of petitioner & her predecessor in-interest is admitted, there is no justification for the authorities to withhold possession of any part of the quarter, especially after evicting the unauthorized occupants. Thus, such retention of possession is wholly illegal, arbitrary and without authority of law.

14. The counsel for the petitioner strenuously urged that the respondents cannot be allowed to act contrary to their own records and orders, and they are legally bound from denying the petitioner's rightful claim to possession.

Submission Advanced by counsel for the State-Respondents

15. Learned Standing Counsel, while refuting the submissions advanced on behalf of petitioner submitted that M/s Silk Weaver Cooperative Societies Limited Varanasi was given the responsibility for the realisation of the rent for the allotted shops and deposit of same in treasury, but due to non depositing of the rent in the treasury despite its collect, dispute started and as such vide Govt. Order dated 17.03.1981 and 18.10.1994 it was resolved that the quarters in Bunkar Colony would be transferred pursuant to Govt. Notification dated 09.09.1994 by District Magistrate. The then Director Handloom & Textile Industries, U.P. Kanpur vide letter dated 22.11.1994 requested the District Magistrate, Varanasi to transfer quarters situated in Bunkar Colony, Nati Imli (Labour Colony Chauraha), District Varanasi, but same could not be materialised.

16. The further submission advanced by State Counsel also fortified by pleadings contained in the counter affidavit particularly in paragraph 3H, is that a Committee was constituted under the order dated 16.03.1996 passed by the Additional District Magistrate (Administration) Varanasi who prepared a list of occupants residing in Bunkar Colony in which at serial no.3 against the property/Quarter No.3, the name of Mati Ullah s/o Hafiz Ullah is mentioned. It has further been emphasized that the records related to the allotment of Quarter No.3 in the name of late Mati Ullah are not available in the office and at the same time, petitioner has not produced any documentary evidence, establishing allotment of Quarter No.3 in favour of late Mati Ullah.

17. It was further submitted that petitioner illegally constructed unauthorised shops on government land adjacent to Quarter No.3. The petitioner is also realizing rent from such unauthorised constructions and therefore, the petitioner is guilty of encroachment and misuse of government land. Based on the enquiry, respondent no.4 issued a warning letter dated 09.11.2022 directing for removal of unauthorised construction and handing over possession to the department. It is further submitted that the petitioner has no ownership rights/valid allotment and is involved in unauthorised occupation and construction.

18. The further submission advanced by learned counsel for the State respondents is that in absence of allotment letter, the portion of Quarter No.3 which has been recovered from Mohd. Shoeb and Mohd. Juned cannot be restored to petitioner.

Discussion and Findings

19. The factual position as emerges from thrashing out the material available on record is that, Mohd Shoeb and Mohd. Juned were found to be unauthorised occupants of Quarter No.3 in Bunkar Colony, Nati Imli (Labour Colony Chauraha), Varanasi and possession from them have been recovered by virtue of order dated 18.10.2014 passed by Assistant Director, Handloom & Textile Industries, Varanasi Region, Varanasi. The said order dated 18.10.2014 has been

implemented through police machinery and the order dated 18.10.2014 passed by Assistant Director, Handloom & Textile Industries, Varanasi was challenged by Mohd Shoeb and Mohd. Juned, through Writ-C No.59769 of 2014 which too has been dismissed and the order dated 18.10.2014 has been affirmed vide order dated 11.11.2014. The order dated 11.11.2014 passed in Writ-C No.59769 of 2014 is extracted as under:

“Heard learned counsel for the parties.

From the record of the present writ petition, it is apparent that the Assistant Director, Handloom and Textiles Industries, Varanasi Region, Varanasi as per his order dated 18.10.2014 has held that the petitioners are in unauthorized occupation of the Quarter no.3 Bunkar Colony Natiimali, Labour Colony Chauraha, Varanasi. It is not in dispute that the said quarter is the property of the State of Uttar Pradesh Industries Department. The Assistant Director, Handloom and Textiles Industries, Varanasi Region, Varanasi has required the petitioner to vacate the premises failing which legal action shall be taken.

We find no ground to interfere with the order of the Assistant Director, Handloom and Textiles Industries, Varanasi Region, Varanasi.

This writ petition is finally disposed off.”

20. After passing of order dated 11.11.2014 in Writ C No.59769 of 2014, petitioner instituted Writ-C No.18178 of 2015 and this Hon^{ble} Court asked the State counsel to seek instructions, whether order dated 18.10.2014 has been complied with or not, then thereafter on 25.04.2015 order was passed by Additional City Magistrate III, Varanasi, which reads as under:

"महोदय,

कृपया सहायक निदेशक, हथकरघा, वाराणसी के पत्र सं०-136-39, दिनांक 15 अप्रैल, 2015 का संदर्भ ग्रहण करने का कष्ट करें, जिसमें मा० उच्च न्यायालय, इलाहाबाद में योजित सिविल मि० रिट याचिका सं०-18178/2015 कमरून्निशा बनाम उ० प्र० सरकार व अन्य में पारित आदेश दिनांक 03-04-2015 के क्रम में अवैध रूप से आवासित कार्टर नं०-3 बुनकर कालोनी में मो० शोएब व मो० जुनैद पुत्रगण जहीर अहमद से रिक्त कराने सम्बन्धी है। अवगत कराना है कि सहायक निदेशक, हथकरघा, वाराणसी व थाना, जैतपुरा, वाराणसी के पुलिस बल की उपस्थिति में दिनांक 24-04-2015 को कार्टर नं०-3 के अंश भाग में स्थित प्रथम एवं द्वितीय तल ०8 कमरे एवं 01 बड़ा हाल को अवैध अध्यासी से खाली करा दिया गया है तथा सभी रिक्त कराये गये भाग को खाली होने के पश्चात् सील बन्द कराकर ताला लगा दिया गया है तथा चाभी सहायक निदेशक, हथकरघा, वाराणसी की सुपुर्दगी में दे दिया गया है। खाली कराने के उपरान्त मो० शोएब व मो० जुनैद एवं उनके सम्बन्धी अपना सामान पुलिस बल के समक्ष उठाकर ले गये। सम्पूर्ण कार्यवाही की वीडियोग्राफी करा ली गयी है।

आख्या सेवा में सादर प्रेषित है।

अपर नगर मजिस्ट्रेट (तृतीय)

वाराणसी।"

21. Subsequently, another Writ-C 18178 of 2015 was instituted by petitioner which was disposed of finding the possession of Quarter No.3/property in question has been recovered from unauthorised occupants. The State respondents refused to hand over the possession of portion of Quarter No.3 recovered from unauthorised occupants. Only on the strength that there was no allotment letter available in their office and as such tried to dispute the allotment in favour of late Mati Ullah and emphasised that petitioner has no right or valid allotment either in her favour or in favour of her husband but the occupation/possession of petitioner and her husband has always been recognized even by virtue of list of occupants prepared on 16.09.1996 brought on record by State respondents themselves through Counter Affidavit and vide order dated 18.10.2014 passed by 4th respondent and possession of petitioner has never been questioned by the State authorities.

22. The instant writ petition was taken up on 09th March, 2026 and on the said date below quoted order was passed:

"3. Learned Standing counsel for the State, at this stage, has drawn the attention of the Court to paragraph no.12 of the counter affidavit in which a stand has been taken that there was no allotment ever issued in favour of Late Mati Ullah for Quarter no.3. These averments made in paragraph no.12 have been sworn by the Assistant Director, Handloom & Textile Industries, Varanasi Region, Varanasi.

4. On the face of it, the averments so made run contrary to the stand taken by the officer of the same rank in the order passed for dispossession by him of the unauthorized occupant on 18.10.2014.

5. Let the allotment list of all the allottees of the colony in question be placed before this Court on an affidavit to be sworn by the Assistant Director, Handloom & Textile Industries, Varanasi Region, Varanasi by the next date fixed, failing which he shall be appearing in person before this Court."

23. In compliance with order dated 09.03.2026, the matter was taken up on 31.03.2026 and the State respondents failed to produced allotment list of all allottees of the colony in question before this Court and as such, this Court is left with no other option except to draw an adverse inference against the State's stand and to treat the fact mentioned in order dated 18.10.2014 qua allotment of late Mati Ullah to be correct which consistently remained intact even after several round of litigation before this Court.

24. The respondents themselves have admitted the allotment of the quarter in question in favour of the petitioner's husband, late Mati Ullah, in the orders dated 11.04.2014 and 18.10.2014 passed by respondent no. 4, and, therefore, the petitioner's lawful entitlement and right and retention of possession over Quarter No. 3 stands clearly established.

25. Despite such clear admission by the competent authority, no document or material has been brought on record by the respondents to dispute or deny the allotment as claimed by petitioner in favour of her late husband.

26. Once the allotment could not be disputed there was no justification for the authorities to have withheld possession of any part of the quarter, especially after evicting the unauthorized occupants. Such retention of possession is wholly illegal, arbitrary and is without authority of law.

27. We must record here that as per own averments vide paragraph 3 (D,E,F,G) the proceedings were started to execute transfer deed in favour of those who were occupant of quarters in weavers' colony and transfer deeds would have been executed but for an intervention of Court (Lucknow Bench of this Court in Writ Petition No.1405 (M/B) of 1996, later on dismissed on 08.03.2013). The proceedings were reinitiated under direction of this Court vide order dated 10.07.2014 passed in Writ Petition No.27435 of 2014. The Committee constituted for the purpose of identifying occupants in the year 1996 itself acknowledged petitioner's husband being a valid occupant by placing him at serial no.3 of the list prepared dated 19.06.1996. The list bears signatures of Assistant Director Handicraft and Cloth Industries, Varanasi (para 3H). It is worth mentioning here that ejection of unauthorised occupants of the quarter in question namely Mohd. Shoeb and Mohd. Juned both sons of Zaheer Ahmad had been done upon the complaint filed by her vide letter dated 09.03.2014 in compliance of the order passed by this Court in a Writ Petition being Writ C No.27434 of 2014 dated 19.05.2014. Neither at the time of compliance of Court's order to evict unauthorized occupants nor at the time of passing of order dated 20.08.2014 in writ petition being Writ C No.42854 of 2014 State respondents took any stand that writ petitioner had no locus to either maintain a complaint or file writ petition as a wife of a valid allottee Mati Ullah. We may observe here also that any suit filed by the unauthorised occupant namely Mohd. Shoeb and Mohd Juned who have already been dispossessed, cannot weaken the case of the petitioner for execution of transfer of deed. Once the Government had itself decided to transfer quarters to the occupant-weavers in possession, the death of a husband-weaver cannot be a ground to deny same rights to weaver's widow. In a family of weavers in India, all members do weaving and the weaving is a hereditary art that passed on to the next generation. We cannot permit death of this art by displacing the members of the family of a weavers from the colony upon the death of head of the family.

28. The respondents cannot be allowed to act contrary to their own records and orders, and they are legally bound to honour petitioner's rightful claim of possession.

Order

29. In view of the above, writ petition succeeds and is allowed. The order dated 19.05.2014 is hereby quashed. The 4th respondent/Assistant Director, Handloom & Textiles Industries, Varanasi Region, Varanasi is commanded to restore possession of the locked part of Quarter No.3, Bunkar Colony, Nati Imli (Labour Colony Chauraha), District Varanasi to writ petitioner forthwith. Transfer deed shall be executed to the successor of late Mati Ullah namely Kamrunnisha his wife, the petitioner, in terms of order dated 19.05.2014 in Writ C No.27434 of 2014.

30. There will be no order as to cost.

(2026) 4 ILRA 1451
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 10.04.2026

BEFORE

THE HON'BLE SARAL SRIVASTAVA, J.
THE HON'BLE SUDHANSHU CHAUHAN, J.

Writ C No. 37749 of 2019

Vinay Kumar Singh

...Petitioner

Versus

State of U.P. & Ors.

...Respondents

ISSUE FOR CONSIDERATION

(i) Whether the State of Uttar Pradesh failed to hand over possession of the mining area allotted to the petitioner for carrying out mining operations;

(ii) Whether there was any determination of the area, if any, falling within the disputed territory of the State of Madhya Pradesh;

(iii) What was the effect of the clause contained in the e-tender/e-auction notice dated 16.02.2018 requiring the bidder to inspect and satisfy himself regarding the mining area before participating in the bidding process, on the reliefs claimed by the petitioner; and

(iv) Whether the amount claimed by the petitioner by way of refund was in excess of the amount actually deposited by him.

HEADNOTE

Indian Contract Act, 1872 – ss.20, 65 – U.P. Minor Minerals (Concession) Rules, 1963 – r.58 – Mining lease – E-tender cum e-auction for excavation of sand/morum over 25 hectares – Mining lease executed after issuance of letter of intent and environmental clearance – Mining operations disrupted shortly after commencement on account of boundary dispute between States of Uttar Pradesh and Madhya Pradesh regarding river Ken – State Government subsequently stopping mining operations and later permitting mining only in alleged undisputed area – Joint inspection finding that out of 25 hectares only 12.86 hectares was undisputed while 12.14 hectares remained disputed – No assessment of mineral quantity in undisputed area – No effective steps taken to resolve boundary dispute, hand over undisputed area, reassess mineral availability or renegotiate lease conditions – Mining operations remaining suspended after 26.05.2019 – Lease ultimately cancelled on ground of loss of revenue – Petitioner sought refund and restitution of the amounts deposited under the mining lease – Entitlement to refund and restitution – Justification:

Held:

Court held that *initially the entire area of 25 hectares under the lease dated 13.02.2019 was demarcated and handed over to the petitioner. Shortly thereafter the dispute of boundary arose between the two States on 22.02.2019 thereby hindering the mining operations. Subsequently a joint exercise was also undertaken on*

10.04.2019 for demarcation of boundary by the officers of both the States but without success. It was admitted that no excavation was carried out after 26.05.2019. As the dispute of boundary remained unresolved the State of U.P. vide the letter dated 15.07.2019 had stopped mining operations in the entire mining area of 50 hectares, including the mining area of 25 hectares allotted to the petitioner. The State of U.P. thereafter permitted mining in the undisputed area. However, even the undisputed area was not made available to the petitioner for mining. Court held that the area of 25 hectares allotted to the petitioner for mining was not made available to the petitioner after 26.05.2019 till the termination of lease on 29.01.2022.

[Paras 54-55]

Court held that it was only once on 10.04.2019 that a joint exercise was undertaken to demarcate the boundary between the two States but the attempt so made was without any success. During the pendency of the writ petition an exercise was undertaken to demarcate the undisputed mining area, but no effort was made by the respondents to hand over the undisputed mining area to the petitioner or to assess the quantity of minor mineral (sand/morum) available in the said area. [Paras 56-62]

Court held that the condition in the advertisement dated 16.02.2018 requiring the bidder to inspect and satisfy himself regarding the mining area would not absolve the respondents of their obligation to make available the leased area for mining. Petitioner was not supposed to verify the correctness of boundary or title as there was a presumption that the State would only advertise the mining area, which is free from all encumbrances. Petitioner was only required to assess the quantity of minerals and the access to the mining area to be allotted to the petitioner. Respondents failed to demarcate and hand over the undisputed area and also failed to assess the quantity of minor minerals available therein or renegotiate the terms of the lease after the boundary dispute arose. Said condition did not defeat the relief claimed by the petitioner. [Paras 63-76]

Court held that both the parties had entered into the mining lease dated 13.02.2019 under a mistake as to a matter of fact that 25 hectares of land was available for mining. However, after execution of the mining lease, it was realised that the required area was not available. The availability of 25 hectares of mining area being a matter of fact essential to the agreement, the parties suffered from mutual mistake and the mining lease was void by virtue of Section 20 of the Contract Act, 1872. The Court further held that the words "discovered to be void" in Section 65 comprehend a situation where the parties were suffering from a mistake of fact from the very beginning but had not realised, at the time of entering into the agreement, that they were suffering from such mistake and had acted bona fide on the agreement. Consequently, the petitioner was entitled to restitution under Section 65 of the Contract Act. [Paras 75, 77, 79]

Court held that the monetary reliefs claimed by the petitioner were in the nature of restitution of investments made. Petitioner was held entitled to refund of the amounts admittedly paid by the petitioner to the respondents in pursuance to the lease deed dated 13.02.2019 after deducting the amount of sand/morum already excavated by the petitioner, the return of fixed deposit, and liberty to move the competent authority for refund of stamp duty. Court held that claims relating to expenditure on service road development and other disputed heads cannot be adjudicated in the writ proceedings. [Paras 95-97]

Court held that the petitioner could not be held liable for any loss of revenue to the State Government. Once the petitioner was not permitted to carry out mining operations after 26.05.2019, there was no question of payment of further lease instalments. Respondents made no effort to resolve the boundary dispute with the State of Madhya Pradesh, which resulted in stoppage of mining operations. No notice as required under Rule 58 of the U.P. Minor Minerals (Concession) Rules, 1963 was issued prior to cancellation of the lease. Consequently, the order dated 29.01.2022 cancelling the lease was held to be illegal, arbitrary and contrary to the prescribed procedure. [Paras 46-49]

Writ petition was partly allowed.

CASE LAW CITED

Planet Steel Pvt. Ltd. v. State of Haryana and others, 2018 SCC OnLine SC 3990;
Tarsem Singh v. Sukhinder Singh, (1998) 3 SCC 471;

Popatrao Vyankatrao Patil v. State of Maharashtra and others, (2020) 19 SCC 241;
Jai Durga Finvest (P) Ltd. v. State of Haryana, (2004) 3 SCC 381;
The Committee-GFIL v. Libra Buildtech Pvt. Ltd. and Others, (2015) 16 SCC 31;
Dharmendra Kumar v. State of Maharashtra (2021) 1 SCC 93

List of Acts

Indian Contract Act, 1872;

U.P. Minor Minerals (Concession) Rules, 1963.

List of Keywords

Mining lease; Sand mining; Morum excavation; Inter-State boundary dispute; River Ken; Refund of lease amount; Mining area not available; Mutual mistake of fact; Void agreement; Restitution; Section 20 Contract Act; Section 65 Contract Act; E-tender; Environmental clearance; Demarcation dispute; Disputed territory; Cancellation of lease; Rule 58; Loss of revenue; Refund of security deposit.

CASE ARISING FROM

Petitioner filed the writ petition seeking refund and restitution of the amounts deposited under a mining lease for excavation of sand/morum over an area of 25 hectares, over which mining operations could not be carried out owing to a boundary dispute between the States of Uttar Pradesh and Madhya Pradesh and because the entire leased area was not made available for mining.

Appearances for Parties

Advs. for the Petitioner: Jai Singh Parihar, Abhishek Bhushan, Adarsh Bhushan, Sri S.P. Singh.

Advs. For the Respondents: C.S.C.,

(Delivered by Hon'ble Sudhanshu Chauhan, J.)

1. Heard Shri Shashi Nandan, learned Senior Counsel assisted by Shri Jai Singh Parihar, learned counsel for the petitioner and Shri Kartikeya Saran, learned Additional Advocate General assisted by Shri Rajeshwar Tripathi, learned Chief Standing Counsel II and Shri Sandeep Kumar Singh, learned Additional Chief Standing Counsel for respondents.

2. The controversy involved in the present writ petition is that the District Magistrate, Banda-respondent no.4 had issued an e-tender cum e-auction notice dated 16.02.2018 inviting bids for excavating 5,00,000 cubic meters of sand/morum over an area of 25 hectares comprised in part of Khasra No.5 and part of Khasra No.9 in Village- Bilharka, Tehsil- Narayani, District- Banda.

3. The bid made by the petitioner in pursuance to the tender notice was accepted and a letter of intent was issued on 19.03.2018. The terms of reference (TOR) for the proposed site was issued by the State Level Environment Impact Assessment Authority (SLEIAA) on 25.05.2018 and the environmental clearance was subsequently granted to the petitioners for mining on the aforesaid site on 08.02.2019.

4. Subsequently, a mining lease dated 13.02.2019 was executed between the parties. Under the lease the petitioner was to excavate annually 5,00,000 cubic meters of sand/morum at the rate of Rs. 527/- per cubic meter. The lease was for a period of five years and the amount so payable was to increase at the rate of 10% for every subsequent year. Besides, the petitioner prior to commencement of mining was required to deposit an amount of Rs. 6,58,75,000/- towards security and 25% of the first instalment for the first year amounting to Rs. 6,58,75,000/-. Hence, the petitioner had deposited a total amount of Rs. 13,17,50,000/- as advance besides a stamp duty of Rs. 3,21,73, 877/- was paid by the petitioner on the lease.

5. However, shortly after the petitioner commenced mining, the mining operations were disrupted by officials of State of Madhya Pradesh (MP) on the pretext that a part of the mining area allotted to the petitioner fell within the State of M.P. The petitioner made complaints regarding the incident with a request to resolve the boundary dispute. A joint inspection team comprising of officers of State of Uttar Pradesh (U.P) and State of M.P. was constituted but the dispute relating to boundaries remained unresolved. In the meanwhile a demand for payment of second instalment under the lease dated 13.02.2019 was raised. However, the petitioner expressed his inability to make any payment till the boundary dispute was resolved between the two States.

6. As the petitioner was not permitted to carry out mining operations and demand for second installment was being made by the respondent no.4, the petitioner was constrained to file Writ-C No.-18794 of 2019 seeking a direction that the two States be directed to settle the boundary dispute in respect of river, 'Ken' and State of U.P. be restrained from realising royalty and future installments till the time the petitioner was not permitted to carry out the mining operations.

7. During the pendency of the aforesaid writ petition a letter dated 15.07.2019 was issued by the State Government wherein while taking cognizance of the difficulties faced in mining of minor minerals (sand /morum) on account of the dispute relating to the boundary a request was made to the Revenue Department (State of U.P.) to resolve the same and till the time the dispute was resolved the mining operations in the area were stopped.

8. This Court while taking cognizance of the letter dated 15.07.2019 had disposed of Writ-C No.- 18794 of 2019 vide the judgment and order dated 18.07.2019 directing as under :-

“10. The dispute in respect of mining area allotted to the petitioner by way of lease deed dated 13.2.2019. The petitioner was not permitted to excavate the minor minerals from the area allotted to him by way of aforesaid lease deed on the ground that certain area fell within the boundary of State of M.P. Cognizance in this regard has already been taken by the State Government which is clear from the perusal of the letter dated 15.7.2019

11. In the aforesaid facts and circumstances, the present writ petition is disposed of finally directing the State Government/respondent No.1 to resolve the dispute expeditiously specially in terms of the letter dated 15.7.2019 written by the State Government, a reference of which has been made in paragraph 7 of this judgement. Till the time, the dispute is resolved by the State Government, no coercive action be taken against the petitioner specially in respect of recovery of amount regarding which notice was issued to the petitioner. 12. With the aforesaid observations, writ petition stands disposed of. 13. No order as to costs. “.

9. As the State Government failed to resolve the dispute relating to boundary, the petitioner was constrained to file the present writ petition seeking the return of the deposited amount and expenses incurred amounting to Rs. 26,65,66,666/- along with 9% interest and damages and also seeking a direction for the State Government to annul the lease executed in favour of the petitioner.

10. During the pendency of the writ petition the State of U.P permitted mining in the undisputed mining area allotted to the petitioner. Further on the directions of this Court an exercise was undertaken by the parties to demarcate the undisputed area and also to determine the quantity of minor mineral (sand/ morum) available therein. Although such an exercise to demarcate the undisputed mining area allotted to the petitioner was undertaken but there is nothing on record to demonstrate that any effort was made by the respondents to hand over the undisputed mining area to the petitioner or to assess the quantity of minor mineral (sand/ morum) available in the said area. It is further admitted between the parties that no mining operations were carried out by the petitioner after 26.05.2019. Under the circumstances the mining lease of the petitioner was cancelled vide the order dated 29.01.2022.

11. It is in the above background that the present writ petition was allowed by this Court vide judgment and order dated 30.09.2022 wherein it was directed as under :-

“12. The stand taken by the respondents seems to be that the petitioner was allowed to carry out excavation of minor minerals in the undisputed area out of total area of 25 hectares, which itself establishes that the interstate boundary dispute was not resolved. Besides this, nothing has been pointed out from the record that possession of aforesaid undisputed area was handed over to the petitioner. However, the petitioner may have opted for taking lease of a particular plot for carrying out excavation of minor minerals keeping in view the total plot and availability of minor minerals therein, which may or may not be commercially viable for a part of the area.

13. For the reasons mentioned above, in our view, the respondents having failed to hand over the possession of the area allotted to the petitioner for carrying out excavation of minor minerals, in our opinion, the petitioner is entitled to get refund of the entire amount deposited for the purpose along with interest @ 6% per annum from the date of deposit of the said amount till the date it is refunded. The needful shall be done by the authorities concerned within a period of three months from the date of receipt of certified copy of the order. In case, the amount is not refunded within the prescribed period, any interest payable to the petitioner thereafter, shall be the responsibility of the officer(s)/ officials (s), who may be responsible for delay in compliance of the order. 14. The writ petition stands allowed in the aforesaid terms.”

12. The respondents being aggrieved by the judgment and order dated 30.09.2022 passed in the present writ petition had filed review petition before this Court registered as Civil Misc. Review Application No.-525 of 2022, essentially on the ground that the petitioner had deposited Rs. 13,17,50,000/- in pursuance to the lease deed and not an amount of Rs. 26,65,66,666/- as claimed in the writ petition. Further the petitioner had carried out mining between 15.02.2019 to 26.05.2019 and excavated 22,820 cubic meters of sand/morum. It was also stated that the petitioner under the conditions of the advertisement dated 16.02.2018 (e-tender notice) was required to inspect the area in respect of the quantity of mineral and the petitioner had got prepared the mining plan and also

obtained the environmental clearance certificate wherein sufficient mineral was shown to be available and as such the petitioner was well aware of the site conditions of the mining area and the quantity of minor mineral available.

13. The review petition so filed by the respondents was allowed in part vide judgment and order dated 12.05.2023 and it was directed as under :- ?5. Considering the facts and circumstances, as it is apparent from the face of record, we accordingly modify the order dated 30.09.2022 to the effect that the opposite party would be at liberty to deduct the amount from the total outstanding amount to the effect of total excavated sand/ morum of 22,820 cubic meter, as it is alleged the same has been excavated by the petitioner with effect from 15.02.2019 to 26.05.2019 and accordingly, the rest of amount along with requisite interest may be returned. 6. Accordingly, the review application is allowed in part.?

14. The respondents not being satisfied with the judgment and order dated 30.09.2022 passed in the present writ petition and the judgment and order dated 22.05.2023 in the review petition had filed a special leave petition before the Apex Court and same was converted in Civil Appeal No. 5171-5172 of 2023 (State of U.P. and others Vs. Vinay Kumar Singh and others). The Apex Court vide judgment and order dated 23.08.2023 passed in the civil appeal had allowed the appeals and restored the present writ petition for fresh adjudication. The Hon'ble Supreme Court in the judgment and order dated 23.08.2023 had held as under :-

“20. On a careful reading of the writ-petition filed by the original petitioner, as noticed above, prima facie, it appears that the State of U.P. was justified in taking a stand in the review petition that the High Court had wrongly observed that the State of U.P. (i.e., respondents in the writ petition) had failed to handover possession of the area allotted to the petitioner for carrying out mining operations. However, while deciding the review petition, this aspect of the matter has not been dealt with by the High Court. Further, the High Court failed to address the ground no. 8 in the review petition wherein it was stated that in the advertisement dated 16.02.2018 the bidder was advised to inspect and satisfy itself regarding the mining area before participating in the bidding process. As to what would be the effect of that clause on the relief claimed by the original petitioner is a matter which requires consideration. But there appears no discussion in that regard in the orders impugned. That apart, there is no determination of the area, if any, which falls in the disputed territory i.e., within the State of M.P. There is also no discussion on the plea of the appellants that the amount of which refund was sought was far in excess of the amount paid by the original petitioner.

21. Having found that the High Court has not properly addressed all the issues raised before it, we deem it appropriate to remand the matter to the High Court by restoring the writ petition to its original number so that it is decided afresh in accordance with law.

22. Consequently, these appeals are allowed. The impugned orders dated 30.09.2022 and 12.05.2023 are set aside. Writ C No.37749 of 2019 is restored to the file for fresh adjudication. It is made clear that if parties have not already exchanged their affidavits in the said writ petition, they may do so within six weeks from today. We request the High Court to decide the matter in the

light of our observations above, expeditiously, preferably, within a period of three months from the date a copy of this order is furnished before it.

23. We, however, clarify that we have not expressed our opinion on the merits of any of the issues that may arise for adjudication by this High Court. .”

15. In the above background it is contended on behalf of the petitioner that the petitioner was not permitted to carry out the mining operations on the entire leased area of 25 hectares. Shortly after the execution of the mining lease, dated 13.02.2019 on 22.02.2019, the officers of the State of MP had stopped the mining operations on the pretext that 300 meters of mining area allotted to the petitioner fell in the State of M.P. The petitioner regarding the incident had made representations before the respondent no. 3 and respondent no.4 with the request to carry out the exercise of demarcation of the mining area allotted to the petitioner. In pursuance thereto a joint exercise of demarcation was undertaken by the officers of the two States but without any success. Subsequent thereto no exercise whatsoever was ever undertaken by the respondents to carry out demarcation of boundaries and the dispute remained unresolved thereby adversely affecting the mining/ excavation to be carried out by the petitioner.

16. In the meanwhile, the respondent no. 4 vide the letter dated 06.04.2019 had made a demand for payment of second instalment under the lease. The petitioner on 15.05.2019 had expressed his inability to pay the amount in view of the difficulties faced in mining. Ultimately as the petitioner was not permitted to carry out mining after 26.05.2019 and in view of the demands raised by the respondent in respect of the payment of second instalment of lease, the petitioner was compelled to file Writ C No. 18794 of 2019. The writ petition was disposed of vide the judgment and order dated 18.07.2019 in the light of the letter dated 15.07.2019 of the State Government stopping mining operations including in the mining area allotted to the petitioner till the boundary dispute was resolved, with the further directions to take no coercive measures against the petitioner till the dispute was resolved in pursuance to the letter dated 15.07.2019.

17. However, as no effective measures were undertaken by the respondents to resolve the boundary dispute, hence, the petitioner was constrained to file the present writ petition. During the pendency of the present writ petition the State Government vide the letter dated 17.03.2020 permitted mining in undisputed areas but no effort whatsoever was made to demarcate the boundary of the undisputed area, to assess the quantity of minor minerals available and to renegotiate the terms of the mining lease. It was only with the intervention of this Court that in pursuance to the order dated 08.02.2021 a joint inspection team was constituted to carry out the demarcation of the undisputed area.

18. The petitioner had objected to the exercise so undertaken essentially on the ground that there was no sand available in the so-called undisputed area and as such mining was not feasible. The petitioner did not agree with the manner in which the exercise of demarcation was carried out on 15.02.2021 but even as per own showing of the respondents in the joint inspection report dated 15.02.2021 out of total mining area of 25 hectares an area of 12.14 hectares was found to be disputed while an area of 12.86 hectare was found to be undisputed. Thus, it is contended that only about 51% of the total mining area was available for mining and there was no sand available for

excavation in the undisputed area. Moreso, no effort was made by the respondents to handover the undisputed mining area to the petitioner and to re-negotiate the terms of the lease. Subsequently the respondents while acting in a most illegal and arbitrary manner had cancelled the mining lease on 29.01.2022.

19. Thus, the crux of contention of the petitioner is that from the very commencement of the mining lease the petitioner was not permitted to carry out mining for no fault of his and ultimately no mining was carried out after 26.05.2019. Further no effort was made by the respondents to demarcate the mining area of the petitioner or to resolve the boundary dispute. Even the so-called undisputed mining area was never handed over to the petitioner and no effort was made to re-negotiate the terms of the mining lease. Under the mining lease it was the obligation of the respondents to provide hindrance free mining area to the petitioner, which the respondents utterly failed to provide, as such the petitioner is liable to be compensated for the breaches and defaults on part of the respondents.

20. Per contra it has been vehemently contended on behalf of the respondents that petitioner was well aware about the site conditions of the mining area under the lease and the petitioner had executed the lease with eyes wide open and it was no longer open for the petitioner to question the same. It is submitted that the e-tender cum e-auction notice was issued only on the basis of District Survey Report and the report of Technical Committee after determining the quantity of minor mineral available at site. Reliance has also been placed on condition no. 22 (1) of the e-tender cum e-auction notice dated 06.02.2018 wherein bidders were required to satisfy themselves regarding the quantity of minor mineral available. Besides reliance has also been placed on condition 22 (2) of the e-tender notice.

21. It is also contended that the petitioner himself had got the mining plan prepared and also got the Environmental Clearance Survey where too, the quantity of minor minerals available from the mining area under the lease was shown to be 5,00,000 (Five lakh) cubic meters. Thus, it is contended that once the entire mining lease area of 25 hectares was demarcated and duly handed over to the petitioner, the respondents cannot be held to be liable for the petitioner being unable to carry out mining.

22. As far as the boundary dispute is concerned, it is contended on behalf of the respondents that repeated efforts were made to resolve the boundary dispute and letters were also issued to Collector, Chhatarour, however due to non-cooperation of the officers of the State of M.P. the boundary dispute remained unresolved. Subsequently the respondents had demarcated the undisputed mining area under the mining lease in compliance of the directions of this Court but the petitioner intentionally failed to commence mining. Thus, the respondents being left with no alternative were compelled to cancel the mining lease vide the order dated 29.01.2022.

23. Hence, the crux of the contention of the respondents is that there was sufficient minor mineral available for mining and once the possession of the mining area was handed over to the petitioner after demarcation of the same, the respondents cannot be held liable under the terms of the agreement.

24. We have heard learned counsel for the parties and perused the records.

25. The respondents do no dispute the fact that the petitioner had carried out mining operations upto 26.5.2019 and had excavated 22820 cubic meter of sand/morum from 15.2.2019 to 26.5.2019. It is also admitted that the petitioner had deposited the amount of Rs. 6,58,00,075/- towards first instalment and a security of Rs. 6,58,00,075/- was deposited, hence, it is stated that total amount of Rs. 13,17,50,000/- was deposited by the petitioner with the respondents. However, the petitioner had not deposited the second instalment, which fell due on 01.4.2019 as per the terms of the lease.

26. Before we advert to the merits of the controversy, we are conscious of the fact that the Apex Court vide the judgment and order dated 23.08.2023, while remanding the matter back to us to decide the same afresh in accordance with law, had also framed certain questions in paragraph 20 of the judgment, morefully reproduced in paragraphs above and the same read as under:-

(i) Whether the State of U.P. had failed to hand over the possession of the area allotted to the petitioner for carrying out mining operations?

(ii) Whether there is no determination of the area, if any, which falls in the disputed territory i.e. within the State of M.P?

(iii) Effect of clause in the advertisement dated 16.02.2018, where the bidder was advised to inspect and satisfy itself regarding the mining area before participating in the bidding process on the reliefs claimed in the writ petition.

(iv) Whether the amount of which refund was sought was far in excess of the amount paid by the petitioner?

Hence, an effort would be made by us that while deciding the matter afresh, the questions raised by the Apex Court, as mentioned above, are also dealt with, at the appropriate place in this judgment.

27. The records reveal that after preparation and approval of District Survey Report (DSR) and after inspection of the Technical Committee the advertisement for e-tender cum e-auction was published on 16.02.2018, amongst others for two locations for mining of sand/ morum situated in Village Bilharka, Tehsil Narayani, District Banda. Both the locations were comprised in part of Khasra No. 5 and part of Khasra No. 9, each having a mining area of 25 hectares and a quantity of 5,00,000 cubic meters of sand/ morum for excavation per year. The letter of intent in respect of one of the mining area so advertised was issued in favour of the petitioner on 19.03.2018. The letter of intent in respect of the other mining area of 25 hectares comprised in part of Khasra Nos. 5 and part of Khasra No. 9 was issued in favour of one, Ram Kumar Shastri, proprietor M/s Madhav Construction. Thereafter the demarcation of the mining area was carried out in presence of the petitioner on 11.02.2019 followed by the lease deed dated 13.02.2019.

28. The perusal of the lease deed amongst others reveals that it was in respect of the land comprised in part of Khasra No. 5 and part of Khasra No. 9 situated in Village Bilharka, Tehsil Narayani, District Banda having an area of 25 hectares and bounded as below:

North: Mining area;

South: River Ken;

East: Khasra Nos. 91 to 96 and 195 belonging to tenureholder Mulle and others.

West: River Ken.

Hence, it is beyond doubt that the mining area allotted to the petitioner was bounded on two sides by river, Ken.

29. It is also evident that after the petitioner had commenced mining, on 22.02.2019 officers belonging to State of M.P had entered the mining area allotted to the petitioner and disrupted the mining operations. The petitioner had apprised the District Magistrate, Banda-respondent no.4 about the incident vide the letter dated 23.02.2019 as well as the Director, Directorate of Geology and Mining- respondent no.2 vide the letter dated 18.03.2019 regarding the incident with a request to carry out the exercise of demarcation of the boundaries.

30. The records also reveal that the District Magistrate, Banda vide the letter dated 25.03.2019 in pursuance to the request of the petitioner had requested the Collector, Chhatarpur to constitute a team to carry out joint inspection. It is also evident that although the exercise for demarcation of boundaries was undertaken by the officials of State of U.P. and that of State of MP but without any success.

31. Hence, it can be concluded from the fact that an exercise of demarcation of boundaries was undertaken by the officers of both the States, though without success but as such, was a dispute in respect of boundaries of two States, which remained unresolved. Further the perusal of letter dated 16.04.2019 of the Mining Inspector, Chhatarpur reveals that the boundary dispute between the two states essentially arose in view of differences regarding the width of river Ken. Hence, the mining area allotted to the petitioner which was bounded on two sides by river Ken ought to have been adversely affected. The records further reveal that other than the exercise undertaken on 10.04.2019 to demarcate the boundaries, no other effort was made thereafter for demarcation of boundaries except for a couple of correspondences made by the respondent no.4 to his counterpart in Chhatarpur, M.P.

32. In the meanwhile the demand for payment of second instalment against the lease was made from the petitioner vide the letter dated 06.04.2019. The petitioner in view of the difficulties faced in mining vide the letter dated 15.05.2019 had informed the respondent no.1 that the petitioner was unable to make the payment of royalty till the exercise of demarcation was carried out and the petitioner was permitted to carry out the mining activities without any hindrance. It is also admitted that no mining was carried after 26.05.2019.

33. It is under these circumstances that the petitioner had filed Writ C No. 18794 of 2019. It is shortly after the filing of Writ C No. 18794 of 2019 that by means of the letter dated 15.07.2019 issued by the State of U.P. the mining operations in the mining area comprised in Khasra No. 5 and Khasra No. 9 having a total area of 50 hectares (including 25 hectares of mining area of the petitioner) was stopped in view of the difficulties faced in mining on account of the boundary dispute. Subsequently the writ petition filed by the petitioner was also disposed of vide the judgment and order dated 18.07.2019 in view of the letter dated 15.07.2019.

34. The fact that State of U.P. had stopped the mining in the mining area allotted to the petitioner itself demonstrates that there was a dispute of boundaries between the two States leading to difficulties in mining, which said dispute remained unresolved. Further the petitioner cannot be faulted for the stoppage of mining.

35. However, the records reveal that no exercise to resolve the dispute relating to boundaries was undertaken by the respondents thereafter, despite the directions of this Court as contained in the judgment and order dated 18.07.2019 to resolve the dispute (in respect of the boundary) expeditiously in terms of the letter dated 15.07.2019. Under the circumstances the petitioner had filed the present writ petition amongst others for the refund of the amounts deposited and investments made by the petitioner in pursuance to the mining lease dated 13.02.2019.

36. Even after filing of the present writ petition, there was no effort by the respondents to resolve the boundary dispute. The only correspondence available on records in this regard is a letter dated 26.12.2019 issued by the respondent no.4 to the District Collector, Chhatarpur to carry out a joint inquiry, even the said letter has been issued at the instance of Ram Kumar Shastri, the allottee of the remaining mining area of 25 hectares. Hence, it can very well be concluded from the records that no effective effort was made by the respondents to resolve the boundary dispute.

37. It is during the pendency of the present writ petition that the State Government vide the letter dated 17.03.2020 had permitted mining in the undisputed area allegedly on the ground of financial losses even though no effort was made to resolve the boundary dispute. But even thereafter neither any effort was made to demarcate the undisputed area available to the petitioner for mining nor any effort was made to determine the quantity of minor minerals (sand/ morum) available for mining in the said undisputed area nor any effort was made to renegotiate the terms of the lease. Hence, the stalemate continued between the parties without any mining activity being undertaken by the petitioner. Further the letter dated 17.03.2020 clearly establishes the fact that the complete mining area allotted to the petitioner under the lease dated 13.02.2019 was not available to the petitioner for mining and even the undisputed area remained undefined.

38. It is only after a passage of about one year thereafter, that this Court vide the order dated 08.02.2021 directed the respondent no.4 to come out with a demarcation of the area on which the petitioner could carry out the mining operations without interference of the State of M.P. that compelled the respondents to undertake the exercise of demarcation of the undisputed area. This Court vide order dated 08.02.2021 had directed as under:

“Learned Standing Counsel prays and is granted a week's time to sort out the issue in regard to the boundaries of mining lease area. The dispute lies between the State of Uttar Pradesh and State of Madhya Pradesh regarding their boundaries and thus mining operation is not being permitted for the area of lease.

Let the District Magistrate concerned come out with the demarcation of area before next date of hearing on which the petitioner can carry on the mining operation without interference of the State of Madhya Pradesh. Let this petition be listed on 9th of March, 2021. The recovery has already been stayed by the State Government, as stated by the learned counsel for the respondents herein. “

39. In pursuance to the directions of this Court, the respondent no.4 vide the letter dated 09.02.2021 had sought to undertake the exercise of demarcation of the undisputed area and also to assess the quantity of minor minerals (sand/ morum) in the said area. The petitioner in response to the aforesaid letter vide letter dated 12.02.2021 expressed his apprehensions to the effect that there was no sand/ morum available in the so called undisputed area.

40. However, although the joint inspection to demarcate the undisputed area was undertaken on 15.02.2021, the petitioner did not agree with the exercise of demarcation so undertaken. In the inspection report dated 15.02.2021 it was held that out of total area of 25 hectares of area leased to the petitioner, while an area of 12.14 hectares was disputed and only the balance area of 12.86 hectares was undisputed. Further despite the specific direction to assess the quantity of minor minerals (sand/ morum), in the undisputed area, no such assessment was made by the joint inspection team. Thus, the undisputed area was only about 51% of the total mining area allotted to the petitioner i.e. 12.86 hectares out of the total area of 25 hectares.

41. In this regard the petitioner in the present writ petition by means of supplementary affidavit have also brought on record the photographs of the undisputed area at the time of joint inspection showing the geo-coordinates of the land to demonstrate that there was hardly any minor minerals available at the spot. The petitioner in paragraph 5 of the supplementary affidavit has stated as under:

“5. That the deponent reached the spot at relevant time but the Mines Inspector and other persons assisting the Mines Inspector reached at spot at about 03.00 p.m. without having assistance from the officers of State of M.P. started mapping mining site as undisputed area where there is no sign of sand and the area full of pebbles, small particles of boulders and rocks indicating as the undisputed site. The deponent questioned about the area asking politely that it is not the sand mining area, but the deponent was scolded indicating the same as undisputed area. The deponent brings on record the photo of the undisputed mining area on behalf of officers of mining department of Banda. The deponent also made live conversation photography of area is mobile scan and the same can be produced before this Hon'ble Court. The photo of the area is being filed herewith and marked as Annexure-SA-4 to this affidavit”

The respondents have not refuted the averments made in the aforesaid paragraph of the supplementary affidavit, so filed by the petitioner.

42. It is in the above circumstances, that the respondent no.4 vide the letter dated 22.02.2021 had forwarded the joint inquiry report to the Directorate of Geology and Mines, State of U.P. admitting the fact that only 12.86 hectares was undisputed, the relevant part of letter dated 22.02.2021 is being reproduced hereunder:

“अतः मा० उच्च न्यायालय इलाहाबाद द्वारा पारित आदेश दिनांक-08.02.2021 के अनुपालनमें किये गये संयुक्त सर्वेक्षण आख्या / सीमांकन आख्या दिनांक 15.02.2021 व उ०प्र० उपखिनज (पिरहार) नियमावली-1963 के नियम-28(2) (दो) (तीन) को दृष्टिगत रखते हुये श्री विनय कुमार पुत्र श्री नरिसहसिंह निवासी-साकेतपुरी, रोड नं०-01, हनुमान नगर, पटना बिहारके पक्ष में स्वीकृत कुल क्षेत्र 25.00 हे० भू-क्षेत्र में से विवादित क्षेत्र रकबा 12.140 हे० को छोड़ कर विवाद रिहत उपलब्ध खनन क्षेत्र 12.860 हे० होने से निष्पादित पट्टा विवेख में उल्लिखित वांछित मात्रा 5,00,000 घनमीटर के आधार पर पांच वर्षों हेतु निधारित पट्टाधनराशि के सम्बन्ध में उचित मार्गदर्शन देने का कष्ट करें, जिससे प्रश्नगत मामले में अग्र मकायवाही की जा सकें एवं मा० उच्च न्यायालय, इलाहाबाद को उक्त कायवाही से अवगत कराया जा सकें।

43. Thereafter no further development took place. Hence, it is beyond doubt that neither any effort was made by the respondents to handover the undisputed mining area to the petitioner to commence mining nor any effort was made by the respondents to assess quantity of sand/ morum available therein or to renegotiate the terms of the mining lease. Further it is the specific case of the petitioner that there was no sand/ morum available in the undisputed area for mining.

44. It is apparent from the perusal of the records that the matter remained pending at the level of the State Government and in the meanwhile vide the letter dated 29.01.2022 the mining lease of the petitioner was cancelled in view of loss of revenue to the State.

45. The perusal of the order dated 29.01.2022 itself reveals that the lease had been cancelled as no mining operations had been undertaken by the petitioner after the month of May, 2019 and the same was leading to loss of revenue to the respondents. In this regard we are of the view that the respondents themselves admit the fact that no mining was carried out by the petitioner after 26.05.2019. Further the respondents by means of the order dated 15.07.2019 themselves had stopped the mining over the leased area. Thereafter even though vide the letter dated 17.03.2020 the petitioner was permitted to carry out mining over the undisputed area but access to the same was never provided to the petitioner despite the exercise of demarcation of the undisputed area. In fact the matter remained pending before the State Government as would be evident from the letter dated 22.02.2021 of the respondent no.4. Under the circumstances, the petitioner cannot be faulted for not being able to carry out the mining operations after 26.05.2019.

46. As far as the question of loss of revenue is concerned, this court vide the judgment and order dated 18.07.2019 passed in Writ C No. 18794 of 2019 had directed that till the time the dispute in respect of boundaries between the two States is resolved by the State Government, no coercive action be taken against the petitioner especially in respect of recovery of the amount regarding which notice (for payment of second installment under the lease) was issued to the petitioner. Further the perusal of the the order dated 08.02.2021 of this Court passed in the present

writ petition, itself reveals that the respondents themselves admit that recovery against the petitioner had already been stayed by the State Government. Thus, the petitioner cannot be said to be liable for any loss of revenue to the State Government and the respondents themselves were responsible for the alleged financial loss as the defaults can only be attributed to the respondents.

47. Even otherwise, once the petitioner was not permitted to carry out mining operations admittedly after 26.05.2019 there is no question of payment of lease instalment by the petitioner. Hence, as far as the question of loss of revenue is concerned, the respondent themselves are responsible for the aforesaid loss, more so as the record reveals that no effort was made by the respondents to resolve the boundary dispute with the State of MP leading to the stalling of mining operations.

48. The lease having being cancelled on the ground of loss of revenue to the State, in this regard Rule 58 of the U.P. Minor Minerals (Concession) Rules, 1963 (hereinafter referred to as 'the Rules, 1963') becomes relevant and the same reads as under:

"58, Consequences of non-payment of royalty, rent or other dues (1) The State Government or any officer authorised by it in this behalf may determine the mining lease after serving a notice on the lessee to pay within thirty days of the receipt of the notice any amount due or dead rent under the lease including the royalty due to the State Government if it was not paid within fifteen days next after the date of fixed for such payment. This right shall be in addition to and without prejudice to the right of the State Government to realise such dues from the lessee as arrears of land revenue.

(2) Without prejudice to the provisions of these rules, simple interest at the rate of 18 percent per annum may be charged on any rent, royalty, demarcation fee and any other dues under these rules, due to the State Government after the expiry of the period of the notice under sub-rule (1)."

49. However, the records reveal that no such notice as required under the Rule 58 was ever issued to the petitioner prior to cancellation of the lease. Hence, it is beyond doubt that the order dated 29.01.2022 cancelling the lease has been passed in an illegal and arbitrary manner, for no fault of the petitioner and was in violation of the manner prescribed.

50. It is also necessary to point out that two mining areas comprised in Khasra No. 5 and Khasra No. 9, Village Bilharka, each having an area of 25 hectares were auctioned vide e-tender cum e-auction notice dated 16.02.2018. The letter of intent dated 19.03.2018 was issued in favour of the petitioner and the letter of intent in respect of other mining area of 25 hectares was issued in favour of Ram Kumar Shastri, proprietor M/s Mahadev Constructions. However, Ram Kumar Shastri did not execute any mining lease in respect of the mining area allotted to him, unlike the petitioner. The aforesaid fact is itself admitted by the respondents, in their counter affidavit dated 19.09.2020 wherein it is stated as under:-

"10. That out of 50 hectare area of Khasra Nos. 05, 09 Village Bilharka, Tehsil-Naraini, District- Banda, 25 hectare area belongs to petitioner's mining lease area and 25 hectare area

was auctioned in favour of one Sri Ram Kumar Shastri but mining lease was not executed in favour of Sri Ram Kumar Shastri. Due to the boundary dispute, the mining work has been stopped till further order of the State Government in pursuant to the order dated 15.07.2019 of State Government”

51. Even the letter dated 26.12.2019 was issued by the respondent no.4 to Collector, Chhatarpur at the instance of Ram Kumar Shastri, the respondent no.4 in the said letter while asking for constitution of joint team to carry out demarcation of boundaries admits that Ram Kumar Shastri had agreed to enter into a mining lease in respect of the undisputed area other than the area in respect of which there was a boundary dispute but for want of demarcation of boundaries the lease could not be executed despite passage of eighteen months.

52. The respondent no.4 vide the order dated 21.03.2020 by means of which mining was permitted in the undisputed area of 50 hectares, comprised in Khasra No. 5 and Khasra No. 9 had once again marked the copy of the said letter to M/s Mahadev Construction through Proprietor Ram Kumar Shastri to get the mining lease executed in accordance with the rules. Further, there is nothing on record to show that the mining lease was executed in favour of Ram Kumar Shastri or any action was taken against him by the respondents on account of his failure to do so.

53. Hence, it is evident that Ram Kumar Shastri, proprietor Mahadev Constructions neither executed any mining lease in respect of the mining area allotted to him nor commenced mining operations, even then, as the records reveal no action was taken against him by the respondents. Thus, the approach of the respondents towards petitioner in largely same set of circumstances was discriminatory, biased and prejudiced as both Ram Kumar Shastri and the petitioner were similarly situated.

54. In view of the findings recorded by us in the paragraphs above, we now advert to the first two questions framed by the Apex Court, the first question framed is as to whether the State of U.P. had failed to handover the possession of the area allotted to the petitioner for carrying out mining operations”

55. In respect of the first question we are of the view that initially the entire area of 25 hectares under the lease dated 13.02.2019 was demarcated on 11.02.2019 and handed over to the petitioner. But shortly thereafter the dispute of boundary arose between the two States on 22.02.2019 thereby hindering the mining operations. Subsequently a joint exercise was also undertaken on 10.04.2019 for demarcation of boundary by the officers of both the States but without success. It is also admitted that no excavation was carried out after 26.05.2019. As the dispute of boundary remained unresolved the State of U.P. vide the letter dated 15.07.2019 had stopped mining operations in the entire mining area of 50 hectares, including the mining area of 25 hectares allotted to the petitioner. The State of U.P. thereafter keeping in view the loss of revenue had vide the letter dated 17.03.2020 permitted mining in the undisputed area of the total mining area of 25 hectares allotted to the petitioner. However, even the undisputed area was not made available to the petitioner for mining, for reasons detailed in the paragraphs above. Thus, it is evident that the area of 25 hectares allotted to the petitioner for mining was not made available to the petitioner after 26.05.2019 till the termination of lease on 29.01.2022.

56. The second question framed is to the effect that as to whether there was no determination of the area, if any, which falls in the disputed territory, ie. within the State of M.P.”

57. In respect of the second question we are of the view that it was only once on 10.04.2019 that a joint exercise was undertaken to demarcate the boundary between the two States but the attempt so made was without any success. Thereafter no exercise was undertaken to demarcate the boundary between the two States and as such no determination could be made in respect of the area within the mining area of 25 hectares allotted to the petitioner, which fell in the disputed territory i.e State of M.P. Be that as it may, an exercise was undertaken by the respondents on 15.02.2021 to demarcate the disputed area and undisputed area in the total mining area allotted to the petitioner, wherein it was concluded that out of the total mining area of 25 hectares, 12.86 hectares constituted undisputed area and the rest 12.81 hectares constituted disputed area.

58. Now considering the contention of the respondents, heavy reliance has been placed on the fact that the petitioner was very well aware of the site conditions and the petitioner had made an inspection of leased area and as such it was no longer open for the petitioner to claim otherwise. In this regard in the advertisement dated 16.02.2018 inviting bids condition number 22 (1) and condition number 22 (2) read as under:-

22. “(1) ई-निविदा सह ई-नीलामी में भाग लेने से पूर्व क्षेत्र में आंकित उपखनज की मात्रा एवं खनन स्थल के लिए पहुँच मार्ग आदि के सम्बन्ध में मौके का निरीक्षण कर बिडर स्वीकृत हो लें। ई-निविदा सह ई-नीलामी में भाग लेने के पश्चात् इस सम्बन्ध में किसी भी प्रकारका दावा स्वीकार नहीं किया जायेगा।

(2) पट्टा धारक पट्टे के अधीन दिये गये क्षेत्र के सर्वेक्षण और सीमांकन के समय सीमांकितमानचित्र पर खनन पट्टा क्षेत्र का कांटेनेट्स अंकित करेगा तथा पट्टा विवेक निष्पादन करने के WRIC No. 37749 of 201918 पूर्व पट्टा धारक अपने स्वीकृत व्यय पर ऐसे सीमा चिह्न को और खम्बों को लगायेगा जो पट्टा विवेक से संलग्न नक्शे में दर्शाये गये सीमांकन को इंगित करने के लिए आवश्यक होगा।”

59. A perusal of the condition no. 22 (1) reveals that the petitioner was required to carry out the inspection of the mining area to assess the quantity of minor minerals available and also the access to the mining area and no claim in this regard was to be entertained after the participation in the auction process. Besides, the lessee prior to execution of the lease deed was required to erect boundary marks to demarcate the mining area. The respondents while placing reliance on the aforesaid condition of the advertisement have argued that once the petitioner had inspected the mining area prior to making his bid, it was no longer open for the petitioner to have raised any dispute in that regard.

60. The perusal of the condition no. 22 (1) reveals that it does not stipulate that the lessee will have to satisfy himself about the measurement of the area to be leased. It was the duty of the respondent to handover the complete mining area as per the e-tender cum e-auction notice. The petitioner under e-tender cum e-auction notice/ advertisement is not supposed to verify about the

title of the mining area or as to whether some part of the area advertised falls within the boundary of another District/ State.

61. Records reveal that advertisement for e-tender cum e-auction is dated 16.02.2018, subsequently recommendations were made in favour of the petitioner by the e-tender committee on 14.03.2018 and the letter of intent was issued in favour of the petitioner on 19.03.2018. There is no evidence available on record to show that there was any dispute of boundary at the time of submission of bid by the petitioner or at the time of issuance of letter of intent in favour of the petitioner. Further the petitioner was only required to assess the quantity of minerals and the access to the mining area to be allotted to the petitioner. There is no dispute between the parties that the mining area allotted to the petitioner did not have sufficient quantity of sand/ morum for evacuation nor there was any dispute in respect of accessibility of the mining area.

62. As far as the condition no. 22 (2) pertaining to demarcation of mining area and fixing of boundary marks prior to execution of lease is concerned it is also admitted between the parties that the exercise of demarcation was carried out on 11.02.2019 prior to execution of lease deed dated 13.02.2019 and it is also not disputed that the entire area of 25 hectares under the lease was available for carrying out mining operations.

63. It is pointed out here that the dispute between the parties revolves around the fact that the entire mining area was not made available to the petitioner for excavation in view of boundary dispute between the two States. As would be evident from the facts narrated above, the aforesaid dispute relating to boundary arose for the first time only on 22.02.2019 much after the acceptance of bid of the petitioner and issuance of letter of intent dated 19.03.2018. Under the circumstances we are afraid that the aforesaid condition would not come to the rescue of the respondents in any manner whatsoever.

65. The petitioner in this regard has placed reliance upon the judgment of the Hon'ble Apex Court in the case of ***Planet Steel Pvt. Ltd. v. State of Haryana and others, 2018 SCC Online SC 3990*** wherein it was held as under:

"4. Learned counsel for the State of Haryana refers to Clause 5 of the terms and conditions of the auction and submits that it was the duty of the petitioner to ascertain whether the land was actually 558.53 hectares or not. Clause 5 of the terms and conditions reads as follows:

"5. All prospective bidders are expected and presumed to have surveyed the areas to make their own assessment for the potential of the areas for which bids are to be offered. The State Government shall not be responsible for any kind of loss to the bidders/contractors at any point of time (before or after grant of contract). Further the bidders are also expected to have gone through the terms and conditions of auction notice and also the applicable Acts and Rules for undertaking mining."

5. On a plain reading of Clause 5, it is quite clear that there is no requirement on the prospective bidder to survey the area for the purpose of measurement. The prospective bidder can make an assessment for the potential of the area for which bids are to be offered.

6. It is the duty and responsibility of the State to ensure that the area sought to be auctioned for mining purposes is as per the advertisement.

7. This view has also been taken by the Punjab and Haryana High Court in the case of *Haryana Royalty Company v. State of Haryana* [CWP No. 15431 of 2014] decided on 15th January, 2015. The admitted position is that this decision of the Punjab and Haryana High Court has attained finality.

8. It is, therefore, incorrect to contend by the State that the sole responsibility for measuring the area sought to be auctioned for mining purposes was that of the petitioner.

9. Consequently, we are of the view that the decision of the High Court is required to be set aside and the petitioner is entitled to the refund of the deposited amount. This amount may be refunded to the petitioner within a period of four weeks from today along with interest at 9% per annum from the date of deposit till the date of payment in view of the vast discrepancy of the area of the land mentioned in the advertisement and the area made available.

10. The special leave petitions are disposed of.

11. Pending application, if any, stands disposed of.”

(emphasis added)

We are of the view that the present controversy is squarely covered by the law relied upon by the petitioner.

66. It would also not be out of place to mention here that the respondents have placed a lot of emphasis on the fact that the petitioner himself had got prepared the mining plan and the same was approved by the Directorate of Geology, U.P., Lucknow, thereafter the terms of reference were issued on 25.05.2018 and environmental clearance was granted to the petitioner on 08.02.2019. Hence, it is contended that the petitioner was well aware about the mining area but had not raised any objection at any point of time.

67. In this regard we are of the view that that the entire exercise was undertaken to assess the quantity of minor mineral available in the mining area to be leased and there is no dispute between the parties in respect to the same. However, the petitioner was not supposed to verify the correctness of boundary or title as there was a presumption that the State would only advertise the mining area, which is free from all encumbrances. Besides, there is nothing on record to show that there was a boundary dispute existing between the two States at the time of execution of the lease dated 13.02.2019 or prior thereto.

68. Thus, the submission of the mining plan by the petitioner and the issuance of environmental clearance would have no bearing upon the failure on the part of the respondents in not providing the required mining area under the lease to the petitioner on account of the boundary dispute between the two States and also for the respondents having failed to resolve the boundary dispute despite the directions of this Court.

69. Further, the mining plan was approved, terms of reference issued and environmental clearance granted after assessing the quantity of sand/ morum over the entire leased area of 25 hectares. However, the respondents for the detailed reasons assigned were only left with an undisputed area of 12.86 hectares for mining and themselves made no effort to assess the quantity of sand/ morum available in the undisputed area, which was about 51% of the total leased area of 25 hectares. Moreso, it is the specific case of the petitioner that no sand/ morum was available in the undisputed area and the respondents made no effort to assess the same. Hence, the mining plan, terms of reference and environmental clearance being in respect of the entire leased area of 25 hectares would be of no relevance once the aforesaid area was no longer available to the petitioner for mining.

70. Now we advert to the third question framed the Apex Court with respect to the effect of the clause in advertisement dated 16.02.2008, where the bidder was advised to inspect and satisfy itself regarding the mining area before participating in the bidding process on the reliefs claimed in the writ petition.

71. In respect thereof we are of the view that the dispute between the parties hovered around the fact that mining area allotted to the petitioner was not made available by the respondent for mining on account of the boundary dispute between the two States. There is no dispute between the parties that required quantity of sand / morum was not available in the mining area allotted to the petitioner. Further under the said clause the petitioner was not required to verify the correctness of area/title of the mining area advertised. Moreover, there was a presumption that State would advertise an encumbrance free mining area. Moreover, for the reasons detailed above, the aforesaid clause in the agreement would not have any effect on the relief claimed in the writ petition, firstly on account of the fact that it was the obligation of the respondent to ensure that the entire mining area of 25 hectares was made available to the petitioner, which the respondent failed to provide and it was solely on account of defaults of respondent that no mining/ excavation could taken place after 26.05.2019.

72. Before advert to the reliefs claimed by the petitioner in the present writ petition, we would like to advert to the law laid down in that regard. In view of the discussions made above, it can be very well be concluded that it was the obligation of the respondents to provide mining area of 25 hectares to the petitioner, morefully detailed in the lease deed dated 13.02.2019 but the respondents failed to do so. As a consequence thereof no mining/ excavation could take place after 26.05.2019. Further for the reasons detailed above the respondents on account of their acts of omission and commission had failed to provide the mining area under the lease dated 13.02.2019 to the petitioner.

73. Be that as it may, there is nothing on record to show that the respondents were aware of the boundary dispute between the two States prior to execution of the lease deed dated 13.02.2019. It is also not the case of petitioner that the lease dated 13.02.2019 was an outcome of coercion, undue influence, fraud or misrepresentation on the part of the respondents. In fact the petitioner in the writ petition admits that the contract became hindered on account of unforeseen circumstances, para 21 of the writ petition in this regard reads as under:-

“21. That it is settled position in law, that if any contract is hindered by unforeseen circumstances, then such contract is losing its efficacy and the petitioner is duty bound to come out of the contract and the State Government is responsible for the refund the money “

74. Further the petitioner in para 11 of the writ petition states that the stand of State of M.P. is wrong and the map prepared by the State of M.P. is wrong and is required to be corrected.

75. Thus, it can be concluded that both the parties had entered into the mining lease dated 13.02.2019 under a mistake as to a matter of fact that 25 hectares of land was available for mining, which was not so. The aforesaid conclusion is further fortified from the fact that although letter of intent was also issued in respect of another piece of land adjoining the land in controversy but no mining lease was executed, as would be evident from the records as the other allottee became aware of the boundary dispute between the two States and the fact that mining area as assured by the respondents was not available.

76. Hence, we are of the view that parties suffered from mutual mistake with regard to the area of land in respect of which, the mining lease dated 13.02.2019 was executed. Thus, we are of the view that provisions of Section 20 of the Contract Act, 1872 would be attracted in the facts and circumstances of the present case and the same reads as under:

“20. Agreement void where both parties are under mistake as to matter of fact- Where both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement the agreement is void.

Explanation- An erroneous opinion as to the value of the thing which forms the subject-matter of the agreement, is not to be deemed a mistake as to a matter of fact. ”

77. In the present case both the parties verily believed that a mining area of 25 hectares was available for excavation under the mining lease, the same being a matter of fact essential to the agreement. However, after execution of the mining lease it was realised that the required area was not available, hence, the mining lease was void as parties suffered from mutual mistake with regard to the area available for mining under the lease by virtue of Section 20 of the Contract Act, 1872.

78. Under the above circumstances we may also refer to Section 65 of the Contract Act, 1872 minus the illustrations and the same reads as under: -

“65. Obligation of person who has received advantage under void agreement or contract that becomes void- When an agreement is discovered to be void or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it to the person from whom he received it. “

79. In the present case while applying the provisions of Section 65 of the Contract Act, 1872 we are of the view that the words ‘discovered to be void’ comprehends a situation where a parties were suffering from a mistake of fact from the very beginning but had not realised, at the time of entering into agreement, that they were suffering from any such mistake and therefore,

acted bonafide on such agreement. The agreement in such a case would be void from its inception, though discovered to be so at a much later stage. Even in the present case both the parties while acting bonafidely prior to entering the mining lease dated 13.02.2019 had carried out various exercises including conduct of surveys and obtaining clearances, morefully detailed above, in respect of mining area of 25 hectares, that was sought to be leased.

80. Under the circumstances we rely on the law laid down by the Apex Court in the case of **Tarsem Singh v. Sukhinder Singh, (1998) 3 SCC 471** in this regard, wherein the parties were at a mutual mistake in respect of the area of land sought to be transferred in pursuance to an agreement for sale thereby making the agreement void consequently leading to the situation of benefit received by one party to another party and it was held as under:

"20. Section 20 of the Act lays down as under: "20. Agreement void where both parties are under mistake as to matter of fact. Where both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement, the agreement is void. Explanation. An erroneous opinion as to the value of the thing which forms the subject-matter of the agreement, is not to be deemed a mistake as to matter of fact."

21. This section provides that an agreement would be void if both the parties to the agreement were under a mistake as to a matter of fact essential to the agreement. The mistake has to be mutual and in order that the agreement be treated as void, both the parties must be shown to be suffering from mistake of fact. Unilateral mistake is outside the scope of this section.

22. The other requirement is that the mistake, apart from being mutual. should be in respect of a matter which is essential to the agreement.

24. "Bigha" and "kanal" are different units of measurement. In the northern part of the country, the land is measured in some States either in terms of "bighas" or in terms of "kanals". Both convey different impressions regarding area of the land. The finding of the lower appellate court is to the effect that the parties were not ad idem with respect to the unit of measurement. While the defendant intended to sell it in terms of "kanals", the plaintiff intended to purchase it in terms of "bighas". Therefore, the dispute was not with regard to the unit of measurement only. Since these units relate to the area of the land, it was really a dispute with regard to the area of the land which was the subject-matter of agreement for sale, or, to put it differently, how much area of the land was agreed to be sold, was in dispute between the parties and it was with regard to the area of the land that the parties were suffering from a mutual mistake. The area of the land was as much essential to the agreement as the price which, incidentally, was to be calculated on the basis of the area. The contention of the learned counsel that the ?mistake? with which the parties were suffering did not relate to a matter essential to the agreement cannot be accepted.

29. Since, in the instant case, it has been found as a fact by the courts below that the agreement in question was void from its inception as the parties suffered from mutual mistake with regard to the area and price of the plots of land agreed to be sold, the forfeiture clause would, for that reason, also be void and, therefore, the petitioner could not legally forfeit the amount and seek

the enforcement of forfeiture clause, even by way of defence, in a suit instituted for specific performance by the respondent.

30. We may also refer to Section 65 of the Contract Act which, minus the illustrations, is as follows: "65. Obligation of person who has received advantage under void agreement, or contract that becomes void. When an agreement is discovered to be void, or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it, to the person from whom he received it."

31. This section, which is based on equitable doctrine, provides for the restitution of any benefit received under a void agreement or contract and, therefore, mandates that any "person" which obviously would include a party to the agreement, who has received any advantage under an agreement which is discovered to be void or under a contract which becomes void, has to restore such advantage or to pay compensation for it, to the person from whom he received that advantage or benefit.

33. Mutual consent, which should also be a free consent, as defined in Sections 13 and 14 of the Act, is the sine qua non of a valid agreement. One of the essential elements which go to constitute a free consent is that a thing is understood in the same sense by a party as is understood by the other party. It may often be that the parties may realise, after having entered into the agreement or after having signed the contract, that one of the matters which was essential to the agreement, was not understood by them in the same sense and that both of them were carrying totally different impressions of that matter at the time of entering into the agreement or executing the document. Such realisation would have the effect of invalidating the agreement under Section 20 of the Act. On such realisation, it can be legitimately said that the agreement was "discovered to be void". The words "discovered to be void", therefore, comprehend a situation in which the parties were suffering from a mistake of fact from the very beginning but had not realised, at the time of entering into the agreement or signing of the document, that they were suffering from any such mistake and had, Therefore, acted bona fide on such agreement. The agreement in such a case would be void from its inception, though discovered to be so at a much later stage.

36. To the same effect is an old decision of the Calcutta High Court in the case of *Ram Chandra Misra v. Ganesh Chandra Gangopadhyaya*, in which it was held that an agreement entered into under a mistake and misapprehension as to the relative and respective rights of the parties thereto is liable to be set aside as having proceeded upon a common mistake. In this case, there was an agreement for lease of the mogoli brahmatter rights of the defendants in certain plots of land. Both the parties were under the impression that the brahmatter rights carried with them the mineral rights. It was subsequently discovered that brahmatter rights did not carry mineral rights. The High Court held that the agreement became void under Section 20 of the Contract Act as soon as the mistake was discovered and, therefore, the plaintiffs were entitled to refund of money advanced under a contract which was subsequently discovered to be void."

(emphasis added)

81. Even otherwise, the Apex Court in the case of **Popatrao Vyankatrao Patil v. State of Maharashtra and others (2020) 19 SCC 241**, where the appellant despite being the highest bidder was not handed over the possession of the sand block for excavation, had held as under:

“11. It could thus be seen, that even if there are disputed questions of fact which fall for consideration but if they do not require elaborate evidence to be adduced, the High Court is not precluded from entertaining a petition under Article 226 of the Constitution. However, such a plenary power has to be exercised by the High Court in exceptional circumstances. The High Court would be justified in exercising such a power to the exclusion of other available remedies only when it finds that the action of the State or its instrumentality is arbitrary and unreasonable and, as such, violative of Article 14 of the Constitution of India. In any case, in the present case, we find that there are hardly any disputed questions of facts.

12. It is undisputed, that the appellant was the highest bidder for the sand block in question. The appellant has deposited an amount of Rs 62,26,085. The panchnama prepared by the Circle Officer, Kale Respondent 5, clearly exhibited that neither possession of the sand block in question was given to the appellant nor excavation of sand was done from the said sand block. The said position is reiterated by the Tahsildar, Karad Respondent 4 in his report submitted to the Collector Respondent 2 dated 9-8-2012. The Sub-Divisional Officer, Karad Respondent 3 in his report dated 4-9-2012, addressed to the Collector, Satara also confirmed the said position. A perusal of the letter dated 3-10-2012, addressed by the Collector, Satara to the Tahsildar and Sub-Divisional Officer also does not dispute the said position. However, he directed his subordinates to submit original file of the appellant's sand block with his office for refund of the amount deposited by the appellant.

13 It appears, that subsequently after all the authorities including Circle Officer, Tahsildar, Sub-Divisional Officer and the Collector found that neither the possession of the sand block was handed over to the appellant nor the excavation of sand from the said sand block was done, at the instance of the Collector, the file for grant of refund was being processed. It further appears. that the file in transit was misplaced and on this ground the appellant was denied the refund. It could thus be seen, in these admitted facts, that the denial on the part of the respondents to refund the amount to the appellant can, by no stretch of imagination, be called as reasonable. The action of the respondents, in denying the refund of the amount of the appellant, when the respondents themselves had failed to give possession of the sand block and as a result of which the appellant could not excavate the sand, would smack of arbitrariness. In this premise, we find that the High Court was not justified in relegating the appellant to file a suit.

15. In view of the undisputed position, that in spite of the appellant being the highest bidder and in spite of him depositing the entire amount of auction, since the possession of the sand block was not given to him for the reasons not attributable to him and he could not evacuate the sand, he will be entitled to get refund of the amount deposited by him.”

82. Similarly the Apex Court in the case of **Jai Durga Invest (P) Ltd v. State of Haryana (2004) 3 SCC 381** where the appellant was prevented from excavation of sand by reasons of omission and commission on the part of the respondents had held as under:

“11. It is not in dispute that the grant of mining lease in favour of the appellant herein for the extraction of mineral sand by the respondents is governed by the provisions of the Punjab Minor Mineral Concession Rules, 1964. In terms of Rule 33 the bidder is required to execute a deed in Form 'L'. Clause 27 of the agreement in Form 'L' obligates the respondents to comply with the request made in terms thereof. The Appellate Authority had not considered this aspect of the matter. The High Court also did not apply its mind in this behalf. The first question that arises is whether the respondents complied with their statutory obligations when the request was made by the appellant. If not, the second question would be the effect of non-compliance with the statutory obligation of the respondents which formed part of the contract insofar as they did not comply with the appellant's request as aforementioned which had a direct bearing on the right of the appellant to raise sand. The High Court, as noticed hereinbefore, has merely proceeded on the basis that the appellant had entered into the contract with his eyes wide open; but, the same would not, in our opinion, mean that they were bound to pay the contract amount, get its security amount forfeited, as also pay interest at the rate of 24 per cent, although it could not, by reason of acts of omission and commission on the part of the respondents, carry out the mining operation as per the terms of the agreement.”

83. As far as the reliefs claimed by the petitioner in the present writ petition are concerned the petitioner has claimed an amount of Rs. 26,65,66,666/- as the amount deposited with the respondent and the expenditure incurred under various heads and elaborate details of the amounts claimed have been given in para 13 of the writ petition. Paragraph 13 of the writ petition reads as under:-

“13. That after the date of execution of mining lease deed, the petitioner's legal business routine required to be calculated according to Government scheduled at the minimum level.

In six months according to Government rate appropriate sale including all expenses would be 26,65,66,666/-. Expenses and profit will be as per the following schedule.

(A) Royal- Rs. 527/- per cum

G.S.T. 18%

D.R.M.F. 10%

Overhead Charge 10%

Total @Rs. 727/- per cum

Total expenses Rs. 24,23,33,333/-

The total used royalty in six months would be 3,33,333/- per cum

(B). After acceptance of e-tender actual government expenses incurred by the petitioner are as follows:

E-stamp fee- Rs. 3,21,73, 877/- Deposit of earnest money-Rs. 6,58,75,000/-

Advance royalty-Rs. 6,58,75,000/-

F.D. Deposit with District Magistrate on 12.2.2019-Rs. 9,27,000/-

Expenses incurred in connection with survey road development etc. (7 km road development by the petitioner including repairing of 3 bridges and shafts- Rs.17,07,50,877/- “

84. The respondents in response thereto in paragraph 23 of their counter affidavit states as under:-

“23. That the contents of paragraph no. 13 of the writ petition are matter of record and the same can only be verified from the record, hence need no comments.”

85. The respondent themselves admit in paragraph 25 of their supplementary counter affidavit dated 19.04.2024 that the petitioner had deposited an amount of Rs. 13,17,50,000/- of which an amount of Rs. 6,58,75,000/- was towards first instalment of the lease and the balance amount was deposited towards security. Besides the respondents also admit in the review petition that the petitioner carried out mining operations from 15.02.2019 to 26.05.2019 and had evacuated a total of 22,820 cubic meters of sand/ morum in the process. The petitioner has not disputed the aforesaid position. Further under the registered lease dated 13.02.2019 the petitioner had agreed to excavate sand/ morum at the rate of Rs. 527 per cubic meter. Thus, in view of the position admitted between the parties the petitioner would be entitled to refund of amount of Rs. 13,17,50,000/- from the respondents with the liberty to the respondents to deduct the amount from the total outstanding amount to the effect of total excavated sand/ morum being 22,820 cubic meter of sand/ morum excavated by the petitioner.

86. Besides the petitioner has claimed an amount of Rs 17,07,50,877/- towards expenses incurred in connection with service road development etc. (seven km of road developed by the petitioner including repairing of three bridges and shafts), the aforesaid claim has not been admitted by the respondents and as such is disputed. For the purpose of establishing the claim of the aforesaid amount the petitioner would be required to adduce evidence in support of the expenditure so incurred. As such the aforesaid claim would require a decision on disputed questions of fact. Under the circumstances, no relief can be granted to the petitioner under the said claim in proceedings under Article 226 of the Constitution of India. Hence, the claim of the petitioner of the aforesaid amount is dismissed with the liberty to the petitioner to approach the competent forum under law as far as the aforesaid claim is concerned.

87. So far as the relief claimed by the petitioner in respect of refund of stamp duty deposited to the tune of Rs. 3,21,73,877/- for the purpose of execution of the lease deed dated 13.2.2019 is concerned. We are of the view that the petitioner was prevented from carrying out the mining operations in pursuance to the lease deed dated 13.02.2019 for no fault of his. Further the petitioner had duly fulfilled his share of obligations under the lease but was prevented from carrying out the mining operations solely on account of the dispute of boundary between the State

of U.P. and the State of M.P., which was beyond the control of the petitioner. The petitioner has been pursuing the legal remedies available to him diligently by approaching this Court. Moreover, the lease deed dated 13.02.2019 is void by virtue of Section 20 of the Contract Act, 1872 for the reasons detailed above.

88. Hence, it is only as a result of this judgment and order passed by this Court that the petitioner would become entitled to the refund of stamp duty paid for the purpose of execution of the lease deed. Thus, in view of the above, the petitioner would be entitled to the refund of stamp duty under Section 65 of the Contract Act, which enables the party to a contract to seek restoration of all such advantages from the other party, which they took from such contract when such contract becomes void.

89. Under the circumstances, we are of the view that the petitioner is entitled to avail appropriate legal recourse under the provisions of Indian Stamp Act, 1888 and to approach the competent authority for refund of the stamp duty paid on the lease deed dated 13.02.2019.

90. The Apex Court in the Case of **The Committee-GFIL vs. Libra Buildtech Pvt. Ltd. and Ors 2015 (16) SCC 31** in respect of refund of stamp duty had held as under :-

“24. In our considered opinion, keeping in view the undisputed facts mentioned above, the applicants are also entitled to claim the refund of entire stamp duty amount of Rs 6.22 crores from the State Exchequer, which they spent for execution of sale deeds in their favour in relation to the properties in question. This we say for the following reasons.

25. In the first place, admittedly the transaction originally intended between the parties i.e. sale of properties in question by GFIL Committee to the applicants was not accomplished and failed due to reasons beyond the control of the parties. Secondly, this Court after taking into consideration all facts and circumstances also came to the conclusion that it was not possible for the parties to conclude the transactions originally intended and while cancelling the same directed the seller (GFIL Committee) to refund the entire sale consideration to the applicants and simultaneously permitted the applicants to claim refund of stamp duty amount from the State Government by order dated 26-9-2012¹¹. Thirdly, as a result of the order of this Court, a right to claim refund of amount paid towards the stamp duty accrued to the applicants. Fourthly, this being a court-monitored transaction, no party was in a position to take any steps in the matter without the permission of the Court. Fifthly, the applicants throughout performed their part of the contract and ensured that transaction in question is accomplished as was originally intended but for the reasons to which they were not responsible, the transaction could not be accomplished. Lastly, the applicants in law were entitled to claim restoration of all such benefits/advantages from the State once the transaction was cancelled by this Court on 26-9-2012 in the light of the principle contained in Section 65 of the Contract Act which enable the party to a contract to seek restoration of all such advantage from other party which they took from such contract when the contract is discovered to be void or becomes void. This was a case where contract in question became void as a result of its cancellation by order of this Court dated 26-9-2012 which entitled the applicants to seek restitution of the money paid to the State for purchase of stamp papers.

26. *In our considered opinion, while deciding a case of this nature, we have to also bear in mind one maxim of equity, which is well settled, namely, actus curiae neminem gravabit meaning an act of the court shall prejudice no man. In Broom's Legal Maxims, 10th Edn., 1939 at p. 73 this maxim is explained by saying that it is founded upon justice and good sense and afforded a safe and certain guide for the administration of law. This maxim is also explained in the same words in Jenk. Cent. 118. This principle is fundamental to any system of justice and applies to our jurisprudence. [See Busching Schmitz (P) Ltd. v. P.T. Menghani and Raj Kumar Dey v. Tarapada Dey].*

27. *It is thus a settled principle of law based on principle of equity that a person cannot be penalised for no fault of his and the act of the court would cause no prejudice to any of his rights.*

28. *In our considered opinion, the aforesaid maxim would apply with full vigour in the facts of this case and if that is the position then the applicants, in our opinion, are entitled to claim the refund of the entire amount of stamp duty from the State Government which they spent in purchasing the stamp papers for execution of sale deed in relation to the properties in question. Indeed in the light of six reasons set out supra which, in our considered opinion, in clear terms attract the principle contained in the aforesaid maxim, the State has no right to defend the order of the SDM for retaining the amount of stamp duty paid by the applicants with them. The applicants' bona fide genuine claim of refund cannot be denied on such technical grounds.*

29. *This case reminds us of the observations made by M.C. Chagla, C.J. in Firm Kaluram Sitaram v. Dominion of India. The learned Chief Justice in his distinctive style of writing observed as under in para 19: (Firm Kaluram case, SCC OnLine Bom)*

"19.... we have often had occasion to say that when the State deals with a citizen it should not ordinarily rely on technicalities, and if the State is satisfied that the case of the citizen is a just one, even though legal defences may be open to it, it must act, as has been said by eminent Judges, as an honest person."

We are in respectful agreement with the aforementioned observations, as in our considered opinion these observations apply fully to the case in hand against the State because except the plea of limitation, the State has no case to defend their action.

30. *Even apart from what we have held above, when we examine the case of the applicants in the light of Sections 49 and 50 of the Act, we find that the case of the applicants can be brought under Section 49 (d) (2) read with Section 50 (3) of the Act to enable the State to entertain the application made by the applicants seeking refund of stamp duty amount. The interpretation, which advances the cause of justice and is based on the principles of equity, should be preferred. We hereby do so."*

91. Under the circumstances, we grant the liberty to the petitioner to approach the competent authority under the Indian Stamp Act, 1888 for the refund of the stamp duty paid on the lease deed dated 13.02.2019. Thus, if the petitioner makes a representation in this regard before the

competent authority under the Indian Stamp Act, 1988 in respect of the refund of Stamp Duty paid on the lease deed dated 13.02.2019 along with the certified copy of this order within one month from the date of this order, the same shall be decided within a period of two months thereafter keeping in view the observations made above and strictly in accordance with law.

92. That as far as the relief of return of fixed deposit of Rs. 9, 27,000/- deposited with the District Magistrate, Banda- respondent no.4 is concerned, for the reasons detailed in the paragraphs above, as the petitioner is entitled to the restitution of payments made in pursuance to the lease deed dated 13.02.2019 by virtue of Section 65 of the Indian Contract Act, 1872, we are of the view that the petitioner would be entitled to return the fixed deposit of Rs. 9,27,000/- and on the failure to do so the petitioner would be entitled for refund of the amount of Rs. 9,27,000/- along with the interest accrued on the fixed deposit, payable upto the date of refund of the aforesaid amount.

93. Now, on the question of the rate of interest payable to the petitioner on the amounts due, we are of the view that admittedly the petitioner could not carry out any excavation after 26th May, 2019 as such the petitioner would be entitled to interest on the amounts due from 27th May, 2019. As far as the rate of interest is concerned we rely upon the judgment of the Apex Court in the case of **Dharmenda Kumar Singh v. State of Uttar Pradesh (2021) 1 SCC 93**, in which case the appellant had been prevented from carrying out mining operations in view of orders passed by learned National Green Tribunal, and the Apex Court was of the view that the appellant's mines remained blocked and mining prevented for no fault of his as such the monies blocked should carry a simple interest @ 9% per annum. Hence, the petitioner would be entitled to simple interest @ 9 % per annum on the amounts so payable by the respondents from 27.05.2019 till the date of actual realization.

94. As far as the relief claimed by the petitioner to annul the lease deed as the respondents failed to fulfill the terms and conditions due to unforeseen circumstances and mistake of the State Government is concerned, in this regard we have already assigned elaborate reasons above to conclude that the lease deed dated 13.02.2019 was void by virtue of Section 20 of the Contract Act, 1872. Hence, we hold that the lease deed dated 13.02.2019 being void, stands annulled.

95. Lastly we advert to the forth question framed by the Apex Court as to whether the amount of which refund was sought was far in excess of the amount paid by the petitioner.

96. As already discussed above, the monetary reliefs claimed by the petitioner are in the nature of restitution of investments made, as the petitioner was not allowed to carry out excavation of sand/ morum in pursuance to the lease deed dated 13.02.2019. Amongst the reliefs claimed by the petitioner we have allowed the refund of the amounts admittedly paid by the petitioners to the respondents in pursuance to the lease deed dated 13.02.2019 after deducting the amount of sand/ morum already excavated by the petitioner, the return of fixed deposit, and granted liberty to the petitioner to move the competent authority for refund of stamp duty. The claim of interest has also been allowed. As far as the relief claimed pertaining to expenditure incurred in connection with service road development etc, undoubtedly the petitioner would have incurred expenses to commence mining operations, however, as the amounts claimed under the said head are not admitted by the respondents and involves disputed questions, which can be adjudicated only after

production of evidence, we have relegated the petitioner to approach the competent forum under law. Thus, we are of the view amongst the amounts claimed by the petitioner, the disputed claims cannot be adjudicated in the present proceedings, further, the petitioner has also failed to seek adjustment of the amount of sand/ morum already excavated

97. Thus, in view of the above the present writ petition is partly allowed in terms of the observations made above.

98. No order as to costs.

(2026) 4 ILRA 1479
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 20.04.2026

BEFORE

THE HON'BLE MAHESH CHANDRA TRIPATHI, J.
THE HON'BLE KUNAL RAVI SINGH, J.

Writ C No. 61435 of 2010
 Alongwith
 Writ C No. 51093 of 2010

Gangadhar Tiwari

State of U.P. & Ors.

...Petitioner
Versus
...Respondents

ISSUE FOR CONSIDERATION

Whether compensation for electrocution injury can be awarded under the Public Liability Insurance Act, 1991, and whether the District Magistrate/Additional Collector had jurisdiction to grant such relief?

Whether the compensation awarded was adequate, or required enhancement in light of permanent disability and prolonged deprivation due to interim stay?

HEADNOTES

Civil Law – Constitution of India - Articles 21, 226 - Public Liability Insurance Act, 1991 – Sections 6, 6(1), 22 - Public Liability Insurance Act, 1991 - Section 6: - Writ Petitions – under Article 226 – one petition filed against U.P. Power Corporation, filed for enhancement of compensation under the Public Liability Insurance Act, 1991 – another petition filed by Power Corporation assailing the Award – petitioner sustained 40% permanent disability due to electrocution from a broken high-voltage wire, despite prior intimation to the Electricity Department - Claim Petition – allowed, awarding to the tune of rupees 4 Lac only - but stayed in connected writ – applicability of Act, 1991 and jurisdiction of District Magistrate – petitioner pleaded entitlement to enhanced compensation for medical expenses, loss of earning, and mental agony – respondents objected that Act, 1991 is inapplicable and order without jurisdiction – Court finds electricity is a hazardous substance - Act, 1991 applies - District Magistrate competent, and prolonged deprivation warrants enhancement – compensation under Article 21 is a constitutional remedy, strict liability applies – held, petitioner entitled to Rs. 9,00,000 (Rs. 4,00,000 medical expenses + Rs. 5,00,000 enhanced compensation) – hence, Writ-C No.61435 of 2010 allowed, Writ-C No.51093 of 2010 dismissed – with direction to the Power Corporation to pay within 4 weeks, failing which 9% interest payable from date of impugned order.

(Para – 29, 30, 31)

Leading WP Allowed & Connected WP Dismissed. (E-11)

CASE LAW CITED

Purvanchal Vidyut Vitran Nigam Ltd. v. Pradeep Kumar Bind & Anr. (2017)
U.P. State Electricity Board & Ors. v. District Magistrate, Dehradun & Ors. (1997) 2 UPLBEC 1344
Neetu Devi v. State of U.P. & Ors. (2014)
Raghuvansh Dewanchand Bhasin v. State of Maharashtra (2012) 9 SCC 791
Rudul Sah v. State of Bihar (1983) 4 SCC 141
Bhim Singh v. State of J&K (1985) 4 SCC 677
Nilabati Behera v. State of Orissa (1993) 2 SCC 746
Salem Advocate Bar Association (II) v. Union of India (2005) 6 SCC 344
M.P. Electricity Board v. Shail Kumari (2002) 2 SCC 162
Parvati Devi v. Commissioner of Police, Delhi (2000) 3 SCC 754,
M.C. Mehta v. Union of India (1987) 1 SCC 395.

LIST OF ACTS

Public Liability Insurance Act, 1991 - Electricity Act, 2003 - Environment (Protection) Act, 1986 - Constitution of India.

LIST OF KEYWORDS

Writ Petition, Electrocutation, hazardous substance, strict liability, compensation, Article 21, jurisdiction, Public Liability Insurance Act, electricity accident, permanent disability, ex parte award, enhancement of compensation, Allowed.

CASE ARISING FROM

Writ-C No.61435 of 2010 filed by claimant-petitioner (Gangadhar Tiwari) seeking enhancement of compensation awarded under the Public Liability Insurance Act, 1991.

Connected Writ-C No.51093 of 2010 filed by U.P. Power Corporation challenging the award of compensation by the Additional Collector/Accident Claim Tribunal, Sant Ravidas Nagar.

APPEARANCE OF PARTIES

Counsel for Appellant(s): - Shri Kamlakar Dwivedi,
Counsel for Respondent(s): - Shri Devesh Vikram, Additional Chief Standing Counsel, Shri Sushil Kumar Pandey for Power Corporation.

(Delivered by Hon'ble Mahesh Chandra Tripathi, J.

&

Hon'ble Kunal Ravi Singh, J.)

1. Heard Shri Kamlakar Dwivedi, learned counsel for the petitioner (respondent no.2 in connected Writ-C No.51093 of 2010; Shri Devesh Vikram, learned Addl. Chief Standing Counsel for State respondents and Shri Sushil Kumar Pandey, learned counsel for respondent nos.3 & 4- Purvanchal Vidyut Vitran Nigam (Electricity Distribution Division-II), Sant Ravidas Nagar (Bhadohi)1 (the petitioners in connected Writ-C No.51093 of 2010).

FACTS

2. Since the controversy involved in both the writ petitions are similar, with the consent of learned counsel for parties, they are being decided by this common order.

3. The facts of Writ-C No.61435 of 2010 are being taken as leading case for deciding the controversy.

4. The facts of the case in brief are that on 09.12.2006, when the claimant-petitioner (Gangadhar Tiwari) was going to answer the call of nature in the morning, he came into contact with live electrical wire of 11000 KV and sustained severe burn injuries due to electrocution. Somehow with the help of stick and bamboos the petitioner was separated from the live electrical wire due to which the life of the petitioner was saved. It is alleged that the electrical wire was broken on 7.12.2006 and on the same day Gram Pradhan had informed about the same to the concerned Junior Engineer of the Electricity Distribution Division, Wahida Nagar Power House, Distt. Sant Ravidas Nagar, Bhadohi but inspite of the information, the broken electrical wire was neither repaired nor electric supply was stopped. The information of the said unfateful incident was also given to the Police Station, Koirauna, Distt. Sant Ravidas Nagar, Bhadohi. The petitioner was treated in several hospitals and due to the said electrocution the petitioner has suffered from 40% permanent disability.□

5. The petitioner filed a Claim Petition No.7 of 2007 in the court of Additional Collector/ Accident Claim Tribunal, Sant Ravidas Nagar, Bhadohi under Section 6 (1) of Public Liability Insurance Act, 19912 claiming Rs.10 lacs as compensation. The claim petition was allowed on 21.5.2010 awarding compensation of Rs.4 lacs in favour of the petitioner.

6. It is alleged that the Addl. Collector/ Accident Claim Tribunal, Sant Ravidas Nagar has not paid compensation to the petitioner towards loss of actual earning, mental agony and medical expenses. Such situation has impelled the petitioner to invoke the writ jurisdiction by way of instant writ petition for the following reliefs:-

"(a) Issue a writ, order or direction in the nature of mandamus enhancing the amount of Rs.4,00,000/- awarded by Additional Collector/ Accident Claim Tribunal, Sant Ravidas Nagar, Bhadohi in Claim Petition No.7 of 2007 under Section 6 (1) of Public Liability Insurance Act, 1991 to Rs.10,00,000/- and directing the respondent no.2 to pay the enhanced amount to the petitioner."

7. The order dated 21.5.2010 passed by the Addl. Collector/ Accident Claim Tribunal, Sant Ravidas Nagar was challenged by the U.P. Power Corporation³ in connected Writ-C No.51093 of 2010. In the said writ petition, following interim order was passed by the Coordinate Bench of this Court on 26.08.2010:-

"Heard learned counsel for the petitioner and learned standing counsel appearing for the respondents.

Notices on behalf of respondents no. 1 and 3 have been accepted by learned standing counsel. He prays for and is granted one month's time to file counter affidavit. Three weeks thereafter is allowed to the petitioner to file rejoinder affidavit.

Issue notice to respondent no. 2 through registered post.

Steps be taken within two weeks. Office shall send notice returnable at an early date.

List this case on the date fixed by the office in the notice.

Counsel for the petitioner has urged that the order passed by Additional District Magistrate, Sant Ravidas Nagar (Bhadohi) is without jurisdiction as the Public Liability Insurance Act, 1991 is not applicable to U.P. Corporation or a person who receive any injury or death or damage. Hence the petitioner is entitled for interim relief.

Until further order of this Court, the effect and operation of order dated 21.5.2010 passed by Additional District Magistrate, Sant Ravidas Nagar, Bhadohi (annexure 2 to the writ petition) shall remain stayed."□

ARGUMENTS ON BEHALF OF PETITIONER

8. Learned counsel for the petitioner vehemently argued that although the information of broken wire was already furnished by the Gram Pradhan to the Electricity Department but the Electricity Department in gross negligence did not repair the high voltage wire, which resulted in the 40% permanent disability of the petitioner.

9. He further argued that even the Claim Petition No.7 of 2007 was allowed on 21.05.2010 but the Tribunal has not awarded compensation towards actual earning, mental agony and medical expenses.

10. Learned counsel for the petitioner has stated that the Act, 1991 is fully applicable in the instant case and the objection qua its maintainability is misplaced.

ARGUMENTS ON BEHALF OF RESPONDENT-NIGAM

11. Learned counsel for the Nigam has vehemently opposed the relief claimed by the claimant-petitioner (Gangadhar Tiwari). He states that the Corporation is the licensee under the provisions of Electricity Act, 2003 and Nigam comes under it. The Nigam is distributing electricity within the area of their operation strictly in accordance with law to the satisfaction of the consumers. It is alleged that in the said claim petition the notices issued to the Nigam could not be served and as such Nigam could not acquire knowledge about the pendency of the said claim petition. Without there being any finding on the ordersheet to the effect that the service of notice could not be effected on the Nigam by hand or by registered post, straightaway order for publication of notice was passed and an alleged copy was filed on record after its publication and the matter was directed to be decided exparte. Eventually the claim petition was allowed on 21.5.2010 granting compensation to the petitioner for a sum of Rs.4 lacs.

12. Learned counsel for the Nigam further contended that the order impugned dated 21.5.2010 is totally arbitrary and patently illegal and the same is liable to be quashed. He submits that the claim petition filed by the petitioner purporting to be under Section 6 (1) of the Act, 1991 will not apply for grant of compensation in case of electrocution. The Act, 2003 is a special

enactment and there is provisions for enquiry in case of accident to be conducted by the Electrical Inspector under Section 161 of the Act, 2003. Therefore, unless the enquiry under Section 161 of the Act, 2003 is conducted, no compensation can be awarded by any court or authority. The notices in the said claim petition were not actually served upon the Nigam and as such the order impugned is arbitrary and illegal being exparte.

13. Learned counsel for the Nigam lastly submitted that only in this backdrop the Division Bench has rightly passed the interim order dated 26.8.2010 as the order impugned is without jurisdiction and the Act, 1991 is not applicable to U.P. Power Corporation or a person, who receive any injury or death or damage.

ARGUMENT OF STATE RESPONDENTS

14. Shri Devesh Vikram, learned Addl. Chief Standing Counsel, while adopting the submissions made by learned counsel for the Nigam vehemently argued that the Act, 1991 is not applicable in the instant matter. He submitted that the Act, 1991 is made for business handling hazardous substances to provide immediate relief to victims of industrial accidents, as such the order passed by the Addl. Collector is illegal and without jurisdiction.

REJOINDER ARGUMENTS ON BEHALF OF PETITIONER

15. Learned counsel for the petitioner-claimant, in rejoinder arguments, vehemently opposed the contention of learned counsel for Nigam and submitted that the Addl. District Magistrate has rightly proceeded to accord compensation under the Act, 1991 as the same would definitely be attracted in the instant matter. He submits that similar controversy has earlier been raised in Writ-C No.12492 of 2017 (Purwanchal Vidyut Vitran Nigam Ltd. v. Pradeep Kumar Bind & Anr.) in which the Division Bench has refuted the similar contentions raised by learned counsel for Nigam and proceeded to dismiss the writ petition on 27.3.2017.

16. Learned counsel for the claimant-petitioner, in this backdrop, has submitted that the Addl. Collector is competent to accord compensation under the Act, 1991. The claimant-petitioner has sustained permanent disability and while passing the order impugned the Addl. Collector has not only accorded ex-gratia payment of Rs.4 lacs but also accorded said amount towards medical expenses. The petitioner is entitled for ex-gratia payment under the Act, 1991.□

17. Learned counsel for the petitioner, in support of his submissions, has also placed reliance on the judgment passed in U.P. State Electricity Board & Ors. v. District Magistrate, Dehradun & Ors.5, wherein learned Single Judge while considering the Act, 1991 and Environment (Protection) Act, 19866 has found that the electricity is hazardous and also substance and, therefore, learned Single Judge had denied to interfere in the impugned award. Learned Single Judge had also provided that the claimant in addition to the amount awarded to them by the impugned award may also institute any other proceeding for claiming further relief.□□

18. Learned counsel for the petitioner submits that the relief has rightly been accorded by Addl. Collector under the Act, 1991, which warrant no interference. It is contended that on account

of pendency of instant proceedings as well as continuation of interim order for more than 15 years, the claimant-petitioner has suffered a lot. Due to sustaining grievous injury causing permanent disability, the claimant-petitioner is not capable to discharge his day to day work. He submits that the compensation is not commensurate to his disability and as such indulgence may be accorded in favour of the claimant-petitioner. □

ANALYSIS BY THE COURT

19. Heard rival submissions, perused the record and respectfully considered the judgments cited at Bar.

20. The precise objection as raised by learned counsel for the Nigam is that in the instant proceeding the Act, 1991 is not applicable. In order to appreciate the controversy, it would be apt to have a glance on the judgment in *Purwanchal Vidyut Vitran Nigam Ltd. v. Pradeep Kumar Bind & Anr.* (Supra), which is reproduced as under:-

"Heard Mr Narendra Kumar Tiwari, learned counsel for the petitioner and Mrs Subhash Rathi, learned Additional Chief Standing Counsel for respondent no.2.

This writ petition, filed by the Electricity Distribution Company, challenges the order dated 29.12.2016 passed by respondent no.2-District Magistrate, whereby compensation of Rs.5,79,456.00 has been awarded, on the application made by respondent no.1, who suffered permanent disability on account of an electrocution accident. The challenged is raised on two grounds. Firstly, that the provisions of the Public Liability Insurance Act, 1991 (in short 'the Insurance Act') are not attracted in view of the fact that such accidents are covered by the rules framed under the Electricity Act, 2003. Secondly, that even if it is held that the provisions of the Insurance Act are attracted, the Collector has no power to grant anything more than what is prescribed in the Schedule appended to the Act.

In our opinion, both the submissions advanced by learned counsel for the petitioner deserve to be rejected outright. Section 22 of the Insurance Act clearly provides that the provisions of this Act and any rules made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law. It may be true that a person, like respondent no.1, may have a remedy under the provisions of the rules framed under the Electricity Act, 2003, but that itself would not debar him from making an application under the provisions of the Insurance Act more particularly, in view of the provisions contained in Section 22 thereof. Hence, the first submission deserves to be rejected outright and is rejected as such.

The second submission advanced by learned counsel for the petitioner is based on Section 3 of the Insurance Act, which places a liability to give relief in certain cases on the principle of "no fault-liability". The application made by respondent no.1 was not under Section 3, but it was under Section 6 of the Insurance Act, which does not put any restriction on the powers of the Collector to award an amount as relief which appears to him to be just. Section 3 confers power only to give the minimum relief to a victim in terms of a scale as provided for in the Schedule. Insofar as the power of the Collector to award relief under Section 6 of the Insurance Act

is concerned, it is unlimited and it is left to the Collector to make an award determining the amount of relief which appears to him to be just. This power cannot be curtailed and is not curtailed by the provisions of this Act or any other Act. □

It is needless to mention that the learned counsel for the petitioner, though made submissions as aforementioned, he did not point out any provisions in support of his contention or judgment of either this Court or any other High Court or the Supreme Court. □

In the circumstances, we find no merit in the writ petition. The writ petition is dismissed.
"

21. In the said judgment, the Court had considered Section 22 of the Act, 1991 and negated the claim of Electricity Department and held that in addition to the Act, 2003, the Act, 1991 would also be attracted in the instant matter. As such the objection raised by Nigam that Act, 1991 is not applicable in the instant matter is not tenable as the same has been clearly answered by the Division Bench in the aforesaid judgment.

22. In a similar matter, vide judgment and order passed by learned Single Judge in U.P. State Electricity Board & Ors. v. District Magistrate Dehradun & Ors. (Supra), it has been held that electricity is both hazardous and substance and it is also admitted that the petitioner has sustained permanent disability from electrocution.

23. Nothing is brought on record to suggest that the aforesaid judgments have been annulled or modified or they do not hold the field. □

24. We have also occasion to peruse the judgment and order dated 19.09.2014 passed in Writ-C No.23783 of 2010 (Neetu Devi v. State of U.P. & Ors.), wherein the Division Bench has also considered the judgment passed by the Apex Court in Raghuvansh Dewanchand Bhasin v. State of Maharashtra⁷. For ready reference, para 18 of the said judgment is reproduced as under:-

"18 In the case reported in 2012 (9) SCC 791: Raghuvansh Dewanchand Bhasin Vs. State of Maharashtra, while considering the ambit and scope of Article 21 and its violation, and court's right to payment compensation, their lordships held as under:-

17 It is trite principle of law that in matters involving infringement or deprivation of a fundamental right; abuse of process of law, harassment etc., the courts have ample power to award adequate compensation to an aggrieved person not only to remedy the wrong done to him but also to serve as a deterrent for the wrongdoer.

18 In Rudul Sah Vs. State of Bihar, Y.V. Chandrachud, CJ, speaking for a Bench of three learned Judges of this Court had observed thus: (SCC p. 147, para 10)

"10. ...One of the telling ways in which the violation of that right can reasonably be prevented and due compliance with the mandate of Article 21 secured, is to mulct its violators in

the payment of monetary compensation. Administrative sclerosis leading to flagrant infringements of fundamental rights cannot be corrected by any other method open to the judiciary to adopt."

19 In Bhim Singh, MLA Vs. State of J & K, holding illegal detention in police custody of the petitioner Bhim Singh to be violative of his rights under Articles 21 and 22(2) of the Constitution, this Court, in exercise of its power to award compensation under Article 32, directed the State to pay monetary compensation to the petitioner. Relying on Rudal Sah , O. Chinnappa Reddy, J. echoed the following views: (SCC p.686, para 2)

"2. ... When a person comes to us with the complaint that he has been arrested and imprisoned with mischievous or malicious intent and that his constitutional and legal rights were invaded, the mischief or malice and the invasion may not be washed away or wished away by his being set free. In appropriate cases we have the jurisdiction to compensate the victim by awarding suitable monetary compensation..."

20. In Nilabati Behera (Smt) Alias Lalita Behera Vs. State of Orissa, clearing the doubt and indicating the precise nature of the constitutional remedy under Articles 32 and 226 of the Constitution to award compensation for contravention of fundamental rights, which had arisen because of the observation that "the petitioner could have been relegated to the ordinary remedy of a suit if his claim to compensation was factually controversial" in Rudul Sah (SCC p. 147, para 10), J.S. Verma, J. (as His Lordship then was) stated as under: (Nilabati Behera case, SCC pp. 762-63, para 17)

"17 It follows that 'a claim in public law for compensation' for contravention of human rights and fundamental freedoms, the protection of which is guaranteed in the Constitution, is an acknowledged remedy for enforcement and protection of such rights, and such a claim based on strict liability made by resorting to a constitutional remedy provided for the enforcement of a fundamental right is 'distinct from, and in addition to, the remedy in private law for damages for the tort' resulting from the contravention of the fundamental right. The defence of sovereign immunity being inapplicable, and alien to the concept of guarantee of fundamental rights, there can be no question of such a defence being available in the constitutional remedy. It is this principle which justifies award of monetary compensation for contravention of fundamental rights guaranteed by the Constitution, when that is the only practicable mode of redress available for the contravention made by the State or its servants in the purported exercise of their powers, and enforcement of the fundamental right is claimed by resort to the remedy in public law under the Constitution by recourse to Articles 32 and 226 of the Constitution. This is what was indicated in Rudul Sah and is the basis of the subsequent decisions in which compensation was awarded under Articles 32 and 226 of the Constitution, for contravention of fundamental rights."

(emphasis supplied)

21. In the same decision, in his concurring judgment, Dr. A.S. Anand, J. (as His Lordship then was), explaining the scope and purpose of public law proceedings and private law proceedings stated as under: (Nilabati Behera case, SCC pp. 768-69, para 34)

"34. The public law proceedings serve a different purpose than the private law proceedings. The relief of monetary compensation, as exemplary damages, in proceedings under Article 32 by this Court or under Article 226 by the High Courts, for established infringement of the indefeasible right guaranteed under Article 21 of the Constitution is a remedy available in public law and is based on the strict liability for contravention of the guaranteed basic and indefeasible rights of the citizen. The purpose of public law is not only to civilize public power but also to assure the citizen that they live under a legal system which aims to protect their interests and preserve their rights. Therefore, when the court moulds the relief by granting "compensation" in proceedings under Article 32 or 226 of the Constitution seeking enforcement or protection of fundamental rights, it does so under the public law by way of penalising the wrongdoer and fixing the liability for the public wrong on the State which has failed in its public duty to protect the fundamental rights of the citizen. The payment of compensation in such cases is not to be understood, as it is generally understood in a civil action for damages under the private law but in the broader sense of providing relief by an order of making 'monetary amends' under the public law for the wrong done due to breach of public duty, of not protecting the fundamental rights of the citizen. The compensation is in the nature of 'exemplary damages' awarded against the wrongdoer for the breach of its public law duty and is independent of the rights available to the aggrieved party to claim compensation under the private law in an action based on tort, through a suit instituted in a court of competent jurisdiction or/and prosecute the offender under the penal law." (emphasis supplied)

22. The power and jurisdiction of this Court and the High Courts to grant monetary compensation in exercise of its jurisdiction respectively under Articles 32 and 226 of the Constitution of India to a victim whose fundamental rights under Article 21 of the Constitution are violated are thus, well-established. However, the question now is whether on facts in hand, the appellant is entitled to monetary compensation in addition to what has already been awarded to him by the High Court. Having considered the case in the light of the fact- situation stated above, we are of the opinion that the appellant does not deserve further monetary compensation."

25. The Division Bench has also considered the judgment passed by the Apex Court in Salem Advocate Bar Association (II) v. Union of India⁸. Eventually, the Division Bench in Neetu Devi (Supra) has accorded indulgence in favour of claimant-petitioner (in the said writ petition). □

26. This Court in the case of U.P. State Electricity Board vs. District Magistrate, Dehradun⁹, has also considered the issue that electricity falls within the definition of "hazardous substance" and the accident, caused on account of it, is covered under the provisions of the Act, 1991. Relevant extract of the judgment, as contained in paragraphs 42 to 44, is being quoted below:

"42. Hence in my opinion 'hazardous substance' as defined in Section 2 (d) of the 1991 Act is not to be confined to a substance specified in the notification issued by the Central Government, but it includes all substances which come under the definition of 'hazardous substance' under the Environment (Protection) Act, 1986, with this exception that if any such substance is also notified by the Central Government under Section 2 (d) of the 1991 Act then it will be a 'hazardous substance' only if it exceeds the quantity specified in the said notification. Thus the notification issued by the Central Government under Section 2 (d) of the 1991 Act can only

narrow down the scope of 'hazardous substance' as defined under the Environment (Protection) Act, 1986, but substances which are not specified in the said notification will nevertheless be regarded as 'hazardous substances' under the 1991 Act if they come within the definition of 'hazardous substances' under the Environment (Protection) Act, 1986.

43. I have already stated above that electricity is "hazardous substance" as defined under the Environment (Protection) Act, 1986 and hence I reject the submission of the learned counsel for the petitioners that it is not a hazardous substance since it has not been included in the Notification dated 24-3-1992.

44. THE principle of strict Liability Section 3 (2) of the 1991 Act places a strict liability (liability without fault) in cases of such accident due to 'hazardous substances' and it is not necessary for the claimant to plead that the death or injury was caused by wrong or negligent act of any person..."

27. Hon'ble Supreme Court in *M.P. Electricity Board v. Shail Kumari*¹⁰ has held that the Electricity Board is liable to pay compensation even though there was no negligence on its part.□ In *Parvati Devi & Ors. v. Commissioner of Police, Delhi & Ors.*¹¹, the Supreme Court observed that once it is established that the death occurred on account of electrocution while walking on the road, necessarily the authorities concerned must be held to be negligent and the legal heirs of the deceased are entitled for compensation.

28. In *M.C. Mehta v. Union of India*¹², Hon'ble Supreme Court has held□that where an enterprise is engaged in a hazardous or inherently dangerous activity and harm is caused on any one on account of the accident in the operation of such activity, the enterprise is strictly and absolutely liable to compensate those who are affected by the accident.

CONCLUSION

29. We find that the issue in hand is no more *res integra*. In the light of the above cited judgments, we find that the quintessence is that the compensation has rightly been accorded under the Act, 1991. It is writ large that the petitioner had set up the claim under the Act, 1991 on the ground that he had received grievous injury and during treatment he has incurred expenses of more than Rs.4 lacs towards medical costs and other expenses. We find that under the present facts and circumstances the order impugned is required to be modified qua the amount of compensation.□ As a stay order was operating in the connected writ petition, therefore, the amount quantified by the District Magistrate was never paid to the petitioner. The petitioner has been deprived of the compensation amount, which he is legally entitled to receive.

30. The stay order was granted on the ground of jurisdiction of the District Magistrate to pass the order. However, as observed above, the District Magistrate has the jurisdiction to pass an order under the Act. Therefore, the ground of jurisdiction is unsustainable. The incident is of the year 2006 and the order of compensation was passed in the year 2010. Ordinarily, the deprivation of the compensation amount would require granting of damages and interest to the petitioner as despite an award for grant of compensation, no amount came to be given for a period of 16 years.

Therefore, in the interest of justice and to balance the equities, we deem it appropriate that a further sum of Rs.5,00,000/- be quantified over and above to what has been awarded as medical expenses and enhanced compensation to be awarded to the petitioner.

ORDER AND DIRECTIONS

31. We accordingly modify the order impugned to the extent that the petitioner is entitled for compensation of Rs.9,00,000/- in total (Rs.5,00,000/- as enhanced compensation and Rs.4,00,000/- as medical expenses). The Corporation/Nigam is directed to disburse the aforesaid amount to the claimant-petitioner within four weeks, failing which the claimant-petitioner will be entitled for 9% interest over the said amount towards delayed payment from the date of impugned order

32. In view of above, WRIT - C No. - 61435 of 2010 stands **allowed** and □ Writ - C No. 51093 of 2010 stands **dismissed**.

(2026) 4 ILRA 1489
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 30.04.2026

BEFORE

THE HON'BLE IRSHAD ALI, J.

Writ C No. 1001056 of 1993

Atul Behari Lal & Ors.

...Petitioners

Versus

State of U.P.

...Respondent

ISSUE FOR CONSIDERATION

(i) Whether the disputed holding recorded in the name of late Sri Daulat Singh was his exclusive holding or was ancestral joint Hindu family property in which the petitioners had acquired interest by birth;

(ii) Whether the authorities below correctly determined the nature of the land as irrigated under Section 4-A of the U.P. Imposition of Ceiling on Land Holdings Act, 1960; and

(iii) Whether the computation of surplus area was made in accordance with law after correctly considering grove, abadi and usar land as well as the number of family members entitled to additional ceiling area.

HEADNOTE

U.P. Imposition of Ceiling on Land Holdings Act, 1960 – ss.4-A, 10(2), 13 – Ceiling proceedings – Notice under Section 10(2) issued to legal heirs of deceased tenure-holder Daulat Singh treating 46.86 acres as surplus land – Petitioners contended that disputed land was ancestral 'sir' and 'khud kasht' property of their grandfather Bankey Bihari Lal and that late Sri Daulat Singh was recorded only in a representative capacity on behalf of the joint Hindu family – Further case of petitioners that petitioner no.1 was born prior to the date of vesting and had acquired coparcenary rights by birth; substantial area had been wrongly treated as irrigated; and grove, abadi and usar land as well as entitlement to additional ceiling area on account of family

composition had not been correctly considered – Prescribed Authority declared surplus land and appellate authority affirmed the order – Failure to adjudicate specific objections and record findings on material issues – Ignored binding precedents governing ancestral holdings – Cryptic and non-speaking appellate order – Orders vitiated by perversity and patent illegality – Remand for fresh determination :

Held: (I) Mere entry in the revenue records does not confer exclusive title where the land is alleged to be ancestral 'sir' and 'khud kasht' land and rights by birth had already accrued under Mitakshara law prior to vesting. Court held that **the** authorities below were not justified in treating the entire holding as the exclusive holding of late Sri Daulat Singh merely because revenue records stood in his sole name. Neither the Prescribed Authority nor the Appellate Authority recorded any categorical finding upon the evidence as to whether the disputed holding was ancestral 'sir' and 'khud kasht' land. It was **the** admitted position that petitioner no.1, having been born prior to the date of vesting, was entitled to be treated as **a** co-sharer. Consequently, the entire premise on which ceiling proceedings were initiated against the legal heirs treating late Sri Daulat Singh as exclusive tenure-holder **could not be sustained**. The authorities completely failed to advert to the said vital jurisdictional issue and thereby misdirected themselves in law.

(II) Court held that Section 4-A prescribes a definite statutory mechanism for determining whether land is irrigated or unirrigated. Such determination is required to be founded upon relevant khasras of 1378, 1379 and 1380 Fasli and, wherever necessary, local inspection. The Prescribed Authority did not **discuss** the relevant khasras nor record any finding satisfying the requirements of Section 4-A. Court held that the determination of irrigated land was arbitrary and contrary to the statutory procedure prescribed under Section 4-A.

(III) Petitioners specifically pleaded that substantial area constituted grove land, abadi land and usar land and had further claimed entitlement to additional ceiling area on account of family composition, existence of a major son and other family members. Those were specific factual objections requiring adjudication. Neither the Prescribed Authority nor the Appellate Authority recorded any reasoned finding on these objections. Impugned orders were quashed and the matter was remanded to the Prescribed Authority for fresh adjudication after determining: (E-5)

[Paras 29–48]

CASE LAW CITED

Dilip Singh and Others v. Commissioner, Agar Division, Agar and Others, MANU/UP/1759/2012;
 Chetanya Raj Singh v. II Additional Civil Judge and Others, MANU/UP/0381/1977;
 Rajendra Singh v. State of Uttar Pradesh, MANU/UP/0986/1978;
 Gaya Prasad v. Prescribed Authority, MANU/UP/0793/1979;
 Vishwa Nath Singh v. State of U.P. and Others, 1978 SCC OnLine All 637;
 Chhattar Singh and Others v. State of Uttar Pradesh and Others, 1978 SCC OnLine All 743;
 Sheela Devi and Others v. Lal Chand and Another, (2006) 8 SCC 581;
 Shyamvir Singh v. State of U.P. and Others, 1978 AWC 263;
 Shital Singh v. State of U.P. and Others, 1978 AWC 449;
 Ram Charan v. State of U.P. and Others, 1979 All LJ 166.

List of Acts

U.P. Imposition of Ceiling on Land Holdings Act, 1960 ;
 U.P. Zamindari Abolition and Land Reforms Act, 1950 ;
 Hindu Succession Act, 1956

List of Keywords

Ceiling proceedings; ancestral property; sir land; khud kasht; coparcenary rights; rights by birth; joint Hindu family; exclusive holding; irrigated land; Section 4-A; grove land; abadi land; usar land; surplus land; burden of proof; revenue entries; speaking order; non-speaking order; remand.

CASE ARISING FROM

Order dated 30.04.1988 passed by the Prescribed Authority (Ceiling)/Upper Collector, Kheri in proceedings under Section 10(2) of the U.P. Imposition of Ceiling on Land Holdings Act, 1960, affirmed by appellate order dated 07.04.1993 passed by the Additional Commissioner, Lucknow Division, Lucknow.

Appearances for Parties

Advs. for the Petitioner: Awadhesh Kumar, Ajaiy Kumar Mishra, Ayush Srivastava, Devi Prasad Maurya, Hari Om Singh, Kapil Dev Chaubey, Manish Mani Sharma, S. Mirza, Sandeep Kumar, Shashwat Srivastava, Uma Shankar Sahai, Vijay Kumar Pandey

Advs. for the Respondents: **C.S.C., Prahlad**

(Delivered by Hon'ble Irshad Ali, J.)

1. Heard Sri U.S. Sahai, learned counsel for the petitioners and Sri Shatrughan Chaudhary, learned Additional CSC for the respondent - State.

2. By means of present writ petition, the petitioners are challenging the impugned order dated 30.04.1988 passed by the prescribed authority (Ceiling) / Upper Collector, Kheri contained as Annexure-22 and the order of Additional Commissioner, Lucknow Division, Lucknow dated 07.04.1993 contained as Annexure-25 to the writ petition.

3. The present dispute pertains to the land situated in village Dhakha and Grant No.10, Pargana Kukra, Tehsil Lakhimpur, District Kheri. The petitioners were served with a notice under Section 10(2) of U.P. Imposition of Ceiling on Land Holdings Act, 1961 (Ceiling Act) being legal heirs of deceased tenure holder Sri Daulat Singh, whereby 46.86 acres of land was declared to be surplus.

4. Joint objection was filed by the petitioners on 12.08.1985 praying for quashing the ceiling notice on the ground that disputed land was recorded in the name of Late Sri Daulat Singh in a representative capacity of a joint hindu family but he was not the sole owner of the said land. The disputed land was 'Sir', 'Khud Kasht' and grove land before enforcement of U.P. ZA& LR Act.

5. The petitioner No.1 was born on 01.11.1939, petitioner No.2 was born in 1956 and petitioner No.3 was born in 1958. Therefore, the petitioner Nos. 1 & 2 were co-parcener of the said ancestral holding of Babu Bankey Bihari Lal (grandfather of the petitioners) and petitioner Nos.1 & 2 and their father Late Sri Dualat Singh each had 1/3rd share.

6. Since Late Sri Daulat Singh, representative of a joint hindu family was father of the petitioners, therefore, there was no need to get their rights declared during his lifetime. Thus, there

would be three independent tenure holders each having 1/3rd share of the disputed land and none of them would fall under the ceiling limits and thus, no notice against them could be issued.

7. 27 acres of land was erroneously shown as irrigated land. Owing to the number of family members of petitioner Nos.1 & 2 (petitioners themselves, their wives, each of them having 2 minor sons and 2 minor unmarried daughters) they were liable to get 5 acres each extra land. Also the petitioner No.3 was major on the relevant ceiling date and on that basis he was entitled to get 5 acres.

8. 72.06 acres of land was erroneously shown as irrigated land while the entire land was unirrigated under Section 4A of Ceiling Act. The petitioners further stated following details:

- 15 acres grove in Grant No.10
- 10 acres grove in Dhaka
- Total 25 acres grove however in ceiling papers the area of grove land was captured incorrectly
- 4 acres abadi land
- 10 acres usar land

9. The Naib Tehsildar (Ceiling), Lakhimpur filed his reply on 22.12.1985 on behalf of State to the objections filed by the petitioners stating that the entire land belonged to Sri Daulat Singh and since the petitioners were his legal heirs, hence, the notice under ceiling provisions was issued to them thereby dismissing the objections filed by the petitioners.

10. Before the prescribed authority (Ceiling) case No.58/24 (State Vs. Late Daulat Singh s/o Banke Bihari Lal through LRs under Section 10 (2) of Ceiling Act was registered in respect of land situated in at village Dhakha and village Grant No.10, Pargana Kukra, Tehsil Lakhimpur, District Kheri. In CLH forms, total land of Daulat Singh was stated to be 79-33 acres out of which 2-23 acres was stated to be Abadi.

11. On behalf of the State, Sri Ram Swarup, Lekhpal of village Dhakha, Sri Ram Bilas Gupta, Lekhpal of village Grant No.10 and Sri Shyama Charan, ARK, were produced and their statements were taken on record.

12. The prescribed authority (Ceiling) / Upper Collector, Kheri (respondent No.3) vide order dated 30.04.1988 declared 33.076 acres land in irrigated terms of the petitioners as surplus. Feeling aggrieved by the order of prescribed authority, the petitioners filed appeal under Section 13(1) of Ceiling Act before the Commissioner, Lucknow Division, Lucknow. Along with said appeal, the petitioners also prayed to stay the operation and execution of order dated 30.04.1988 passed by respondent No.3.

13. The Additional Commissioner (Judicial) Lucknow Division, Lucknow was pleased to stay the operation of the order dated 30.04.1988 and all sorts of further ceiling proceedings on 25.06.1988 till next date and thereafter, the stay was extended on every date and it was operative till the pronouncement of the judgment.

14. On 07.04.1993, the Additional Commissioner (Judicial), Lucknow Division, Lucknow dismissed the appeal and confirmed the order of prescribed authority (Ceiling) / Upper Collector, Kheri dated 30.04.1988. It is noteworthy that in the order dated 07.04.1993 no adequate findings were given by respondent No.2 with respect to the issues framed by respondent No.3 vide order dated 03.04.1988.

15. Submission of learned counsel for the petitioners is that the decision of the court below is against the law and facts of the case. The court below has wrongly declared 33.076 acres of land in irrigated terms as surplus while no land was to be declared surplus. The court below has misrepresented and disbelieved the evidence adduced by the appellant and relied upon the statements of Sri Ram Bilas Gupta, Lekhpal of Grant No.10, Ram Swarup, Lekhpal of Dhaka without any proof.

16. He next submitted that the court below has wrongly shifted the burden of proof on the shoulders of the appellant while the same onus is on the State to prove the facts. The court below has not discussed the entire evidence on record adduced by the appellant but based its finding on imagination conjectures and surmises.

17. He further submitted that the court below has wrongly held that the entire disputed land was not an ancestral holding but it was owned by Late Sri Daulat Singh father of the appellants while it was acquired by Late Babu Bankey Behari Lal the grandfather of the appellants and the appellants were co-tenants alongwith their father Sri Daulat Singh who was recorded in revenue papers in representative capacity.

18. He submitted that the court below has wrongly interpreted the law of Sir and Khud Kasht and Zamindari Abolition Act and in nay case one son will be co-tenant alongwith his father Late Sri Daulat Singh and as such he will be co-tenant to the extent of 1/2 share.

19. He next submitted that the court below has erred in holding that appellant No.1 and 2 will not be entitled to get separately while they are entitled to get 1/3 share each. The court below has erred in holding that the tenure holder had two adult son and one minor son at the time of applicability of Ceiling Act.

20. He further submitted that the court below has wrongly relied upon the commission report partially but relied upon the statements of Lekhpals of village Grant No.10 and Dhaka. The Court below has also misinterpreted Section 4A of Ceiling Act whereby burden of proof lies on the State to file Khasra of 1378, 1979 and 1380 F and to inspect the spot and to prove that the disputed land is irrigated one in accordance with Section 4A of the Act.

21. He submitted that the court below has erred in holding that in village Dhaka no grove situates whereas 10 acres of land in village Dhaka is grove. The court below has also erred in holding that there is only 2 acres of Abadi land whereas 4 acres of abadi land is one the spot.

22. He lastly submitted that the court below has wrongly calculated the numbers of family members and relates for them as the appellant No.3 is major and he is also entitled to get. In declaring the land surplus, the court below has miscalculated the area and has wrongly declared 33.076 acres of land to be surplus. The findings arrived at by the court below are against the oral and documentary evidence on record. In support of his submissions, he placed reliance upon following judgments:

a) Dilip Singh and Ors. Vs. Commissioner Agar Division Agar and Ors.; MANU/UP/1759/2012

b) Chetanya Raj Singh Vs. II Addl. Civil Judge and ors.; MANU/UP/0381/1977.

c) Rajendra Singh Vs. State of Uttar Pradesh; MANU/UP/0986/1978.

d) Gaya Prasad Vs. Prescribed Authority; MANU/UP/0793/1979

e) Vishwa Nath Singh Vs. State of U.P. and others; 1978 SCC Online All 637.

g) Chhattar Singh and others Vs. State of Uttar Pradesh and others; 1978 SCC Online All 743

f) Sheela Devi and others Vs. Lal Chand and Another; (2006) 8 Supreme Court Cases 581.

21. The Act indisputably would prevail over the old Hindu law. We may notice that Parliament, with a view to confer right upon the female heirs, even in relation to the joint family property, enacted the Hindu Succession Act, 2005. Such a provision was enacted as far back in 1987 by the State of Andhra Pradesh. The succession having opened in 1989, evidently, the provisions of the Amendment Act, 2005 would have no application. Sub-section (1) of Section 6 of the Act governs the law relating to succession on the death of a coparcener in the event the heirs are only male descendants. But, the proviso appended to sub-section (1) of Section 6 of the Act creates an exception. First son of Babu Lal viz. Lal Chand, was, thus, a coparcener. Section 6 is an exception to the general rules. It was, therefore, obligatory on the part of the respondent-plaintiffs to show that apart from Lal Chand, Sohan Lal will also derive the benefit thereof. So far as the second son, Sohan Lal is concerned, no evidence has been brought on record to show that he was born prior to coming into force of the Hindu Succession Act, 1956.

22. Thus, it was the half-share in the property of Babu Ram, which would devolve upon all his heirs and legal representatives as at least one of his sons was born prior to coming into force of the Act."

23. On the other hand, learned Additional CSC submitted that in regard to Section 4, onus lies on the tenure holder to prove that which land is irrigated and non irrigated. He also submitted that under Section 4A of the Ceiling Act, there is a provision to look into other documents relied upon by the State and in view of that CLH form 41 was produced which shown the irrigated and non irrigated land. In support of his submissions, he placed reliance upon following judgments:

a) Shyamvir Singh Vs. The State of U.P. and others; 1978 AWC 263.

b) Shital Singh Vs. State of U.P. and others; 1978 AWC 449.

c) Ram Charan Vs. State of U.P. and others; 1979 All. L.J. 166.

24. In reply to the arguments advanced by learned Additional CSC, learned counsel for the petitioners submitted that onus lies on the State to prove that the land is irrigated or un-irrigated by producing khasra of 1378, 1379 and 1980 and if not available, inspection is to be made by the prescribed authority himself to ascertain the irrigated and non irrigated land and facility available of canal or private tubewell or government tubewell, which has not been done in the present case, therefore, reliance placed on other documents and CLH form 41, which is 15 years old paper or is of before 1970, has no meaning while the Ceiling Act came into year 1985.

25. I have considered the submissions advanced by learned counsel for the parties and perused the material on record as well as law reports cited by learned counsel for the parties.

26. To resolve the controversy involved in the matter, relevant portion of the judgments are being quoted below:

Judgments relied upon by learned counsel for the petitioners:

a) Dilip Singh and Ors. (Supra):

"9. Law is well settled that in case of a Hindu as far as his interest in ancestral property is concerned the same accrues right from the date of conception in the womb and the same does not wait till the child is born. Even if he may not be in actual control of the property, he has inalienable right to own the said property. So while determining the shares in the said holding, right of the such child has also to be looked into. In the present case, admitted fact is that the petitioners No. 2 and 3 had acquired their respective rights in the ancestral property prior to 1st of July, 1952 and had clear interest in the property as such it could not be said to be exclusive property of the petitioner No. 1. It was by way of necessity the Prescribed Authority was required to examine this aspect of the matter at the time of initiating ceiling proceedings under section 10(2) of the Act, 1960. This aspect had to be looked into irrespective of any subsequent proceedings being initiated by the petitioners to define their shares. Limited role of Prescribed authority was to determine the surplus land by reference to the number of owners holding such land. As already stated herein-supra petitioners No. 2 and 3 had acquired their right in this property prior to 1.7.1952 and had interest in the property. This aspect has been consistently ignored by the Prescribed Authority even though specific objection was taken before the Prescribed Authority.

10. 11. Reliance placed by learned Counsel for the petitioners on the case of *Vishwa Nath Singh v. State of U.P.* [1978 All. L.J. 1085 : 1978 (4) ALR 945.] wherein a Co-ordinate Bench of this Court in paragraph No. 12 has held as under:

"In my opinion the Prescribed Authority has misappropriated the contentions raised on behalf of the petitioner tenure holder. The relevant thing to be determined in the case is as to whether the plots claimed by the petitioner were coming down in his family from the time of his ancestor and whether the petitioner's son Madan Gopal was born before 1st July, 1952. If the aforesaid two questions are answered in the affirmative the petitioner's son Madan Gopal would get a right in Sir or Khudkasht land by virtue of his birth in the family. It is immaterial whether his name was entered over the disputed plots or not, or he was not in actual possession over his share in the plots. Even if the petitioner was in possession over the ancestral property, the rights of his son Madan Gopal would not extinguish in the disputed plots if the disputed plots were coming down in the family from the time of grand father or great grand father or even from before them. It is true that the devolution would be governed by the provisions of U.P.Z.A. and L.R. Act after the enforcement of Act 1 of 1951, but on 30.6.1952 the persons who could in law be sir holder or Khudkasht holder would not lose their rights due to enforcement of Act 1 of 1951. The Prescribed Authority appears to have failed to examine the claim of the petitioner from this angle. The appellate authority has not dealt with this aspect of the matter. Since the judgments of the ceiling authorities are patently erroneous on the questions of the claim put forward by the petitioner that his plots were unirrigated, I think that the appellate authority should also examine the claim of the petitioner that his son Madan Gopal has a share in the plots indicated by him (the petitioner) as ancestral property."

19. From the aforesaid discussion, it clearly emerges that the Prescribed Authority has not examined the case in its true legal perspective by ignoring the right of the petitioners No. 2 and 3 to be joint holder of the ancestral property from the date of their birth. It was incumbent upon him that while determining the ceiling area it should have taken into consideration the land which had fallen into the share of petitioner Nos. 2 and 3 as owners. As a matter of fact what is being construed as assigning of shares before the consolidation officer is infact a partition of the property. Partition can be effected only where the ownership is joint. Petitioners acquired ownership right prior to 1.7.1952. Partition was effected only for the purposes of assigning their respective shares. This could not be construed to be a transfer as held by the Prescribed Authority. For the reasons stated above, this writ petition is allowed. The impugned orders are hereby quashed. The matter is remanded back to the concerned authorities to determine the shares of the petitioners No. 2 and 3 and after such determination the authorities shall determine as to whether they hold the land in excess of the ceiling limit in accordance with law."

b) Chetanya Raj Singh (Supra):

"4. The 2nd Additional Civil Judge, Aligarh, however, dismissed both the appeals by his order dated 19th August, 1976. He came to the conclusion that Hari Raj Singh and Ravi Raj Singh being just minors of one or two years, were not in cultivatory possession and, therefore, they could not be the bhumidhars of the plots in question and so the petitioner alone was the tenure holder of the disputed plots. The contention of the petitioner that by virtue of the family settlement on 20th

June, 1969, the entire land of the family was partitioned and the same was recovered by court in the suit filed by Hari Raj Singh in 1972 was also repelled by the learned Judge in view of the provisions of Section 5(7) of the Ceiling Act, as that was a partition of land after the 24th day of January, 1971. The learned Judge also repelled the contention of the petitioner that the land of his wife Smt. Indra Kumari was her Stridhan on the ground that Smt. Indra Kumari had given her consent to include the land held by her in the ceiling area applicable to her husband, the petitioner. He took the view that the word 'tenure holder' has been defined to mean the holder of a holding and the word 'person' has been defined to include a family. Thus a family is an unit at par with the individual and the term 'family' in section 2(7) of the Ceiling Act, which includes himself or herself and his wife or her husband, as the case may be (other than a judicially separated wife or husband), minor sons and minor daughters (other than married daughters). So, the land held by them is liable to be aggregated in the ceiling area applicable to the petitioner. The transfer made by Smt. Indra Kumari of the land situate in village Kinhus to Rani Laj Kumari was ignored, as the same was made after the 24th day of January, 1971, and it was not proved to the satisfaction of the Prescribed Authority that the transfer was made in good faith and for adequate consideration under an irrevocable instrument. The learned Judge was also not satisfied that the petitioner had his stud farm.

19. For the reasons given above, while confirming the findings of the appellate authority on other points, I set aside the finding on the question that Hari Raj Singh and Ravi Raj Singh are not the co-tenure holders with the petitioner Chetanya Raj Singh. Consequently, the order of the appellate authority is quashed and the case is sent back to it for deciding that point afresh in the light of the observations made above. The findings on other points, which have been confirmed, shall not be considered. In the circumstances of the case, the petitioner is entitled to his costs."

c) Rajendra Singh (Supra):

"1. A notice under section 10(2) of the U.P. Imposition of Ceiling on Land Holdings Act was issued to Hanumant Singh. In the objection filed by him it was asserted that the entire land recorded as his holding was ancestral Sir and Khudkasht before the abolition of Zamindari and that his sons Rajendra Singh and Lallu Raja had a share in it by birth as they were born prior to the date of vesting. The objection was overruled by the Prescribed Authority and the appeal preferred by the tenure-holder also proved infructuous. Rajendra Singh and Lallu Raja, the sons of the tenure-holder, filed this petition challenging the legality of the orders of the ceiling authorities. In the petition Hanumant Singh was impleaded as a respondent. An application has been moved praying that respondent no. 4 be transposed from the array of respondents to the array of the petitioners. I have allowed that application today. 2. The only question involved in the petition is whether land recorded in the name of Hanumant Singh could be treated as his exclusive holding. There is no dispute that the land was ancestral Sir and Khudkasht. There appears to be further no dispute that Rajendra Singh and Lallu Raja were born prior to the date of vesting. On these admitted facts the legal position is clear that Rajendra Singh and Lallu Raja had an interest in the property and that it was not the exclusive property of Hanumant Singh. On the abolition of Zamindari the land held by the aforesaid persons as their Sir and Khudkasht became their Bhumidhari property in the same share in which they hold the land as their Sir and Khudkasht. The fact that in revenue papers only the name of the father was mutated would not result in depriving

the sons of their interest in the property. By mere entry of his name in the revenue records Hanumant Singh did not acquire exclusive Bhumidhari rights over the entire property to the exclusion of the rights of his sons. Under section 18 of the U.P. Zamindari Abolition and Land Reforms Act Bhumidhari rights were acquired by all the intermediaries who held that land as their Sir and Khudkasht. Since there was no conflict of interest between the father and the sons, it has to be presumed that the name of the father was recorded in the revenue papers in a representative capacity. The view taken by the ceiling authorities that since Bhumidhari right was a fresh right conferred under the U.P. Zamindari Abolition and Land Reforms Act, the fact that the property was ancestral Sir and Khudkasht, and the sons had an interest in it prior to the abolition of Zamindari was not of any significance, is wholly erroneous, Bhumidhari rights under the U.P. Zamindari Abolition and Land Reforms Act was acquired by all the three persons who held the land exclusively in his own right."

d) Gaya Prasad Vs. Prescribed Authority (Supra):

" 1. This petition arises out of the proceedings under the U.P. Imposition of ceiling on Land Holdings Act, 1960. The facts, in brief are thus. The petitioner was issued notice under Section 10(2) of the Act and objections were filed. They were decided by the Prescribed Authority, a true copy of whose order dated 30th June, 1976 is Annexure I to the petition. Thereafter an appeal was filed by the petitioner and the same was decided by the Civil Judge, Jalaun Camp at Orai and a certified copy of the judgment has been annexed and marked as Annexure 2. Now the petitioner has come up in the instant petition and in support thereof I have heard the learned counsel Sri Rajesh Ji Verma for the petitioner and in opposition, the Standing counsel has made submissions. Only one point has been pressed before me and that relates to Khata No. 12 in village Churkhi. The said land was claimed to be ancestral Sir and Khud Kasht and it was also contended that the three sons of the petitioner were in existence on the date of vesting and as such the petitioner and his three sons had 1/4th share each in the land of the said Khata. The said contention was not accepted by the authorities below and in my opinion on an inadequate ground. It seems that the petitioner had executed gift deed in favour of his sons and subsequently he also executed a sale deed on 6-9-1971. The recital in these documents was that the petitioner was the sole and exclusive owner of the properties. In my opinion merely because of these recitals the real nature of the land could not be changed. The appellate Court has itself observed that the extract of Khatauni for 1334 Fasli established that the land was recorded as Sir and Khudkasht. It has to be seen that the recording in the name of the petitioner in that Fasli year will not prove that the land was ancestral in his hands. It had to be further found that the land of the said Khata had come in the hands of the petitioner from his ancestors or that it was otherwise proved to be joint family property in which the sons acquired rights by their births."

e) Vishwa Nath Singh (Supra):

"11. In my opinion the Prescribed Authority has misappreciated the contentions raised on behalf of the petitioner tenure-holder. The relevant thing to be determined in the case is as to whether the plots claimed by the petitioner was coming down in his family from the time of his ancestor and whether the petitioner's son Madan Gopal was born before 1st July, 1952. If the aforesaid two questions are answered in the affirmative the petitioner's son Madan Gopal would

get a right in Sir or Khudkasht land by virtue of his birth in the family. It is immaterial whether his name was entered over the disputed plot or not, or he was not in actual possession over his share in the plots. Even if the petitioner was in possession over the ancestral property, the right of the son Madan Gopal would not extinguish in the disputed plots if the disputed plots were coming down in the family from the time of grand-father or great grand-father or even from before them. It is true that the devolution would be governed by the provisions of U.P. Zamindari Abolition and Land Reforms Act after the enforcement of Act I of 1951, but on 30th June, 1952 the persons who could in law be sirholder or khudkasht holder would not lose their rights due to enforcement of Act I of 1951. The Prescribed Authority appears to have failed to examine the claim of the petitioner from this angle. The appellate authority has not dealt with this aspect of the matter. Since the judgments of the ceiling authorities are patently erroneous on the question of the claim put forward by the petitioner that his plots were unirrigated, I think that the appellate authority should also examine the claim of the petitioner that his son Madan Gopal has share in the plots indicated by him (the petitioner) as ancestral property."

f) Chhattar Singh and others (Supra):

"It is note-worthy that the appellate authority has accepted that Pratap Singh was born before the date of vesting, i.e. 1st July, 1952 and that the property in the hands of the present petitioner. Chhattar Singh was coming down from the time of Nathuram. In such circumstances, it is evident that Pratap Singh being grandson of Nathuram, father of the present petitioner no. 1 would get right in the property by birth. Whether the property would be exclusive property of Chhattar Singh or not, it would be a pure question of law in the circumstances of the present case. Even if the Present petitioner no. 1 makes contrary admission in the alleged gift deeds that the property exclusively belongs to him, but in law if it could not belong to him, as such the petitioner could be held as an exclusive owner, I think that the appellate authority has misappreciated the circumstances in the present case. Secondly even if the possession of the present petitioner Chhattar Singh is treated to be exclusive possession on his own behalf excluding Pratap Singh, his son, the present petitioner no. 1 would not mature right to the land on the relevant date because for perfecting title by adverse possession ousting the other co-sharer he would need 12 years possession. In the present case the gift-deed is of the year 1967 and the relevant date for the purpose of determining the ceiling area of the petitioners would be 8th June, 1973 according to the provisions of the aforesaid Ceiling Act. In this view of the matter the right of the son of the petitioner no. 1, namely, Pratap Singh had not extinguished in the area which is under the provisions of law. It appears that the appellate authority has misdirected itself in holding that the right of Pratap Singh had come to an end in the area which he could otherwise hold being a co-sharer in family of Nathu Ram, father of present petitioner no. 1."

g) Sheela Devi and others Vs. Lal Chand and Another (Supra):

"16. Although in 1927, Babu Ram had no son and the property at his hands became a separate property. But, in view of the well-settled principles of Hindu law, as soon as a son was born to him the concept of the property being a coparcenary property in terms of the Mitakshara school of Hindu law revived. The law in this behalf has succinctly been stated in Mayne's Hindu Law & Usage, 14th Edn., at pp. 627-28 and 641, in the following terms:

“Where ancestral property has been divided between several joint owners, there can be no doubt that if any of them have male issue living at the time of the partition, the share which falls to him will continue to be ancestral property in his hands, as regards his male issue, for their rights had already attached upon it, and the partition only cuts off the claims of the dividing members. The father and his male issue still remain joint. The same rule would apply even where the partition had been made before the birth of male issue or before a son is adopted, for the share which is taken at a partition, by one of the coparceners is taken by him as representing his branch. It was held by the Andhra Pradesh High Court that where a father divided the family property between him and his sons, the share obtained by him was his self-acquired property which he could bequeath to his wife”

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Coparceners may hold property separately.?An examination into the property of the joint family would not be complete without pointing out what property may be held by the individual members as their separate property. All property which is not held in coparcenary is separate property and Hindu law recognises separate property of individual members of a coparcenary as well as of separated members. (1) Property which comes to a man as obstructed heritage (sapratibandhadaya) is his separate property. It is not self-acquired property within the meaning of Hindu law, though in their incidents, there may be no difference between the two species.”

(See also Muttayan Chettiar v. Sangili Vira Pandia Chinnatambiar [(1881-82) 9 IA 128 : ILR (1883) 6 Mad 1 (PC)] .)”

Judgments relied upon by learned Additional CSC:

a) Shyamvir Singh (Supra):

"4. The second submission made by counsel for the petitioner is that the petitioner's land of village Rajpur was unirrigated. It may be pointed out that the Additional Civil Judge has held that the petitioner did not file the copies of the Khasra for the relevant years and as such he had failed to substantiate the plea raised by him. The submission made on behalf of the petitioner before the Additional Civil Judge that it was not the petitioner's duty to file the necessary copies of the Khasra but it was the duty of the State Government to have filed these copies was repelled by the Additional Civil Judge on the ground that when the notice under Section 10(2) of the Act along with the statement prepared under sub-section (1) thereof was sent to the petitioner requiring him to show cause as to why the same should not be taken as correct it was the duty of the petitioner to point out such errors which according to him found place in the statement and to prove his case by producing evidence including copies of the Khasra for the relevant years. The same plea was raised by counsel for the petitioner in support of this writ petition also, viz., that it was the duty not of the petitioner but of the State Government to produce the copies of the Khasra for the relevant years to enable the Prescribed Authority to record a finding whether the petitioner's land was irrigated or not within the meaning of Section 4-A of the Act. According to counsel Section 4-A cast a duty on the Prescribed Authority to look into these Khasras itself before determining the petitioner's land to be surplus and record reasons as to how the petitioner's land of village Rajpur

was irrigated within the meaning of Section 4-A of the Act. In order to deal with this submission it would be necessary to have in view the scheme of the Act. The preamble of the Act reads:”

‘Ceiling area’ has been defined in Sec. 3(2) of the Act. According to the definition the term ‘ceiling area’ means the area of land not being land exempted under this Act, determined as such in accordance with the provisions of Sec. 5. Substantial amendment was made in the Act by the U.P. Imposition of Ceiling on Land Holdings (Amendment) Act, 1972 (U.P. Act 18 of 1973). By the said Act Secs. 4, 5 and 6 were substituted for the old sections. Reference hereinafter to these sections is being made as they stand after being substituted by U.P. Act 18 of 1973. Section 4 deals with determination of area for purposes of ceiling under Section 5 and exemptions under Section 6. Section 5(1) inter alia provides that on and from the commencement of the Uttar Pradesh Imposition of Ceiling on Land Holdings (Amendment) Act, 1972, no tenure-holder shall be entitled to hold in the aggregate throughout Uttar Pradesh, any land in excess of ceiling area applicable to him. As seen above the aforesaid amendment Act is U.P. Act 18, 1973, the date of commencement of which Act is 8th June, 1973. Section 5(3) provides for the limit of the ceiling area in terms of irrigated land. Sub-sections (2) and (4) to (8) of Section 5 are not relevant for the decision of the point under consideration. Section 6 provides that notwithstanding anything contained in the Act, land falling in any of the categories mentioned in Section 6 shall not be taken into consideration for the purposes of determining the ceiling area applicable, and the surplus land of a tenure-holder. The ceiling area contemplated by sub-section (1) of Section 5 is to be determined, inter alia, keeping in mind Section 4, the remaining sub-sections (2) to (8) of Section 5 and Section 6 of the Act. The extent of ceiling area provided for in sub-section (3) of Section 5 is in terms of irrigated land. The ceiling area of a tenure-holder, therefore, which is determined under sub-section (1) of Section 5 is in terms of irrigated land. Term ‘tenure-holder’ stands defined in Section 3(17) of the Act. It is not disputed that the petitioner was a tenure-holder and his ceiling area was liable to be determined under the Act and as such it is not necessary to refer to the definition of the term ‘tenure-holder’. Since ceiling area is determined in terms of irrigated land it is necessary to refer to the definition of the term ‘irrigated land’. It is contained in Section 3(11) of the Act. Amendments of the various terms which are defined in Section 3 have been made from time to time. ‘Irrigated land’ according to its present definition means ‘land determined as such in the manner laid down in Section 4-A’. Section 4-A was inserted in the Act by U.P. Act 2 of 1975 with retrospective effect from 8th June, 1973, and deals with determination of irrigated land. Prior to the insertion of this section the manner of determination of irrigated land was contained in Rule 3 framed under the Act. Since the sheet anchor of the submission made by counsel for the petitioner in respect of his plea that the petitioner’s land of village Rajpur was unirrigated is based on this very Section 4-A, it would be useful to reproduce it at this plea. It reads:

In the scheme of the Act Sections 7 and 8 need not be referred to inasmuch as nothing turns upon these sections in order to determine the plea raised by counsel for the petitioner. Section 9 has also been amended by U.P. Act 18 of 1973 and its sub-section (1), as it stands now, reads”

Sub-section (2) of Section 9 inter alia provides that as soon as may be after the enforcement of the Uttar Pradesh Imposition of Ceiling on Land Holdings (Amendment) Act, 1972, the Prescribed Authority shall, by like general notice, call upon every tenure-holder holding land

in excess of the ceiling area applicable to him on the enforcement of the said Act to submit to him within 30 days of publication of such notice, a statement referred to in sub-section (1) of Section 9. Sections 10, 11 and 12 are the other material sections and they read as follows:?

Sections 9 and 10 refer to forms and particulars as may be prescribed. The term "prescribed" has been defined in Section 3(12) of the Act. It means ?prescribed by rules made under this Act.? Rule 6 of the Rules framed under the Act provides that the general notice to be published in pursuance of Section 9 and the statement required to be submitted thereunder by every tenure-holder holding land in excess of the ceiling area applicable to him in the State shall be in C.L.H. Forms 1 and 2 respectively. Rule 7 inter alia provides that soon after the issue of general notice in C.L.H. Form 1 the Prescribed Authority shall, after making necessary inquiries, cause to be prepared a statement in C.L.H. Form 3. Rule 8 inter alia provides that as soon as may be after the expiry of 33 days from the date of publication of the general notice in C.L.H. Form 1 in the official Gazette, the Prescribed Authority shall cause to be served upon every tenure-holder, who has failed to submit the statement in C.L.H. Form 4 together with a copy of the statement in C.L.H. Form 3 prepared under Rule 6 calling upon him to show cause within a period of 15 days from the date of service of the notice why the aforesaid statement be not taken as correct. It is not necessary to quote here Forms 2 and 3. Suffice it to point out that these forms inter alia contain various columns which are to be filled in for purposes of determining ceiling area as contemplated by Section 5(1) of the Act. Their perusal makes it clear that these forms have inter alia to show plot Nos., their area, the irrigated area, single crop land in areas mentioned in Section 4(2) of the Act, unirrigated area, Usar land and grove land. Form 3 which contains the statement which is prepared as contemplated by sub-section (1) of Section 10 of the Act and which is served on the tenure-holder along with the notice under Section 10(2) of the Act has also in its column 6 of part A to mention the ceiling area applicable to the tenure holder under Section 5 in terms of irrigated land.

5. On a conspectus of the relevant provisions of the Act and the Rules it is clear that the ceiling area contemplated by Section 5(1) of the Act has to be determined in terms of irrigated land. Land held by the tenure-holder in excess of the ceiling area is to be declared surplus. Form 2, in which the tenure-holder is required to voluntarily submit the statement of ceiling area, has inter alia to show, as already seen above, the extent of his irrigated land as also unirrigated land. Likewise Form 3, which contains the statement prepared in accordance with Section 10(1) of the Act and which is to be served along with notice under Section 10(2), has also to contain the extent of the tenure-holders irrigated and unirrigated area. It has further to give in its column 6 of part A the tenure-holder's ceiling area in terms of irrigated land. It is a settled principle of law that if a term stands denned in the Act the said term is to be given the same meaning wherever it is used in the Act unless a contrary intention is expressed. Nothing has been brought to my notice either in the Act or in the Rules which may contain an indication that the term irrigated area is to be given the meaning according to its definition for some purposes and a different meaning for other purposes. No contrary intention having thus been expressed the term ?irrigated land? has to be given the same meaning wherever the said term occurs in the Act or the Rules framed thereunder as has been assigned to it in the definition clause. Consequently there is no escape from the conclusion that when the tenure-holder is required to submit his statement in Form 2 he has to calculate the area of his irrigated land in accordance with its definition under the Act. Likewise

Form 3 prepared under Section 10(1) of the Act is to contain the statement about the area of irrigated land in conformity with the requirements of the definition of the said term. Since the ceiling area is to be determined in terms of irrigated land this area can be determined only if the extent of the tenure-holder's irrigated land is calculated in the manner provided for in the definition of the said term. If any other manner is taken recourse to it would be impossible to determine the extent of the petitioner's ceiling area in terms of irrigated land as contemplated by the Act. As such if any manner for determining the extent of irrigated land other than the manner contemplated by the definition of the term is adopted the extent of the irrigated land would not represent the extent of such land as contemplated by the Act. It is again a settled principle of law that if a particular thing is by statute required to be done in a particular manner it has to be done in that manner or not at all. In this view of the matter I find it difficult to accept the submission made by counsel for the petitioner that the words "the prescribed authority shall determine such land to be irrigated land for the purposes of this Act", used in Section 4-A of the Act refer only to the judicial adjudication by the Prescribed Authority while deciding the objection of the tenure-holder under Section 12 of the Act. In my opinion the word "determine" apart from judicial decision also includes within its ambit its dictionary meaning. According to Webster the word "determine" inter alia means "to decide by authoritative and judicial sentence; as the court has determined the cause; to pronounce formally; to state, to enounce, to come to a decision concerning, as a result of investigation, reasoning etc.; as I am unable to determine its meaning; to obtain definite and first hand knowledge of as to character, location, quantity or the like; as to determine a rock, a route, the salt in sea water."

6. 8. The reason why I take the aforesaid view is this. When the tenure-holder submits his return in Form 2 he has to determine the extent of his irrigated land for without doing so he cannot give the required information. This determination has to be made with reference to the definition of the term "irrigated land". It cannot be said that while the tenure-holder is determining his irrigated land for purposes of filling in Form 2 he is making any judicial decision. Section 10(1) contemplates preparation of a statement in Form 3, as already seen above, for purposes of service along with notice under Section 10(2). This statement has to be prepared in case where a tenure-holder fails to submit a statement in Form 2 or submits an incomplete or incorrect statement. In that case where a tenure-holder has submitted his statement in Form 2 notice under Section 10(2) can be issued only if the Prescribed Authority is of the view that the statement submitted is incomplete or incorrect. Here again the Prescribed Authority will have to determine whether the statement which has been submitted by the tenure-holder in regard to his irrigated land is correct or not without doing which it would not be justified in issuing a notice to the tenure-holder under Sec. 10(2) of the Act. At this stage even though the Prescribed Authority will have to determine whether the statement of a tenure-holder in regard to his irrigated land is correct or not, it cannot be said that this determination amounts to any judicial decision. At this place it would be relevant to point-out that if no objection has been filed by a tenure-holder on a notice being served on him under Section 10(2) of the Act the Prescribed Authority has under Section 11 to determine the surplus land of the tenure-holder "accordingly" meaning thereby in accordance with "the statement prepared by the Prescribed Authority under Section 10". In this connection it will be relevant to note that the form of the notice which is served on the tenure-holder under Section 10(2) of the Act is C.L.H. Form 4. It has to bear the signature of the Prescribed Authority and inter alia contains the following statement:"

“On your failure to dispute the correctness of the statement in my court, within the time allowed, the aforesaid statement shall be treated as final and ceiling area applicable to you and the surplus land shall be determined accordingly.”

9. At this stage the Prescribed Authority really only confirms the statement prepared under Section 10 and declares that area to be surplus which is in excess of the ceiling area which stands already shown in column 6 of part A of CLH Form 3 and which in its turn is prepared in terms of ‘irrigated land’ as defined in the Act. At this stage also the Prescribed Authority cannot really be said to be making a judicial decision on the question as to whether the extent of the petitioner’s irrigated land, as shown in CLH Form 3, is in conformity with the definition of the said term or not. Section 12 deals with determination of surplus land where an objection is filed. As already seen above this section contemplates that the Prescribed Authority after affording the parties reasonable opportunity of being heard and of producing evidence decide the objections after recording its reasons and determine the surplus land. This section thus requires the Prescribed Authority to do two things: (1) to decide the objections after recording its reasons, and (2) to determine the surplus land. It is thus apparent that even while determining surplus land under Section 12 the Prescribed Authority would do so in accordance with the statement prepared in CLH Form 3 subject to such modifications as may be necessitated by its findings while deciding the objections filed by the tenure-holder.

7. The scheme of the Act thus shows that if a statement is submitted by the tenure-holder in CLH Form 2 and is accepted by the Prescribed Authority the ceiling area and the surplus land of the tenure-holder will be determined in accordance with the statement contained in the said form. If the tenure-holder does not submit the statement in CLH Form 2 the Prescribed Authority would prepare a statement in CLH Form 3 or get the same prepared by a person subordinate to it and serve it on the tenure-holder along with a notice under Section 10(2). If no objection is filed by the tenure-holder the ceiling area and the surplus land of the tenure-holder would be determined in accordance with the statement prepared in CLH Form 3. If an objection is filed the ceiling area and the surplus land of the tenure-holder who has filed such an objection would again be determined in accordance with the statement contained in CLH Form 3 subject to such modifications as may be necessitated by the decision of the objection filed by the tenure-holder. The legislature has thus attached great significance to the statement prepared in CLH Form 3 for purposes of determining the ceiling area and surplus land of tenure-holders. A statutory duty has been cast upon the Prescribed Authority to either prepare the statement itself or to get it prepared by a person subordinate to it. Even in those cases where the statement is prepared by a person subordinate to the Prescribed Authority it is prepared under the authorisation of the Prescribed Authority and is served on the tenure-holder along with a notice under Section 10(2) under the signature of the Prescribed Authority.

8. Illustration (e) of Section 114 of the Indian Evidence Act provides that the court may presume that judicial and official acts have been regularly performed. This rule is apparently based on the maxim ‘omnia proesumuntur legitime facta donee probetur in contrarium,’ which means ‘everything is presumed to be legally done until the contrary is shown.’ In *Shyam Pratap v. Collector of Etawah*, AIR 1946 PC 103 a question arose about the evidentiary value of a pedigree contained in an estate note book prepared under Section 332 of the Court of Wards Manual. It was

held that the court must assume that the Court of Wards did its duty to the best of its ability and based the pedigree on material of the accuracy of which it was satisfied and in the absence of any reason for supposing the document to be incorrect it must be accepted as accurate. In Raj Bahadur v. Emperor, AIR 1947 All. 105, a Division Bench of this Court held that the very purpose of Section 114 is that it shall be assumed that the authority charged with a duty has performed it. The decision in this case was approved of by a Full Bench of this Court in Devi Prasad v. Emperor, AIR 1947 All. 191. In Tulsi Ram v. State of U.P., AIR 1963 SC 666 (para. 12) it was held that a presumption would arise that an official act was regularly performed. In Gopal Narain v. State of U.P., AIR 1964 SC 371 (para. 15) it was held that there is a presumption when a statutory authority makes an order that it has followed the prescribed procedure. In Pratap Singh v. Manmohan Dev, AIR 1966 SC 1931 (para. 10) it was held that if an official act has been proved to have been done it will be presumed to have been regularly done.

9. 12. *In the background of the law discussed above it is apparent that there would be a presumption that the statement which was prepared in CLH Form 3 as contemplated by Section 10(1) of the Act, the preparation of which is an official act in the discharge of the statutory duty, had been prepared in the manner prescribed by the Act and the Rules framed thereunder. Accordingly there would be a presumption that the details of the petitioner's irrigated land as contained in the said Form 3 were prepared in the manner prescribed by Section 4-A of the Act. If the petitioner had not filed any objection the Prescribed Authority would have determined the petitioner's ceiling area and surplus land under Section 11 of the Act accepting the statement in Form 3 to be correct. As seen above what Section 12 contemplates is (1) the decision of the objections filed by the tenure-holder, and (2) determination of surplus land. The determination of the surplus land, as already pointed out above, is made on the basis of the statement prepared in CLH Form 3 subject to such modifications as the decision of the objections may require. What is, therefore, vital under Sec. 12 of the Act is the decision of the objections after recording reasons. If there is no objection it is not clear as to what is to be decided and what reasons are to be given. In view of the presumption that the extent of the irrigated land of the tenure-holder shown in CLH Form 3 has been calculated or determined in the manner prescribed by Section 4-A of the Act it falls to the lot of the tenure-holder to rebut that presumption. At this place it would be relevant to refer to P.J. Ratnam v. B. Kanikaram, AIR 1964 SC 244 to paragraph 6 where of not only it was held that there would be a presumption of regularity in respect of official and judicial acts but it was also held that it would be for the party who challenges such regularity to plead and prove his case. (Emphasis supplied).*

10. *In the aforesaid background if a tenure-holder wishes to challenge the correctness of the statement prepared in CLH Form 3 in respect of his irrigated land he will have to plead in his objection all such facts which, if proved would establish that the statement in Form 3 about his irrigated land was not prepared in the manner prescribed by Section 4-A of the Act and that his land was not irrigated within the meaning of the said section. He will also, have to produce evidence to prove those facts. In adversary proceedings a presumption cannot be rebutted only by raising a plea in the objection. The facts pleaded have to be proved. In Agricultural & Industrial Syndicate Ltd. v. State of U.P., (1974) 2 SCC 27 (para. 8) it was held that after an objection has been filed by the tenure-holder disputing the correctness of the statement prepared under Section 10 of the Act there ensues a dispute and in such a case there is an adversary proceeding before the*

Prescribed Authority between him and the government; Since the Prescribed Authority in the process of deciding the objection is empowered to take evidence it would be ?court? within the meaning of Sec. 3 of the Evidence Act. As such when it is deciding an objection under Sec. 12 of the Act the provisions of the Evidence Act in regard to the manner and burden of proof will apply to the proceedings. Section 101 of the Evidence Act inter alia provides that when a person is bound to prove the existence of a fact, the burden of proof lies on that person. In view of the decision of the Supreme Court in P.J. Ratnam's case (supra) to the effect that it is for the party who challenges the regularity in respect of official acts to plead and prove his case and in view of Section 101 of the Evidence Act the burden to prove that the statement in C.L.H. Form 3 about his irrigated land was not prepared in the manner prescribed by Section 4-A of the Act would lie on the tenure-holder and to discharge that burden it would be for him to produce such evidence as he considers material including the relevant extracts of Khasras mentioned in Section 4-A. It is really with reference to these documents and not with reference to his pleading in the objection that the tenure holder would be in a position to show that the statement in Form 3 about his irrigated land has not been prepared in the manner prescribed by Section 4-A of the Act. In the eye of law there is hardly any difference between a case where no objection at all is filed and a case where in the objection necessary facts have not been pleaded nor evidence has been led to prove such facts. Section 4-A does not cast any obligation on the Prescribed Authority to record reasons where no objection is filed at all. The said section cannot in my opinion be reasonably interpreted to mean that it casts an obligation on the Prescribed Authority to record reasons why a particular plot has been treated as irrigated in C.L.H. Form 3 even if no facts have been pleaded by the tenure-holder in his objection which if proved will establish that the said plot has been shown as irrigated in Form 3 otherwise than in conformity with Section 4-A and no evidence has, been led by him to prove those facts. If these facts have been pleaded and proved the Prescribed Authority will certainly have to decide the objection raised. In this behalf and record reasons for its findings in conformity with Section 4-A. In the absence of requisite pleading and proof the Prescribed Authority, while declaring surplus land under Section 12 of the Act, can be required to record reasons stating as to under which part or category of Section 4-A a particular plot has been treated as irrigated in CLH Form 3, only if Section 4-A is placed at par to the performance of a ritual. In this view of the matter I find it difficult to accept the submission made by counsel for the petitioner that the Additional Civil Judge committed an error in treating the petitioner's land of village Rajpur as irrigated."

b) Shital Singh Vs. State of U.P. and others (Supra):

"4. With regard to the next point about the remaining area of plot no. 262 being unirrigated, the point does not appear to have been considered by the Prescribed Authority. The learned Additional Civil Judge has, however, observed on this point that the khasras for 1377F. to 1378F and 1380F. show that the plot was irrigated from a canal and both Kharif and Rabi crops were produced in the plot, hence, it was rightly treated as irrigated by the Prescribed Authority. The learned counsel contended that the plot was in the bed of a river and the revenue entries were prima facie wrong and that his prayer for local inspection was refused. The determination of irrigated area of the land has to be made in accordance with section 4-A of the Act. That section makes the khasras of 1378F. 1379F. and 1380F. relevant for purposes of determining the irrigated area and also enjoins upon the Prescribed Authority to make a local inspection wherever necessary. How the Prescribed Authority is supposed to prepare the statement of ceiling area after

determination of the irrigated area in accordance with the principles and procedure laid down by section 4-A of the Act. This does not appear to have been done and when the petitioner contended that the whole of the area of plot no. 262 was unirrigated, no attempt was made by the Prescribed Authority to go into that objection or to determine it on the basis of the considerations made relevant by section 4-A of the Act. The learned Additional Civil Judge has also not mentioned the khasra of 1379F. probably because it was not on the record and has mentioned the khasra of 1377F. With regard to the refusal of the prayer for local inspection, all that has been said on behalf of the Prescribed Authority in the counter-affidavit of Sri Brij Kishore Misra, the Supervisor Kanungo, is that it was not necessary to be made unless the Prescribed Authority considered the case to be a fit one. Under the circumstances, I am not satisfied that the question whether plot no. 262 was unirrigated, has been dealt with properly and in accordance with law. If the entries in the revenue records are challenged by a citizen in proceedings under the Act, and a statute provides for a procedure for determination of the irrigated area, the prescribed procedure has to be followed. The petitioner has challenged the correctness of the entries in the revenue records with regard to plot no. 262. The Prescribed Authority did not even care to look into the relevant khasras and his refusal to make a local inspection was in the circumstances of the case no less arbitrary."

c) Ram Charan Vs. State of U.P. and others (Supra):

"23. In this view when the legislature by adding the Explanation created a fiction that proceedings under the Ceiling Act shall not be deemed to be proceedings in respect of declaration or adjudication of rights or interest in any land, had obviously intended to exclude the ceiling proceedings from the purview of the Consolidation Act. The Explanation was made applicable for purposes of sub-section (2) of section 5. Since section 49 is an extension of sub-section (2) of section 5 in relation to future litigation of the same kind, the fiction created by the Explanation would equally apply to the bar created by section 49. A proceeding under the Ceiling Act shall not be deemed to be a proceeding which is barred under section 49 as well.

25. The legal fiction is that ceiling proceedings are not proceedings for declaration of rights or interest in land. This imaginary state of affairs must equally apply to all situations in which it would on terms be applicable. Though the Explanation says 'for the purposes of sub-section (2)' it would apply to section 49 also because section 49 is integrally connected with and referable to sub-section (2) of Section 5."

27. From perusal of the record and the rival submissions advanced by learned counsel for the parties, the principal questions which arise for consideration before this Court are:

(i) whether the disputed holding recorded in the name of late Sri Daulat Singh was his exclusive holding or was ancestral joint Hindu family property in which the petitioners had acquired interest by birth;

(ii) whether the authorities below have correctly determined the nature of land as irrigated under Section 4-A of the Ceiling Act;

(iii) whether the computation of surplus area has been made in accordance with law after correctly considering grove, abadi and usar land as well as the number of family members entitled to additional ceiling area.

28. So far as the first issue is concerned, the consistent case of the petitioners is that the land in dispute was ancestral 'sir' and 'Khud Kasht' land of late Babu Bankey Bihari Lal and after his death the same devolved upon the branch represented by late Sri Daulat Singh, who continued to be recorded merely in a representative capacity on behalf of the joint Hindu family. The petitioners have specifically pleaded that petitioner no.1 was born on 01.11.1939, petitioner no.2 in the year 1956 and petitioner no.3 in the year 1958 and, therefore, petitioner no.1 admittedly existed prior to the date of vesting and acquired co-parcenary rights by birth.

29. The prescribed authority as well as the appellate authority have brushed aside this foundational plea merely on the ground that the revenue records stood in the sole name of late Sri Daulat Singh. Such an approach is patently unsustainable in law. It is now well settled that mere entry in the revenue records does not confer exclusive title where the land is shown to be ancestral 'sir' and 'Khud Kasht' and where rights by birth had already accrued under Mitakshara law prior to vesting.

30. In the case of **Rajendra Singh Vs. State of U.P. (Supra)**, this Court has categorically held that where ancestral 'sir' and 'Khud Kasht' land devolved upon a family and sons were born prior to the date of vesting, they acquired rights therein by birth and subsequent mutation solely in the father's name would not extinguish such rights. Similarly, in the case of **Vishwa Nath Singh Vs. State of U.P. (Supra)**, it was held that what is relevant is whether the property was coming down from ancestors and whether the son was born before 1st July, 1952; if both conditions stand satisfied, independent rights accrue by birth irrespective of separate entries.

31. The same principle has been reiterated in the case of **Dilip Singh and others Vs. Commissioner (Supra)**, wherein this Court held that ceiling authorities are duty bound to determine whether the sons had acquired rights in ancestral property prior to 1.7.1952 and cannot proceed on the assumption that land standing in the father's name is his exclusive holding. The ratio of the judgment in the case of **Chetanya Raj Singh (Supra)**, **Gaya Prasad (Supra)** and **Chhattar Singh (Supra)** also reinforces the proposition that rights flowing from birth in ancestral holdings cannot be defeated by revenue entries or unilateral assertions.

32. Even the judgment of the Hon'ble Supreme Court in the case of **Sheela Devi Vs. Lal Chand (Supra)** recognizes the settled doctrine that ancestral property continues to retain its coparcenary character and the birth of a son revives and fastens corresponding rights therein.

33. Tested on the touchstone of the aforesaid legal principles, the findings returned by the authorities below that the entire land exclusively belonged to late Sri Daulat Singh cannot be sustained. Neither the prescribed authority nor the appellate authority recorded any categorical finding upon the evidence as to whether the disputed holding was ancestral 'sir' and 'Khud Kasht' land. The authorities have completely failed to advert to this vital jurisdictional issue and thereby misdirected themselves in law.

34. At the very least, the admitted position that petitioner no.1 was born prior to the date of vesting entitled him to be treated as co-sharer. Once this position is accepted, the entire premise on which ceiling proceedings were initiated against the legal heirs treating late Sri Daulat Singh as exclusive tenure holder falls to the ground.

35. Coming to the second issue relating to irrigated land, this Court finds substance in the submission of learned counsel for the petitioners that the determination under Section 4-A of the Ceiling Act has not been undertaken in the manner known to law. Section 4-A prescribes a definite statutory mechanism for determining whether land is irrigated or unirrigated. Such determination is required to be founded upon relevant khasras of 1378, 1379 and 1380 Fasli and, wherever necessary, local inspection.

36. Though learned Additional CSC has rightly relied upon in the case of **Shyamvir Singh (Supra)** for the proposition that there is a presumption regarding correctness of CLH Form-3 and burden lies upon the tenure holder to rebut the same, the said judgment itself clearly lays down that once a specific objection is raised, the prescribed authority is obliged to adjudicate the same by considering evidence and recording reasons.

37. In the present case, the petitioners specifically pleaded that 72.06 acres had wrongly been shown as irrigated; that 25 acres constituted grove land; that 4 acres were abadi; and 10 acres were usar land. These were not vague objections but specific factual assertions requiring adjudication on the basis of statutory material.

38. The prescribed authority, however, appears to have relied principally upon oral statements of Lekhpals and CLH entries without discussing the relevant khasras or recording any reasoned finding satisfying the requirements of Section 4-A. The appellate authority, instead of independently examining the issue, affirmed the order in a cursory manner.

39. The judgment in the case of **Shital Singh Vs. State of U.P. (Supra)** directly supports the petitioners inasmuch as it holds that where objection to irrigation entries is raised, the prescribed authority must examine khasras and follow the statutory procedure. Failure to do so renders the determination arbitrary.

40. Thus, even the authorities cited by learned Additional CSC do not advance the respondents' case. On the contrary, they emphasize strict adherence to statutory procedure, which is conspicuously absent here. The reliance placed upon in the case of **Ram Charan Vs. State of U.P. (Supra)** is equally misplaced. The said judgment merely clarifies the nature of ceiling proceedings vis-a-vis consolidation proceedings and does not dilute the obligation of ceiling authorities to adjudicate title-related objections when such objections bear directly upon determination of surplus area.

41. This Court further finds that the objections regarding grove land, abadi land, usar land and entitlement of additional ceiling area on account of family composition have not been adjudicated by the authorities below with the seriousness required in law.

The petitioners had specifically pleaded the existence of major son, additional family members and corresponding entitlement to additional land. No reasoned finding has been recorded while rejecting these claims.

42. The appellate authority, being the final fact-finding authority, was under a legal obligation to independently examine each issue framed by the prescribed authority. The appellate order dated 07.04.1993 does not disclose any such consideration. It is cryptic, non-speaking and suffers from complete non-application of mind.

43. A quasi-judicial order affecting valuable property rights must contain reasons. Recording of reasons is not an empty formality but an indispensable facet of fairness and judicial discipline. The impugned appellate order falls woefully short of this requirement.

44. This Court is, therefore, of the considered opinion that both the prescribed authority as well as the appellate authority have proceeded on an erroneous understanding of law, ignored binding precedents governing ancestral 'sir' and 'Khud Kasht' holdings, failed to properly determine irrigated land under Section 4-A and have consequently arrived at findings vitiated by perversity and patent illegality.

45. Since, the very foundation of the surplus determination is legally unsustainable, the impugned orders cannot be permitted to stand. Accordingly, for all the reasons recorded hereinabove, the writ petition deserves to be allowed.

46. The writ petition is, accordingly, **allowed**.

47. The impugned order dated 30.04.1988 passed by the Prescribed Authority (Ceiling)/Upper Collector, Kheri and the appellate order dated 07.04.1993 passed by the Additional Commissioner, Lucknow Division, Lucknow are hereby quashed.

48. The matter is remitted to the Prescribed Authority concerned to reconsider the proceedings afresh strictly in accordance with law after determining, whether the disputed land was ancestral 'sir' and 'Khud Kasht' property and the shares of the petitioners therein in light of the law laid down in the case of Rajendra Singh (Supra), Vishwa Nath Singh (Supra), Dilip Singh (Supra) and other binding precedents redetermining the nature of land under Section 4-A of the Ceiling Act on the basis of relevant khasras and such local inspection as may be necessary by adjudicating afresh the claims regarding grove, abadi and usar land and determining the entitlement of the petitioners to additional ceiling area on account of family composition and majority status of petitioner no.3 by passing a fresh reasoned speaking order after affording full opportunity of hearing to all concerned parties. The entire exercise shall be completed expeditiously, preferably within a period of six months from the date a certified copy of this order is produced before the concerned authority.

49. Till fresh determination is made, no coercive action shall be taken against the petitioners pursuant to the quashed orders. 50. No order as to costs.

(2026) 4 ILRA 1511
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 29.04.2026

BEFORE

THE HON'BLE IRSHAD ALI, J.

Writ C No. 1002103 of 2000

Smt. Gyanwati ...Petitioner
Addl. Commissioner Judicial Faizabad ...Respondent
Versus

ISSUE FOR CONSIDERATION

Whether delay of about five years in filing revision under Section 219 of the U.P. Land Revenue Act against the order passed under Section 28 of the U.P. Land Revenue Act could be condoned without disclosure of any cogent or convincing reason; and whether revision preferred by a person who was neither a party to the original proceedings nor had any direct legal interest is maintainable.

HEADNOTE

U.P. Land Revenue Act – ss.28, 219 – Limitation Act, 1963 – s.5 – Correction of village map – Application under Section 28 of the U.P. Land Revenue Act allowed by Additional Collector (Finance and Revenue) directing correction of plot number in village map – Respondent no.3, who was neither a party to the proceedings nor shown to have any direct interest in the matter, preferred revision under Section 219 after about five years along with application under Section 5 of the Limitation Act – Delay condoned and revision entertained by Additional Commissioner (Judicial) – Challenge in writ jurisdiction – Justification:

Held: Although Court has discretion to condone delay under Section 5 of the Limitation Act, such discretion must be exercised judiciously and upon sufficient cause being shown – In the present case, delay was inordinate, extending to about five years and the impugned order did not disclose any cogent or convincing reasons justifying such delay – Exercise of discretion therefore appeared to be arbitrary and unsustainable in law.

Revisional power, though wide, must be exercised in cases involving jurisdictional error or where public interest is demonstrably involved – Respondent no.3 was neither a party to the original proceedings nor had any direct legal interest been established – Revisional Authority failed to examine maintainability of revision at the instance of respondent no.3, rendering the order legally infirm.

Ordinarily writ jurisdiction is not exercised against interlocutory or interim orders; however, an exception arises where order suffers from jurisdictional error or there is manifest illegality or abuse of process – Entertaining a highly belated revision without proper reasons and doing so at the instance of a person lacking locus constitutes a clear jurisdictional error warranting interference – Court held that impugned order suffered from non-application of mind and delay had been condoned in a mechanical manner – Issue of locus standi had also not been properly considered – Writ petition allowed – Impugned order dated 05.06.2000 passed by Additional Commissioner (Judicial), Faizabad Division, Faizabad quashed. [Paras 15, 16, 17, 18, 19] (E-5)

CASE LAW CITED

Bachchu Bhai Tripathi v. Board of Revenue, U.P. at Allahabad and others, Neutral Citation No. 2005:AHC:2226;

Jawahar Lal Tiwari v. Saheb Lal and another, Reference No. 220 of 1974-75, 19.04.1979;
Smt. Phoolmati and others v. Assistant Director of Consolidation, Deoria and others, 03.11.1989;
Smt. Leung @ Laungshri v. Deputy Director of Consolidation, Moradabad and others, 28.11.1989;
Dharam Singh v. Ravindra Singh and others, 2011 (113) RD 154.

List of Acts

**U.P. Land Revenue Act;
Limitation Act, 1963.**

List of Keywords

Correction of village map; Section 28 proceedings; Revision under Section 219; Condonation of delay; Inordinate delay; Sufficient cause; Mechanical condonation; Locus standi; Maintainability of revision; Informant; Jurisdictional error; Non-application of mind; Revisional jurisdiction; Public interest; Writ jurisdiction.

CASE ARISING FROM

From the order dated 05.06.2000 passed by the Additional Commissioner (Judicial), Faizabad Division, Faizabad in Revision No. 1531 under Section 219 of the U.P. Land Revenue Act condoning delay and entertaining the revision against the order dated 02.03.1995 passed under Section 28 of the U.P. Land Revenue Act.

Appearances for Parties

Advs. for the Petitioner: Narendra Gupta, I.M. Pandey, K.K. Dubey.

Advs. for the Respondents: C.S.C., Gopal Krishna Pathak, R.N. Gupta.

(Delivered by Hon'ble Irshad Ali, J.)

1. Heard Shri I.M. Pandey, learned counsel for the petitioner, learned Standing Counsel for the respondents-State and Shri Piyush Pathak, learned counsel for the private respondents.

2. By means of the present writ petition, the petitioner has prayed for issuance of a writ in the nature of Certiorari, quashing proceedings of revision and order dated 5.6.2000 as contained in Annexure Nos.1 and 2 passed by Additional Commissioner (Judicial), Faizabad in Revision No.1531 under Section 219 of the U.P. Land Revenue Act.

3. Factual matrix of the case is that the petitioner moved an application under Section 28 of the U.P. Land Revenue Act before the Collector, Sultanpur which was heard and disposed off by Additional Collector (Finance and Revenue), District Sultanpur on 2.3.1995 and it was allowed and the correction of plots number was directed to be done in place of 2506 in village map and Plot No.2507 was renumbered as 2506. The mistake was occurred on the face of the record as such the same was directed to be corrected.

As a matter of fact, opposite party no.3 Swami Dayal was neither a party nor he has got any interest in the matter nor locus standi, therefore he has got nothing to do with the case. On

account of entry after a lapse of time of about 5 years, he preferred a revision before Additional Commissioner under Section 219, Faizabad Division, Faizabad against the order dated 2.3.1995 with an application for condonation of delay under Section 5 of the Limitation Act without explaining the inordinate delay in filing the revision and against this the petitioner filed an objection in writing but the same was not considered and revision was held maintainable.

Swami Dayal (opposite party no.3) filed revision at his own accord and on behalf of Gaon Sabha or State Government but in individual capacity, but the same was entertained and interim stay order was also granted and delay was condoned.

The application moved by the petitioner for exchange under Section 161 of U.P. Zamindari Abolition and Land Reforms Act was allowed by Deputy Collector, Musafirkhanna, District Sultanpur on 12.6.1998 against which opposite party no.3 moved an application for setting aside so called ex parte order dated 12.6.1998 and the same was rejected on 21.12.1999.

Against the order dated 21.12.1999 and 12.6.1998, the opposite party no.3 preferred a revision with an application under Section 5 of the Limitation Act praying therein for condonation of delay, the same was condoned and the revision was held maintainable and granted interim stay order.

Against the order dated 5.6.2000 passed in revision under Section 333 of U.P.Z.A.& L.R. Act preferred by the opposite party no.3 in exchange matter by the Additional Commissioner, Faizabad Division, the petitioner preferred a writ petition no.1702 of 2000 which was admitted and interim stay orders were granted.

The Deputy Collector decided the application under Section 28 of the U.P. Land Revenue Act after obtaining the report from Tehsildar which fully justified the order of the Deputy Collector allowing the application of the petitioner moved under Section 28 of the U.P. Land Revenue Act.

4. Learned counsel for the petitioner submitted that the Additional Commissioner, Faizabad Division has acted beyond his jurisdiction in holding that the revision filed by the opposite party no.3 under Section 219 of U.P. Land Revenue Act is maintainable and there is sufficient ground for condonation of delay and condoned the delay in ex parte manner ignoring the objections of the petitioner.

5. Learned counsel for the petitioner next submitted that accepting the revision of the opposite party no.3 and granting interim relief after long interval of the order passed by the Deputy Collector without accepting the delay is itself sufficient ground for rejection of the revision and impugned orders as contained in Annexure nos.1 and 2 are perverse in law and fact both.

6. Learned counsel for the petitioner next submitted that non-taking of advise by the opposite party no.3 for a long time cannot be a ground for condonation of delay or an excuse within the meaning of Section 5 of the Limitation Act.

7. Learned counsel for the petitioner next submitted that order of the Deputy Collector allowing the correction of Map cannot be assailed in any way as in the map the error was apparent on the face of the record.

8. In support of his submissions, learned counsel for the petitioner placed upon judgment rendered in the case of **Bachchu Bhai Tripathi v. Board of Revenue, U.P. at Allahabad and others** reported in **Neutral Citation No.-2005:AHC:2226**.

9. Per contra, learned counsel for the respondents submitted that the impugned order passed by the respondents does not suffer from infirmity or illegality and is just and valid order.

10. Learned counsel for the respondents also placed reliance upon the following judgments:

"(i) Jawahar Lal Tiwari v. Saheb Lal and another (Reference No.220 of 1974-75 decided on April 19, 1979)

(ii) Smt. Phoolmati and others v. Assistant Director of Consolidation, Deoria and others (Civil Misc. Writ Petition No.Nil of 1988, decided on the 3rd November, 1989)

(iii) Smt. Leung @ Laungshri v. Deputy Director of Consolidation, Moradabad and others (Civil Misc. Petition No. Nil of 1989 decided on 28th November, 1989)

(iv) Dharam Singh v. Ravindra Singh and others reported in 2011 (113) RD 154"

11. Having heard the rival submissions of learned counsel for the parties, I perused the material and the case-law cited by the learned counsel for the parties.

12. To resolve the controversy involved in the present writ **petition, operative portion of the judgment rendered in the case of Bachchu Bai Tripathi** (supra) is extracted here-in-below:

"In view of the aforesaid this Court is of the view that on both counts i.e. on merits of exchange and on locus of petitioner writ petition is to fail. Exchange has not been found to be erroneous in any manner as no violation of any of the criteria or guidelines as provided in Section 161 of the U.P.Z.A. & L.R. Act has been either proved or has been pointed out. Similarly petitioner having not complained about inaction on the part of Gaon Sabha, before Collector/ Commissioner who are custodian of Gaon Sabha property and there being unanimous resolution of Gaon Sabha in favour of exchange and report of Tehsildar, taking up the matter, only by the petitioner, not by any body else of the village appears to be with some motive in the name of public loss and thus no relief on this count also can be allowed."

13. Learned counsel for the respondents also relied upon the several judgments, operative portion of which is extracted here-in-below:

Jawahar Lal Tiwari (supra):

5. *The learned Additional Com-Jawahar Lal Tiwari was not a party to the proceedings and had no locus stand to file a revision application, as he was merely an informant. This view of the learned Additional Commissioner is not sound. Section 333 of the U.P. 2. no and L.R. Act reads as follows:*

"Sec. 333. Power of Board to call for name. The Board may call for the record of any suit or proceeding decided by any subordinate court in which no appeal lies, or where an appeal lies but has not been preferred, and if such subordinate court appears-

(a) to have exercised a jurisdiction not vacated in it by law; or

(b) to have failed to exercise a jurisdiction so vested; or

(c) to have acted in the exercise of jurisdiction illegally or with material irregularity;

the Board may pass such order in the case as it thinks fit."

6. *The power of revision is conferred under Section 333. This section does not lay down that a revision shall be filed by a party to the case. In fact it does not state at all that any party shall file a revision. On the other hand, it is the power of the Board of Revenue to call for the record of any suit or proceeding decided by any subordinate court and thereafter to pass a suitable order. Hence, the Board of Revenue cannot refuse to entertain a revision only on a plea that it has been filed by a person who is an informant and not a party to the proceedings. The material points which the Board of Revenue has to consider in a revision are, whether a sub-ordinate court has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested or has acted in the exercise of jurisdiction illegally or with material irregularity. Now, the present proceedings under Section 122-B were started on the report of the Supervisor Kanungo dated January 20, 1972. The Supervisor Kanungo is a responsible field official of the Revenue Department and his enquiry report cannot be lightly brushed aside. He has clearly stated in his report that Saheb Lal had encroached on the public path-way. There was nothing in his report to suggest that the encroachment had taken place before May 24, 1971. Even in the detailed order dated August 8, 1972 passed by the learned Tahsildar, there is nothing to suggest that the encroachment had taken place prior to this date. Once the learned Tahsildar has passed the final order on August 8, 1972. in proceedings under Section 122-B. the prior remedy open to the aggrieved party (Saheb Lal) was to come in revision before the Board of Revenue. It was a misuse of jurisdiction by the learned Tahsildar to review his own earlier order on October 28, 1972, setting aside the previous order. The power of review can be exercised only when there is an error apparent on the face of the record or for some other sufficient reason. There is no error apparent on the face of the record in the earlier order of the Tahsildar. There is nothing on the record to show that the encroachment took place before May 24, 1971. The impugned order of the learned Tahsildar is thus without jurisdiction and cannot be maintained.*

Smt. Phoolmati (supra):

4. *As regards reduction of the valuation of the petitioners plot, it would be open to the petitioners to agitate this point before the revisional court.*

5. *It is well known by now that any order passed against a party without hearing him is bad in law and cannot be sustained. Therefore if the contentions raised on behalf of the petitioners are correct, the impugned order would be recalled by the revisional court and the revisional court shall decide the claims of the petitioners strictly in accordance with law. It is also made clear that if the petitioners approach, the revisional court hereafter, the revisional court shall not indulge into any technicality and treat the application filed by the petitioners as a miscellaneous application and afford an opportunity to the petitioners if they were not heard earlier.*

Smt. Leung @ Laungshri (supra):

This petition under Article 226 of the Constitution of India is directed against the order dated 9-6-89 granting interim stay in the revision filed before the Dy. Director of Consolidation.

2. *Heard the learned counsel for the petitioner. Against the order granting interim stay the writ petition is not maintainable on the facts of the case. However, under the facts and circumstances of the case it appears just that the revision before the Dy. Director of Consolidation, Moradabad must be decided within two months..*

3. *The Dy. Director of Consolidation of Moradabad, is directed to decide the revision positively by 31-1-1990.*

4. *With these directions the petition is dismissed summarily.*

Dharam Singh (Supra):

A party has a right to raise such objection before the Trial Court in order to protect his interest. But once such objections are being decided the party has to be cautious in approaching the higher forum, especially in a writ jurisdiction. The petitions filed under the supervisory writ jurisdiction, has to be sparingly used and cannot be made a forum to approach the Writ Court on a drop of a hat. In the present case, the Court finds that the petitioner is raising all sorts of objections before the Trial Court, for which, he has every right to do so, in order to protect his interest but, by taking such objection before a higher forum, the Court finds that the petitioner, namely, Dharam Singh is misusing the process of the Court. A writ jurisdiction cannot be used as a tool to delay the proceedings. The Court finds that election petition was filed in the year 2008. Two years have nearly elapsed. The term of the elected member is five years and the Court finds that a concerted effort is being made by the elected candidate to stall the proceedings and prolong the litigation. Such tactics adopted by the returned candidate which the Court can see clearly from the order sheet is deprecated. In the light of the aforesaid and in the facts and circumstances of the case, the Court finds that exemplary cost needs to be imposed upon the petitioner Dharam Singh for raising frivolous issues before this Court and in the circumstances of the case, the Court imposes a cost of Rs. 25,000/- which shall be deposited by the petitioner before the Trial Court within two weeks from today. The amount so deposited can be withdrawn by the plaintiff Ravindra Singh without furnishing any security.

14. I have examined the material available on record in the light of the case-laws reported by learned counsel for the parties.

15. On its examination, it is found that it is well settled that although the Court has discretion to condone delay under Section 5 of the Limitation Act, such discretion must be exercised judiciously and upon sufficient cause being shown.

In the present case, the delay is inordinate, extending to about five years and the impugned order does not disclose any cogent or convincing reasons justifying such delay, therefore the exercise of discretion appears to be arbitrary and unsustainable in law.

16. The submission of the respondents based on Jawahar Lal Tiwari (supra) that a revision can be entertained even at the instance of an informant cannot be accepted in absolute terms. The revisional power, though wide, must be exercised in cases involving jurisdictional error, or where public interest is demonstrably involved.

In the present case, respondent no. 3 was neither a party to the original proceedings nor has any direct legal interest been established. Thus, the Revisional Authority failed to examine the maintainability of the revision at the instance of respondent no. 3, rendering the order legally infirm.

17. Moreover, it is true that ordinarily writ jurisdiction is not exercised against interlocutory or interim orders, as held in **Smt. Leung (supra)**. However, an exception arises where the order suffers from jurisdictional error, or there is manifest illegality or abuse of process.

In the present case, entertaining a highly belated revision without proper reasons, and doing so at the instance of a person lacking locus, constitutes a clear jurisdictional error, warranting interference.

18. Therefore, in view of the aforesaid discussion, this Court is of the considered opinion that the impugned order dated 05.06.2000 suffers from non-application of mind and the delay has been condoned in a mechanical manner. Moreover, the issue of locus standi has not been properly considered.

19. Accordingly, the writ petition succeeds and is **allowed**. The impugned order dated 05.06.2000 passed by the Additional Commissioner (Judicial), Faizabad Division, Faizabad is hereby quashed.

(2026) 4 ILRA 1517
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 03.04.2026

BEFORE

THE HON'BLE IRSHAD ALI, J.

Writ C No. 3000033 of 1999

Kulwant Singh & Ors.

...Petitioners

Versus

State of U.P. & Ors.

...Respondents

ISSUE FOR CONSIDERATION

Whether the Petitioners' recorded tenure lands could legally be clubbed with the holdings of opposite party no.4 under Section 5 of the U.P. Imposition of Ceiling on Land Holdings Act, 1961, despite separate consolidation proceedings and undisputed entries in revenue records.

HEADNOTES

Civil Law - Constitution of India - Article 226 - U.P. Imposition of Ceiling on Land Holdings Act, 1961 - Section 5(1), 10(2) - U.P. Imposition of Ceiling on Land Holdings Rules - Rule 8: - Writ Petition under Article 226 - seeking quashing of orders passed by the Prescribed Authority and order of Appellate Authority, and exclusion of petitioners' lands from clubbing with opposite party no.4. - Petitioners, recorded tenure holders - their lands were separately consolidated and wrongly declared surplus by relying solely on Lekhpal's statement, without cogent evidence - Authorities below found opposite party no. 4 to be real holder - treating petitioners as name-lenders - Petitioners relied on precedents (*Pritam Singh, Som Nath Khanna, Shishu Pal Singh*) to argue that burden lies on State to prove ostensible holding with substantive evidence - Respondents countered that possession and benefits were enjoyed by opposite party no.4, and concurrent findings should not be disturbed - Court finds that revenue entries carry presumption of correctness, State failed to discharge burden, reliance on Lekhpal's report alone is perverse, and Appellate Authority abdicated jurisdiction by not remanding - Ceiling Act must be strictly construed - findings based on surmises are unsustainable - Held, impugned orders vitiated and set aside - Writ petition allowed with directions issued to exclude petitioners' lands from clubbing.

(Para – 22, 23, 24, 25, 26)

WP Allowed. (E-11)

CASE LAW CITED

Pritam Singh v. State of U.P. (1998(1) JCLR 329 All)

Som Nath Khanna v. State of U.P. (Writ C No. 3000025 of 2005)

Shishu Pal Singh v. Prescribed Authority (Civil Misc. Writ Petition No. 4283 of 1992)

LIST OF ACTS

Constitution of India - U.P. Imposition of Ceiling on Land Holdings Act, 1961 - U.P. Imposition of Ceiling on Land Holdings Rules.

LIST OF KEYWORDS

Ceiling Act, Ostensible Holding, Benami, Revenue Record, Lekhpal Report, Burden of Proof, Appellate Jurisdiction, Consolidation Proceedings, Surplus Land, Certiorari, Mandamus.

CASE ARISING FROM

Appeal No. 335/93-94 and order dated 30.03.1994 of Prescribed Authority (Ceiling), Kheri, declaring 33.913 hectares irrigated land surplus by clubbing petitioners' land with opposite party no.4.

APPEARANCE OF PARTIES

Counsel for Appellant(s): Shri Aftab Ahmad.

Counsel for Respondent(s): Ms. Richa Sharma (for Respondent No.4), Shri Rajeev Srivastava, Additional Chief Standing Counsel for State

(Delivered by Hon'ble Irshad Ali, J.)

1. Heard Shri Aftab Ahmad, learned counsel for the petitioners, Ms. Richa Sharma, learned counsel for the respondent no.4 and Shri Rajeev Srivastava, learned Additional Chief Standing Counsel for the respondents-State.

2. By means of the present writ petition, the petitioners have prayed for issuance of a writ in the nature of Certiorari, quashing order dated 28.12.1998 passed by opposite party no.2 in Appeal No. 335/93-94 and order dated 21.4.1994 passed by opposite party no.3, as contained in Annexure nos.1 and 2 respectively to this writ petition, with further prayer to issue a writ in the nature of Mandamus, commanding upon the opposite party nos.2 and 3 not to club the land of the petitioners with other tenure holder whereby they may also be directed to exclude the same in accordance with law.

3. Factual matrix of the case is that the petitioners are recorded tenure holders of the land in question. The petitioner no.1 is the tenure holder of land comprising plots bearing Khata No.164 (Annexure No.3 to the writ petition), the petitioner no.2 is tenure holder of 02 plots (Annexure no.4 to the writ petition), petitioner no.3 is tenure holder of 01 plot (Annexure No.5 to the writ petition), petitioner no.4 is tenure holder of 06 plots (Annexure no.6 to the writ petition) and petitioner no.5 is tenure holder of 01 plot (Annexure no.7 to the writ petition).

The opposite party no.4 was issued notice u/s 10(2) U.P. Imposition of Ceiling on Land Holdings Act, 1961 and subsequently the land of the petitioners was clubbed with him and they were issued notice under Rule 8 of the Rules. The opposite party no.4 filed his objection dated 25.01.1993 stating that he had no concerned with the petitioners' land and their chaks were created separately during consolidation proceedings.

The petitioners also filed their objection before Prescribed Authority (Ceiling), Kheri stating that they are having cultivatory possession over the lands in their ownership and they have no other agricultural land in all over State of U.P. It was also stated that their lands are situated in different villagers and cannot be in any manner treated and clubbed with the land of opposite party no.4 and their chaks were created in year 1992 during consolidation proceedings.

The Prescribed Authority (Ceiling), Kheri vide his impugned judgment and order dated 30.03.1994 declared 33.913 hectare irrigated land as surplus of the opposite party no.5 by clubbing the land of the petitioners although it has been admitted in the impugned judgment and order dated 30.03.1994 that the land is recorded in the name of the petitioners in revenue record.

Being aggrieved, the petitioners and the opposite party no.4 filed two separate appeals which have been dismissed by the opposite party no.2 vide judgment and order dated 28.12.1998. However, while dismissing the appeals the opposite party no.2 has himself directed the opposite party no.3 to verify the revenue record at his level and if the land four plots which are recorded in Khata No.1615 in Khatauni 1399-1404 Fasli as Navin Parti are found to be Khalihan land of Gaon Sabha then there is no justification to declare the same as surplus land and the opposite party no.3 may modify his impugned judgment and order dated 30.03.1994 at his level.

4. Learned counsel for the petitioner submits that the opposite party no.2 while passing the impugned judgment and order dated 28.12.1998 has failed to exercise the jurisdiction vested in him and instead of setting aside the impugned judgment and order dated 30.03.1994 and remanding back the matter to the opposite party no.3 to verify the record and then pass a fresh order after

giving opportunity of hearing and evidence to the petitioners and had given it in the hand of the opposite party no.3 to correct his mistake.

5. Learned counsel for the petitioner next submitted that the opposite parties had not disputed that the names of the petitioners are recorded over the lands in question as tenure holders and hence the bald statement of the Lekhpal that the opposite party no.4 is in possession over the petitioners land is totally false and misleading.

6. Learned counsel for the petitioner next submitted that in the instant case, the sole evidence relied upon by the courts below to return the finding that it is opposite party no.4 who was ostensible owner of the land in question even on and after 24.01.1971 the statement made by Lekhpal, is false, wrong and misleading.

7. In support of his submissions, learned counsel for the petitioner placed reliance upon the following judgment:

(i) Pritam Singh Vs. State of U.P. & Ors., reported in 1998(1) JCLR 329(All)

(ii) Som Nath Khanna and 3 Ors. vs State of UP through Collector Kheri and 2 Ors. (Writ C No. 3000025 of 2005),

(iii) Shishu Pal Singh and Ors. vs Prescribed Authority and Ors. (Civil Misc. Writ Petition No. 4283 of 1992)

8. On the other hand, learned counsel for the respondents submitted that the writ petition is devoid of merit and the impugned orders dated 30.03.1994 and 28.12.1998 do not suffer from any illegality or error of law and have been passed after due consideration of material on record.

9. Learned counsel for the respondents next submitted that both the Prescribed Authority and the Appellate Authority have concurrently recorded findings that Sri Sobaran Singh (Opp. Party No. 4) was the real tenure holder, and the lands recorded in the names of the petitioners were merely held ostensibly for his benefit.

10. Learned counsel for the respondents next submitted that though the lands were recorded in the names of the petitioners, in reality possession remained with Sri Sobaran Singh and benefits of the land were enjoyed by him, and the petitioners were only name-lenders.

11. Learned counsel for the respondents placed reliance upon the fact that the notices issued under Section 10(2) were received by Sri Sobaran Singh, sale receipts of agricultural produce (wheat) in the names of petitioners were in possession of Sri Sobaran Singh and produced by him, statement/report of the Lekhpal confirming possession of Sri Sobaran Singh over the land. Therefore, submission of learned counsel for the respondent is that on this basis, the authorities rightly concluded that the land was held ostensibly in the names of the petitioners.

12. Learned counsel for the respondents next submitted that Section 5 of the Ceiling Act uses the expression "land held ostensibly in the name of another person", which is distinct from "benami transaction". Therefore, clubbing under the Ceiling Act does not depend upon proving a benami transaction as defined under the 1988 Act.

13. Learned counsel for the respondents next submitted that the findings recorded are pure findings of fact, the High Court, in exercise of writ jurisdiction under Article 226, should not interfere with concurrent findings unless shown to be perverse or illegal, and no such ground has been made out by the petitioners.

14. Having heard the rival submissions of learned counsel for the parties, I have perused the material on record as well as law-report cited by learned counsel for the petitioner.

15. To resolve the controversy involved in the present writ petition, operative portion of the judgments relied upon by learned counsel for the petitioner is extracted here-in-below:

(i) Pritam Singh (supra):-

"21. Having given my anxious consideration I am clearly of the opinion that in the circumstances indicated hereinabove, in the present case, the presumption contemplated under II Explanation of Section 5 of the Ceiling Act could not be deemed to be available. As a consequence, in the absence of the presumption the onus to prove that the transfer effected on 11-8-1970 was a sham transaction or a transfer ostensible in nature where transferor had not divested himself of all interest and rights in praesentii in the transferred land and had reserved some benefits in future for himself or other person of his family had to be established by cogent evidence led by the State."

(ii) Som Nath Khanna (supra):

"19. It is further submitted that the findings are based on mere assumption, surmises and conjunctures. It is pointed out that from the perusal of the impugned order it would reveal; that the sole reason upon which the impugned order is based is that while the notices were issued, the same could not be served on any of the petitioners rather it was served on the care taker/agent of Ms. Asha Nanda and all the petitioners were living in Delhi, hence since Ms. Asha Nanda was in possession of all the land, hence they were clubbed in the hands of Ms. Asha Nanda."

32. Now relating to the submissions, relating to Writ-C No.3000025 (Ceiling) of 2005 is concerned, in light of the above noted facts and from the perusal of the impugned order, it would reveal that both the Prescribed Authority as well as Appellate Authority has proceeded on the premise that since notice was issued and received by and on behalf of Ms. Asha Nanda, hence it was found that the land relating to all the original petitioners namely, Som Nath Khanna, Madan Lal, Ms. Sangita Khanna and Sai Kiran were ostensible owner whereas possession was of Ms. Asha Nanda, Hence the same was clubbed together. 33. It would be relevant to notice that the nature of U.P Imposition of Ceiling Act, 1980 is a proprietary legislation by which land beyond the prescribed limit can be ex-proprietied by the State under the Act of 1960. In the aforesaid circumstances where the nature of the Act 1960 is such then the same has to be strictly construed. In case if the land of any record tenure holder is to be taken by the State in exercise of powers

under the Act 1960, then it would be State who has to establish that the condition prescribed in the Act are clearly met, failing which it cannot be assumed that the entries or the facts as appearing on record are incorrect."

(iii) Shishu Pal Singh (supra):-

"3.The learned Counsel for the petitioners submitted that the petitioners are not included within the term □family□ defined under Section 3(7) of the Act and in order to include their holding by placing reliance on Explanation-1 of Section 5 of the Act, heavy onus lies upon the State to prove that the holding was benami, i.e., □ostensibly in the name of any other person, though it is a land held by him in his own rights□. In the case in hand, the respondents have proceeded otherwise by observing that the petitioners did not produce any evidence to show that the land was not held by petitioner's father in his own rights and, therefore, the basic approach of the respondents is clearly erroneous, illegal and contrary to law. He has also placed reliance on a single judgment of this Court in Writ Petition No. 2315 of 1977□Banshi Singh□v.□District Judge, Moradabad□decided on 3-1-1979. The learned Standing Counsel opposed the submission and supported the reasons assigned by the respondents.

8.From the order of the appellate authority, it appears that he proceeded on the assumption that once notice under Section 10(2) of the Act has been issued based on the inquiry of the Lekhpal and Tahasildar etc. alleging that the noticee held certain holding in his own rights though ostensibly in the name of other, it is the liability of the noticee to prove otherwise. This approach is absolutely misconceived and contrary to law. Explanation-1 of Section 5 is in the nature of exception inasmuch normally every tenure holder is entitled to hold a land to the extent provided in the Act, but in a case where the land actually belongs to one but has been purchased in the name of some other person, that is a kind of benami transaction, in that case only to prevent such cases so as not to frustrate the very purpose of the Act, the explanation-1 has provided that such land shall be included in the holding area of a tenure holder, but to prove the existence of such fact, the onus lies on the State heavily and not otherwise. Explanation-1 read with Section 5 is very clear that neither it purports to add nor to limit the normal meaning of the expression □tenure-holder□ as defined in Section-3, sub-section (17) of the Act and, thus, clearly shows that the land must be held by the tenure holder in his own rights. In case, the State claims that any land is held ostensibly by the tenure holder, the onus lies upon the State to establish the same. A somewhat similar issue came up for consideration before a Division Bench of this Court in□Mohammad Abbas□v.□State of U.P., 1979 AWC 23 : (1979 All LJ 326). There two major sons of the tenure holder executed sale deeds on 12-5-1971, 7-9-1971 and 8-3-1972 transferring the entire land recorded in their names. Thereafter, the tenure holder claimed two additional hectares of land on the ground that his two major sons did not hold any land on the appointed date, i.e., 8-6-1973, but the said claim was rejected by the ceiling authorities holding that the transfer of land by major sons after 24-1-1971 was liable to be ignored as they could not establish that the sale deeds were executed in good faith and for adequate consideration. Referring to Section 5, sub-section (3) of the Act, the Court held that the ceiling area to which a tenure holder is entitled is fixed with reference to the number of members in the tenure-holder's family and land held by other members of the tenure-holder's family is to be aggregated with the land held by the tenure holder. The word □family□ as defined in the Act in relation to a tenure holder, means himself or herself and his wife

or her husband, as the case may be (other than a judicially separated wife or husband) minor sons and minor daughters (other than married daughters).

*9. It shows that the said definition does not include the major sons of the tenure holder. By virtue of Section 5(3), if the tenure holder is a male, land recorded in the name of his wife, provided she is not a judicially separated wife, and minor sons and minor daughters can be clubbed in determining the ceiling area which the tenure holder is entitled to retain. This shows that the land held by the major sons is not to be included in the holding of the tenure holder. The only possibility for including the said land, therefore, would have been if Explanation-1 of Section 5(1) would have been applicable, namely, if the land is ostensibly held by the tenure holder in the name of any other person, but for the said purpose, heavy burden lies upon the State to prove this fact. Considering this aspect of the matter with reference to Explanation-1 to Section 5(1) of the Act, another Division Bench of this Court in *Banshi Singh* (supra) wherein this Court held as under:*

“Explanation 1 of Section 5(1) clearly shows that when the State alleges that the land is ostensibly being held by a tenure-holder in the name of any other person which should be treated as the land belonging to the tenure-holder then the burden lies upon the State to prove this fact. Merely because in the notice the State has clubbed the land belonging to others under the pretext that it is being held ostensibly in the name of sons or any other person, the burden cannot be said to have been discharged. Once a notice under Section 10(2) is served upon the tenure-holder he has to show cause and while showing cause if the tenure-holder establishes by prima facie evidence by filing documents or by giving evidence that the land was being held by other persons in their own capacity, the burden shifts upon the State to establish the fact that the land is being held by the tenure-holder ostensibly in the name of others. In order to discharge this burden the State has to establish by some cogent and satisfactory evidence that the land is being held by the tenure-holder. Merely because the land has been clubbed in the land of petitioner No. 1 in the notice issued under Section 10(2) of U.P. Imposition of Ceiling on Land Holdings Act or merely because the Lekhpal gives a statement that the petitioner is in possession, is not sufficient to discharge that burden and to establish that the land was ostensibly being held by the tenure-holder in the name of others. In the present case petitioner No. 1 led evidence by showing that the names of the sons were entered in revenue records right from 1264-F and after the partition their names were entered separately on the basis of the partition decree. When the State was alleging that the land was being ostensibly held by petitioner No. 1, the State had to discharge that burden by giving cogent and satisfactory evidence. In the present case no such evidence was adduced and the mere statement of the Lekhpal was not sufficient to rebut the evidence and to hold that the land was being held ostensibly by petitioner No. 1 in the names of the sons.”

16. I have examined the material on record in the light of the judgment relied upon by learned counsel for the petitioners.

17. Upon careful examination of the entire material on record, submissions advanced by learned counsel for the parties, and the settled legal position, this Court arrives at the conclusion that it is an admitted position that the lands in question are recorded in the names of the petitioners as tenure holders in the revenue records. Such entries carry a presumption of correctness under law

unless rebutted by cogent, reliable and admissible evidence reference may be made to the case of **Shishupal (supra)**.

18. Moreover, the case set up by the State authorities for clubbing the land of the petitioners with that of opposite party no.4 is founded solely on the allegation that the holdings are ostensible or benami in nature. No documentary evidence, independent witness, or surrounding circumstances of a definite character have been brought on record to substantiate such allegation.

19. The entire findings recorded by the Prescribed Authority as well as the Appellate Authority rests upon the statement/report of the Lekhpal. It is trite law that such a report, in absence of corroborative evidence, cannot by itself discharge the heavy burden cast upon the State to establish that a transaction or holding is benami or ostensible.

20. The issue is no longer *res integra*. In **Som Nath Khanna (supra)**, this Court has categorically held that findings based merely on assumptions, such as service of notice or alleged possession of one person, without substantive evidence, are vitiated being based on surmises and conjectures. It has further been held that the Ceiling Act, being expropriatory in nature, must be strictly construed and the burden lies heavily upon the State to establish that the statutory conditions for clubbing are fully satisfied.

21. Similarly, in case of **Shishu Pal Singh (supra)**, it was held that where the State seeks to invoke Explanation to Section 5(1) of the Act by alleging that land is held ostensibly in the name of another, the burden squarely lies upon the State to prove such fact by cogent evidence. It has been further clarified that mere issuance of notice under Section 10(2) or reliance upon the report of revenue officials like the Lekhpal is not sufficient to discharge such burden.

22. The ratio of the aforesaid judgments applies fully to the present case. Here also, the authorities have proceeded on an erroneous premise that once an allegation is made in the notice, the burden shifts upon the petitioners to disprove the same. Such an approach is clearly contrary to the settled legal position.

In fact, the petitioners have discharged their initial burden by placing reliance upon revenue records showing their independent tenure holding and possession. Once such *prima facie* evidence was brought on record, the burden shifted upon the State to establish, by cogent and convincing evidence, that the holdings were in fact benami or ostensible. The State has failed to discharge this burden.

23. The reliance placed solely upon the statement of the Lekhpal, without any supporting evidence such as source of consideration, nature of possession, conduct of parties, or any indicia of benami transaction, renders the findings wholly perverse and legally untenable.

24. This Court also finds that the Appellate Authority has failed to exercise jurisdiction vested in it in accordance with law. Despite noticing discrepancies, it did not set aside the order of the Prescribed Authority nor remand the matter for fresh adjudication. Instead, it issued directions

to the Prescribed Authority to verify and modify its own order, which is an impermissible course and amounts to abdication of appellate jurisdiction.

25. The findings recorded by the authorities below are thus vitiated on the ground of absence of cogent evidence, misapplication of burden of proof, reliance on inadmissible/insufficient material, and failure to exercise jurisdiction in accordance with law. Consequently, the impugned orders cannot be said to be legally sustainable and are liable to be set aside.

26. Considering in totalities of facts and circumstances of the case, this writ petition is allowed. Order dated 28.12.1998 passed by opposite party no.2 in Appeal No. 335/93-94 and order dated 21.4.1994 passed by opposite party no.3, as contained in Annexure nos.1 and 2 respectively to this writ petition are hereby set aside.

27. Accordingly, this writ petition succeeds and is allowed.

28. No order as to costs.

(2026) 4 ILRA 1525
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 01.04.2026

BEFORE

THE HON'BLE IRSHAD ALI, J.

Writ C No. 3000096 of 2002

Nishar Ahmad Khan & Ors.

...Petitioner

Versus

State of U.P. & Ors.

...Respondents

ISSUE FOR CONSIDERATION

Whether the Prescribed Authority and appellate authority erred in declaring 13.657 acres irrigated land surplus despite High Court's remand order dated 12.01.1984, oral family settlement claim, and substitution of heirs.

Whether the impugned orders suffer from violation of natural justice and non-compliance with binding directions.

HEADNOTES

Civil Law - Constitution of India - Article 226, 227 - U.P. Imposition of Ceiling on Land Holdings Act, 1961 - Section 10(2): - Writ Petition under Article 226 – seeking quashing of order passed by prescribed authority under the U.P. Imposition of Ceiling on Land Holdings Act, and order of appellate order - whereby 13.657 acres irrigated land was declared surplus - petitioners pleaded that the land was ancestral, subject to oral family settlement, heirs were not duly substituted, and the Prescribed Authority failed to comply with the High Court's remand order, directing recalculation - respondents contended that proper notices were issued, heirs substituted, and recalculation done strictly in compliance with law - Court finds that,

substitution application was ignored, remand directions were not followed, and orders were passed without judicial application of mind - show violation of natural justice and disregard of binding precedents - held, both impugned orders are unsustainable, quashed - writ petition allowed - matter remanded for recalculation in terms of High Court's earlier directions – direction issued accordingly.

(Para – 22, 23, 24, 25, 26, 27)

WP Allowed. (E-11)

CASE LAW CITED

Wadood Ahmad v. ADJ, 2020 SCC OnLine All 1930

Jasraj Inder Singh v. Hemraj Multanchand, (1977) 2 SCC 155

LIST OF ACTS

Constitution of India - U.P. Imposition of Ceiling on Land Holdings Act, 1960

LIST OF KEYWORDS

Ceiling proceedings, surplus land, oral family settlement, substitution of heirs, remand order, natural justice, recalculation of land, supervisory jurisdiction

CASE ARISING FROM

Orders of Prescribed Authority dated 31.03.2001 and Commissioner dated 10.09.2002 affirming surplus land declaration under Ceiling Act.

APPEARANCE OF PARTIES

Counsel for Appellant(s): Shri Mohiuddin Khan,

Counsel for Respondent(s): Shri S.G. Singh, Standing Counsel - Shri Dinesh Chandra for allottee.

(Delivered by Hon'ble Irshad Ali, J.)

1. Heard Shri Mohiuddin Khan, learned counsel for the petitioners, Shri S.G. Singh, learned Standing Counsel for the respondents-State and Shri Dinesh Chandra, learned counsel for the subsequent allottee.

2. The present writ petition has been filed challenging the judgment and order dated 10.09.2002 passed by the Commissioner (opposite party no.2) whereby the appeal preferred by the petitioners has been dismissed and the order dated 31.03.2001 passed by the Prescribed Authority under the provisions of the U.P. Imposition of Ceiling on Land Holdings Act, 1960 has been affirmed.

3. The factual matrix of the case is that on 08.07.1974 a notice under Section 10(2) of UP Imposition of Ceiling on Land Holding Act was issued in which area held by the petitioner's father and grand-father of (petitioners no. 9 to 12) was shown 23.056 acres land un-irrigated equivalent to 13.697 acres irrigated land was proposed to be declared surplus and an area 29.400 acres irrigated land was held within the ceiling limits.

The petitioner's father and grand father of the petitioner no. 9 to 12 filed an objection with the allegation that the entire land is unirrigated ancestral land and 5 major sons were in existence on the date of vesting and thus they are the co-tenure holder along-with Gulam Mohammad Khan.

The Prescribed Authority (Opposite Party No. 3) dismissed the objections vide order dated 26.12.1974. Against the said order petitioner preferred an appeal in the Court of District Judge, Bahraich (Rent Appeal No. 32 of 1975) which was allowed and accordingly the order dated 26.12.1974 was set aside vide order dated 05.04.1975.

In a review application filed by OP No.1 the order dated 05.04.1975 was dismissed and the order dated 26.12.1974 was upheld vide order dated 18.09.1980.

The petitioner filed a writ petition 3026/80 in this Hon'ble Court which was allowed vide order dated 12.01.1984 with following direction : "*The writ petition is allowed and the order passed by the Distt. Judge dated 5.4.1975 Annexure Ho. 5) in review application is quashed and is directed to recalculate the land in accordance with laws*"

The matter was remanded back to the Prescribed Authority to recalculate the land of the petitioner in the light of order dt. 12.01.1984. The Prescribed Authority vide order dated 31.03.2001 declared 13.657 acres irrigated land equivalent to 20.485 acres unirrigated land as surplus. Against the order dated 31.03.2001 petitioners filed an appeal in the court of Commissioner, Devi Patan (OP No. 2) which was dismissed vide order dated 10.09.2002.

4. Learned counsel for the petitioners submits that the appellate Court has arbitrarily and illegally passed the judgment and order dated 10.9.2002 upholding the order dated 31.3.2001 passed by the opposite party no. 3 has been passed without giving opportunity of hearing to the petitioners and without applying its judicial mind at the time of passing the impugned order and without considering the pleas and arguments raised by the petitioners.

5. Learned counsel for the petitioners next submits that opposite party no. 3 has committed manifest error of law in not deciding the application for substitution of the legal heirs of late Abdul Wahab Khan and without substituting the sons of late Abdul Wahab and grandsons of Late Gulam Mohamaad Khan passed the impugned order dated 10.9.2002.

6. Learned counsel for the petitioner next submits that the Prescribed Authority vide order dated 26.12.1974 also rejected the plea of mutual partition cum family settlement on the ground that no documentary evidence to the said effect has been led whereas it is well settled principle that mutual partition and family settlement can be orally done and there is no necessity of reducing the same in writing.

7. Learned counsel for the petitioner submits that the Prescribed Authority passed the order dated 31.03.2001 without considering the facts of the order dated 12.1.1964 passed by this Hon'ble Court wherein it was held that the District Judge Bahraich allowed the review application under mistaken belief that the original tenure holder had four major sons and three sons are entitled to 6 hectare of land and as such even if the original tenure holder had 4 sons an area of 5.160 acre land was not reduced, the order passed by the District Judge in review application order dated 18.9.1980 thus deserves to be quashed, but the Prescribed Authority Ceiling Bahraich did not follow the remand order of the Additional Commissioner Faizabad nor the order dated 12.1.1984 passed by

this Hon'ble Court and without deducting the area of land and declared 13.657 acres irrigated land equivalent to 20.485 acres unirrigated land acres as surplus.

8. Learned counsel for the petitioner next submits that according to the petitioner, out of total surplus land, 0.461 acres has been shown as grove, 0.410 acres of land has been kept out of ambit of ceiling and in remaining land petitioners are entitled to retain 7.30 hectares in terms of irrigated land plus six hectare for 4 major sons and other family members and thus remains 8.09 acres land only and after excluding 5,160 only, 2.98 acres land allegedly remains surplus.

9. In support of his submissions, learned counsel has relied upon the following judgments:

(i) *Wadood Ahmad v. ADJ*, 2020 SCC OnLine All 1930

(ii) *Jasraj Inder Singh v. Hemraj Multanchand*, (1977) 2 SCC 155

10. On the other hand, learned counsel for the respondents submits that the orders passed by the authorities under the U.P. Imposition of Ceiling on Land Holdings Act, 1960 are legal, valid and passed in accordance with law.

11. Learned counsel for the respondents next submits that a notice under Section 10(2) of the Act was issued on 08.07.1974 to the tenure holder Ghulam Mohammad Khan, indicating that he possessed 43.057 acres of land (in terms of irrigated land). After calculating the permissible ceiling limit of the tenure holder and his family members 23.056 acres (unirrigated equivalent) were proposed to be declared surplus land. Accordingly, the Prescribed Authority/Additional District Magistrate (Finance and Revenue), Bahraich passed an order dated 02.12.1974 declaring the said land as surplus.

12. Learned counsel for the respondents next submits that the tenure holder filed Appeal No. 32/75 before the District Judge, Bahraich, which was dismissed on 18.09.1980. Thereafter, a writ petition was filed before the High Court, and by order dated 12.01.1984, the High Court directed the authorities to recalculate the land in accordance with the rules. In compliance with the High Court's direction and the order dated 22.04.1998 of the appellate authority, the land was recalculated. After recalculation, the total holding of the tenure holder was found to be 43.057 acres (irrigated equivalent). After deducting the permissible ceiling limit of 29.400 acres, 13.657 acres of irrigated land (equivalent to 20.485 acres unirrigated) was found to be surplus.

13. Learned counsel for the respondents next submits that after the death of the tenure holder, notices were duly served upon his legal representatives, who were substituted in the proceedings on the basis of the Tehsildar's inquiry report dated 23.04.1999. The legal representatives appeared on 26.09.2000 and 30.09.2000, but subsequently failed to appear, due to which ex-parte proceedings were conducted.

14. Learned counsel for the respondents next submits that the Prescribed Authority passed an order dated 31.03.2001 declaring 13.657 acres of irrigated land (20.485 acres unirrigated) of Gata No. 301M as surplus. Against this order, the legal representatives filed Appeal No. 21/2001

(Nisar Ahmad Khan & Others vs State), which was dismissed on 10.09.2002, and the order of the Prescribed Authority was affirmed.

15. Learned counsel for the respondents lastly submits that the State has contended that all proceedings were conducted after issuing proper notices, providing opportunity of hearing, and strictly in compliance with the directions of the High Court and the appellate authority. Therefore, the grounds taken in the writ petition are not tenable in law, and the writ petition is liable to be dismissed.

16. Having heard the rival submissions of learned counsel for the parties, I have perused the material available on record.

17. To resolve the controversy involved in the present writ petition, operative portion of judgment relied upon by learned counsel for the petitioner is extracted herein below:

(i) Wadood Ahmad (supra):

"17. On the issue, learned counsel for respondent No. 2 further relied upon a judgment rendered in the case of Shamshad Ahmad v. Tilak Raj Bajaj; (2008) 9 SCC 1 : (AIR 2008 Supp SC 526):

"38. Though powers of a High Court under Articles 226 and 227 are very wide and extensive over all courts and Tribunals throughout the territories in relation to which it exercises jurisdiction, such powers must be exercised within the limits of law. The power is supervisory in nature. The High Court does not act as a court of appeal or a court of error. It can neither review nor reappreciate, nor reweigh the evidence upon which determination of a subordinate court or inferior Tribunal purports to be based or to correct errors of fact or even of law and to substitute its own decision for that of the inferior court or Tribunal. The powers are required to be exercised most sparingly and only in appropriate cases in order to keep the subordinate courts and inferior Tribunals within the limits of law.

18. Learned counsel for respondent No. 2 relied upon aforesaid judgments to show that the findings recorded by the trial court on erroneous impression of legal position could be interfered with and the Revisional court can re-assess and record its findings. The case of Smt. Nattho (supra) relates to the revisional jurisdiction under Section 115 of the CPC, likewise, in the case of Ram Swaroop (supra), the provisions of Section 2(2) of Act No. 13 of 1972 were considered as well as in Hemlata Tripathi and Bhoopal Singh (supra), it was held that the finding regarding non-applicability of the Act are findings of fact. The judgment of the Apex Court in Shamshad Ahmad (supra) case relates to the bona fide requirement of the landlord.

19. On a careful consideration of the entire facts and the evidence on record as well as the case laws, it is now evident that this court after setting aside the findings recorded by the respondent No. 1 vide judgment dated 06.11.2006 regarding the question of rate of rent and applicability of U.P. Act No. 13 of 1972 and the entitlement of the petitioner for the benefit under

Section 20(4) of the Act, quashed the same and remanded the matter to the respondent No. 1 to decide the revision in accordance with the directions contained therein within two months.

20. The respondent No. 1 even without complying the order of remand passed by this court earlier, had again endorsed the same findings which in view of the law relied upon by counsel for the petitioner are beyond scope of the powers conferred on him under Section 25 of the Act"

(ii) Jasraj Inder Singh (supra):

"12. The remand order was undoubtedly binding on the lower court and had directed a limited enquiry and passing of a decree □ in favour of the party in whose favour the balance will be found due □. The High Court held that after the remand the learned trial Judge had no jurisdiction to look into the Bombay accounts as a whole and on account of the misapprehension of the observations of the remand order an illegal decree had been passed in favour of the plaintiff.

13. What was the misapprehension about? While directing a remand, the High Court ordered that Issue 6 should be decided by the trial court and this issue has been set out earlier by us. Naturally, the trial court took the view that the High Court, having ordered an adjudication of Issue 6, vested it with the jurisdiction to enquire into the Bombay accounts in toto and pass the decree that we have already indicated viz. a deduction of the surplus due to the defendant from the Bombay accounts from the amount due to the plaintiff from the defendant according to the Khamgaon accounts. The arithmetic is not in dispute and, indeed, while both the counsel have taken us through the evidence in the case we are satisfied that if both the Khamgaon and the Bombay accounts had to be gone into the decree passed was correct both regarding the quantum and on the issue of limitation. This we affirm because Shri Phadke had feebly pressed before us that in any case his client should be given a fresh opportunity to make out his case regarding the various entries in the Bombay khata. We are not satisfied that the defendant has not had a full say and we are therefore disinclined to accede to this request.

14. The surviving question before us is whether it was in order for the trial court to have investigated the accounts in the two shops together as if they were transactions between the same two persons or whether the remand order of the High Court at the first round had fettered the trial court's hands in doing justice in this comprehensive way. The suit is for a sum due on accounts. The parties are the same. There are two shops belonging to the same owner. The return of the income from the two shops, for income tax purposes, is a consolidated one. In short, there was only one person who owned two shops and it is wrong to construe the situation as if there were two juristic entities or personae. Secondly, the defendant, who dealt with the plaintiff in the two shops, was the same person. He had no dual characters to play. The dealings were either in one or in the other shop. They were business dealings between two businessmen, during the same period, and even inter-related, to such an extent that sometimes advances were made from one shop and realisations were made in the other shop. In short an artificial dissection of these transactions could not square up with the reality of the situation. Shri Phadke urged that one contract was one transaction and a set of contracts need not be necessarily brought up in the same action between the same parties. We consider that the true nature of the action here is a suit on accounts for the

sum due on striking a balance. That itself is the cause of action. Such a suit is not unfamiliar and such a cause of action may be made up of various minor transactions. Viewed at the micro level each may be a single contract. But viewed at the micro level as a suit on accounts, it is a single cause of action. If the present action is one on accounts and if the various entries in the two shops at Khamgaon and Bombay involve transfusion of funds and goods, there is no reason why we should not accept as sound the approach made by the trial court that the entirety of accounts in the two shops should be viewed as a composite one. It reduces litigation; it promotes the final financial settlement as between the parties; it has the stamp of reality. Otherwise it would be an odd distortion to grant a decree for the plaintiff for, say Rs 10,000 on the strength of the Khamgaon accounts while he owes the defendant Rs 50,000 according to the Bombay accounts. Order 8 Rule 6 CPC deals with a specific situation and does not prevent the court, where the facts call for wider relief, from looking into the accounts in both places to do ultimate justice between the parties. Procedure is the handmaid and not the mistress of justice and, in this spirit, the trial court's adjudication cannot be faulted.

15. *Be that as it may, in an appeal against the High Court's finding, the Supreme Court is not bound by what the High Court might have held in its remand order. It is true that a subordinate court is bound by the direction of the High Court. It is equally true that the same High Court, hearing the matter on a second occasion or any other court of coordinate authority hearing the matter cannot discard the earlier holding, but a finding in a remand order cannot bind a higher court when it comes up in appeal before it. This is the correct view of the law, although Shri Phadke controverted it, without reliance on any authority. Nor did Shri S.T. Desai, who asserted this proposition, which we regard as correct, cite any precedent of this Court in support. However, it transpires that in Lonankutty [Lonankutty v. Thomman, (1976) 3 SCC 528] this proposition has been affirmed. Viewed simplistically, the remand order by the High Court is a finding in an intermediate stage of the same litigation. When it came to the trial court and escalated to the High Court, it remained the same litigation. The appeal before the Supreme Court is from the suit as a whole and, therefore, the entire subject-matter is available for adjudication before us. If, on any other principle of finality statutorily conferred or on account of res judicata attracted by a decision in an allied litigation the matter is concluded, we too are bound in the Supreme Court. Otherwise, the whole lis for the first time comes to this Court and the High Court's finding at an intermediate stage does not prevent examination of the position of law by this Court. Intermediate stages of the litigation and orders passed at those stages have a provisional finality. After discussing various aspects of the matter, Chandrachud, J. speaking for the Court in Lonankutty [Lonankutty v. Thomman, (1976) 3 SCC 528] observed : (scc p. 535, para 23)*

“The circumstance that the remaining judgment of the High Court was not appealed against, assuming that an appeal lay therefrom, cannot preclude the appellant from challenging the correctness of the view taken by the High Court in that judgment.”

18. Perusal of the above-extracted judgments reveals that though the powers of a High Court under Article 226 and 227 are very wide and extensive over all courts and Tribunals throughout the territories in relation to which it exercises jurisdiction, such powers must be exercised within the limits of law. The power is supervisory in nature. The High Court does not act a court of appeal or a court of error. It can neither review nor reappreciate, nor reweigh the

evidence upon which determination of a subordinate court or inferior Tribunal purports to be based or to correct errors of fact or even of law and to substitute its own decision for that of the inferior court or Tribunal. The powers are required to be exercised most sparingly and only in appropriate cases in order to keep the subordinate courts and inferior Tribunals within the limits of law.

It also reveals that the remand order was undoubtedly binding on the lower court and had directed a limited enquiry and passing of a decree □in favour of the party in whose favour the balance will be found due□. It was held that after the remand the learned trial Judge had no jurisdiction to look into the matter as a whole.

19. Perusal of the record shows that an application for substitution of the legal heirs of late Abdul Wahab Khan had been filed. However, the Prescribed Authority proceeded to decide the matter without first determining the substitution application and without bringing the legal heirs on record. It is a settled principle that proceedings conducted without impleading the necessary parties, particularly legal heirs of a deceased party whose rights are directly affected, cannot be sustained in law. In this view of the matter, the order impugned is vitiated in law and has been passed without applying its judicial.

20. The orders impugned also reveal that earlier proceedings in the matter had culminated in a remand by the superior authorities. Once a remand order had been passed with specific directions, it was incumbent upon the Prescribed Authority to strictly adhere to those directions. The law in this regard has been clearly laid down by the Hon'ble Supreme Court in *Jasraj Inder Singh v. Hemraj Multanchand (supra)* where it has been held that the subordinate Court is bound by the remand order and cannot travel beyond its scope.

21. Similarly, this Court in the case of **Wadood Ahmad (supra)** reiterated that failure to comply with the directions issued in a remand order renders the subsequent order unsustainable. The judgments relied upon by the learned counsel for the petitioners are fully applicable to the facts and circumstances of the case

In the present case, it appears that the Prescribed Authority did not properly understand the directions issued in earlier proceedings nor examined the question regarding deduction of land as indicated by the superior authorities.

22. The Prescribed Authority, without considering the observation that Hon'ble Court declared 13.6547 acres irrigated land equivalent to 20.485 acres of unirrigated land as well as the observation that the initial 5.160 acres of land declared as surplus has to be reduced vide order dated 31.03.2001, passed the impugned order without application of judicial mind and is contrary to the observation made by the Hon'ble Court.

23. The Appellate Authority while affirming the order of the Prescribed Authority has also failed to examine these aspects and passed the impugned order in a cursory manner without taking into account the aspects narrated in the aforesaid paragraphs.

24. Both the Courts-Below have failed to re-calculate the land surplus in accordance with direction issued by this Hon'ble Court and hence not duly complied with the remand order, hence both the orders are liable to be set aside.

25. It is very strange that specific direction issued by the Hon'ble High Court has not been taken into account and ignored while passing the orders impugned by the Courts-Below. It is duty of the Courts Below that while passing any order by the Courts-Below, remand order passed by the Hon'ble High Court / Superior Authority must be taken into account and pass order in accordance with the direction issued by the Superior Authority.

26. Considering in totalities of facts and circumstances of the case, this Court is of the opinion that both the Courts-Below have passed the orders impugned without complying with the remand order of this Hon'ble Court dated 12.01.1984 in which a direction was specifically made to recalculate the land of the petitioners.

27. Accordingly, this writ petition succeeds and is allowed. Order dated 10.09.2002 passed by the Commissioner (opposite party no.2) and the order dated 31.03.2001 passed by the Prescribed Authority are quashed.

(2026) 4 ILRA 1533
APPELLATE JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 29.04.2026

BEFORE

THE HON'BLE ARUN BHANSALI, C.J.
THE HON'BLE KSHITIJ SHAILENDRA, J.

Special Appeal No. 1632 of 2013
 Alongwith
 Special Appeal No. 1634 of 2013
 Alongwith
 Special Appeal No. 388 of 2014

Javed Khan

...Appellant

Versus

State of U.P. & Ors.

...Respondents

Issue for Consideration

(1) Effect of not holding departmental enquiry before terminating the appointment, which was obtained by using forged certificate.

Headnotes

(A) Service law – Punishment – Termination – Appointment on the post of Excise Constable – Charge of using forged documents of educational qualification was leveled – Certificate of 'Adhikari Pariksha', not equivalent to High School Examination was used – Plea of not serving the copy of document, relied upon in the impugned order, was taken – Permissibility – Writ

petition was also dismissed confirming termination order – Validity challenged – Ground of not conducting departmental enquiry was taken – Permissibility: (E-1)

Held: Fraud vitiates even the most solemn act and fraud and justice never dwell together – Once the appellant had secured appointment based upon forged and fabricated certificates; other aspects of the matter including alleged equivalence of the two qualifications and examinations, become irrelevant – Termination of services of the appellant on the ground that he had obtained appointment based upon forged and fabricated documents, was in accordance with law and the learned Single Judge has not erred in dismissing the writ petition – Fraud and justice never dwell together and that in case the appointment has been obtained based upon forged and fabricated documents, services can be terminated without holding inquiry, we find absolutely no error, either of fact or law, in the order passed by the learned Single Judge. [Para 24, 25, 29 and 34]

Case Law Cited

Akanksha Gautam vs. State of U.P. and others, 2012 (6) ADJ 107; Dhanpal and others vs. State of U.P. and others, 2013 (8) ADJ 723 (FB); Riazul Hasan vs. State of U.P. and others, 2024 (6) ALJ 542; R. Vishwantha Pillai vs. State of Kerala and others, (2004) 2 SCC 105; Jainendra Singh vs. State of U.P., (2012) 8 SCC 748; Ishwar Dayal Sah vs. State of Bihar, 1987 Lab. I.C. 390; Indian Oil Corporation Ltd. vs. Rajendra D. Harmalkar, 2022 SCC OnLine SC 486; Union of India and others vs. M. Bhaskaran, AIR 1996 SC 686; Ram Chandra Singh vs. Savitri Devi and others, (2003) 8 SCC 319; The State of Andhra Pradesh & Anr. vs. T. Suryachandra Rao, JT 2005 (6) SC 391; A.V. Papayya Sastry & others vs. Government of A.P. & Ors., JT 2007 (4) SC 186; zanpatbhai Mahijibhai Solanki vs. State of Gujarat & others, JT 2008 (3) SC 452 – **referred to.**

List of Acts

Constitution of India – Article 311.

List of Keywords

Termination, Educational qualification, Documents, Forged and fictitious, Opportunity of hearing, Equivalence, Marksheet and certificate, Departmental enquiry, Reasoned decision, Explanation, Verification, Cancellation of appointment, Constitutional right, Misrepresentation, Misconduct, Fraud and justice.

Case Arising From

Judgment and order dated 03.10.2013 passed in Writ A No. 54819 of 2013, Javed Khan v. State of U.P. and Writ A No. 54821 of 2013, Nazeeb Ali v. State of U.P. and Judgment and order dated 25.02.2014 passed in Writ A No. 3689 of 2014, Mustaq Ullaha v. State of U.P. and others.

Appearances for Parties

Advs. for the Appellant: Siddharth Khare, Parashar Pandey.

Advs. for the Respondents: Ankit Gaur (S.C.).

(Delivered by Hon'ble Kshitij Shailendra, J.)

1. Heard Shri Siddharth Khare, learned counsel for the appellants and Shri Ankit Gaur, learned Standing Counsel for the respondents in all the appeals.

2. Whereas Special Appeal No.1632 of 2013 arises out of order dated 03.10.2013 passed by the learned Single Judge in Writ A No.54819 of 2013 (Javed Khan v. State of U.P. and 5 others), Special Appeal No.1634 of 2013 raises challenge to an identical order passed in Writ A No. 54821 of 2013 (Nazeeb Ali v. State of U.P. and 4 others) and Special Appeal No.388 of 2014 arises out of order dated 25.02.2014 passed in Writ A No.3689 of 2014 (Mustaq Ullaha v. State of U.P. and others).

3. Since controversy involved in all these appeals is identical, they are being decided by this common judgment. For the sake of convenience, Special Appeal No.1632 of 2013 is being treated as the leading one, however, slightly distinctive features of the remaining two special appeals shall be taken note of by us.

4. By the order dated 03.10.2013, learned Single Judge has dismissed Writ A No. 54819 of 2013 upholding the order dated 16.09.2013 passed by Deputy Commissioner Excise, Agra, whereby the appellant's representation against termination of his services had been rejected on the ground that the documents submitted by him pertaining to his educational qualifications had been found forged and fictitious in the inquiry conducted by the respondents.

5. Brief facts are that the appellant, after undergoing the process of selection, was appointed as Excise Constable by appointment order dated 14.10.2010 and he joined his duties. On 30/31.05.2013, the Deputy Commissioner Excise, Agra terminated his services against which he preferred a representation before the Deputy Commissioner Excise, Agra Region, Agra and also filed Writ Petition No.36360 of 2013 (Javed Khan v. State of U.P. and 2 others). The Writ Petition was disposed of by order dated 09.07.2013 with liberty to the appellant to approach the competent authority with supportive documents with a further direction to the authority to take a reasoned decision.

6. Pursuant to the liberty granted by this Court, the appellant preferred another representation dated 22.07.2013 before the authority annexing therewith 87 documents. All the representations were rejected by order dated 16.09.2013, against which the writ petition giving rise to the present appeal was filed and dismissed.

7. The authority has, after providing opportunity of hearing to the petitioner-appellant and after considering the explanation submitted by him and based upon the documents, found the certificate of □Adhikari Pariksha□ obtained by the petitioner in the year 2008 from Gurukul Vishwavidyalaya, Vrindavan, Mathura (in short □the University□) to be forged, fabricated and invalid. It was further observed that the □Adhikari Pariksha□ allegedly conducted by the said University was not equivalent to High School Examination conducted by the Board of Secondary Education and, consequently, termination of appellant was not interfered with.

8. Learned counsel for the appellant has made submissions that the order dated 16.09.2013 was based upon the documents, copies whereof were not served upon him and, therefore, the order cannot be sustained. On merits, it is contended that the appellant had produced marksheet and certificate of □Adhikari Pariksha□ (High School)-2008 issued by the University. Learned counsel also referred the record of marks obtained by various students including the appellant and submission has been made that once there was no dispute regarding validity of □Adhikari Pariksha□ (High School) conducted by the said University up to the year 2008, but it was declared invalid only after 2008, as held by this Court in **Akanksha Gautam v. State of U.P. and others : 2012 (6) ADJ 107**, declaring

the appellant's marksheet and certificate, which pertained to year 2008, as invalid, *was per se* illegal.

9. It is further submitted that the view taken by the authority while rejecting the representation that the □Adhikari Pariksha□ allegedly conducted by the said University was not equivalent to High School Examination conducted by the U.P. Board of Secondary Education, is in teeth of judgment of Full Bench of this Court in **Dhanpal and others v. State of U.P. and others : 2013 (8) ADJ 723 (FB)** and, for this reason also, the order impugned in the writ petition was liable to be set aside. Reliance has also been placed upon judgment of this Court in **Riazul Hasan v. State of U.P. and others : 2024 (6) ALJ 542**.

10. It is lastly submitted that once the appellant was duly appointed on the post of Excise Constable, termination of his services being stigmatic, could not be resorted to without holding a full fledged departmental inquiry.

11. *Per contra*, learned Standing Counsel has made submissions that it is not a case where appellant was not afforded any opportunity of hearing, rather the order dated 16.09.2013 itself indicates that not only his explanation was considered but also he was personally heard and the order was passed based upon inquiry conducted by the department, wherein it stood reflected that no academic activities were held in the Institution wherefrom the appellant had obtained certificate, for the period w.e.f. 2008 onwards nor any examinations had been conducted during the said period. Further submission has been made that during inquiry, no record of even recognition allegedly granted to B.L. Vidya Mandir, Devnagar, Jheel ka Purva, District-Banda on 16.04.2005 had been found and, therefore, conclusion drawn by the authority that documents produced by the appellant were forged and fabricated, cannot be faulted.

12. It is further submitted that fraud vitiates everything and once it has been found that the appellant had obtained appointment based upon forged and fabricated documents, no departmental inquiry was required. Reliance has been placed on judgment of Hon'ble **Supreme Court in R. Vishwantha Pillai v. State of Kerala and others : (2004) 2 SCC 105**.

13. We have considered the submissions made and have perused the material available on record.

14. The order dated 16.09.2013, impugned in the writ petition was passed in furtherance of the order passed by this Court in Writ A No.36360 of 2013, wherein this Court had directed the authority to take a reasoned decision on appellant approaching the authority. The order dated 16.09.2013 clearly indicates that the appellant was granted opportunity to offer his explanation and for personal hearing, 27.06.2013 was fixed, on which date the appellant filed various documents.

15. The authority has observed that before the documents presented by the appellant could be verified, he preferred writ petition before the High Court and during the course of verification of the marksheet of the appellant pertaining to the examinations of

2008, it stood revealed that all the evidences produced by the appellant had not been issued by or received from the University. The order further indicates that no Registrar was appointed in the Institution during the relevant period of time, however, the letter pad and even seal of Registrar had been utilized for the purposes of procuring documents.

16. It has further been recorded that the officer had personally contacted the Arya Pratinidhi Sabha, U.P., 5- Meerabai Road, Lucknow and, on inquiry, it was found that no head of the said Sabha was appointed. In relation to the same, letter dated 16.04.2009 issued by Justice S.C. Verma, retired Judge of this Court, who was acting as receiver in the Arya Pratinidhi Sabha, was relied on, wherein it was indicated that on account of managerial dispute in relation to the Society, no academic activities had been conducted in the Institution or in any related Colleges and no examinations had been held.

17. The order further indicates that a document of recognition to the B.L. Vidya Mandir, Dev Nagar, Jheel ka Purva, District Banda, allegedly dated 16.04.2005 had been produced, however, on query, the Vice Chancellor of the University had informed that the documents did not pertain to the Institution nor was there any evidence to demonstrate that the same were issued from the Institution and, consequently, the documents produced were found to be forged.

18. After recording various findings regarding production of forged and fabricated documents by the appellant, the authority has concluded that the appellant had procured appointment on the post of Excise Constable based upon forged and fabricated documents and, further, □Adhikari Pariksha□ allegedly conducted by the said University was not equivalent to High School Examination conducted by the Board of Secondary Education.

19. As far as the documents referred to by learned counsel for the appellant to demonstrate as if the marksheet and certificate of □Adhikari Pariksha□ held in 2008 were issued to the appellant and that the record of the University reflects his participation in the examinations held, along with other candidates, we could have elaborated the implication of the contents of those documents, however, once we are satisfied that the documents have already been found as forged and fabricated pursuant to extensive inquiry held by the authorities which we are not inclined to discard merely on the plea that copies of the documents relied upon were not served upon the appellant, we need not delve into the contents of the certificates or other documents.

20. The relied upon documents form part of the counter affidavit filed on behalf of the respondents and the Court deems it appropriate to refer to one of such documents, being letter dated 16.04.2009 issued by (Retired) Justice S.C. Verma, indicating issuance of fabricated certificate. The said letter reads as under:-

कल्याण 1888 ई०
पंजीकरण तिथि-5 जनवरी, 1907

श्रीमद्दय नन्दाय
14

0522-05

आर्य प्रतिनिधि सभा उत्तर प्रदेश

न्यायमूर्ति (अ.प्रा.)
एस०सी०वर्मा
रिसीवर

श्री नारायण स्वामी-भवन

5, मीराबाई
लखनऊ-2260

पत्रांक 91

दिनांक 16-04-

कार्यालय - आर्य प्रतिनिधि सभा उ०प्र० 5-मीराबाई मार्ग लखनऊ

जिससे भी संबंधित हो

गुरुकुल विश्वविद्यालय वृन्दावन, मथुरा आर्य प्रतिनिधि सभा उ०प्र० 5 - मीराबाई मार्ग लखनऊ द्वारा संचालित एक शिक्षण संस्था है। इसके द्वारा आयोजित अधिकारी परीक्षा (कक्षा 10) के माध्यमिक शिक्षा परिषद उ०प्र० इलाहाबाद द्वारा हाई स्कूल समकक्ष मान्यता प्राप्त थी। गुरुकुल विश्वविद्यालय वृन्दावन, मथुरा की स्वामिनी संस्था आर्य प्रतिनिधि सभा उ०प्र० की प्रबंध समिती के वर्ष 2003 में आपसी विवाद के कारण गुरुकुल विश्वविद्यालय वृन्दावन, एवं उससे सम्बंधित विद्यालयों में किसी प्रकार का पठन-पाठन का कार्य नहीं हुआ है। जिस कारण किसी भी प्रकार की परीक्षाओं का संचालन नहीं हुआ है।

अद्योहस्ताक्षरी के सज्ञान में आया है कि विगत वर्ष 2003 से अनेक व्यक्तियों द्वारा अपने को गुरुकुल विश्वविद्यालय वृन्दावन, का पदाधिकारी बताते हुए एक ही वर्ष में अनेक व्यक्तियों के द्वारा अधिकारी/पंडित परीक्षा के प्रमाण पत्र जारी किये जाने के कारण शासन ने शासनादेश संख्या -2085/15-7-08-1(139)/05 दिनांक 08 सितम्बर 2008 द्वारा उक्त अधिकारी परीक्षा की मान्यता को भी समाप्त कर दिया है।

उपरोक्त के अतिरिक्त गुरुकुल विश्वविद्यालय वृन्दावन मथुरा की पंडित परीक्षा (कक्षा-12) की किसी भी बोर्ड/शिक्षा परिषद द्वारा मान्यता प्राप्त नहीं है।

अतः आपको सूचित किया जात है कि गुरुकुल विश्वविद्यालय वृन्दावन मथुरा, की अधिकारी एवं पंडित परीक्षा के जो भी प्रमाण-पत्र वर्ष 2003 के बाद जारी किये गये हैं, पूर्ण रूपेण अवैध/फर्जी हैं यदि कोई व्यक्ति उक्त फर्जी प्रमाण-पत्र प्राप्त करता है तो संस्था आर्य प्रतिनिधि सभा उ०प्र० का कोई उत्तरादायित्व नहीं होगा और न ही अ. प्रतिनिधि सभा उ०प्र० द्वारा उक्त फर्जी प्रमाण-पत्रों का सत्यापन किया जायेगा।

भवदीय
न्यायमूर्ति एस०सी०वर्मा
मू०पू० लोकायुक्त
रिसीवर
आर्य प्रतिनिधि सभा उ०प्र०,
5-मीराबाईमार्ग लखनऊ।
दिनांक 16/4/2009

16/4/2009

21. The Hon'ble Supreme Court in **Jainendra Singh v. State of U.P. : (2012) 8 SCC 748** held that fraudulently obtained orders of appointment could be legitimately treated as voidable at the option of the employer or could be recalled by the employer and, in such cases, merely because

the employee has continued in service for a number of years on the basis of such fraudulently obtained employment, he cannot get any equity in his favour or any estoppel against the employer.

22. The Hon'ble Supreme Court, in the case of **R. Vishwantha Pillai** (supra), has laid down that where an appointment in service had been acquired by practising fraud or deceit, such appointment is no appointment in law and in such a situation, Article 311 of the Constitution of India is not attracted. The Hon'ble Supreme Court reiterated the view taken by the Division Bench of Patna High Court in *Ishwar Dayal Sah v. State of Bihar* : 1987 Lab. I.C. 390 and observed that in that case, the employee had obtained appointment by producing a caste certificate indicating that he belonged to a Scheduled Caste community which, later on, was found to be false and the appointment was cancelled. It was contended by the employee before the Patna High Court that the cancellation of appointment amounted to removal from service within the meaning of Article 311 of the Constitution and, therefore, void and that he could not be terminated from service without holding departmental inquiry as provided under the Rules. Dealing with the above contention, the High Court had held that if the very appointment to the civil posts is vitiated by fraud, forgery or crime or illegality, it would necessarily follow that no constitutional rights under Article 311 of the Constitution can possibly flow and if the very entry or the crossing of threshold into the area of the civil service of the State or the Union is put in issue and door is barred against him, the cloak of protection under Article 311 is not attracted.

23. On similar lines, the Hon'ble Supreme Court, in **Indian Oil Corporation Ltd. v. Rajendra D. Harmalkar** : 2022 SCC OnLine SC 486, has held that the production of a fake document in a selection process is sufficient to invoke action, notwithstanding the intention of the applicant. Similarly, in **Union of India and others v. M. Bhaskaran** : AIR 1996 SC 686, it has been held that when an appointment is procured on the basis of bogus and forged causal labourer service card, it would amount to misrepresentation and fraud on the employer. Therefore, it would create no equity in favour of the workman or any estoppel against the employer and for such misconduct, termination would be justified without any domestic inquiry.

24. It is well settled that fraud vitiates even the most solemn act and fraud and justice never dwell together. Reference, in this regard, can be made to judgments of Hon'ble Supreme Court in **Ram Chandra Singh v. Savitri Devi and others** : (2003) 8 SCC 319, **The State of Andhra Pradesh & Anr. v. T. Suryachandra Rao** : JT 2005 (6) SC 391, **A.V. Papayya Sastry & others v. Government of A.P. & Ors.** : JT 2007 (4) SC 186 and **Ganpatbhai Mahijibhai Solanki v. State of Gujarat & others** : JT 2008 (3) SC 452.

25. As far as arguments based upon the Full Bench decision of this Court in the case of *Dhanpal* (supra) qua equivalence of □Adhikari Pariksha□ with High School examination conducted by the U.P. Board of Secondary Education, we need not go into the said aspect of the matter as we are satisfied that once the appellant had secured appointment based upon forged and fabricated certificates; other aspects of the matter including alleged equivalence of the two qualifications and examinations, become irrelevant.

26. For all the aforesaid reasons, we are not inclined to interfere with the order passed by the learned Single Judge.

27. The appeal has no merit and the same is, accordingly, **dismissed**.

Special Appeal No.1634 of 2013

28. This special appeal is directed against order dated 03.10.2013 whereby the learned Single Judge has dismissed Writ A No. 54821 of 2013 (Nazeeb Ali v. State of U.P. and 4 others).

29. The facts of the present case are identical to the one involved in Special Appeal No.1632 of 2013 as also submitted by learned counsel for the appellant. Therefore, we are of the view that termination of services of the appellant on the ground that he had obtained appointment based upon forged and fabricated documents, was in accordance with law and the learned Single Judge has not erred in dismissing the writ petition.

30. For the reasons stated in the order deciding Special Appeal No.1632 of 2013, the present appeal also stands **dismissed**.

Special Appeal No.388 of 2014

31. This appeal has been filed challenging the order dated 25.02.2014 whereby learned Single Judge has dismissed Writ A No.3689 of 2014 (Mustaq Ullah v. State of U.P. and 2 others).

32. The writ petition was filed challenging the order dated 26.12.2013 whereby the Deputy Excise Commissioner, Mirzapur, Region Mirzapur had terminated services of the appellant on identical grounds of forged certificates and marksheets having been utilized for the purposes of obtaining appointment on the post of Excise Constable.

33. Present appeal was filed subsequent to filing of Special Appeals No.1632 of 2013 and 1634 of 2013 and reliance was placed on interim orders dated 30.10.2013 passed therein. Apparently, the cause agitated in the present appeal is identical to the one involved in two other special appeals and once no distinctive features are apparent on the face of record as far as obtaining appointment based upon the documents issued from the University etc., as already discussed in our order passed in Special Appeal No.1632 of 2013, we are inclined to take same view in the present appeal also.

34. We may, however, mention that though in other two appeals, the writ petitions were dismissed by learned Single Judge by one page order, the order impugned in the present appeal is quite detailed one wherein the learned Single Judge, after discussing the documents on record, has recorded findings regarding production of forged certificates and other documents and, after referring to various judgments of Hon'ble Supreme Court on the proposition that fraud and justice never dwell together and that in case the appointment has been obtained based upon forged and fabricated documents, services can be terminated without holding inquiry, we find absolutely no error, either of fact or law, in the order passed by the learned Single Judge.

35. Consequently, the present appeal also fails and is, accordingly, **dismissed**.

(2026) 4 ILRA 1541
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 17.04.2026

BEFORE

THE HON'BLE RAJNISH KUMAR, J.
THE HON'BLE MRS. BABITA RANI, J.

Application U/S 378 No. 30 of 2024

State of U.P.

...Applicant
Versus

Shubham Srivastava & Ors.

...Opposite Party

Issue for Consideration

Whether the victim and his father have corroborated the date, time, place, and manner of offence and have proved the case beyond reasonable doubt, but learned Trial Court, discarding the evidence of best witness/victim, has recorded unreasonable finding and same is required to be interfered by this court by granting leave to appeal.

Head Notes

The Indian Penal Code, 1860- Sections 377, 504 & 506; The Protection of Children from Sexual Offences Act, 2012- Sections 3 & 4; The Code of Criminal Procedure, 1973-Section 378(3)- That offence was said to have been committed on 09.04.2020 and medical was conducted on 16.04.2020, and therefore, there may not be a chance of having found any injury on his person by that time after a gap of almost seven days. But the fact remains that it was the burden of the prosecution to explain as to why the First Information Report was not registered immediately after commission of the offence and same is best known to the complainant- Only fact established on record is that the prosecution version is not supported by the medical evidence, which may be best piece of evidence to show the complicity of accused in commission of offence- There is no dispute that the samples preserved by PW4 were not sent for DNA testing. Therefore, the medical evidence is not in support of the version of prosecution and the applicants have failed to point out any prima facie fault in the appreciation of medical evidence by the learned Trial Court

Defence from the very inception that complainant was tenant of accused's father and was under the obligation to pay the outstanding arrears of electricity charges pending against him, due to which there was heated exchange of words between the complainant and father of accused and in order to avoid the liability of payment, present malicious prosecution has been launched against him-The elder brother of the victim has been shown as eyewitness of the occurrence, but he was not examined as witness by the prosecution- Victim has blown hot and cold in same breath and light of admission made by PW1, even if at a time it appeared that he corroborated the story of prosecution, possibility cannot be ruled out that the child has been tutored to depose against the accused and he is susceptible to be won over due to his tender age. If for the sake of argument, it is assumed that some offence has been committed with the victim, then also finding recorded by learned Trial Court that this child deposed at different places differently and observed him not to be reliable witness, has guaranteed the presumption of innocence of the accused, which cannot be taken away without any concrete and plausible evidence.

Held- Nothing adverse has been brought on record by the prosecution to hilt which may leave the tinge of doubt-Memorandum of appeal does not survive and stands dismissed. (E-15)

Case Law Cited

Ramesh and Others v. State of Haryana; (2017) 1 SCC 529; Jafarudheen vs State Of Kerala, (2022) 8 SCC 440; Rajpal Singh v. Rajveer & Others; 2025 SCC OnLine SC 2823; Manoj Rameshlal Chhabriya v. Mahesh Prakash Ahuja & Another; 2025 SCC OnLine SC 451;

List of Acts

The Indian Penal Code, 1860; The Protection of Children from Sexual Offences Act, 2012; The Code of Criminal Procedure, 1973

List of Keywords

Section 378 (3); CrPC; Nothing adverse; On record by prosecution; To hilt which may leave the tinge of doubt

Case Arising From

Prayer in this instant criminal miscellaneous application filed by state under Section 378(3) of the Code of Criminal Procedure, 1973, is to seek leave to appeal against the impugned order and judgement of acquittal of sole respondent passed by the learned Trial Court in Sessions Trial No. 50/2020, arising out of Case Crime Number 293/2020, under Sections 377, 504, 506 of Indian Penal Code, 1860 and Section 3/4 of Protection of Children from Sexual Offences Act, 2012, in Police Station, Kotwali Nagar, District, Faizabad

Appearances for Parties

Counsel for Applicant(s) : G.A.

Counsel for Opposite Party(s) :

(Delivered by Hon'ble Mrs. Babita Rani, J.)

1. Heard learned Additional Government Advocate for the State-applicant.

2. Prayer in this instant criminal miscellaneous application filed by state under Section 378(3) of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'CrPC' for brevity), is to seek leave to appeal against the impugned order and judgement of acquittal of sole respondent (hereinafter referred to as 'accused') passed by the learned Trial Court in Sessions Trial No. 50/2020, arising out of Case Crime Number 293/2020, under Sections 377, 504, 506 of Indian Penal Code, 1860 (hereinafter referred to as 'IPC' for brevity) and Section 3/4 of Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as 'POCSO' for brevity), in Police Station, Kotwali Nagar, District, Faizabad.

3. Brief facts of the case relevant for the purpose of disposal of this application are that on 15.04.2020 at about 20:58 hours, the First Information Report bearing number 293/2020 was registered against the accused in Police Station, Kotwali Nagar, Ayodhya, under Sections 377/504/506 of IPC and Section 3/4 of POCSO, on the basis of the written tehrir Ex.Ka.1 submitted by the informant, Vinay Kumar, with the averments that he, along with his family, has been residing in the tenanted premises and on 09.04.2020, at about 10:00 AM, when his elder son Matadin reached on the roof, he saw that accused Shubham was committing unnatural offence with his minor son 'X' aged about seven years. On being confronted by Matadin, the accused started abusing Matadin and threatened to eliminate him. PW5, constable Vijay Kumar Pandey, registered

the First Information Report against the accused and same was entered in the general diary of the police station.

4. Investigation was thereafter carried out by PW6 sub- Inspector Vijayant Mishra. During investigation, he recorded the statement of informant, victim and other factual witnesses. The medical examination of the victim was conducted and statement of the concerned doctor was also recorded. After collecting the entire material, finding prima facie incriminating evidence against the accused and completing the entire formalities, the charge-sheet under Sections 377/504/506 of IPC and Section □ of POCSO, was filed before the court concerned. Learned Trial Court, taking cognizance of the offences, committed the case to the Court of Sessions for the trial. Learned Trial Court framed the charges against the accused in the aforementioned sections, to which the accused pleaded not guilty and claimed trial.

5. The prosecution opened its case and examined PW1 informant Vinay Kumar, PW2 victim of the case, PW3 Qasim Mehendi, principal of the School who produced and proved the age of victim at the time of occurrence, as well as PW4 Dr Dharmendra Rao. Apart from above factual witnesses, PW5, constable Vijay Kumar Pandey and sub-inspector, Vijayant Mishra, investigating officer PW6, were also examined as prosecution witnesses.

6. After conclusion of prosecution evidence, the statement of accused was recorded under Section 313 of CrPC, in which the accused stated that he has been falsely implicated due to the non-payment of rent and electricity bill arrears and dispute between the informant and his father. In order to avoid the payment of outstanding rent arrears, a false story had been cooked up against him only to pressurise him and extort money. The accused was given opportunity to adduce the evidence oral as well as documentary in support of his innocence, but accused chose not to lead any evidence, and consequently, his opportunity was closed.

7. Learned Trial Court, after hearing the arguments advanced by both the parties and considering the facts, circumstances and evidence available on record, passed the impugned order and judgement acquitting the accused from the charges levelled against him, which the state intends to challenge in appeal, and hence the instant leave to appeal has been filed.

8. While pressing the application under Section 378(3) of CrPC, learned Additional Government Advocate submitted that acquittal of accused vide impugned order and judgement, carries substantial irregularity and illegality and the same has been passed ignoring the evidence available on the record. Further contention is that the impugned judgement leads to patent miscarriage of justice and the accused has been granted benefit of doubt considering the trivial ground of delayed FIR, non-examination of independent witness and minor discrepancies arising out of statements of PW1 and PW2 and heavily relying upon the defence of the accused, which is erroneous and tantamount to grave miscarriage of justice with the victim and his family. Further contention is that at the time of occurrence, the age of victim was of seven years and accused, while taking advantage of his tender age and non-opposition, committed the grave and serious offence which certainly would have been imprinted in the mind and memory of the victim forever. Such type of offences against the children not only ruins their future but also weakens the society. In the instant case, the victim and his father have corroborated the date, time, place, and manner of

offence and have proved the case beyond reasonable doubt, but learned Trial Court, discarding the evidence of best witness/victim, has recorded unreasonable finding and same is required to be interfered by this court by granting leave to appeal. Concluding the arguments, it has been stated that the prosecution has proved its case beyond reasonable doubt in chapter and verse, and therefore, there are good chances of success in appeal and hence, the instant application deserves to be allowed.

9. We have heard the arguments of the state and perused the record minutely and meticulously.

10. Before advertng to the facts of the instant case, it may be beneficial to refer to the following pronouncements which deal with the scope of interference with a judgment of acquittal at the appellate stage.

11. In *Ramesh and Others v. State of Haryana*; (2017) 1 SCC 529, the Hon'ble Supreme Court made the following observations:

"24. We have duly appreciated the submissions advanced by counsel for the parties on both sides. No doubt, the High Court was dealing with the appeal against the judgment of the trial court which had acquitted the appellants herein. The scope of interference in an appeal against acquittal is undoubtedly narrower than the scope of appeal against conviction. Section 378 of the Code of Criminal Procedure, 1973 confers upon the State a right to prefer an appeal to the High Court against the order of acquittal. At the same time, sub-section (3) thereof mandates that such an appeal is not to be entertained except with the leave of the High Court. Thus, before an appeal is entertained on merits, leave of the High Court is to be obtained which means that normally judgment of acquittal of the trial court is attached a definite value which is not to be ignored by the High Court. In other words, presumption of innocence in favour of an accused gets further fortified or reinforced by an order of acquittal. At the same time, while exercising its appellate power, the High Court is empowered to reappreciate, review and reconsider the evidence before it. However, this exercise is to be undertaken in order to come to an independent conclusion and unless there are substantial and compelling reasons or very strong reasons to differ from the findings of acquittal recorded by the trial court, the High Court, as an appellate court in an appeal against the acquittal, is not supposed to substitute its findings in case the findings recorded by the trial court are equally plausible.

26. This legal position is reiterated in *Govindaraju v. State* (2012) 4 SCC 722 and the following passage therefrom needs to be extracted: (SCC p. 732, paras 12-13)

12. The legislature in its wisdom, unlike an appeal by an accused in the case of conviction, introduced the concept of leave to appeal in terms of Section 378 CrPC. This is an indication that appeal from acquittal is placed on a somewhat different footing than a normal appeal. But once leave is granted, then there is hardly any difference between a normal appeal and an appeal against acquittal. The concept of leave to appeal under Section 378 CrPC has been introduced as an

additional stage between the order of acquittal and consideration of the judgment by the appellate court on merits as in the case of a regular appeal. Sub-section (3) of Section 378 clearly provides that no appeal to the High Court under sub-section (1) or (2) shall be entertained except with the leave of the High Court. This legislative intent of attaching a definite value to the judgment of acquittal cannot be ignored by the courts.

13. Under the scheme of CrPC, acquittal confers rights on an accused that of a free citizen. A benefit that has accrued to an accused by the judgment of acquittal can be taken away and he can be convicted on appeal, only when the judgment of the trial court is perverse on facts or law. Upon examination of the evidence before it, the appellate court should be fully convinced that the findings returned by the trial court are really erroneous and contrary to the settled principles of criminal law."

12. In *Jafarudheen vs State Of Kerala*, (2022) 8 SCC 440, the Hon'ble Supreme Court made the following observations:

"25. While dealing with an appeal against acquittal by invoking Section 378 of the Cr.PC, the Appellate Court has to consider whether the Trial Court's view can be termed as a possible one, particularly when evidence on record has been analyzed. The reason is that an order of acquittal adds up to the presumption of innocence in favour of the accused. Thus, the Appellate Court has to be relatively slow in reversing the order of the Trial Court rendering acquittal. Therefore, the presumption in favour of the accused does not get weakened but only strengthened. Such a double presumption that enures in favour of the accused has to be disturbed only by thorough scrutiny on the accepted legal parameters."

13. In *Rajpal Singh v. Rajveer & Others*; 2025 SCC OnLine SC 2823, the Hon'ble Supreme Court held that even where the appellate court re-appreciates the evidence while dealing with a judgment and order of acquittal, the innocence attributed to the accused acquitted from the charges of offences would be a weighty rebuttable factor. The relevant paragraph 9.2 is extracted here-in-below:

"9.2 It is a well-settled principle enunciated by series of judgments of this Court that there must exist "substantial and compelling reasons" to upset the acquittal. Once the court acquits the accused, the presumption of innocence is reinforced. Thereafter, the interference by the appellate court would be minimal and has to be guided by strong and cogent reasons. Reversal of acquittal should not be a matter of course just because the other view is considered to be possible by the appellate court. Even when the appellate court re-appreciates the evidence while dealing with the judgment and order of acquittal, the innocence attributed to the accused acquitted from the charges of offences would be a weighty rebuttable factor."

14. In *Manoj Rameshlal Chhabriya v. Mahesh Prakash Ahuja & Another*; 2025 SCC OnLine SC 451 the Hon'ble Supreme Court made the following observations regarding the parameters that must be considered while dealing with the applications seeking leave to appeal under Section 378 of CrPC:

"7. The question as to how the application for grant of leave to appeal filed under Section 378(3) of the Cr.P.C. should be decided by the High Court and what are the parameters which the High Court should keep in mind remains no longer *res integra*. This issue was examined by this Court in *State of Maharashtra v. Sujay Mangesh Poyarekar* reported in (2008) 9 SCC 475. C.K. Thakker, J. speaking for the Bench held in paras 19, 20, 21 and 24 respectively as under:

"19. Now, Section 378 of the Code provides for filing of appeal by the State in case of acquittal. Sub-section (3) declares that no appeal "shall be entertained except with the leave of the High Court". It is, therefore, necessary for the State where it is aggrieved by an order of acquittal recorded by a Court of Session to file an application for leave to appeal as required by subsection (3) of Section 378 of the Code. It is also true that an appeal can be registered and heard on merits by the High Court only after the High Court grants leave by allowing the application filed under sub-section (3) of Section 378 of the Code.

20. In our opinion, however, in deciding the question whether requisite leave should or should not be granted, the High Court must apply its mind, consider whether a *prima facie* case has been made out or arguable points have been raised and not whether the order of acquittal would or would not be set aside.

21. It cannot be laid down as an abstract proposition of law of universal application that each and every petition seeking leave to prefer an appeal against an order of acquittal recorded by a trial court must be allowed by the appellate court and every appeal must be admitted and decided on merits. But it also cannot be overlooked that at that stage, the court would not enter into minute details of the prosecution evidence and refuse leave observing that the judgment of acquittal recorded by the trial court could not be said to be "perverse" and, hence, no leave should be granted.

xxx xxx xxx

24. We may hasten to clarify that we may not be understood to have laid down an inviolable rule that no leave should be refused by the appellate court against an order of acquittal recorded by the trial court. We only state that in such cases, the appellate court must consider the relevant material, sworn testimonies of prosecution witnesses and record reasons why leave sought by the State should not be granted and the order of acquittal recorded by the trial court should not be disturbed. Where there is application of mind by the appellate court and reasons (may be in brief) in support of such view are recorded, the order of the court may not be said to be illegal or objectionable. At the same time, however, if arguable points have been raised, if the material on record discloses deeper scrutiny and reappraisal, review or reconsideration of evidence, the appellate court must grant leave as sought and decide the appeal on merits. In the case on hand, the High Court, with respect, did neither. In the opinion of the High Court, the case did not require grant of leave. But it also failed to record reasons for refusal of such leave.

12. We are of the view that at the stage of considering grant of leave under sub-section (3) of Section 378 of the Cr.P.C., a prima facie case should be looked into by the High Court, of course, not ignoring the materials on record."

15. In the wake of above case laws and bare perusal of Section 378(3) of CrPC, it is needless to say that Section 378(3) casts a restriction that has been put on the entertainment of appeal by imposing a condition that leave of the High Court should first be obtained before any such appeal is entertained and before granting the leave, High Court is permitted to review and reconsider the evidence placed on record by the prosecution and while refusing leave to appeal, it shall indicate the reasons for the refusal. Generally, the order of acquittal passed by the court shall not be interfered with because the presumption of innocence of accused is further strengthened by acquittal and it is to be interfered only when there are compelling and substantial reasons for doing so. Further, if the evaluation and appreciation of evidence by the Trial Court does not suffer from illegality, manifest error or perversity and the main grounds on which it has based its finding is reasonable and plausible, the High Court should not disturb the order of acquittal even if another view is possible. The High Court has to determine whether a prima facie case is made out warranting interference in the order of acquittal or not and only where any prima facie arguable points are made out, the leave to appeal must be granted.

16. Now, we have to see the evidence on record and whether the findings made by learned trial court bears any error or perversity while passing the impugned order of acquittal. Here, the subjected offence was said to have been committed on 09.04.2020 between 10 AM-11 AM on the terrace, the time when the complainant Vinay Kumar was out of his house for the purpose of selling the vegetables. It has been alleged that as his elder son reached on terrace searching for his younger brother 'X' (identity not disclosed being victim of case), he found the accused committing unnatural offence with the minor son of complainant, aged about seven years. On being opposed the same by his elder son, the accused ran away extending him filthy abuses and threats to life. As per the prosecution, the entire incident was narrated to the complainant by his both sons and on having the information of the incident, PW1 submitted the written complaint before the police concerned and accordingly, the First Information Report was registered against the accused on 15.04.2020. After registration of First Information Report, the investigating officer got conducted the medico-legal examination of the victim and obtained the report and recorded the statement of doctor concerned. In order to prove its version, prosecution examined only two factual witnesses i.e. PW1 and PW2.

17. Admittedly, PW1 is only the complainant and hearsay-witness and has no personal knowledge about the incident, therefore, his evidence in the scenario of present case carries negligible value. PW3 is the principal of the school, who has proved the age of the victim as seven years at the time of occurrence which is uncontroverted and unchallenged. PW4 Dr. Dharmendra Rao, has proved the medico legal examination report Ex.Ka.4 of the victim stating therein that while examining the victim on 16.04.2020, he found no injuries on the person of the victim and preserved his perianal, anal, oral swab in two slides and blood sample as well as nail clippings for the purpose of DNA and handed over the same to the police concerned. From the perusal of statement of PW4, it has been established on record that no injury was found on the person of victim and the version of prosecution has not been supported by the medical evidence.

18. Needless to say that offence was said to have been committed on 09.04.2020 and medical was conducted on 16.04.2020, and therefore, there may not be a chance of having found any injury on his person by that time after a gap of almost seven days. But the fact remains that it was the burden of the prosecution to explain as to why the First Information Report was not registered immediately after commission of the offence and same is best known to the complainant. In the attending circumstances, only fact established on record is that the prosecution version is not supported by the medical evidence, which may be best piece of evidence to show the complicity of accused in commission of offence. Further, there is no dispute that the samples preserved by PW4 were not sent for DNA testing. Therefore, the medical evidence is not in support of the version of prosecution and the applicants have failed to point out any prima facie fault in the appreciation of medical evidence by the learned Trial Court.

19. Accused has placed his defence from the very inception that complainant was tenant of his father and was under the obligation to pay the outstanding arrears of electricity charges pending against him, due to which there was heated exchange of words between the complainant and father of accused and in order to avoid the liability of payment, present malicious prosecution has been launched against him. PW1 and PW2 both factual witnesses have admitted the fact of their being tenant of father of accused since the year of 2014. PW1 categorically admitted that on 13.04.2020, he left the rented premises of accused and shifted to another rented accommodation on 15.04.2020 and after shifting, he filed the First Information Report against the accused on the same day. It is not the case of complainant that he could not get the FIR lodged against the accused due to the reason of his being tenant and was under fear of eviction and therefore after leaving the premises only, he could dare to lodge the First Information Report against the accused, or due to the commission of offence by the accused, he was forced to vacate the premises. The conjoint perusal of facts and circumstances and conduct of complainant speaks in volume against the complainant and his version.

20. Another circumstance which drew our immediate attention is that in the First Information Report, the elder brother of the victim has been shown as eyewitness of the occurrence, but he was not examined as witness by the prosecution. He may be the witness who could have corroborated the testimony of victim PW2, against the accused regarding commission of an offence, but the prosecution failed to examine him and best reason of the same may be known to him only. Law is well settled that where the prosecution has the best evidence available with it, but despite that the best evidence has not been produced or withheld, then the court may draw adverse inference against the prosecution.

21. Now we will examine the credibility and reliability of the sole evidence of the victim of the case in hand, PW1, aged about seven years at the time of occurrence. Learned Trial Court before permitting him to depose as witness examined his capacity and maturity to understand the question and rational answering of same and after being satisfied that the child is capable to understand and answer rationally, permitted him to testify. As a PW1, victim corroborated the allegations made in First Information Report in his chief examination. During the cross examination, it was stated by this witness that at the time of occurrence, he was not on the terrace, rather was down. Similarly, he testified that there was a dispute between his father and father of the accused regarding the outstanding amount of electricity charges of the rented premises and his father was obliged to pay

the same being tenant. PW1 further admitted that the present case lodged against the accused is false and has been filed maliciously by his father. PW1, although in one breath has tried to produce the allegations not only in his chief but also in his cross examination that he suffered the atrocities of unnatural offence at the hand of accused, but on next moment testified that entire prosecution was malicious and an attempt to get rid of payment of rental dues. Thus, this witness has blown hot and cold in same breath. Therefore, in light of admission made by PW1, even if at a time it appeared that he corroborated the story of prosecution, possibility cannot be ruled out that the child has been tutored to depose against the accused and he is susceptible to be won over due to his tender age. If for the sake of argument, it is assumed that some offence has been committed with the victim, then also finding recorded by learned Trial Court that this child deposed at different places differently and observed him not to be reliable witness, has guaranteed the presumption of innocence of the accused, which cannot be taken away without any concrete and plausible evidence.

22. On the basis of norms set up by settled legal principles and on the basis of evidence placed on record, we have gathered the view that learned Trial Court has taken best probable view as outcome of the case in hand while discussing the entire facts and circumstances. Nothing adverse has been brought on record by the prosecution to hilt which may leave the tinge of doubt. No arguable points have been made out by the applicants that would convince us to grant the leave of appeal. The purpose of Section 378(3) of CrPC is to ensure that the accused is not kept waiting for years for a relief which may be granted to him at early stage to save his right of life and personal liberty.

23. Keeping in view the aforesaid failure of prosecution to establish any prima facie ground warranting interference with the order of the learned Trial Court, the prayer for grant of leave to appeal is hereby refused and the instant application is dismissed accordingly. Resultantly, the memorandum of appeal does not survive and stands dismissed.

(2026) 4 ILRA 1549
REVISIONAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 20.04.2026

BEFORE

THE HON'BLE KSHITIJ SHAILENDRA, J.

Civil Revision No. 38 of 2025

Amarkant Vijaywar & Ors.

...Revisionists

Versus

Vipnesh Kumar & Ors.

...Opposite Parties

Issue for Consideration

Whether the plaint was liable to be rejected under Order VII Rule 11 (d) CPC as the suit was barred by Order II Rule 2 CPC and Section 34 of the Specific Relief Act, 1963 and, and whether the order impugned be set aside and the plaint be rejected.

Head Notes

The Code of Civil Procedure-1908- Order II Rule 2; Order VII Rule 11- Order VII Rule 11 deals with rejection of plaint and not the 'right to sue being barred'. Qua expression "barred by any law", it The provision of Order II Rule 2 does not bar the filing of any suit but sub-rules (2) and (3) forbid the suing for certain claims which have been relinquished or certain reliefs which have been omitted to sue in the earlier suit in respect of which a plaintiff cannot sue for those claims or reliefs by filing a subsequent suit. Under Order II Rule 2 of the Code, the right to sue is taken away in terms of sub-rules (2) and (3) thereof which means that the suit could not have been filed at all. On the other hand, under Order VII Rule 11(d), there is "no bar to sue" but "the suit is barred by law"- The application of Order II Rule 2 CPC to a case can result in denial of reliefs being granted to a plaintiff which may, in certain cases, also result in dismissal of the suit itself but it does not result in rejection of the plaint under Order VII Rule 11 (d) of the Code.

Partial substance in the submissions made on behalf of the revisionists that, on the one hand the Court has deferred adjudication of the pleas raised to the stage of framing issues and leading evidence, at the same time, plea of limitation has been decided in favour of the respondent.

Held- Finding recorded by the trial court in the order impugned only to the effect that challenge laid by the respondent is not barred by limitation, is set aside, however, the same shall be adjudicated after framing of issues- **Revision partly allowed.** (E-15)

(Para 16, 17, 18 & 22)

Case Law Cited

Saleem Bhai vs. State of Maharashtra, (2003) 1 SCC 557; R.K. Roja vs. U.S. Rayudu, (2016) 14 SCC 275;

List of Acts

The Code of Civil Procedure-1908

List of Keywords

Order II Rule 2; Order VII Rule 11; "barred by any law"; 'right to sue being barred'; "no bar to sue" but "the suit is barred by law"

Case Arising From

Revision under Section 115 CPC at the instance of defendants in O.S. No. 394 of 2023 (re-numbered as 22 of 2023), raises challenge to the order dated 24.01.2025, whereby the learned Additional District and Sessions Judge/Fast Track Court, Agra has rejected an application 31-C filed on behalf of the revisionists under Order VII Rule 11 CPC, consequence whereof is that the plaint of the suit survives as on date.

Appearances for Parties

Counsel for Revisionist(s) : Amit Kumar Asthana, Ved Prakash Shukla, Vineet Kumar Singh
Counsel for Opposite Party(s) : Neeraj Dwivedi, Pankaj Agarwal, Vivek Saran (elevated)

(Delivered by Hon'ble Kshitij Shailendra, J.)

1. Heard Shri Vineet Kumar Singh, learned counsel for the applicants in revision (revisionists), Shri Pankaj Agarwal, learned counsel for the respondent no. 1 (respondent) and Shri Neeraj Dwivedi, learned counsel for the proforma respondents no. 2, 3 and 4.

THE CHALLENGE

2. The instant revision under Section 115 CPC at the instance of defendants in O.S. No. 394 of 2023 (re-numbered as 22 of 2023), □ raises challenge to the order dated 24.01.2025, whereby the learned Additional District and Sessions Judge/Fast Track Court, Agra has rejected an application 31-C filed on behalf of the revisionists under Order VII Rule 11 CPC, consequence whereof is that the plaint of the suit survives as on date.

BRIEF FACTS

3. The property in dispute was allotted in favour of the revisionists by Awas Vikas Parishad on 02.01.1993/28.02.2023. The allotment was cancelled and a fresh allotment was made in favour of the respondent on 03.03.1993. The revisionists earlier filed an Original Suit No. 252 of 1993 claiming relief for declaring the auction made in favour of respondent as null and void and for declaring the allotment made earlier in favour of the revisionists as valid. The suit was decreed ex-parte on 18.10.1996. The decree was put into execution, wherein the respondent filed objections under Section 47 CPC. The same were rejected, against which a revision was preferred, which was also dismissed and Writ-C No. 9100 of 2015 filed by him was also dismissed on 16.02.2015.

4. After dismissal of the said writ petition, a suit being O.S. No. 296 of 2015 was filed by the respondent seeking setting aside of the ex-parte decree dated 18.10.1996. The plaint of the said suit was rejected under Order VII Rule 11 CPC holding the suit as barred by limitation. Civil Appeal filed thereagainst was dismissed and now the matter is pending before this Court in the form of Second Appeal.

5. Another suit being O.S. No. 394 of 2023 (re-numbered as 22 of 2023) giving rise to this revision was filed by the respondent with a prayer to declare the allotment order dated 28.02.2023 passed in favour of the revisionists as illegal, invalid, void and liable to be recalled, set aside and quashed. A further prayer was made to restrain the defendants in the suit, i.e. the Awas Vikas Parishad and its officials, from executing any sale deed and delivering possession in favour of the revisionist.

6. In the meantime, a fresh allotment was made and a sale deed was also executed in favour of the revisionists on 05.04.2023 in execution of the decree drawn in previous O.S. No. 252 of 1993 and challenge laid to the execution proceedings at the behest of the Awas Vikas Parishad was turned down upto Hon'ble Supreme Court.

SUBMISSIONS ON BEHALF OF THE REVISIONISTS

7. It is contended on behalf of the revisionists that, based upon the finality attached not only to the allotment but also the sale deed executed in furtherance of order passed by the executing court even before institution of the suit giving rise to the present revision, the suit is barred by law and, therefore, the plaint was liable to be rejected. It is further submitted that the plaint has been amended by the respondent and the relief which has now been claimed by way of amendment, could be claimed even at the time of filing of earlier suit in the year 2015 and, therefore, the plaint was liable to be rejected under Order VII Rule 11 (d) CPC as the suit was barred by Order II Rule 2

CPC and Section 34 of the Specific Relief Act, 1963 and, therefore, the order impugned be set aside and the plaint be rejected.

8. It is further submitted that though all the pleas raised by the revisionists were discussed by the trial court, an erroneous finding has been recorded that the suit is not barred by limitation and, then, after observing that the questions raised by the revisionists are mixed questions of fact and law and that the same shall be decided after framing proper issues, the application has been illegally rejected.

SUBMISSIONS ON BEHALF OF THE RESPONDENT

9. Learned counsel for respondent submits that every adjudication made in favour of the revisionists is ex-parte qua the respondent in the sense that the first Suit No. 252 of 1993 was filed by the revisionists only against the officials of Awas Vikas Parishad and, therefore, the decree obtained by the revisionists and consequences flowing therefrom are not binding against the respondent.

10. It is further submitted that the objections filed by the respondent under Section 47 CPC were not decided on merits, rather the same were rejected only on the ground that he was not a party to the proceedings. It is, therefore, contended that since the pleas raised by the respondent in execution proceedings were rejected, he had no option but either to raise his claim under Order XXI Rule 97 CPC as observed by this Court while deciding Writ-C No. 9100 of 2015 or by way of a separate suit which he filed in the year 2015 but plaint thereof was rejected, however, the matter is now subjudice before this Court in the form of Second Appeal.

11. It is further submitted that the sale deed relied upon by the revisionists is without delivery of possession in respect whereof specific averments have been made in the amended plaint, particularly para 15(f) thereof, and, therefore, all the questions raised inter se parties require adjudication on merits.

SUBMISSIONS IN REJOINDER

12. In rejoinder, learned counsel for revisionists submits that once title stood vested in their favour pursuant to the sale deed, cancellation whereof has not been prayed for in appropriate terms, the challenge initially laid to the subsequent allotment made in furtherance of the execution proceedings and indirect challenge to the sale deed dated 05.04.2023 is not sustainable. It is further contended that more than Rs. 25,00,00/- (twenty five lakh) was deposited by the revisionists and even though possession has been delivered to them, they are unable to raise constructions on the plot in question as time limit fixed by the Awas Vikas Parishad for the said purpose has already expired on account of litigation pending between the parties and an order of status quo passed in F.A.F.O. No. 1104 of 2024 by this Court arising out of suit giving rise to the present revision itself.

DISCUSSION

13. I have considered the submissions made and have perused the material available on record.

14. The proceedings of different suits and the result thereof not being in dispute, the Court has to confine its adjudication within the four corners of Order VII Rule 11 CPC, which provides that when plaint, from the statement made therein, appears to be barred by any law [sub-rule (d) of Rule 11], it shall be rejected. It has been held in **Saleem Bhai vs. State of Maharashtra, (2003) 1 SCC 557** that the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint and the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage. In **R.K. Roja vs. U.S. Rayudu, (2016) 14 SCC 275**, it was reiterated that the consideration of the application should not be on the basis of the allegations made by the defendant in his written statement and the court has to consider only the plaint as a whole.

15. Since bar of suit under Order II Rule 2 C.P.C. has been emphatically argued, the Court may observe that Order II Rule 2 deals with the reliefs claimed in a suit in respect of a cause of action. Order II Rule 2(1) states that every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any court. Order II Rule 2(2) states that where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished. Order II Rule 2(3) states that a person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs; but if he omits, to sue for all such reliefs, except with the leave of the court, he shall not afterwards sue for any relief so omitted.

16. 'Bar to sue' is distinct from a 'suit being barred by any law'. In the former, a suit cannot commence at all and, therefore, would have to be dismissed by applying Order II Rule 2 CPC, while in the latter case, a suit can commence but is not entertainable owing to a bar in law. Under Order II Rule 2, a suit can be dismissed after recording evidence depending upon the facts and circumstances of the case and on the analysis of the cause of action in a former suit and a subsequent suit.

17. Order VII Rule 11 deals with rejection of plaint and not the 'right to sue being barred'. Qua expression 'barred by any law', it is noted that the provision of Order II Rule 2 does not bar the filing of any suit but sub-rules (2) and (3) forbid the suing for certain claims which have been relinquished or certain reliefs which have been omitted to sue in the earlier suit in respect of which a plaintiff cannot sue for those claims or reliefs by filing a subsequent suit. Under Order II Rule 2 of the Code, the right to sue is taken away in terms of sub-rules (2) and (3) thereof which means that the suit could not have been filed at all. On the other hand, under Order VII Rule 11(d), there is no bar to sue but 'the suit is barred by law'. In other words, the application of Order II Rule 2 CPC to a case can result in denial of reliefs being granted to a plaintiff which may, in certain cases, also result in dismissal of the suit itself but it does not result in rejection of the plaint under Order VII Rule 11 (d) of the Code. The said legal position has been thoroughly explained by the Hon'ble Supreme Court very recently in *S. Valliammai and others Vs. S. Ramanathan and another*: Civil Appeal No. 3624 of 2024, decided on 16.04.2026.

18. In view of the above discussion, if the order impugned is perused, the Court finds partial substance in the submissions made on behalf of the revisionists that, on the one hand the Court has

deferred adjudication of the pleas raised to the stage of framing issues and leading evidence, at the same time, plea of limitation has been decided in favour of the respondent. However, other submissions made that, at this stage itself, the plaint be rejected without holding trial, cannot be accepted as per the law laid down and referred.

19. Considering the record of proceedings and the scope of order under Order VII Rule 11 CPC, irrespective of the findings recorded in earlier litigations which may be germane and relevant to the controversy involved in the present suit also, the same can be considered even in the form of preliminary issues that may be framed by the trial court, if pressed. The submissions advanced in this revision go beyond the purview of Order VII Rule 11 CPC, except the findings recorded on the question of limitation at this stage.

20. As far as the grievance raised qua inability to raise constructions on account of order of status quo operating in F.A.F.O. No. 1104 of 2024, no comment can be made in these proceedings and the parties are at liberty to raise their respective pleas in the said appeal itself.

CONCLUSION

21. Consequently, the revision is allowed in part.

22. The finding recorded by the trial court in the order impugned only to the effect that challenge laid by the respondent is not barred by limitation, is hereby set aside, however, the same shall be adjudicated after framing of issues.

23. Considering the nature and length of litigation, it is directed that the trial court shall frame issues within a period of two months from the date a certified copy of this order is filed before it. Thereafter, the suit shall be posted for further proceedings including adjudication based upon preliminary issues, if they are framed, and the court shall make all endeavour to dispose of the proceedings in accordance with law with utmost expedition without granting unnecessary adjournment to the parties, by fixing short dates on weekly basis.

(2026) 4 ILRA 1554
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 15.04.2026

BEFORE

THE HON'BLE SIDDHARTH, J.
THE HON'BLE VINAI KUMAR DWIVEDI, J.

Habeas Corpus Writ Petition No. 128 of 2026

Amit Singh

Union of India & Ors.

...Petitioner

Versus

...Respondents

Issue for Consideration

Whether petitioner is detained illegally in pursuance of the detention order dated 8.8.2025 passed under Section 3(1) of P.I.T.N.D.P.S. Act passed by respondent no.3 and order dated 6.11.2025 passed by respondent no.4 and whether impugned order dated 8.8.2025 passed by respondent no.3 as well as confirmation order dated 6.11.2025 passed by respondent no.4 are liable to be quashed

Head Notes

The Constitution of India, 1950-Article 14, 21, 22 & 226 (Habeas Corpus); The Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988- Section 3(1)- The detention orders can be passed against detainees in jail provided the officers passing such orders can justify the detention with reference to the material on record and can also justify that the detainees will indulge in similar activities, if set at liberty- No such 'satisfaction' recorded by the detaining officers in the present case- The detaining authority should apply its mind and show awareness to the "grounds of detention". The detaining authority must be reasonably satisfied on the basis of cogent material, that there is likelihood of detainee of indulging in such activities on being released from jail. The "reasons to believe" should be based on reliable material and real possibility of detainee misusing his liberty in case of release from jail. The impugned orders are self-explanatory and clearly show that they have been passed without application of mind and without reference to any of the 'grounds of detention' of the petitioner. Such a state of affairs is deplorable and needs to be redressed at the earliest by the Union Government in the larger interest of the criminal justice delivery system.

Impugned orders passed against the petitioner cannot be sustained as per the settled law. Respondent Nos. 3 & 4 have paid mere lip service to the mandatory requirements of law. They have mechanically mentioned that they are satisfied that petitioner is required to be detained so as to prevent him from engaging in illicit trafficking of narcotic drugs and psychotropic substances. Such 'satisfaction' was required to have been spelt out after application of mind by reference to separate grounds of detention made by the detaining authority, which has not been done. None of the orders impugned show any application of mind and no "grounds of detention" have been recorded therein.

Held- The conduct of respondent nos. 3 & 4 is highly arbitrary and illegal. They have exercised their powers in violation of Articles 14, 21 and 22 of the Constitution of India. Despite being public servants, their conduct reflects scant respect for law of land the dereliction of duty on their part, which can be considered to be misconduct in service on their part, since they have failed to perform their duties in accordance with law- Impugned orders quashed.

Petition allowed. (E-15)

(Para 9, 10, 11 & 12)

Case Law Cited

Mortuza Hussain Choudhary Vs. State of Nagaland and others, 2025 SCC Online SC 502; Binod Singh v. District Magistrate, Dhanbad, Bihar, (1986) 4 SCC 416; Union of India v. Paul Manickam, (2003) 8 SCC 342;

List of Acts

The Constitution of India, 1950; The Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988

List of Keywords

Habeas Corpus; P.I.T.N.D.P.S. Act; Grounds of detention: No satisfaction recorded by the detaining authority; That detainees will indulge in similar activities, if set at liberty;

Case Arising From

Prayer for Issue a writ of habeas corpus commanding all the respondents to release the petitioner from their illegal detention in pursuance of the detention order dated 8.8.2025 passed under Section 3(1) of P.I.T.N.D.P.S. Act passed by respondent no.3 and order dated 6.11.2025 passed by respondent no.4 and to set petitioner at liberty forthwith and may further be pleased to quash the impugned orders dated 8.8.2025 passed by respondent no.3 as well as confirmation order dated 6.11.2025 passed by respondent no.4.

Appearances for Parties

Counsel for Petitioner(s) : Ajay Mishra, Shri Krishna Mishra

Counsel for Respondent(s) : A.S.G.I., G.A., Shiv Kumar Pal

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

1. Heard Shri Vinay Saran, learned Senior Counsel assisted by Sri Ajay Mishra and Shri Piyush Panday learned counsel for the petitioner; Shri S.K. Pal, learned Deputy Solicitor General of India assisted by Sri Prem Shanker Prasad appearing for respondent nos. 1 to 4 and perused the material on record.

2. This Habeas Corpus Writ Petition has been filed praying for following reliefs:-

(i) Issue a writ of habeas corpus commanding all the respondents to release the petitioner from their illegal detention in pursuance of the detention order dated 8.8.2025 passed under Section 3(1) of P.I.T.N.D.P.S. Act passed by respondent no.3 and order dated 6.11.2025 passed by respondent no.4 and to set petitioner at liberty forthwith and may further be pleased to quash the impugned order dated 8.8.2025 passed by respondent no.3 as well as confirmation order dated 6.11.2025 passed by respondent no.4.

(ii) To issue a writ or any other such order or direction as may be deemed just fit and proper under the facts and circumstances of the case.

(iii) Award the cost of the writ petition.

3. Learned Senior Counsel for the petitioner has made following submissions:-

(I) While passing the detention order dated 08.08.2025, provisions of section 3 (3) of the Act has not been complied with which mandates that for the purpose of clause (5) of Article 22 of the Constitution of India, the communication to a person detained in pursuance to detention order of grounds on which the order has been made shall be made as soon as may be after detention, but ordinarily not later than 5 days and in exceptional circumstances and for reason to be recorded in writing not later than 15 days, from the date of detention.

(ii) The petitioner was not supplied with complete and legible set of relied upon documents along with the detention order itself which is a gross violation of the procedure itself.

(iii) The impugned order was primarily issued on two ill-founded assumptions that if enlarged on bail, the Detenu will abscond and vitiate the trial, and would again indulge in the same crime for

monetary benefits, without relying upon any such fact or circumstance or document to substantiate such an ill-founded apprehension. The same has been done solely with the motive of keeping the Detenu/Petitioner in unwarranted and uninterrupted custody away from the place where he is facing trial and delaying the trial, for reasons best known to the sponsoring Authority and detaining authority. It has been passed solely on unfounded apprehensions, without any cogent material based on stale grounds having no live proximity with the alleged prejudicial activity leading to no subjective satisfaction and application of mind by Detaining Authority thereby violating the fundamental rights guaranteed under Articles 21 and 22 of the Constitution of India.

(iv) 5 months period of incarceration of detention period is passed already.

(v) The impugned orders are arbitrary, mechanical, and suffer from a fatal flaw between the alleged prejudicial activities relied upon by the detaining authority. The alleged prejudicial activities primarily stem from two pending under trial cases: (i) the 2013 DRI case (Cr. No. 338/XVIII/2013/GI), which dates back over 12 years, and (ii) the October 2024 NCB case (Cr. No. VIII/35/DZU/2024), in relation to which the petitioner was arrested on 26.10.2024. Despite the petitioner being in continuous judicial custody since 26.10.2024, in the 2024 case, the detention order was passed only on 08.08.2025-after an unexplained delay of approximately 10 months from the date of the alleged offence in October 2024 from the date of arrest.

4. Learned counsel for the respondents have vehemently opposed the petition on the basis of the material brought on record by way of counter affidavits filed before this Court.

5. Since the detention order dated 8.8.2025 passed by respondent no.3, Joint Secretary, (P.I.T.N.D.P.S.), Government of India, Ministry of Finance, Department of Revenue, (P.I.T.N.D.P.S. Division), New Delhi and order dated 6.11.2025 passed by respondent no.4, Deputy Secretary, (P.I.T.N.D.P.S.), Government of India, Ministry of Finance, Department of Revenue, New Delhi, are sought to be quashed in this petition, they are required to be considered and for ready reference, they are hereby quoted below:-

I. Order Dated 8.8.2025:-

SECRET

**F-No. U-11011/37/2025-PITNDPS
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
(PITNDPS UNIT)**

Room No. 156B, 1st Floor
North Block, New Delhi
Dated: 8th August, 2025

ORDER

Whereas, I, Anupam Prakash, Joint Secretary to the Government of India, specially empowered under Section 3(1) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988, (as amended), am satisfied with respect to the person known as **Amit Singh S/o Omvir Singh** that with a view to preventing him from engaging in-illicit trafficking of narcotic drugs & psychotropic substance, in future, it is necessary to make the following order:

Now, therefore, in exercise of the powers conferred by Section 3(1) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988, (as amended), I direct that the said **Amit Singh S/o Omvir Singh, R/o G 45 Lajpat Nagar Part I, New Delhi 110024** be detained and kept in **Central Prison, Puzhal, Chennai**.

Sd/-

8.8.2025

(Anupam Prakash)

Joint Secretary to the Government of India

**Amit Singh S/o Omvir Singh,
R/o G 45 Lajpat Nagar Part I,
New Delhi 110024.**

ii. Order dated 6.11.2025:-

F. No. U-11012/25/2025-PITNDPS
Government of India
Ministry of Finance
Department of Revenue
PITNDPS Division

2 Floor Room No 202. Jeevan
Tara Building. Parliament
Street. New Delhi
Date: 06 November 2025

ORDER

WHEREAS, an Order No. U-11011/37/2025-PITNDPS dated 08.08 2025 was issued by the Detaining Authority I.e. Joint Secretary to the Government of India, Department of Revenue Ministry of Finance under section 3(1) of the Prevention of Illicit Traffic in Narcotics Drugs and Psychotropic Substances Act, 1988 in respect of Amit Singh S/o Sh. Omvir Singh R/O G45, Lajpat Nagar, Part I New Delhi-110024.

AND WHEREAS, the said Order was executed upon Amit Singh S/o Sh. Omvir Singh on 05.09.2025 who is currently lodged in Central Prison, Puzhal, Chennai.

AND WHEREAS, the matter of Amit Singh S/o Sh. Omvir Singh was placed before the State Advisory Board (PITNDPS), Tamil Nadu, which is of the Opinion, that sufficient cause is made out for detention of the detenu Amit Singh S/o Sh. Omvir Singh.

AND WHEREAS the Central Government has considered the opinion of the State Advisory Board (PITNDPS), Tamil Nadu.

NOW THEREFORE, in exercise of the powers conferred by Section 9(f) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988, the Central Government hereby confirms the aforesaid Detention Order dated 08.08.2025 and further directs under Section 11 of the said Act that Amit Singh S/O Sh. Omvir Singh be detained for a period or one year from the date of his detention i.e. 05.09.2025.

Sd/-

6/11/2025

(Kishor Bandyopadhyay)

Deputy Secretary to the Government of India

E-mail: ds.pitndps@gov.in

To.

Amit Singh S/o Sh Omvir Singh, a PITNDPS detenu

Through: The Superintendent, District Jail, Gautam Buddha Nagar.

Copy to:-

1. The Superintendent, District Jail, Gautam Buddha Nagar with the request to serve the order on the detenu and return a dated acknowledgment to the undersigned. An extra copy of the Order is enclosed for this purpose.

2. The Superintendent, Central Prison. Puzhal, Chennai

3 The Deputy Director (Ops), Narcotics Control Bureau, Deihi Headquarter.

4. The Competent Authority (SAFEMA), Department of Revenue, Ministry of Finance, Delhi. A copy of Grounds of Detention is also enclosed.

5 The Sub-Assistant Registrar. COFEPOSA Section, High Court. Madras-600104

Sd/-

6/11/2025

(Kishor Bandyopadhyay)

Deputy Secretary to the Government of India

E-mail: ds.pitndps@gov.in

5. The Apex Court in the case of **Mortuza Hussain Choudhary Vs. State of Nagaland and others, 2025 SCC Online SC 502** has considered the scheme of P.I.T.N.D.P.S. Act from paragraph nos. 7 to 10 quoted herein below:-

“7. It would be apposite at this stage to take note of the statutory regime of the Act of 1988. Section 3(1) thereof empowers the authorized officers, either of the Central Government or of a State Government, to detain any person with a view to prevent him/her from engaging in illicit traffic in narcotic drugs and psychotropic substances. Section 3(2) requires a State Government that passes such a detention order to forward a report of the same to the Central Government within ten days. Section 3(3) mandates communication of the grounds on which the detention order has been made to the detenu as soon as may be after the detention, but ordinarily not later than five days and in exceptional circumstances and for reasons to be recorded in writing, not later than fifteen days from the date of detention. The sub-section records that this requirement is for the purposes of Article 22(5) of the Constitution, which mandates such communication as soon as may be. Section 6 of the Act of 1988 provides that the grounds of detention are severable and an order of detention shall not be deemed to be invalid or inoperative merely because one or some of the grounds is either found to be vague, nonexistent, irrelevant or not connected with such persons or is invalid for any other reason. Section 6 specifically records that where a person has been detained pursuant to an order of detention under Section 3(1), which has been made on two or more grounds, such order shall be deemed to have been made separately on each ground. This indicates that the order of detention must be accompanied by the 'grounds of detention' made by the detaining authority itself. Section 11 of the Act of 1988 speaks of the maximum period of detention and states that the same may be extended up to 2 (two) years from the date of detention.

8. We may now note precedential law on the subject. In **Kamarunnissa v. Union of India, (1991) 1 SCC 128** the detenus were already in judicial custody at the time the orders of preventive detention were passed against them. This Court affirmed that detention orders could be validly passed against detenus who were in jail, provided the officers passing the orders were alive to the factum of the detenus being in custody and there was material on record to justify the conclusion that they would indulge in similar activities, if set at liberty. Reference was made to the earlier decision of this Court in **Binod Singh v. District Magistrate, Dhanbad, Bihar, (1986) 4 SCC 416** wherein it was held that there must be cogent material before the officer passing the detention order to infer that the detenu was likely to be released on bail and such an inference must be drawn from the material on record and must not be the ipse dixit of the officer passing such order. This Court, therefore, emphasized that before passing the detention order in respect of a person who is in jail, before passing the detention order in respect of a person who is in jail the concerned authority must satisfy himself and such satisfaction must be reached on the basis of cogent material that there is a real possibility of the detenu being released on bail and, further, if released on bail, the material on record must reveal that he/she would indulge in prejudicial activity again, if not detained.

9. On similar lines, in **Rekha v. State of Tamil Nadu, (2011) 5 SCC 244**, a 3-Judge Bench of this Court affirmed that, where a detention order is passed against a person already in jail, there should be a real possibility of the release of that person on bail, that is, he must have moved a bail application which is pending. It was observed that if no bail application is pending it logically

*followed that there is no likelihood of the person in jail being released on bail. The Bench, however, pointed out that the exception to this Rule would be where a co-accused, whose case stood on the same footing, was granted bail. The Bench cautioned that details in this regard have to be recorded, otherwise the statement would be mere ipse dixit and cannot be relied upon. The law laid down in Rekha (supra) was reiterated and followed in **Huidrom Konungjao Singh v. State of Manipur, (2012) 7 SCC 181.***

*10. Earlier, in **Union of India v. Paul Manickam, (2003) 8 SCC 342**, this Court observed that, where detention orders are passed against persons who are already in jail, the detaining authority should apply its mind and show awareness in the grounds of detention of the chances of release of such persons on bail. It was observed that the detaining authority must be reasonably satisfied, on the basis of cogent material, that there is a likelihood of the detenu's release and in view of his/her antecedent activities, which are proximate in point of time, he/she must be detained in order to prevent him/her from indulging in such prejudicial activities. It was held that an order of detention would be valid in such circumstances only if the authority passing the order is aware of the fact that the detenu is actually in custody; the authority has a reason to believe, on the basis of reliable material, that there is a real possibility of the detenu being released on bail; and that, upon such release, he/she would, in all probability, indulge in prejudicial activities; and it is felt essential to detain him/her to prevent him/her from so doing. This principle was again reiterated and applied in **Union of India v. Dimple Happy Dhakad, (2019), 20 SCC 609.**"*

9. The Apex Court in the case of **Kamarunnisa Vs. Union of India (supra)** has held that the detention orders can be passed against detainees in jail provided the officers passing such orders can justify the detention with reference to the material on record and can also justify that the detainees will indulge in similar activities, if set at liberty. In this case, we do not find any such 'satisfaction' recorded by the detaining officers. The ratio of the judgments of the Apex Court in the cases of **Binod Singh Vs. District Magistrate (supra)** and **Rekha Vs. Tamil Nadu (supra)** are to the same effect. The Apex Court in the case of **Union of India Vs. Paul Manickam (supra)** has also held that the detaining authority should apply its mind and show awareness to the 'grounds of detention'. The detaining authority must be reasonably satisfied on the basis of cogent material, that there is likelihood of detenu of indulging in such activities on being released from jail. The 'reasons to believe' should be based on reliable material and real possibility of detenu misusing his liberty in case of release from jail. The impugned orders are self-explanatory and clearly show that they have been passed without application of mind and without reference to any of the 'grounds of detention' of the petitioner. Such a state of affairs is deplorable and needs to be redressed at the earliest by the Union Government in the larger interest of the criminal justice delivery system.

10. If we consider the aforesaid impugned orders passed by respondent nos. 3 & 4 in the light of the settled legal as laid down by the Apex Court in the case of **Mortuza Hussain Choudhary (supra)**, we find that the orders passed against the petitioner cannot be sustained as per the settled law. Respondent Nos. 3 & 4 have paid mere lip service to the mandatory requirements of law. They have mechanically mentioned that they are satisfied that petitioner is required to be detained so as to prevent him from engaging in illicit trafficking of narcotic drugs and psychotropic substances. Such 'satisfaction' was required to have been spelt out after application of mind by reference to

separate grounds of detention made by the detaining authority, which has not been done. None of the orders impugned show any application of mind and no 'grounds of detention' have been recorded therein.

11. It is settled law that order passed by public servant should stand on its own legs. Any pleadings in support of impugned order cannot cure the defect in the order.

12. Therefore, the conduct of respondent nos. 3 & 4 is highly arbitrary and illegal. They have exercised their powers in violation of Articles 14, 21 and 22 of the Constitution of India. Despite being public servants, their conduct reflects scant respect for law of land the dereliction of duty on their part, which can be considered to be misconduct in service on their part, since they have failed to perform their duties in accordance with law.

13. We leave it open for the employer to take suitable action against respondent nos. 3 & 4, since dereliction of duty by them will ultimately benefit the detenue. We find that this state of affairs is continuing for long despite numbers of orders passed by the courts quashing such illegal and non-speaking orders passed by detaining authorities.

14. We have no option but to quash the impugned orders dated 8.8.2025 and 6.11.2025 passed by respondent nos. 3 and respondent no.4.

15. The petitioner is directed to be set at liberty forthwith.

16. The above noted petition is **allowed**.

(2026) 4 ILRA 1562
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 21.04.2026

BEFORE

THE HON'BLE SANDEEP JAIN, J.

Habeas Corpus Writ Petition No. 365 of 2025

Akshit Pandey (Minor) & Anr.

...Petitioners

Versus

State of U.P. & Ors.

...Respondents

Issue for Consideration

Whether the petitioner, being the natural and legal guardian, is entitled to the custody of the minor, the mother of the corpus, died on 10.02.2025 and since then, the corpus is in the custody of respondent Nos. 4 and 5, who are the maternal aunt and uncle of the corpus.

Head Notes

The Constitution of India, 1950-Article 226 (Habeas Corpus)- In proceedings of habeas corpus relating to custody of a minor, the paramount consideration for the Court is the welfare and best

interest of the child- That the mother of the corpus, died on 10.02.2025, and there is no criminal prosecution pending against the petitioner in relation to her death. The mere fact that the death occurred during a failed IVF procedure cannot, in any manner, be attributed to any fault on the part of the petitioner so as to disentitle him from claiming custody of his minor child- After the demise of the mother, the father is the natural guardian and ordinarily the most suitable person to look after the welfare of the minor. There is no material on record to indicate that the petitioner is unfit or incapable of discharging his parental responsibilities. On the contrary, the record reflects that the petitioner possesses sufficient financial means, has stable residential arrangements, and is in a position to provide proper care and upbringing to the child.

Held- In the totality of the facts and circumstances, and considering the paramount welfare of the minor, this Court finds no justification to deny custody of the corpus to his father. (E-15)

Case Law Cited

Tejaswini Gaud and Others vs. Shekhar Jagdish Prasad Tewari and Ors. (2019) 7 SCC 42; Gautam Kumar Das vs. NCT of Delhi and Ors. (2024) 10 SCC 588

List of Acts

The Constitution of India, 1950

List of Keywords

Habeas Corpus; Tender age of corpus; After the demise of the mother; Father is the natural guardian of the minor child.

Case Arising From

Present habeas corpus petition has been filed by the petitioner, who is the father of the minor corpus, , seeking his custody

Appearances for Parties

Counsel for Petitioner(s) : Akhilesh Kumar Mishra, Devbratt Yadav, Gaurav Singh, Ram Pratap Yadav
Counsel for Respondent(s) : Pramod Kumar Srivastava, G.A., Manjari Singh

(Delivered by Hon'ble Sandeep Jain, J.)

The present habeas corpus petition has been filed by the petitioner, Vipin Kumar Pandey, who is the father of the minor corpus, Akshit Pandey, seeking his custody.

In compliance with the order of this Court dated 03.04.2026, the corpus has been produced before this Court today by Sri Sanjay Kumar Singh, Sub-Inspector, Police Station Sarai Lakhansi, District Mau.

Learned counsel for the petitioner submits that the wife of the petitioner and mother of the corpus, namely Deepika Pandey, died on 10.02.2025. It is further submitted that since then, the corpus is in the custody of respondent Nos. 4 and 5, who are the maternal aunt and uncle of the corpus. It is contended that the petitioner, being the natural and legal guardian, is entitled to the custody of the minor. It is further submitted that the petitioner is financially sound and fully capable of maintaining the minor and ensuring his proper upbringing. Therefore, there exists no legal justification to deny custody of the minor to the petitioner.

It is also submitted that the petitioner's sister, Smt. Sunita Pandey, who resides in close proximity to the petitioner's residence, is a housewife and is available to assist in taking care of the minor. She is stated to be physically fit and capable of ensuring the welfare of the child.

The petitioner, Vipin Kumar Pandey, is present in Court and has assured that he shall properly take care of the minor corpus. His financial capacity has not been disputed. Likewise, Smt. Sunita Pandey is also present and has undertaken to assist in the upbringing and welfare of the child.

Per contra, learned counsel for private respondent Nos. 4 and 5 submits that the wife of the petitioner died during a failed IVF procedure, which, according to him, reflects adversely on the conduct of the petitioner and raises doubts regarding his capability to take care of the minor, who is presently about 13 months old. It is further submitted that the corpus is presently under the care of the maternal aunt, who is adequately equipped to look after the child, particularly considering that the child was born premature and requires special care. However, it is fairly admitted that no criminal proceedings are pending against the petitioner.

I have heard learned counsel for the parties and perused the material on record.

The Apex Court in the case of Tejaswini Gaud and Others vs. Shekhar Jagdish Prasad Tewari and Ors. (2019) 7 SCC 42 while granting the custody of 1.5 years child after the demise of mother to the father, who is the natural guardian, under Article 226 of the Constitution of India, held as under:-

"14. Writ of habeas corpus is a prerogative process for securing the liberty of the subject by affording an effective means of immediate release from an illegal or improper detention. The writ also extends its influence to restore the custody of a minor to his guardian when wrongfully deprived of it. The detention of a minor by a person who is not entitled to his legal custody is treated as equivalent to illegal detention for the purpose of granting writ, directing custody of the minor child. For restoration of the custody of a minor from a person who according to the personal law, is not his legal or natural guardian, in appropriate cases, the writ court has jurisdiction.

18. In Manju Malini [Manju Malini Seshachalam v. Vijay Thirugnanam, 2018 SCC OnLine Kar 621 : (2018) 4 AIR Kant R 166] where the mother filed a habeas corpus petition seeking custody of her minor child Tanishka from her sister and brother-in-law who refused to hand over the child to the mother, the Karnataka High Court held as under : (SCC OnLine Kar para 26)

26. The moment Respondents 1 and 2 refused to hand over the custody of minor Tanishka to the petitioner the natural and legal guardian, the continuation of her custody with them becomes illegal detention. Such intentional act on the part of Respondents 1 and 2 even amounts to the offence of kidnapping punishable under Section 361 IPC. Therefore there is no merit in the contention that the writ petition is not maintainable and Respondents 1 and 2 are in legal custody of baby Tanishka.?

19. Habeas corpus proceedings is not to justify or examine the legality of the custody. Habeas corpus proceedings is a medium through which the custody of the child is addressed to the discretion of the Court. Habeas corpus is a prerogative writ which is an extraordinary remedy and the writ is issued where in the circumstances of the particular case, ordinary remedy provided by the law is either not available or is ineffective; otherwise a writ will not be issued. In child custody matters, the power of the High Court in granting the writ is qualified only in cases where the detention of a minor by a person who is not entitled to his legal custody. In view of the pronouncement on the issue in question by the Supreme Court and the High Courts, in our view, in child custody matters, the writ of habeas corpus is maintainable where it is proved that the detention of a minor child by a parent or others was illegal and without any authority of law.

20. In child custody matters, the ordinary remedy lies only under the Hindu Minority and Guardianship Act or the Guardians and Wards Act as the case may be. In cases arising out of the proceedings under the Guardians and Wards Act, the jurisdiction of the court is determined by whether the minor ordinarily resides within the area on which the court exercises such jurisdiction. There are significant differences between the enquiry under the Guardians and Wards Act and the exercise of powers by a writ court which is summary in nature. What is important is the welfare of the child. In the writ court, rights are determined only on the basis of affidavits. Where the court is of the view that a detailed enquiry is required, the court may decline to exercise the extraordinary jurisdiction and direct the parties to approach the civil court. It is only in exceptional cases, the rights of the parties to the custody of the minor will be determined in exercise of extraordinary jurisdiction on a petition for habeas corpus.

21. In the present case, the appellants are the sisters and brother of the mother Zelam who do not have any authority of law to have the custody of the minor child. Whereas as per Section 6 of the Hindu Minority and Guardianship Act, the first respondent father is a natural guardian of the minor child and is having the legal right to claim the custody of the child. The entitlement of father to the custody of child is not disputed and the child being a minor aged 1 years cannot express its intelligent preferences. Hence, in our considered view, in the facts and circumstances of this case, the father, being the natural guardian, was justified in invoking the extraordinary remedy seeking custody of the child under Article 226 of the Constitution of India.

32. In the case at hand, the father is the only natural guardian alive and has neither abandoned nor neglected the child. Only due to the peculiar circumstances of the case, the child was taken care of by the appellants. Therefore, the cases cited by the appellants are distinguishable on facts and cannot be applied to deny the custody of the child to the father.

33. The child Shikha went into the custody of the appellants in strange and unfortunate situation. Appellants 1 and 2 are the sisters of deceased Zelam. Appellant 4 is the husband of Appellant 1. All three of them reside at Mahim, Mumbai. Appellant 3 is the married brother of Zelam who resides in Pune. During the fifth month of her pregnancy, Zelam was diagnosed with stage 3/4 breast cancer. Zelam gave birth to child Shikha on 14-8-2017. On 29-11-2017, Respondent 1 collapsed with convulsions due to illness. Upon his collapse, he was rushed to

hospital where he was diagnosed with Tuberculosis Meningitis and Pulmonary Tuberculosis. He was kept on ventilator for nearly eight days, during which period, appellants took care of Zelam and the child. The first respondent had to undergo treatment in different hospitals for a prolonged period. From 29-11-2017 to June 2018, Zelam and Shikha stayed at the residence of the appellants in Mumbai. During this period, Zelam underwent mastectomy surgery. Zelam later relapsed into cancer and decided to get treatment from a doctor in Pune and therefore, shifted to Appellant 3's house at Pune with Shikha and Zelam passed away on 17-10-2018. After recovering from his illness, the respondent visited Pune to seek custody of the child. But when they refused to hand over the custody, the father was constrained to file the writ petition seeking custody of the child. The child Shikha thus went to the custody of the appellants in unavoidable conditions. Only the circumstances involving his health prevented the father from taking care of the child. Under Section 6 of the Act, the father is the natural guardian and he is entitled to the custody of the child and the appellants have no legal right to the custody of the child. In determining the question as to who should be given custody of a minor child, the paramount consideration is the welfare of the child and not rights of the parents under a statute for the time being in force.

34. As observed in *Rosy Jacob* [*Rosy Jacob v. Jacob A. Chakramakkal*, (1973) 1 SCC 840] earlier, the father's fitness has to be considered, determined and weighed predominantly in terms of the welfare of his minor children in the context of all the relevant circumstances. The welfare of the child shall include various factors like ethical upbringing, economic well being of the guardian, child's ordinary comfort, contentment, health, education, etc. The child Shikha lost her mother when she was just fourteen months and is now being deprived from the love of her father for no valid reason. As pointed out by the High Court, the father is a highly educated person and is working in a reputed position. His economic condition is stable.

35. The welfare of the child has to be determined owing to the facts and circumstances of each case and the Court cannot take a pedantic approach. In the present case, the first respondent has neither abandoned the child nor has deprived the child of a right to his love and affection. The circumstances were such that due to illness of the parents, the appellants had to take care of the child for some time. Merely because, the appellants being the relatives took care of the child for some time, they cannot retain the custody of the child. It is not the case of the appellants that the first respondent is unfit to take care of the child except contending that he has no female support to take care of the child. The first respondent is fully recovered from his illness and is now healthy and having the support of his mother and is able to take care of the child.

36. The appellants submit that handing over of the child to the first respondent would adversely affect her and that the custody can be handed over after a few years. The child is only 1^{1/2} years old and the child was with the father for about four months after her birth. If no custody is granted to the first respondent, the Court would be depriving both the child and the father of each other's love and affection to which they are entitled. As the child is in tender age i.e. 1^{1/2} years, her choice cannot be ascertained at this stage. With the passage of time, she might develop more bonding with the appellants and after some time, she may be reluctant to go to her father in which case, the first respondent might be completely deprived of her child's love and affection. Keeping in view the welfare of the child and the right of the father to have her custody and after consideration of all the facts and circumstances of the case, we find that the High Court was right in

holding that the welfare of the child will be best served by handing over the custody of the child to the first respondent."

The Apex Court in the case of *Gautam Kumar Das vs. NCT of Delhi and Ors.* (2024) 10 SCC 588, held that granting temporary custody of minor child to a relative would not preclude the natural guardian from seeking custody of the minor child. It was held as under:-

"20. ..The appellant's wife died due to Covid infection and as such, he was forced to give the custody of the minor child Sugandha Das to Respondents 5 and 6, who are the sisters of the deceased wife. Looking at the very tender age of the child Sugandha Das at that time, the appellant could not have looked after her. However, the appellant was looking after his son Divyanshu Das, who was relatively older.

21. Subsequently, the appellant remarried. Now, he and his wife can very well look after the minor girl Sugandha Das. A perusal of the photographs placed on record would also reveal that pursuant to the visitation rights granted by the High Court and this Court, the minor child has gelled well with the family and the family of four appears to be happy.

22. Insofar as the fitness of the appellant is concerned, he is well educated and currently employed as Assistant General Manager (Class A Officer) in Central Warehousing Corporation, Delhi. The appellant's residence is also in Delhi whereas Respondent 6 to whom the custody of the minor child was handed over to by Respondent 5 is residing at a remote village in West Bengal. Apart from taking care of his children, the appellant can very well provide the best of the education facilities to his children. The child Sugandha Das, who lost her mother at tender age, cannot be deprived of the company of her father and natural brother. At the relevant time, the appellant had no other option but to look upon the sisters of his deceased wife to nurture his infant child.

23. In our opinion, merely because of the unfortunate circumstances faced by the appellant as a result of which, Respondents 5 and 6 were given the temporary custody of the minor child Sugandha Das and only because they looked after her for few years, the same cannot be a ground to deny the custody of the minor child to the appellant, who is her only natural guardian.

24. ***

25. Recently, this Court, in *Nirmala* [*Nirmala v. Kulwant Singh*, (2024) 10 SCC 595 : 2024 INSC 370] in para 27 has also observed that no hard-and-fast rule can be laid down insofar as the maintainability of the habeas corpus petition in the matters of custody of minor child is concerned. It has been held that as to whether the writ court should exercise its jurisdiction under Article 226 of the Constitution of India or not will depend on the facts and circumstances of each case.

26. However, it is to be noted that a common thread in all the judgments concerning the custody of minor children is the paramount welfare of the child. As discussed hereinabove, we find that, apart from the appellant being the natural guardian, even in order to ensure the welfare of the minor child, she should live with her natural family. The minor child is of tender age, and she will

get adapted to her natural family very well in a short period. We are therefore inclined to allow the appeal."

It is well settled that in proceedings of habeas corpus relating to custody of a minor, the paramount consideration for the Court is the welfare and best interest of the child.

From the record, it is evident that the mother of the corpus, Deepika Pandey, died on 10.02.2025, and there is no criminal prosecution pending against the petitioner in relation to her death. The mere fact that the death occurred during a failed IVF procedure cannot, in any manner, be attributed to any fault on the part of the petitioner so as to disentitle him from claiming custody of his minor child.

It is also undisputed that after the demise of the mother, the father is the natural guardian and ordinarily the most suitable person to look after the welfare of the minor. There is no material on record to indicate that the petitioner is unfit or incapable of discharging his parental responsibilities. On the contrary, the record reflects that the petitioner possesses sufficient financial means, has stable residential arrangements, and is in a position to provide proper care and upbringing to the child.

Further, the presence and support of the petitioner's sister, Smt. Sunita Pandey, who is residing nearby and is an experienced housewife with two grown up children aged about 17 years and 11 years, provides an additional assurance regarding the welfare and proper upbringing of the minor.

The contention of the private respondents that the welfare of the child would be better served under the care of the maternal relatives does not outweigh the legal and natural claim of the father, particularly in the absence of any adverse material against him. The age of the maternal grandmother, stated to be about 71 years, also cannot be ignored while assessing long-term welfare considerations.

This Court is also mindful of the fact that the corpus is only about 13 months old. If custody is not entrusted to the father at this stage, there is a real possibility of the child growing up without forming any emotional bond with him, which would be detrimental to the child's overall development and the father's parental rights.

In the totality of the facts and circumstances, and considering the paramount welfare of the minor, this Court finds no justification to deny custody of the corpus to his father.

Accordingly, the private respondent Nos. 4 and 5 are directed to hand over the custody of the minor corpus, Akshit Pandey, to the petitioner, Vipin Kumar Pandey, forthwith, in Court itself.

However, in order to preserve the emotional bond of the child with the maternal family, respondent Nos. 4 and 5 are granted visitation rights. They shall be entitled to visit the minor at the petitioner's residence every Sunday at 04:00 PM for a duration of two hours.

It is expected that the petitioner shall extend full cooperation to the private respondents and shall not cause any obstruction during the visitation period.

It is further clarified that in the event the private respondents observe any circumstance adverse to the welfare of the minor, it shall be open to them to approach this Court in accordance with law.

Accordingly, the present habeas corpus petition is allowed.

In compliance of the direction of this Court, the custody of minor Akshit Pandey has been handed by the private respondents, to his father Vipin Kumar Pandey.

(2026) 4 ILRA 1569
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 10.04.2026

BEFORE

THE HON'BLE ANIL KUMAR-X, J.

Habeas Corpus Writ Petition No. 387 of 2026

Smt. Anjali Devi & Ors.

...Petitioners

Versus

State of U.P. & Ors.

...Respondents

Issue for Consideration

Head Notes

The Constitution of India, 1950-Article 226 (Habeas Corpus); The Hindu Minority and Guardianship Act, 1956- Section 6; The Indian Penal Code. 1860- Section 361- Mere allegation that the father has forcibly taken the minors from the custody of the mother, even if accepted on its face value, would not lead to the conclusion that the minors are in illegal detention. The father, being a natural guardian, cannot be said to have taken the minors out of lawful guardianship so as to attract any criminality. Such forcibly taking away will constitute an offence only if it has been done in violation of a legal order or legal prohibition.

Held- It is evident that the minors, who are above five years of age, have been residing with the father since the year 2022. No exceptional or extraordinary circumstance has been brought on record to indicate that their custody is illegal or detrimental so as to warrant interference by this Court in exercise of its writ jurisdiction. The remedy of habeas corpus cannot be permitted to be used as a substitute for the remedies available under the Hindu Minority and Guardianship Act, 1956 and the Guardians and Wards Act, 1890, where a detailed adjudication on the issue of custody, guided by the welfare of the child, can appropriately be undertaken.

Petition dismissed. (E-15)

(Para 15, 17 & 18)

Case Law Cited

Smt. Rinku Ram @ Rinku Devi and another vs. State of U.P. and 7 others; Tejaswini Gaud and others vs. Shekhar Jagdish Prasad Tewari and others; Shri Ashok Kumar Seth vs. State of Orissa 2002 SCC OnLine Ori 138

List of Acts

The Constitution of India, 1950; The Hindu Minority and Guardianship Act, 1956

List of Keywords

Father, being a natural guardian; Offence attracted offence only if done in violation of a legal order ; Cannot be said to have taken the minors out of lawful guardianship; Remedy of habeas corpus; Not permitted to be used: Substitute for the remedies available under the Hindu Minority and Guardianship Act, 1956;

Case Arising From

Habeas corpus writ petition has been filed seeking issuance of a writ, order or direction in the nature of habeas corpus commanding respondents to produce petitioner no. 1 (corpus) before this Court and to set her at liberty

Appearances for Parties

Counsel for Petitioner(s) : Pradeep Kumar Singh, Rahul Shukla

Counsel for Respondent(s) : Amit Kumar Chaudhary, G.A.

(Delivered by Hon'ble Anil Kumar-X, J.)

1. Heard learned counsel for the petitioners and Sri R.K.Singh, learned AGA for the State as also perused the record.

2. The present habeas corpus writ petition has been filed seeking issuance of a writ, order or direction in the nature of habeas corpus commanding respondents to produce petitioner no. 1 (corpus) before this Court and to set her at liberty.

3. Learned counsel for the petitioner submitted that the marriage of petitioner no. 1 was solemnized with respondent no. 4 on 07.02.2010 in accordance with Hindu rites and rituals. Out of the said wedlock, petitioner no. 2, Devansh, aged about 14 years, and petitioner no. 3, Awani, aged about 10 years, were born. It is further submitted that relations between petitioner no. 1 and respondent no. 4 became strained, and petitioner no. 1 was driven out of her matrimonial home. Thereafter, on 04.06.2022, respondent no. 4 allegedly came to the matrimonial home of petitioner no. 1 and forcibly took away both the minors (corpus) at gunpoint. Since then, petitioner nos. 2 and 3 are stated to be in the illegal custody of respondent no. 4. Learned counsel for the petitioner further submitted that several applications were filed before different forums seeking custody of the minors; however, no effective action has been taken by the authorities. It is also submitted that a habeas corpus petition for seeking custody of a minor child, even from the other parent, is maintainable.

4. In support of his submissions, learned counsel has placed reliance upon the judgment of this Court in Smt. Rinku Ram @ Rinku Devi and another vs. State of U.P. and 7 others. Drawing attention to paragraph 16 of the said judgment, it is submitted that the Division Bench has clearly held that where a child is in the custody of another parent, the Court can invoke its extraordinary

jurisdiction in the best interest of the child. Accordingly, it is prayed that a direction be issued to respondent no. 4 to hand over custody of the corpus to the petitioner.

5. Learned AGA and learned counsel for the respondent submitted that both minors have been residing with respondent no. 4 since the year 2022, and the petitioner has not availed any remedy under the Guardian and Wards Act till date. It is contended that the appropriate remedy for seeking custody of the minors is to approach the competent Family Court by filing a petition under the Guardian and Wards Act. It is further submitted that custody disputes between parents ordinarily cannot be adjudicated in a writ petition under Article 226 of the Constitution of India. The judgment in Smt. Rinku Ram (supra), relied upon by the petitioner, is distinguishable on facts. In that case, the custody of the minor was forcibly taken in violation of an order passed by the Child Welfare Committee, which had directed that custody be handed over to the mother. No such circumstance exists in the present case. Therefore, the present petition, seeking custody of minors from the father at the instance of the mother, is not maintainable.

6. Heard learned counsel for the parties and perused the record. Considering the submissions advanced, it is evident that the Division Bench of this Court in Smt. Rinku Ram (supra), in paragraph 16, observed that the extraordinary writ jurisdiction may be invoked where the welfare of the child so demands. It was observed in Paragraph-16:-

"16. In our opinion, the view taken by the learned Single Judge is contrary to the decision of the Hon'ble Supreme Court in Yashita Sahu Vs. State of Rajasthan and others: (2020) 3 SCC 67, wherein, after placing reliance on judgments in Elizabeth Dinshaw Vs. Arvand M. Dinshaw and others: (1987) 1 SCC 42, Nithya Anand Raghavan Vs. State (NCT of Delhi) and another: (2017) 8 SCC 454 and Lahari Sakhamuri Vs. Sobhan Kodali: (2019) 7 SCC 311, it has been held that it is too late in the day to urge that a writ of habeas is not maintainable if the child is in the custody of another parent and the court can invoke its extraordinary writ jurisdiction for the best interest of the child."

7. However, the said observation was made in the peculiar facts of that case, where the child had been forcibly taken in violation of an order passed by the Child Welfare Committee. It is well settled that ordinarily a writ of habeas corpus for custody of a minor child is not maintainable when the custody is sought by one parent from the other parent. In this regard, reference may be made to the judgment of the Hon'ble Supreme Court in Tejaswini Gaud and others vs. Shekhar Jagdish Prasad Tewari and others, wherein the Hon'ble Supreme Court has held in paragraphs 18 and 19 as follows:

"18. Habeas corpus proceedings is not to justify or examine the legality of the custody. Habeas corpus proceedings is a medium through which the custody of the child is addressed to the discretion of the court. Habeas corpus is a prerogative writ which is an extraordinary remedy and the writ is issued where in the circumstances of the particular case, ordinary remedy provided by the law is either not available or is ineffective; otherwise a writ will not be issued. In child custody matters, the power of the High Court in granting the writ is qualified only in cases where the detention of a minor is by a person who is not entitled to his legal custody. In view of the pronouncement on the issue in question by the Supreme Court and the High Courts, in our view, in

child custody matters, the writ of habeas corpus is maintainable where it is proved that the detention of a minor child by a parent or others was illegal and without any authority of law.

19. In child custody matters, the ordinary remedy lies only under the Hindu Minority and Guardianship Act or the Guardians and Wards Act as the case may be. In cases arising out of the proceedings under the Guardians and Wards Act, the jurisdiction of the court is determined by whether the minor ordinarily resides within the area on which the court exercises such jurisdiction. There are significant differences between the enquiry under the Guardians and Wards Act and the exercise of powers by a writ court which is of summary in nature. What is important is the welfare of the child. In the writ court, rights are determined only on the basis of affidavits. Where the court is of the view that a detailed enquiry is required, the court may decline to exercise the extraordinary jurisdiction and direct the parties to approach the civil court. It is only in exceptional cases, the rights of the parties to the custody of the minor will be determined in exercise of extraordinary jurisdiction on a petition for habeas corpus."

8. The crux of the above observation is very clear that habeas corpus in child custody matters is an extraordinary remedy, used only when the custody of a child is illegal or without authority of law. It is not meant to decide detailed custody rights but to ensure the welfare of the child through a summary process. Normally, such disputes should be resolved under the Guardians and Wards Act or the Hindu Minority and Guardianship Act. The High Court exercises this power only in exceptional cases and may direct parties to approach the civil court if a detailed inquiry is required.

9. A question arises whether a bald allegation by one parent against the other parent that the minors were forcibly taken away would be sufficient to invoke the jurisdiction of a writ of habeas corpus. The basic requirement for invoking the writ of habeas corpus is that the corpus must be shown to be in illegal detention. Therefore, a further question arises as to whether a minor residing in the custody of one parent, against the wishes or consent of the other parent, would by itself give rise to a presumption that such custody is illegal.

10. In order to answer the aforesaid issue, it is necessary to examine the ingredients of Section 361 of the Indian Penal Code, which defines kidnapping from lawful guardianship in the following terms:-

"Whoever takes or entices any minor under sixteen years of age if a male, or under eighteen years of age if a female, out of the keeping of the lawful guardian of such minor, without the consent of such guardian, is said to kidnap such minor from lawful guardianship."

11. The emphasis of the provision is on taking a minor "out of the keeping of the lawful guardian". The said expression clearly signifies that the offence would be attracted only when the minor is removed from the custody of a person who is legally recognized as the guardian, and the person taking the minor is not himself a lawful guardian. Where the person taking the minor is himself a lawful guardian, the essential ingredient of the offence fails.

12. In this context, reference may be made to Section 6 of the Hindu Minority and Guardianship Act, 1956, which reads as below :

"6. Natural guardians of a Hindu minor ? The natural guardians of a Hindu minor, in respect of the minor's person as well as in respect of the minor's property (excluding his or her undivided interest in joint family property), are-

(a) in the case of a boy or an unmarried girl ? the father, and after him, the mother; provided that the custody of a minor who has not completed the age of five years shall ordinarily be with the mother;"

13. It is evident that statute itself recognizes the father as a natural guardian. Further, the definition of the term "Guardian" as defined under Section 4(2) of the Guardians and Wards Act, 1890, also requires consideration which reads thus :

"4.(2) "guardian" means a person having the care of the person of a minor or of his property, or of both his person and property."

14. Bare perusal of Section 6 of the Hindu Minority and Guardianship Act, 1956 and Section 4 (2) of the Guardians and Wards Act, 1890 defines a guardian as a person having the care of the person of a minor or of his property or of both. The combined reading of these provisions makes it clear that both parents have a legally recognized status in relation to the minor, and disputes regarding custody are essentially civil disputes to be adjudicated by the competent court.

15. In view of the aforesaid legal position, mere allegation that the father has forcibly taken the minors from the custody of the mother, even if accepted on its face value, would not lead to the conclusion that the minors are in illegal detention. The father, being a natural guardian, cannot be said to have taken the minors out of lawful guardianship so as to attract any criminality. Such forcibly taking away will constitute an offence only if it has been done in violation of a legal order or legal prohibition. It was explicitly explained in *Shri Ashok Kumar Seth vs. State of Orissa* 2002 SCC OnLine Ori 138, particularly paragraph 8 of the said decision, which runs as below :

"8. It is thus clearly readable from the position of law as noted and discussed above that unless there is legal prohibition by order of a Court of competent jurisdiction, the father cannot be booked for taking away his minor child from the custody of his wife because he is the natural guardian and therefore, the offence under Section 363, I.P.C. cannot be attracted against him for taking the child from the custody of the mother?.."

16. In the above decision the Orissa High Court equally held that the father cannot be booked for taking away his minor child from the custody of his wife because he is the natural guardian, and therefore, the offence punishable under Section 363 of the IPC cannot be attracted against him.

17. Consequently, such allegation by itself would not justify invocation of the extraordinary writ jurisdiction of habeas corpus. It is well settled that habeas corpus is an extraordinary remedy, to be exercised sparingly and only in cases where the custody is shown to be wholly illegal or without authority of law, as held by the Hon'ble Supreme Court in *Tejaswini Gaud* (Supra). The observation in judgment of *Smt. Rinku Ram* (supra) were made in the same context and is not applicable in every case of custodial dispute between the parents.

18. Applying the aforesaid principles to the facts of the present case, it is evident that the minors, who are above five years of age, have been residing with the father since the year 2022. No exceptional or extraordinary circumstance has been brought on record to indicate that their custody is illegal or detrimental so as to warrant interference by this Court in exercise of its writ jurisdiction. The remedy of habeas corpus cannot be permitted to be used as a substitute for the remedies available under the Hindu Minority and Guardianship Act, 1956 and the Guardians and Wards Act, 1890, where a detailed adjudication on the issue of custody, guided by the welfare of the child, can appropriately be undertaken.

19. Accordingly, this Court is of the considered opinion that the present petition is not maintainable and no interference is called for.

20. Accordingly, this petition is dismissed.

(2026) 4 ILRA 1574
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 16.04.2026

BEFORE

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

Habeas Corpus Writ Petition No. 741 of 2025

Sameer & Anr.

...Petitioners

Versus

State of U.P. & Ors.

...Respondents

Issue for Consideration

Whether the petitioner has been detained by the Detaining Authority, exercising jurisdiction under Section 3(3) of the NSA, without application of mind and the offence attributed to the petitioner is a petty offence, triable by Magistrate, which even if established to have been committed by him, would constitute no more than a violation of the law and order.

Head Notes

The Constitution of India, 1950-Article 226 (Habeas Corpus); The National Security Act, 1980-Section 3(3) & 12-The offence committed by the petitioner was not an offence of the ordinary violent kind, that affected the life of one individual or a group of them, unconcerned with the stable life of the community, which would go on unruffled by his actions. He had committed an act that aroused public outrage amongst a large section of the population in the locale, whose religious feelings were hurt. This kind of an offence, if repeated again, about which the Detaining Authority had material to believe that it could be done by the petitioner upon his release, would certainly imperil the even tempo of life of the locality, and, a fortiori public order. In this regard, the nature of the offence has to be borne in mind very discretely. The offence committed by the petitioner, produces almost spontaneous violence and resentment from one section of the community and, therefore, the Detaining Authority was absolutely justified in thinking that the petitioner, upon his release from jail, could indulge in activity, prejudicial to the

maintenance of public order- No unexplained delay occurred, which might vitiate the detention order.

Held- No infirmity in the order impugned, directing the petitioner's detention under the NSA.
Petition dismissed. (E-15)

Case Law Cited

Ram Manohar Lohia v. State of Bihar and another, AIR 1966 SC 740; Arun Ghosh v. State of W.B., (1970) 1 SCC 98; Shaukat Ali v. Union of India and others, 2002 SCC OnLine All 1435; Tauqeer v. State of U.P. and others, 2002 SCC OnLine All 230; Guddu Panchhi v. District Magistrate, Kanpur Nagar and others, 2004 SCC OnLine All 1847; Wasi through Mohd. Rafi v. State of U.P. and others, 2017 SCC OnLine All 1880; Kamarunnissa v. Union of India and another, (1991) 1 SCC 128; T.V. Sraavan v. State, (2006) 2 SCC 664 ; Champion R. Sangma v. State of Meghalaya, (2015) 16 SCC 253;

List of Acts

The Constitution of India, 1950; The National Security Act, 1980

List of Keywords

Section 3(3); NSA; Committed offence: Aroused public outrage; Religious feelings were hurt; Detaining Authority; Justified in thinking; Upon release on bail; Petitioner could indulge in activity, prejudicial to the maintenance of public order

Case Arising From

Writ of habeas corpus has been preferred by the detenu through his father, against his detention ordered by the District Magistrate, Shamli, under Section 3(3) of the National Security Act, 1980, vide order dated 15.05.2025, and confirmed by the State Government vide order dated 12.06.2025 made under Section 12(1) of the Act.

Appearances for Parties

Counsel for Petitioner(s) : Brijesh Kumar Yadava, Narendra Kumar

Counsel for Respondent(s) : Manish Pandey, G.A.

(Delivered by Hon'ble J. J. Munir, J.)

1. This petition for a writ of habeas corpus has been preferred by Sameer through his father, Shamshad, against his detention ordered by the District Magistrate, Shamli, under Section 3(3) of the National Security Act, 1980, vide order dated 15.05.2025, and confirmed by the State Government vide order dated 12.06.2025 made under Section 12(1) of the Act last mentioned.

2. The facts, giving rise to this petition, would show that it all began with a police party, headed by Sub-Inspector Gyanendra Singh on routine duty to maintain law and order and serve processes etc. while passing through the jungle in Village Lavvadaudpur, Police Station Jhinhana, District Shamli, coming across the remains of cows progeny, lying in the field of one Sandeep son of Aval Singh on 15.03.2025, soon after 10.10 a.m. The police party, who came across the remains of cows' progeny, found 11 dismembered feet, four tails, parts of the head, besides parts of skin and a wooden block. The police team called Veterinary Medical Officer, Dr. Imran Ansari over his mobile phone to identify the remains. The Veterinary Medical Officer reached the spot and identified the remains as ones of the cows progeny, regarding which he said he would make a separate report. The police team in the FIR, that they got registered with P.S. Jhinhana, said that

the remains were found at the specified location, and that some unknown men had slaughtered the cows progeny, on the basis of which Crime No. 99 of 2025, under Section 3/8 of the Uttar Pradesh Prevention of Cow Slaughter Act, 1955 (for short, 'the Act of 1955'), P.S. Jhinhana, District Shamli, was registered. It was also recorded in the FIR that the remains were secured by the Police and upon directions of the Veterinary Medical Officer, in order to prevent foul stench, besides disease from spreading, interred after digging up earth. The wooden block was marked and taken into custody.

3. It is next said in the FIR that Holi was around and the incident had led to unrest amongst the Hindu population, necessitating detailing of force to maintain peace. It was also said in the FIR that a memo of recovery was prepared on the spot and signed by members of the police party. In fact, it is the aforesaid memo, relating to recovery of remains of the cows progeny, that was registered as the check FIR, giving rise to the crime.

4. The grounds, upon which the impugned detention is founded, are indeed detailed and recount all happenings and circumstances, leading to the petitioner's incarceration. Since other men were involved in the crime, that led to the petitioner's detention, and they too were similarly detained, the grounds carry reference to those others as well. Therefore, it may not be relevant for us to refer to the entire gamut of facts that the grounds carry. We propose to refer to only so much of whatever is said in the grounds as is relevant to the petitioner's detention under the National Security Act, 1980 (for short, 'the NSA'). After a copious reference to the discovery of the offence by the police team and whatever is said in the FIR, it is mentioned in the grounds that post registration of the crime, the Investigating Officer left for the place of occurrence, and upon reaching there, saw that at the field of Sandeep Kumar located in the jungle of Village Lavvadaudpur, a big crowd of people had congregated. Amongst them, members of the Hindu populace had frayed tempers, who were reasoned with and pacified.

5. The Investigating Officer then set about the task of finding out the identity and location of the offenders. The police informers were summoned for the purpose and necessary instructions issued to them. The Station House Officer, P.S. Jhinhana, upon learning of this happening, reached the spot, accompanied by members of his companion force. The S.H.O. again found a big crowd gathered at the place of occurrence and they were livid about the incident of cow slaughter. The crowd, that had now gathered, had representatives of various associations present, including Hindu organizations, such as the Rashtriya Bajrang Dal, the Pashchimi Uttar Pradesh Sanyukt Udyog Vyapar Mandal, the Shiv Sena Mandal Saharanpur Unit, the Akhil Bharatiya Pradhan Sangthan. Members of these organizations were shouting slogans and demanding the immediate arrest of the offenders responsible for the crime. This crowd blockaded the Jhinhana-Thana Bhawan Road, leading to a long queue of vehicles on both sides of the blockade. The passersby and the travellers were much troubled. This jamming of the road on account of the blockade lasted for long hours, in consequence of which public order in the area was torn asunder.

6. Upon receiving information, the Circle Officer, Kairana, also reached the spot/ place of occurrence, along with members of his companion force and attempted to pacify the enraged members of the crowd. In the meanwhile, information of this incident was relayed to the nearby police stations and additional forces from those stations, such as Thana Bhawan, Garhi Pukhta,

Thana Babri, arrived. They were detailed around the place of occurrence and the enangered villagers were assured about their own safety and that of their cattle. Police force had to camp at villages Naya Gaon, Dathaida, Gangarampur Khedki, Lavvadaudpur, Shamli-Shamla, Panthupura, Jijaula, Ballamajra, Toda, Khodsama and Laxmipura. The Police maintained surveillance in these villages, in order to ensure that the disturbed public order resulting from this incident could be restored.

7. The Investigating Officer on the 16th of March, 2025 learnt through a police informer that five men were involved in this incident of cow slaughter. They were Iqbal son of Rashid, Jaane Alam son of Sagir, Javed son of Islam, Wasim alias Gullu son of Salim, and Sameer son of Shamshad (the petitioner). All of them had together, according to the informer, committed the offence. By and by, the investigation proceeded and raids were made by the Police to interrogate men, whose names had surfaced in connection with the crime.

8. For a first, the Police went to the homes of Iqbal and Jaane Alam, one after the other, looking out for them, but they were not there. The relatives did not give any information as to their whereabouts. Next, the Police went to Javed's house, but he too was not found at home. His relatives did not give any information as to his whereabouts. On 16.03.2025, upon an informer's tip off that the offenders, responsible for the incident of cow slaughter, would be proceeding from Chausana to Mundet, carrying illicit weapons on them, and that they could be caught if a checking exercise was strictly undertaken, the Police went to the place of their reported movement. To shorten the narration of events, three of the men, said to be involved in the incident, were seen riding a motorcycle, and upon being challenged to stop, attempted to escape, accelerating the vehicle. They then turned aggressive, when it was apparent that they were surrounded by the police party, and opened fire. The policemen barely escaped unhurt and in the return fire, some of the offenders were injured. They were overpowered and apprehended. The apprehended men disclosed their names as Javed son of Islam, Iqbal son of Rasheed and the third, who was caught after a chase, revealed his name as Raees son of Mumtaj. All of them had firearms on them, besides mobile phones, the details of which are not very relevant to the controversy involved here. All the three were arrested.

9. On 16.03.2025 at 23:12 hours, the arrested men were interrogated, who disclosed that in the night intervening 12/ 13.03.2025, the three of them, along with Waseem @ Gullu son of Saleem and Sameer son of Shamshad (the petitioner), had slaughtered a cow and two calves, that were roaming free, doing this act in the jungle of Village Lavvadaudpur, precisely a sugarcane field. The flesh of the slaughtered progeny of the cow was sold, fetching them a sum of Rs.20,000/- in proceeds. A sum of Rs.5,999/- was utilized to buy a mobile handset, which was recovered from Iqbal and the residue was equally shared by all the offenders. It was also revealed that today when apprehended, they were planning to slaughter cows, roaming free in the jungle. The arrest of the three offenders and whatever they revealed was recorded on a mobile phone by Sub-Inspector Gyanendra Singh, the mobile carrying SID No. 2724984928831148. On the basis of these facts, a separate Crime No.104 of 2025, under Sections 109(1) B.N.S. and 3/25/27 of the Arms Act was registered vide G.D. No. 4 at 2:20 a.m. on 17.03.2025 at P.S. Jhinhana, District Shamli.

10. Next on the information received, the petitioner was arrested on 17.03.2025 at 9:55 a.m. He is a young man of 20 years and a search of his person, led to the recovery of an illicit knife. Upon inquiry being made about the knife, the petitioner is said to have stated that if during a cow slaughter, someone chances upon him, the knife is used to threaten the man away. The petitioner too, upon being interrogated, revealed that he along with his brother-in-law (sister's husband), Javed and his companions Iqbal, Jaane Alam and Gullu, had slaughtered cows in the night intervening 12/13.03.2025 in the jungle of Village Lavvadaudpur. Since those men were caught, the petitioner reportedly said that he was going to a friend to hide himself, but was caught. The petitioner was arrested on the spot and charged with Section 4/25 Arms Act, as he was in the possession of an illicit knife. Later on, being involved in Crime No.99 of 2025, under Section 3/8 of the Act of 1955, he was challaned in that case also.

11. It is also said in the grounds of detention that the petitioner's arrest and recovery were captured on a mobile phone, using the e-evidence application by Head Constable 578 Ashish Kumar, leading to generation of SID No. 2782061293382277. It is also said in the grounds of detention that information of his arrest was given to his family members, whose name was furnished by the petitioner. The memo of arrest and recovery was typed out by the Investigating Officer on his mobile phone, using notepad and forwarded to Head Constable 578 Ashish Kumar on his mobile phone. Two sets of printouts were taken out at Police Chowki Chausana, employing the official printer provided there. Once the printout of the memo of arrest and recovery was available, it was read out to all the members of the police party, who signed the same. A copy of the said memo was provided to the petitioner after securing his acknowledgment on the duplicate. The last of the co-accused Waseem @ Gullu son of Saleem was apprehended after exchange of fire with the Police on 27.03.2025.

12. It is next said in the grounds of detention that news of the cow slaughter in Village Lavvadaudpur spread like wildfire in that village and the adjoining villages of Naya Gaon, Dathaida, Gangarampur, Khedki, Panthupura, Jijaula, Laxmipura, Ballamajra, Toda and Khodsama, leading natives of the said village and workers of various organizations/ Hindu organizations to rush to the spot. Upon seeing the remains of the cow and their progeny, they were enraged. This event coincided with the festival of Holi, which led to religious feelings of the villagers being hurt. They let out their anger by resorting to slogan shouting and blockading the Thana Bhawan-Jhinjhana Road completely. This cause a formidable road jam and on both sides of the blockade, a long queue of vehicles, all standstill was there. The passersby and travellers, caught in this traffic jam, were severely distressed and the public order was completely disturbed. Upon receipt of information, the S.H.O., P.S. Jhinjhana along with police force posted at the Chowki and higher officials of the police reached the spot in order to attempt to pacify the crowd that had gathered there. Police summoned from the adjoining police stations was detailed to duty in maintaining public order and the villagers were assured about the safety and security of their animals, all towards an endeavour to restore public order.

13. The prevalent conditions on the spot are evident from copies of reports registered at Police Chowki Chausana, P.S. Jhinjhana, memoranda handed over to the Police/ Administration by the various Hindu organizations, the material collected in the cases registered, including statements recorded and documentary evidence, besides intelligence collected from the adjoining villages by

speaking to the locals there and that secured through informers. It is also said in the grounds that the incident was widely reported in various newspapers, which are annexed to the grounds.

14. It is next mentioned in the grounds that Head Constable 578 Ashish Kumar and Head Constable 361 Mukesh Kumar, upon return from their beat, had got G.D. No.20 at 7:25 p.m. registered, saying that the petitioner had got information conveyed through his close relatives from the jail that he would be soon released on bail by this Court, and upon being released from jail, would again commit cow slaughter and that the Police could not harm him. This beat information was entrusted for investigation to Sub-Inspector Pramod Kumar, who found that the information carried correct facts. In addition, the report submitted by the Local Intelligence Unit dated 29.04.2025 also verified the same facts as carried in the beat report.

15. It is then said in the grounds that the petitioner was in jail in connection with Case Crime No. 99 of 2025, under Section 3/5A/8 of the Act of 1955 and Section 4/25 of the Arms Act, incarcerated in the District Jail, Muzaffar Nagar, but was regularly endeavouring to secure his release on bail. It is noted that a bail application was filed before the Lower Court, which was rejected, and then the Sessions Judge was moved, seeking bail. The Sessions Judge too rejected the petitioner's bail plea. Now, the petitioner had moved this Court and there are strong chances that the petitioner would be enlarged on bail.

16. It is said that the petitioner was consistently endeavouring to secure his release on bail. The fact that the petitioner was so endeavouring is verified by the report of P.S. Jhinhana. The beat information and its verification, besides the Local Intelligence Unit report dated 29.04.2025, also verify the fact. It is next recorded in the grounds that it is, thus, evident that the petitioner's release is nigh. His criminal propensity makes it evident that once released from jail, there is likelihood of commission of such offences that public order in the local limits of P.S. Jhinhana and the adjoining areas would again be vitiated. The detaining Authority then says that on the basis of the aforesaid facts and grounds, he was subjectively satisfied that the petitioner's release from jail could happen soon, and that upon release from jail, there was likelihood of his committing such offences, which are prejudicial to the maintenance of public order. In order to prevent him from acting in a manner prejudicial to the maintenance of public order, it was necessary to detain him.

17. The grounds then go on to inform the petitioner of his right to represent to the District Magistrate and the State Government under Section 8 of the NSA. It was also clearly conveyed that in the event the petitioner wished to exercise his right to represent to the Detaining Authority, he could do so promptly through the Superintendent of Jail, where he was detained. Such a representation, if moved within 12 days or before the approval of the detention by the State Government, whichever was earlier, would be considered by the Detaining Authority. The right to represent to the State Government could be exercised by the petitioner by moving the Secretary, Home Department, Government of U.P., Lucknow, through the Superintendent of the Jail, wherever the petitioner was detained.

18. The grounds further informs the petitioner that under Sections 9 and 10 of the NSA, if he wished to represent his case before the Uttar Pradesh Advisory Board, Lucknow, he could do so through the Registrar, U.P. Advisory Board, Lucknow, addressing him. The representation could be

moved through the Superintendent of the Jail, where he was detained. The petitioner was further informed that the matter would be referred to the Advisory Board under Section 10 within three weeks of the petitioner's detention and his representation, if received with delay, would not be considered by the Board. The petitioner was also informed that under Section 11(1) of the NSA, if the Advisory Board thought it fit or the petitioner desired so, he could be heard in person. If the petitioner wanted a personal hearing before the Board, he must specifically mention it in his representation, which would have to be made through the Superintendent of the Jail, where he was detained and presented to the State Government. The petitioner was informed that under Section 14 of the NSA, he had a right to represent his case against the detention to the Central Government. If the petitioner desired to invoke this remedy, he could do so by making a representation, addressed to the Secretary, Home Ministry, Government of India through the Deputy Secretary (Security), Security Department, Sector 11 Building, Jaisingh Road, near Regal Park, Jantar-Mantar, New Delhi, moving the said representation through the Jail Superintendent.

19. On the basis of these grounds, the District Magistrate, Shamli, passed a detention order under Section 3(3) read with Section 3(2) of the NSA, directing the petitioner to be detained in District Jail, Muzaffar Nagar. Since the petitioner's representation against his detention to the Advisory Board was rejected, the State Government, in exercise of their powers under Section 12(1), confirmed the detention order, directing the petitioner to be detained for a period of 12 months w.e.f. 15.05.2025.

20. Aggrieved, this habeas corpus writ petition has been preferred.

21. The writ petition was presented before the Registry on 11.08.2025 and all defects were removed on 19.08.2025. It came up before the Division Bench for admission on 23.08.2025, when a show cause was issued, asking the respondents to answer why the detenu be not set at liberty. By an order dated 22.09.2025, the Union of India was directed to be impleaded. The petition then came up again on 13.10.2025, when the Court noticed that affidavits, so far as the State of U.P. and their officials were concerned, have been exchanged. The petition was admitted and posted for hearing on 28.10.2025. By that time, the Secretary, Ministry of Home, was granted time to file a counter affidavit. The petition was adjourned once on 28.10.2025. On 03.11.2025, the Union of India filed their counter affidavit, but the learned Counsel for the petitioner waived his right to file a rejoinder to the said affidavit.

22. Heard Mr. Narendra Kumar, learned Counsel for the petitioner, Mr. Deepak Mishra, learned A.G.A. on behalf of respondent Nos.1 to 8 and Mr. Manish Kumar Pandey, learned Central Government Counsel, appearing on behalf of the Union of India.

23. The foremost point argued by the learned Counsel for the petitioner is that the grounds of detention in support of the detention order indicate that the petitioner has been detained by the Detaining Authority, exercising jurisdiction under Section 3(3) of the NSA, without application of mind. The next submission is that the offence attributed to the petitioner is a petty offence, triable by Magistrate, which even if established to have been committed by him, would constitute no more than a violation of the law and order. There is no material to show that the petty offence, of which the petitioner was a part, could or did lead to vitiation of public order. Since, there is no case more

than that of a violation of the law and order, the prosecution launched against the petitioner would test the petitioner's guilt or otherwise. There is absolutely no basis to invoke the NSA and detain the petitioner without trial, it being evident that there was no violation of public order. It is next argued that there was no material to show that the petitioner, if enlarged on bail, would again indulge in commission of the offence of cow slaughter, endangering the maintenance of public order in future. There being no objective material in this regard, the subjective satisfaction of the detaining Authority is clearly vitiated on account of being based on no material.

24. The petitioner alleges that he represented his case in the exercise of his statutory right to the State Government and the Advisory Board, but there was inordinate delay in the decision of his representations by the Government and the Board, vitiating the detention.

25. Mr. Deepak Mishra, learned A.G.A., has refuted the submissions advanced on behalf of the petitioner and submitted that the detention order has been made well within the requirements of the law. He has taken us through the various affidavits and the material, upon which the order of detention is founded.

26. So far as the submission that the impugned order is one made without application of mind, we do not think that, that is the case. A perusal of the grounds of detention show that there is a copious consideration not only of the crime disclosed in the FIR, giving rise to Crime No.99 of 2025, but the circumstances of the occurrence and its impact in the locale, where the offence was committed, vis-a-vis the issue of public order. All of this has been meticulously considered by the Detaining Authority. This is not a case, where there is a mechanical recital of the fact alone that the offence constitutes a violation of public order, but shows due application of mind to the offence and its impact in the locale on the maintenance of public order. It is also not the case that the Detaining Authority has proceeded to pass the detention order without application of mind to the requirements of the law, after describing the ramifications of the offence in the locale. The Authority has held it to be an act that vitiated public order. It is also remarked by the Authority on the basis of material before it that it was subjectively satisfied that the petitioner was attempting to secure his release on bail and there was likelihood of his being released on bail. It is then said that the material further showed that the petitioner intended to repeat the offence by capturing stray cows, which if done, would again lead to the public order being prejudicially affected. All these features, which figure in the grounds of detention, make it evident that this is not a case, where it can be said that the order of detention has been passed without application of mind. The first point urged by the learned Counsel for the petitioner is, therefore, negatived.

27. This takes us to the next submission that the crime reported against the petitioner, on the foot of which the impugned order of detention has been passed, is no more than an instance of the violation of law and order; not an incident, which prejudicially affects public order, so as to entitle the respondents to detain the petitioner without trial, invoking the provisions of the NSA.

28. We must remark here that in the genesis of every event, that is an infraction of the public order or its vitiation, there is some crime punishable by law, which can always be termed as a violation of law and order. The violation of law and order is, of course, to be punished in accordance with law after prosecuting the offender, but this does not mean that every infraction of

the law and order, that spins out of its trouble spot and widely affects the even tempo of life, is to be regarded as a violation of law and order alone. Whether a violation of the law and order would be just that and no more or have a cascading effect, unsettling the even tempo of life in the locale, or even far and wide, is dependent upon the circumstances, the time, the place and the situation, where the infraction is committed. The point is well elucidated in the celebrated decision of the Supreme Court in *Ram Manohar Lohia v. State of Bihar* and another, AIR 1966 SC 740, where their Lordships of the Constitution Bench held:

"54. We have here a case of detention under Rule 30 of the Defence of India Rules which permits apprehension and detention of a person likely to act in a manner prejudicial to the maintenance of public order. It follows that if such a person is not detained public disorder is the apprehended result. Disorder is no doubt prevented by the maintenance of law and order also but disorder is a broad spectrum which includes at one end small disturbances and at the other the most serious and cataclysmic happenings. Does the expression "public order" take in every kind of disorders or only some of them? The answer to this serves to distinguish "public order" from "law and order" because the latter undoubtedly takes in all of them. Public order if disturbed, must lead to public disorder. Every breach of the peace does not lead to public disorder. When two drunkards quarrel and fight there is disorder but not public disorder. They can be dealt with under the powers to maintain law and order but cannot be detained on the ground that they were disturbing public order. Suppose that the two fighters were of rival communities and one of them tried to raise communal passions. The problem is still one of law and order but it raises the apprehension of public disorder. Other examples can be imagined. The contravention of law always affects order but before it can be said to affect public order, it must affect the community or the public at large. A mere disturbance of law and order leading to disorder is thus not necessarily sufficient for action under the Defence of India Act but disturbances which subvert the public order are. A District Magistrate is entitled to take action under Rule 30(1)(b) to prevent subversion of public order but not in aid of maintenance of law and order under ordinary circumstances.

55. It will thus appear that just as "public order" in the rulings of this Court (earlier cited) was said to comprehend disorders of less gravity than those affecting "security of State", "law and order" also comprehends disorders of less gravity than those affecting "public order". One has to imagine three concentric circles. Law and order represents the largest circle within which is the next circle representing public order and the smallest circle represents security of State. It is then easy to see that an act may affect law and order but not public order just as an act may affect public order but not security of the State. By using the expression "maintenance of law and order" the District Magistrate was widening his own field of action and was adding a clause to the Defence of India Rules.

29. The point is again considered in *Arun Ghosh v. State of W.B.*, (1970) 1 SCC 98, where the concept of public order, as distinguished from law and order, has been eloquently explained by their Lordship thus:

‘3. The submission of the counsel is that these are stray acts directed against individuals and are not subversive of public order and therefore the detention on the ostensible ground of preventing him from acting in a manner prejudicial to public order was not justified. In support of

this submission reference is made to three cases of this Court: *Dr Ram Manohar Lohia v. State of Bihar* [(1966) 1 SCR 709]; *Pushkar Mukherjee v. State of W.B.* [WP No. 179 of 1968, decided on November 7, 1968: (1969) 1 SCC 10] and *Shyamal Chakraborty v. Commissioner of Police, Calcutta* [WP No. 102 of 1969, decided on August 4, 1969: (1969) 2 SCC 426]. In *Dr Ram Manohar Lohia* case [(1966) 1 SCR 709] this Court pointed out the difference between maintenance of law and order and its disturbance and the maintenance of public order and its disturbance. Public order was said to embrace more of the community than law and order. Public order is the even tempo of the life of the community taking the country as a whole or even a specified locality. Disturbance of public order is to be distinguished from acts directed against individuals which do not disturb the society to the extent of causing a general disturbance of public tranquillity. It is the degree of disturbance and its affect upon the life of the community in a locality which determines whether the disturbance amounts only to a breach of law and order. Take for instance, a man stabs another. People may be shocked and even disturbed, but the life of the community keeps moving at an even tempo, however much one may dislike the act. Take another case of a town where there is communal tension. A man stabs a member of the other community. This is an act of a very different sort. Its implications are deeper and it affects the even tempo of life and public order is jeopardized because the repercussions of the act embrace large sections of the community and incite them to make further breaches of the law and order and to subvert the public order. An act by itself is not determinant of its own gravity. In its quality it may not differ from another but in its potentiality it may be very different. Take the case of assault on girls. A guest at a hotel may kiss or make advances to half a dozen chamber maids. He may annoy them and also the management but he does not cause disturbance of public order. He may even have a fracas with the friends of one of the girls but even then it would be a case of breach of law and order only. Take another case of a man who molests women in lonely places. As a result of his activities girls going to colleges and schools are in constant danger and fear. Women going for their ordinary business are afraid of being waylaid and assaulted. The activity of this man in its essential quality is not different from the act of the other man but in its potentiality and in its affect upon the public tranquillity there is a vast difference. The act of the man who molests the girls in lonely places causes a disturbance in the even tempo of living which is the first requirement of public order. He disturbs the society and the community. His act makes all the women apprehensive of their honour and he can be said to be causing disturbance of public order and not merely committing individual actions which may be taken note of by the criminal prosecution agencies. It means therefore that the question whether a man has only committed a breach of law and order or has acted in a manner likely to cause a disturbance of the public order is a question of degree and the extent of the reach of the act upon the society. The French distinguish law and order and public order by designating the latter as *ordre publique*. The latter expression has been recognised as meaning something more than ordinary maintenance of law and order. Justice Ramaswami in *Writ Petition No. 179 of 1968* drew a line of demarcation between the serious and aggravated forms of breaches of public order which affect the community or endanger the public interest at large from minor breaches of peace which do not affect the public at large. He drew an analogy between public and private crimes. The analogy is useful but not to be pushed too far. A large number of acts directed against persons or individuals may total up into a breach of public order. In *Dr Ram Manohar Lohia* case examples were given by Sarkar and Hidayatullah, JJ. They show how similar acts in different contexts affect differently law and order on the one hand and public order on the other. It is always a question of degree of the harm and its affect upon the community. The question

to ask is: Does it lead to disturbance of the current of life of the community so as to amount a disturbance of the public order or does it affect merely an individual leaving the tranquillity of the society undisturbed? This question has to be faced in every case on facts. There is no formula by which one case can be distinguished from another.

30. There are some issues, where the community is sensitive to the extent that if these surface, there is an inherent potentiality of creating widespread ripples in society that would affect the even tempo of life. One of them is cow slaughter. The slaughtering of a cow, whenever reported or detected, spontaneously evokes strong emotions and violent reactions for obvious injury to religious beliefs of a large section of the society. History is replete with instances of profusion of emotions and violence that an incident of this kind entails. And, it is not that these are matters of historical record to be read in books or fancied about in contemporary world. Violent reactions at the happening of cow slaughter are so well reputed that no one can feign ignorance of the fact, violation of the law apart. Public order is after all not about what the intention of the individual was, or what law he has violated. It is about the impact that his act generates. If the act in question is such that it is not confined to one, two or a few individuals, but disturbs the even tempo of life in the locale or may be beyond, in larger areas, prejudice to public order, is certainly there. The particular act of slaughtering a cow, as already remarked, has immediate and widespread ramifications in society, almost always leading to widespread violence that takes toll on a tranquil society and throws life out of gear.

31. There are a series of decisions of this Court, which acknowledge the fact that cow slaughter foments communal tension, brings disharmony and results in a situation, that leads to disturbance of public order. The point is elucidated in a few words in the Bench decision of this Court in *Shaukat Ali v. Union of India and others*, 2002 SCC OnLine All 1435. In *Shaukat Ali* (supra), it was held:

‘1. A perusal of the grounds of detention copy of which is Annexure 2, shows that the allegations against the petitioner are that the petitioner had slaughtered a cow and the knife and rods were recovered from him. This incident caused communal tension and hence the impugned detention order was passed.

2. Communal amity and harmony are absolutely essential for the progress of the nation. We cannot afford to have another Gujarat in U.P. Slaughter of cow hurts the sentiments of the Hindus and hence should not be committed. In our opinion cow slaughter affects public order because it is likely to incite communal tension.

3. Hence it is not merely a case of law and order.

32. Again in *Tauqeer v. State of U.P. and others*, 2002 SCC OnLine All 230, it was held:

‘4. We have carefully perused the detention order and find that the matter certainly pertains to public order and not to law and order. Under our Constitution freedom of religion has been guaranteed as a fundamental right. However the U.P. Prevention of Cow Slaughter Act bans the slaughter of cows and calves. The petitioner has no right to break the law and violate the above

Act. It may be mentioned that nobody has right to do any tiling which may lead to communal tension in the country. In case we permit such activities a situation like in Gujarat may recur again Hindus, rightly or wrongly venerate cows. The Muslims should also respect the sentiments of the Hindus and noticing should be done Which may provoke communal riots. The last thing which country can afford today is inflammation of communal feelings in the Society. The petitioner with his associate could slaughter any other animal but certainly not slaughter cows against the provisions of the Prevention of Cow Slaughter Act as that may create communal tension.

33. In *Guddu Panchhi v. District Magistrate, Kanpur Nagar and others*, 2004 SCC OnLine All 1847, the following remarks of the Division Bench are relevant:

‘3. Slaughtered cow and she-calf were found lying at the spot. The news of the incident spread in the area like wild fire. Members of the two communities of the society, i.e. Hindus and Muslims collected at the spot in agitated mood and started raising slogans against one another. Communal harmony was disturbed and the atmosphere became tense. The shopkeepers started downing their shutters. People ran helter-skelter. The public order was completely disturbed. S.O. informed the higher authorities on telephone and requisitioned additional force to control the situation. Case Crime No. 217 of 2003 under Sections 3/5/8 of U.P. Cow Slaughter Act was registered against the petitioner and others.

6. Obviously, it is the reaction or fall out of an incident in the society which is determinative as to whether it was only disturbance of law and order or that of public order. In the present case, there was a live link between the alleged criminal activity of the petitioner of cow slaughtering and the purpose of detention. The act was clearly prejudicial to public order as is borne out from the grounds of detention reiterated by respondent No. 1 District Magistrate, Kanpur Nagar in his counter-affidavit. The act of the petitioner offended the religious feelings of a sect of society venerating cow and its progeny, besides being in contravention of U.P. Prevention of Cow Slaughter Act. The incident disturbed the even tempo of the life of the society. Members of two communities thronged the spot, shouting slogans against one another. The shops were closed and public tranquility was disturbed in the area with tempers of the two communities of the society running high. Additional force had to be deployed in the area to restore the confidence of the people and for the return of normalcy. The incident adversely affected the social harmony, created communal tension and disturbed public order of the area. The matter certainly pertains to public order and not to law and order. We, therefore, reject the sole argument advanced by the learned counsel for the petitioner in support of the petition that it was a matter of law and order only

34. Much later in *Wasi through Mohd. Rafi v. State of U.P. and others*, 2017 SCC OnLine All 1880 in the context of an offence of cow slaughter and its bearing on the disturbance of public order, it was held by a Division Bench of this Court:

‘30. Learned counsel for the petitioner has emphatically argued that the place of incident where cow was slaughtered is not a public place, as such, it cannot be treated as an issue of public order. It is the reaction or fall out of an incident in the society which is determinative, as to whether, it was only disturbance of law and order or that of public order. Admittedly, the cow slaughter in an open place may have offended the religious feeling of a society, it is, therefore,

important to see the proportionality of the response to the act complained of and in view of this, the gravity of the act may be given a thought where the body parts of cow were lying open in public view. Where cattle has been slaughtered in public view, which may definitely lead to disturbance of the current life of the community, so as to amount to a disturbance of a public order, communal amity and harmony. Slaughter of cow hurts the sentiments of the Hindus which affects public order because it is likely to incite communal tension, hence, it is not merely a case of law and order but that of public order.

35. We have already noticed the kind of impact that the incident had not only in the village, where it happened, but in the adjoining villages of Naya Gaon, Dathaida, Gangarampur Khedki, Lavvadaudpur, Shamli-Shamla, Panthupura, Jijaula, Ballamajra, Toda, Khodsama and Laxmipura. The aftermath of the slaughter and its discovery by the Police led to the local populace and volunteers of organizations heading to the place of occurrence. They were workers of Hindu organizations as also others, like Pashchimi Uttar Pradesh Sanyukt Udyog Vyapar Mandal and the Akhil Bharatiya Pradhan Sangthan, who participated with the public in staging a blockade on the Thana Bhawan □ Jhinhana Road. It led to a complete traffic jam with passersby and travellers, badly stuck and unable to move. The even tempo of life was thrown out of gear, necessitating the summoning of additional forces from adjoining police stations. In fact, it was after very sensitive and trained persuasions by officers of the Police that public order could be restored. The locals of the village and adjoining villages had to be assured about their safety and security as well as that of their animals.

36. These facts amply show that it was no isolated incident of a violation of the law and order, but one which threw the even tempo of life out of gear. It is the disturbing effect of an incident on serene and tranquil life that determines if it is indeed a violation of public order or a mere breach of law and order. It is not necessary that there should be actual violence, loss of human life and property before an incident can be termed as disturbance of public order. It is disturbance of the daily and ordinary movements of life in the locale, which are the index of vitiation of public order.

37. In the totality of circumstances, we hold that this is decidedly a case where public order was prejudicially affected in consequence of the offence committed by the petitioner. And, it is not a mere case of infraction of law and order.

38. The next point for consideration is if there was material to show that the petitioner, if enlarged on bail, would again indulge in commission of the offence of cow slaughter, endangering the maintenance of public order in future. It is submitted that there is no objective material in this regard, on the foot of which the Detaining Authority could be subjectively satisfied that the petitioner, if enlarged on bail, would again indulge in repetition of the offence, prejudicially affecting public order.

39. The question involved here is part of a wider principle, which relates to preventive detention of persons, already in jail, in connection with the crime, that has given rise to the preventive detention order or some other crime. At some point of time, a question that arose for consideration was, if a man, already in jail, could be preventively detained. He was incarcerated and, therefore, could pose no present danger prejudicially affecting public order. In other words, the

question was that as regards a man, already in jail, if the detaining Authority thought of preventively detaining him under the NSA, what would be the principles, upon which the Detaining Authority could rest his subjective satisfaction. This question was answered by the Supreme Court in *Kamarunissa v. Union of India* and another, (1991) 1 SCC 128, after survey of all relevant authority, thus:

‘13. From the catena of decisions referred to above it seems clear to us that even in the case of a person in custody a detention order can validly be passed (1) if the authority passing the order is aware of the fact that he is actually in custody; (2) if he has reason to believe on the basis of reliable material placed before him (a) that there is a real possibility of his being released on bail, and (b) that on being so released he would in all probability indulge in prejudicial activity and (3) if it is felt essential to detain him to prevent him from so doing. If the authority passes an order after recording his satisfaction in this behalf, such an order cannot be struck down on the ground that the proper course for the authority was to oppose the bail and if bail is granted notwithstanding such opposition, to question it before a higher court. What this Court stated in the case of *Ramesh Yadav* [(1985) 4 SCC 232 : 1985 SCC (Cri) 514] was that ordinarily a detention order should not be passed merely to pre-empt or circumvent enlargement on bail in cases which are essentially criminal in nature and can be dealt with under the ordinary law. It seems to us well settled that even in a case where a person is in custody, if the facts and circumstances of the case so demand, resort can be had to the law of preventive detention. This seems to be quite clear from the case law discussed above and there is no need to refer to the High Court decisions to which our attention was drawn since they do not hold otherwise. We, therefore, find it difficult to accept the contention of the counsel for the petitioners that there was no valid and compelling reason for passing the impugned orders of detention because the detenus were in custody.

40. These principles have been followed in *T.V. Sravanan v. State*, (2006) 2 SCC 664 and *Champion R. Sangma v. State of Meghalaya*, (2015) 16 SCC 253.

41. In this case, as already remarked, the entire gamut of principles summarized by the Supreme Court in *Kamarunissa* (supra), relating to preventive detention of a man, already in custody, apply. The reason is that it has not been seriously disputed or urged before us that the Detaining Authority was not aware of the fact that the petitioner is actually in custody. More than that, it has also not been urged in this case that the detaining Authority had no reliable material before him, on the basis of which he could infer that there is a real possibility of the petitioner being released on bail. It has, however, been argued that there was no reliable material placed before the Detaining Authority, on the basis of which he could infer that upon being released on bail, the detinue in all probability would indulge in activity, prejudicial to the maintenance of public order. Of course, it is submitted that since there was no reliable material to infer that upon his release, the petitioner would indulge in activity prejudicial to public order, there was no question for the Detaining Authority to think that it was essential to detain him from going about his misadventure. What emerges, therefore, is that the petitioner's submission is an effort to establish that there was no reliable material, on the foot of which, the Detaining Authority could think that upon his release from prison on being granted bail, the petitioner would again act in a manner that would vitiate public order.

42. In the grounds of detention, it has figured that on 30.04.2025, Head Constable 578 Ashish Kumar and Head Constable 361 Mukesh Kumar, upon return from their beat, got G.D. No.20 registered at 17:25 hours, mentioning therein that while in jail, the petitioner had sent information through persons close to him that he was about to be released on bail by this Court, and on being emancipated from jail, he would indulge in cow slaughter. The Police can do him no harm. This beat information was investigated by Sub-Inspector Pramod Kumar and found to be true. There is also a report dated 29.04.2025, given by the Local Intelligence Unit, which affirms the fact that the Beat Constables had reported. Now, this is certainly reliable material, on the basis of which the Detaining Authority could form his subject satisfaction that the petitioner, if released on bail, would in all probability indulge in activity prejudicial to the maintenance of public order. He would in all likelihood repeat the same kind of offence, disturbing the even tempo of life.

43. One has to bear in mind that the offence committed by the petitioner was not an offence of the ordinary violent kind, that affected the life of one individual or a group of them, unconcerned with the stable life of the community, which would go on unruffled by his actions. He had committed an act that aroused public outrage amongst a large section of the population in the locale, whose religious feelings were hurt. This kind of an offence, if repeated again, about which the Detaining Authority had material to believe that it could be done by the petitioner upon his release, would certainly imperil the even tempo of life of the locality, and, a fortiori public order. In this regard, the nature of the offence has to be borne in mind very discretely. The offence committed by the petitioner, about which we have already spoken, produces almost spontaneous violence and resentment from one section of the community and, therefore, the Detaining Authority was absolutely justified in thinking that the petitioner, upon his release from jail, could indulge in activity, prejudicial to the maintenance of public order. The contention to the contrary, put forward on behalf of the petitioner that there was no such possibility or no reliable material to draw that inference, is stated to be rejected under the circumstances obtaining.

44. This brings us to the last point urged on behalf of the petitioner and that is that there was inordinate delay in the decision of his representations by the State Government and the Advisory Board, vitiating his detention.

45. There is a complete calendar of events in paragraph Nos.3, 4, 5, 6, 7, 8, 9 and 10 of counter affidavit filed on behalf of Respondent no. 1 and 2, explaining the time taken by the State Government in disposing of the petitioner's representation and that by the Advisory Board, where the petitioner was heard in person on 28.05.2025. The State Government approved the detention on 23.05.2025, when it was sent to it by the District Magistrate on 16.05.2025. The approval was communicated to the petitioner through the District Authorities by the State Government's radiogram and letter, both dated 23.05.2025, within 12 days from the date of detention. The copy of the detention order, together with the grounds and documents, were forwarded to the Central Government by the State Government under Section 3(5) of the NSA. The petitioner submitted his representation dated 25.05.2025, which was received by the State Government on 06.06.2025. It was sent to the Advisory Board and the Central Government under covering memoranda dated 12.06.2025. Thereafter, the State Government considered the representation of the petitioner on 18.08.2025. It was examined by the Joint Secretary on 18.08.2025, and on the same day, by the Special Secretary (Home) and the Secretary (Home), Government of U.P., Lucknow, also on

18.08.2025. It was submitted to the higher Authorities for final orders of the State Government and rejected on 18.08.2025. It was communicated to the petitioner by the State Government's radiogram dated 19.08.2025. In the rejoinder affidavit, filed in response to the State Government's counter affidavit, it is not at all pointed out by the petitioner as to where unexplained delay occurred, which might vitiate the detention order.

46. In the circumstances, we are of opinion that there is no infirmity in the order impugned, directing the petitioner's detention under the NSA.

47. This habeas corpus writ petition fails and is dismissed.

(2026) 4 ILRA 1589
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 09.04.2026

BEFORE

THE HON'BLE YOGENDRA KUMAR SRIVASTAVA, J.

Transfer Application (Civil) No. 465 of 2025

Shikha Sharma

...Applicant

Versus

Dimpal Babu Gangwar

...Opposite Party

Issue for Consideration

Whether the application under Section 24 of the Code of Civil Procedure has been filed, seeking transfer of the divorce case pending before the Family Court, Bareilly is liable to be allowed on the basis "No Objection" expressed by the Opposite Party.

Head Notes

The Code of Civil Procedure-1908- Section 24; The Hindu Marriage Act, 1955- Section 13 (1)- Applicant is stated to be presently residing at her parental home along with her old mother and minor child- Attending the proceedings at Bareilly would cause inconvenience and grave hardship to her- In view of the hardship that has been pleaded by the applicant and the categorical "No Objection" expressed on behalf of the Opposite Party, the Court is of the considered opinion that the present case is a fit one for exercise of power under Section 24 CPC.

The transfer sought, being by consent of the parties and in furtherance of justice, deserves to be allowed. (E-15)

(Para 9)

Case Law Cited

Smt. Akansha Saxena v. Shikhar Saxena, 2026 (3) ADJ 104; Smt. Arju @ Vimal v. Umakant Parasar, 2026 (3) ADJ 66

List of Acts

The Code of Civil Procedure-1908; The Hindu Marriage Act, 1955

List of Keywords

Section 24 CPC; No Objection" expressed on behalf of the Opposite Party; Application allowed.

Case Arising From

Present application has been preferred by the Applicant-wife under Section 24 of the Code of Civil Procedure, 1908, seeking transfer of Case No.723 of 2025 instituted under Section 13 (1) of the Hindu Marriage Act, 1955 from the Court of the Principal Judge, Family Court, Bareilly to the Court of the Principal Judge, Family Court, Gautam Budh Nagar.

Appearances for Parties

Counsel for Applicant(s) : Sayujya Singh

Counsel for Opposite Party(s) : Rahul Pandey, Rang Nath Pandey

(Delivered by Hon'ble Yogendra Kumar Srivastava, J.)

1. Heard Sri Sayuja Singh, learned counsel for the applicant and Sri Rang Nath Pandey, learned counsel for the opposite party.

2. Present application has been preferred by the Applicant-wife under Section 24 of the Code of Civil Procedure, 1908, seeking transfer of Case No.723 of 2025 (Dimpal Babu Gangwar vs. Sikha Sharma), instituted under Section 13 (1) of the Hindu Marriage Act, 1955 from the Court of the Principal Judge, Family Court, Bareilly to the Court of the Principal Judge, Family Court, Gautam Budh Nagar.

3. The order-sheet of the case indicates that on 17.07.2025, when the case was taken up, this Court, upon considering the submissions made on behalf of the applicant that she is residing with her old mother and child and is dependent upon her mother and the distance from Bareilly to the residence of the applicant is about 250 kms. the financial condition of the applicant is not good to do pairvi of the case, and the balance of convenience also lays in favour of the applicant, and if the applicant is allowed to proceed at Bareilly she would suffer serious prejudice, directed issuance of notice and stayed the further proceedings of the divorce suit.

4. The facts as pleaded on behalf of the applicant-wife indicate that the opposite party filed a petition under Section 13 (1) of the Hindu Marriage Act 1955 before the Court of Principal Judge, Family Court, Bareilly, seeking a declaration that the marriage dated 20.11.2013 be dissolved. The said petition was registered as Case No.723 of 2025 (Dimple Babu Gangwar vs. Shikha Sharma). Notice of the said proceedings has been served upon the applicant and the matter is pending before the Family Court, Bareilly.

5. The applicant is stated to be presently residing at her parental home along with her old mother and minor child. According to the applicant, attending the proceedings at Bareilly would cause inconvenience and grave hardship to her. In these circumstances, the present application under Section 24 of the Code of Civil Procedure has been filed, seeking transfer of the divorce case pending before the Family Court, Bareilly.

6. It is submitted that the divorce petition has been instituted by the opposite party at Bareilly with a view to cause harassment to the applicant.

7. Counsel appearing for the opposite party, without admitting the allegations made by the applicant, has very fairly submitted that he has instructions to state that the opposite party does not object to the transfer of the case to Gautam Budh Nagar, as sought by the applicant.

8. This Court, in its recent decisions in Smt. Akansha Saxena v. Shikhar Saxena, 2026 (3) ADJ 104, and Smt. Arju @ Vimal v. Umakant Parasar, 2026 (3) ADJ 66 has observed that in matrimonial cases, the convenience of the wife must be looked into; the cardinal principle for exercise of power under Section 24 CPC being that the ends of justice should be subserved.

9. In view of the aforesaid discussions, and particularly in view of the hardship that has been pleaded by the applicant and the categorical "No Objection" expressed on behalf of the Opposite Party, this Court is of the considered opinion that the present case is a fit one for exercise of power under Section 24 CPC. The transfer sought, being by consent of the parties and in furtherance of justice, deserves to be allowed.

10. Accordingly, Civil Misc. Transfer Application is allowed with the following directions :

(i) The proceedings of Case No.723 of 2025 (Dimpal Babu Gangwar vs. Shikha Sharma), instituted under Section 13 (1) of the Hindu Marriage Act, 1955, are hereby withdrawn from the Court of the Principal Judge, Family Court, Bareilly and transferred to the Court of the Principal Judge, Family Court, Gautam Budh Nagar.

(ii) The Principal Judge, Family Court, Bareilly is directed to transmit the entire case record to the Transferee Court at District Gautam Budh Nagar within fifteen days from the date of receipt of a certified copy of this order.

(iii) The Transferee Court shall proceed with the matter from the stage at which it was transferred and shall endeavor to conclude the proceedings expeditiously.

(2026) 4 ILRA 1591
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 09.04.2026

BEFORE

THE HON'BLE YOGENDRA KUMAR SRIVASTAVA, J.

Transfer Application (Civil) No. 620 of 2023

Smt. Vinita

...Applicant

Versus

Vivek Kumar

...Opposite Party

Issue for Consideration

Whether the application under Section 24 of the Code of Civil Procedure has been filed, seeking transfer of the divorce case pending before the Family Court, Bareilly is liable to be allowed on the basis "No Objection" expressed by the Opposite Party.

Head Notes

The Code of Civil Procedure-1908- Section 24; The Hindu Marriage Act, 1955- Section 13- Applicant is residing with her father at Shamli and the divorce petition had been filed by the respondent in the Family Court at Baghpat with a view to harass the applicant, and also taking note of the fact that the applicant is a deserted wife, having no source of income to meet the litigation expenses and other expenses which are to be incurred in traveling from Shamli to Baghpat- in view of the hardship that has been pleaded by the applicant and the categorical "No Objection" expressed on behalf of the Opposite Party, this Court is of the considered opinion that the present case is a fit one for exercise of power under Section 24 CPC.

The transfer sought, being by consent of the parties and in furtherance of justice, deserves to be allowed. (E-15)

(Para 8)

Case Law Cited

Smt. Akansha Saxena v. Shikhar Saxena, 2026 (3) ADJ 104; Smt. Arju @ Vimal v. Umakant Parasar, 2026 (3) ADJ 66

List of Acts

The Code of Civil Procedure-1908; The Hindu Marriage Act, 1955

List of Keywords

Section 24 CPC; No Objection" expressed on behalf of the Opposite Party; Application allowed

Case Arising From

Present application has been preferred by the Applicant-wife under Section 24 of the Code of Civil Procedure, 1908, seeking transfer of Case No.21 of 2023, instituted under Section 13 of the Hindu Marriage Act, 1955 from the Court of the Principal Judge, Family Court, Baghpat to the Court of the Principal Judge, Family Court, Shamli.

Appearances for Parties

Counsel for Applicant(s) : Avinash Pandey

Counsel for Opposite Party(s) : Aditya Pratap Mishra, Dev Raj Singh

(Delivered by Hon'ble Yogendra Kumar Srivastava, J.)

1. Heard Sri Avinash Pandey, learned counsel for the applicant and Sri Aditya Pratap Mishra, learned counsel for the opposite party.

2. Present application has been preferred by the Applicant-wife under Section 24 of the Code of Civil Procedure, 1908, seeking transfer of Case No.21 of 2023 (Vivek Kumar vs. Smt. Vinita), instituted under Section 13 of the Hindu Marriage Act, 1955 from the Court of the Principal Judge, Family Court, Baghpat to the Court of the Principal Judge, Family Court, Shamli.

3. The order-sheet of the case indicates that on 03.08.2023, when the case was taken up, this Court, upon considering the submissions made on behalf of the applicant that she is residing with her father at Shamli and that as per the applicant, the divorce petition had been filed by the respondent in the Family Court at Baghpat with a view to harass the applicant, and also taking note of the fact that the applicant is a deserted wife, having no source of income to meet the litigation expenses and other expenses which are to be incurred in traveling from Shamli to Baghpat, directed issuance of notice and stayed the further proceedings of the divorce suit.

4. The facts as pleaded on behalf of the applicant-wife indicate that the opposite party filed a petition under Section 13 of the Hindu Marriage Act 1955 before the Court of Principal Judge, Family Court, Baghpat, seeking a declaration that the marriage dated 15.03.2020 be dissolved. The said petition was registered as Case No.21 of 2023 (Vivek Kumar vs. Smt. Vinita). Notice of the said proceedings had been served upon the applicant and the matter is pending before the Family Court, Baghpat.

5. The applicant is stated to be presently residing at her parental home. According to the applicant, attending the proceedings at Baghpat would cause inconvenience and grave hardship to her. In these circumstances, the present application under Section 24 of the Code of Civil Procedure has been filed, seeking transfer of the divorce petition pending before the Family Court, Baghpat.

6. Counsel appearing for the opposite party, without admitting the allegations made by the applicant, has very fairly submitted that he has instructions to state that the opposite party does not object to the transfer of the case to Shamli, as sought by the applicant.

7. This Court, in its recent decisions in Smt. Akansha Saxena v. Shikhar Saxena, 2026 (3) ADJ 104, and Smt. Arju @ Vimal v. Umakant Parasar, 2026 (3) ADJ 66 has observed that in matrimonial cases, the convenience of the wife must be looked into; the cardinal principle for exercise of power under Section 24 CPC being that the ends of justice should be subserved.

8. In view of the aforesaid discussions, and particularly in view of the hardship that has been pleaded by the applicant and the categorical "No Objection" expressed on behalf of the Opposite Party, this Court is of the considered opinion that the present case is a fit one for exercise of power under Section 24 CPC. The transfer sought, being by consent of the parties and in furtherance of justice, deserves to be allowed.

9. Accordingly, Civil Misc. Transfer Application is allowed with the following directions :

(i) The proceedings of Case No.21 of 2023 (Vivek Kumar vs. Smt. Vinita) instituted under Section 13 of the Hindu Marriage Act, 1955, are hereby withdrawn from the Court of the Principal Judge, Family Court, Baghpat and transferred to the Court of the Principal Judge, Family Court, Shamli.

(ii) The Principal Judge, Family Court, Baghpat is directed to transmit the entire case record to the Transferee Court at District Shamli within fifteen days from the date of receipt of a certified copy of this order.

(iii) The Transferee Court shall proceed with the matter from the stage at which it was transferred and shall endeavor to conclude the proceedings expeditiously.

(2026) 4 ILRA 1594
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 16.04.2026

BEFORE

THE HON'BLE SUBHASH VIDYARTHI, J.

Transfer Application (Criminal) No. 44 of 2026

Smt. Ritu Tripathi

**...Applicant
Versus**

State of U.P & Ors.

...Opposite Parties

Issue for Consideration

Whether the transfer application deserves to be allowed on the grounds that the applicant is unable to take part in the proceedings in the Court of CJM Raibareli due to financial constraints and threats of the opposite parties

Head Notes

The Bhartiya Nagrik Suraksha Sanhita, 2023- Section 447- The applicant has pleaded in the transfer application that she got married to the opposite party no. 4 on 22.06.2022 at Raibareli, she stayed at her sasural for about 1 ½ months only. Although she has stated that the opposite party no. 4 is working as a tube-well operator at District Jaunpur, the applicant has concealed the fact that she is working as a teacher in Kasturba Gandhi Vidyalay, Hardoi- Applicant has made both concealment and mis-statement of facts in the transfer application and yet she has failed to make out a ground for transfer of the criminal case filed by herself at Raibareli, to Hardoi.

Held- The applicant has made both concealment and mis-statement of facts in the transfer application and yet she has failed to make out a ground for transfer of the criminal case filed by herself at Raibareli, to Hardoi- **Application dismissed.** (E-15)

(Para 15, 18 & 22)

Case Law Cited

Anjali Ashok Sidhwani Vs. Ashok Kishinchand Sidhwani: (2009) 16 SCC 188; Sonam Rai v. State of U.P.: 2023 SCC OnLine All 4344; V. Chandrasekaran v. Administrative Officer: (2012) 12 SCC 133

List of Acts

The Bhartiya Nagrik Suraksha Sanhita, 2023

List of Keywords

Sect 447; BNSS; Transfer application; Concealment and mis-statement of facts;

Case Arising From

Applicant has sought transfer of Case No.13990 of 2025, arising out of Case Crime No. 101 of 2025 under Sections 85, 115(2), 352, 351(2) B.N.S. and Section 3/4 of Dowry Prohibition Act, Police Station Mill Area,

District Raebareli from the Court of Chief Judicial Magistrate, Raebareli to the Court of Chief Judicial Magistrate, Hardoi.

Appearances for Parties

Counsel for Applicant(s) : S.K. Tripathi

Counsel for Opposite Party(s) : G.A.

(Delivered by Hon'ble Subhash Vidyarthi, J.)

1. Heard Sri S. K. Tripathi, the learned counsel for the applicant, Sri Vishal Agarwal, the learned A.G.A. appearing on behalf of the State and perused the records.

2. By means of the instant application filed under Section 447, Bhartiya Nagrik Suraksha Sanhita (BNSS), the applicant has sought transfer of Case No.13990 of 2025, arising out of Case Crime No. 101 of 2025 under Sections 85, 115(2), 352, 351(2) B.N.S. and Section 3/4 of Dowry Prohibition Act, Police Station Mill Area, District Raebareli from the Court of Chief Judicial Magistrate, Raebareli to the Court of Chief Judicial Magistrate, Hardoi.

3. It has been pleaded in the transfer application that the applicant got married to the opposite party no. 4 on 22.06.2022 at Raibareli. She stayed at her sasural for about 1 months. Thereafter she went to her maternal house at Hardoi and returned after 15 days. She kept visiting her maternal house with the consent of the opposite parties. The opposite party no. 4 is working as a tube-well operator at District Jaunpur, but his family resides at Raibareli. After sometime, her husband and his family members started ill-treating her for demanding dowry. She was beaten up on 16.03.2025 and she lodged an F.I.R. on 18.03.2025 against her father-in-law, mother-in-law and husband (the opposite parties no. 2 to 4 respectively) and the husband's sister Ritika Tripathi.

4. The allegations levelled against Ritika Tripathi could not be established in investigation and a charge-sheet dated 15.04.2025 was filed only against the opposite parties no. 2 to 4. The Magistrate took cognizance of the offence on 06.08.2025.

5. The applicant has alleged that the accused persons have been enlarged on bail and during that, when the applicant and her brother opposed the bail application, they were threatened by the opposite parties no. 2 to 4. The applicant and her brother were gheroad and threatened for withdrawing the case when they had gone to attend the date fixed on 06.03.2026 and they were forced to leave without meeting their Counsel.

On 09.03.2026, the applicant has sent a complaint to the police stating that while she was going to attend the proceedings of the case, the opposite party no. 2 and 4 and five other unknown persons stopped and abused them and they had beaten them up with kicks and fists and threatened to kill them, unless they entered into a compromise.

6. The applicant has filed Complaint No. 2913 of 2025 under Section 12 of the Protection of Women in the Court of Civil Judge (J.D.) / F.T.C. Mahila, Hardoi.

7. The applicant has pleaded that she is unable to take part in the proceedings in the Court of CJM Raibareli due to financial constraints and threats of the opposite party nos. 2 to 4.

8. The applicant has filed a supplementary affidavit annexing therewith a copy of the FIR lodged by her and a copy of some extracts of the case diary. It contains a narration of her medical examination report dated 16.03.2025, which mentions an abrasion of 1cmX0.5cm, 2 cm below right eye and restricted movement of right thumb. The injuries were opined to be simple in nature and the duration of injury was one day.

9. Copies of the statements of the applicant, her brother and the land-lord of the house which was the applicant's matrimonial home at Raibareli, have also been annexed with the supplementary affidavit. The applicant and her brother reiterated the FIR version but the landlord has stated that the applicant is working in Kasturba Gandhi Vidyalay, Hardoi. The opposite party no.4 is working as Operator in Tube-well Department at Jaunpur. The other accused Ritika Tripathi had got married on 11.12.2020. She has not stayed with the applicant at any point of time and she has falsely been implicated.

10. It is relevant to note that the applicant has stated in para 6 of the application that her husband (the opposite party no.4) is working as a tube well operator at Jaunpur and he is permanent resident of District Raebareli. She has stated that she was forced to leave her matrimonial house at Raebareli and having no other place to live she has taken shelter at her brother's house at District Hardoi. However, while she stated that she is unable to attend the proceedings of the case at District Raebareli due to financial constraints, she did not disclose her financial status and the source of earning.

11. It has been stated in the supplementary affidavit that the applicant is working as a teacher in Kasturba Gandhi Awasiya Balika Vidyalay, Hardoi. Therefore, the averment made in the transfer application that the applicant will not be able to attend the proceedings due to financial constraints, is false and baseless.

12. The learned counsel for the applicant has submitted that the above stated facts make out a case for transfer of the criminal case instituted by the applicant at Raibareli to Hardoi. He has placed reliance on a judgment of Hon'ble Supreme Court in the case of Anjali Ashok Sidhwani Vs. Ashok Kishinchand Sidhwani: (2009) 16 SCC 188, and a decision of a coordinate Bench of this court in the case of Sonam Rai v. State of U.P.: 2023 SCC OnLine All 4344.

13. In Anjali Ashok Sidhwani Vs. Ashok Kishinchand Sidhwani (supra), the Hon'ble Supreme court has transferred the proceedings of the a suit from the Family Court at Indore, Madhya Pradesh to the Family Court at Bandra in Mumbai keeping in view the distance between the two places which was about 900 kms and there was nobody in the family of the wife who could escort her from Mumbai to Indore for attending the cases. In the present case, the applicant is seeking transfer of the case from Raebareli to Hardoi and the distance between the two cities is merely 195 kms. The applicant has stated that she has taken shelter of house of her brother and it is not her case that there is no one in her family of the applicant who can escort her from Hardoi to Raebareli. Therefore, the applicant cannot get any benefit from the order in the case of Anjali

Ashok Sidhwani Vs. Ashok Kishinchand Sidhwani (supra) because of the difference in the facts of the two cases.

14. The case of Sonam Rai Vs. State of U.P. and another (supra) arose from an application for transfer the entire proceedings of a Criminal Case instituted on a complaint filed under Sections 498-A, 323, 504, 506, 120-B IPC and Section 3/4 Dowry Prohibition Act filed on 27.08.2019 before the learned Judicial Magistrate, Azamgarh. In spite of the statements under Sections 200 and 202 Cr.P.C. having been recorded, the opposite party nos. 2 to 6 had not been summoned till decision of the transfer application on 04.04.2023. The applicant was originally a resident of District Azamgarh and at the time of filing the transfer application, she was residing at District Mau while the opposite party no. 2 (husband) was a resident of District Azamgarh. The coordinate Bench allowed the transfer application on the following submissions: -

14. Learned counsel for the applicant submits that she is a poor lady having no source of income and depends upon the income of her father, who also bears the liability of other family members. The applicant herself has a minor daughter aged about four years. The father of the applicant is an old person who is unable to attend the court on every date with the applicant and in absence of him, the opposite party nos. 2 to 6 regularly threatened her, when she goes to attend the court alone. Thus, life of the applicant is not safe in view of the previous conduct of the opposite party nos. 2 to 6. Due to fear of opposite party nos. 2 to 6 as well as their family members, she could not face the trial in District Azamgarh. In these circumstances, there is apprehension to her life keeping in view the previous conduct of opposite party nos. 2 to 6. The opposite party nos. 2 to 6 have good relation with anti social elements and they are waiting the occasion to take revenge from the applicant if she goes to Azamgarh for doing pairvi of the case in question. She is also not able to bear the expenses of pairvi of the case.?

15. In the present case, the applicant has pleaded in the transfer application that she got married to the opposite party no. 4 on 22.06.2022 at Raibareli, she stayed at her sasural for about 1 months only. Although she has stated that the opposite party no. 4 is working as a tube-well operator at District Jaunpur, the applicant has concealed the fact that she is working as a teacher in Kasturba Gandhi Vidyalay, Hardoi.

16. The applicant has pleaded that she kept visiting her maternal house at Hardoi, but this pleading appears to be false, as a person working as a teacher in Kasturba Gandhi Vidyalay, Hardoi has to reside at Hardoi to be available there permanently.

17. While serving at Hardoi, the applicant herself filed the FIR at Raibareli regarding the offences that had allegedly committed at Raibareli. She had leveled allegations against her married sister-in-law Ritika Tripathi, which were found to be false in investigation.

18. While concealing the fact that the applicant is working as an assistant teacher in Kasturba Gandhi Vidyalay, Hardoi, she has pleaded in the transfer application that she will not be able to attend the proceedings due to financial constraints. Apparently this plea is false and baseless, as a teacher working in Kasturba Gandhi Vidyalay cannot claim that she cannot attend the proceedings initiated by herself at District Raibareli because of financial constraints.

19. The other ground taken in the transfer application is that the applicant and her brother were threatened by the accused persons on the date fixed on 06.03.2026. However, in the complaint dated 09.03.2026 sent to the police, the applicant stated that while she was going to attend the proceedings of the case on 07.03.2026, the opposite party no. 2 and 4 and five other unknown persons had stopped and abused them and they had beaten them up with kicks and fists and had threatened to kill them.

20. The presence of five other persons has not been mentioned in the transfer application. The discrepancy in the date of the incident is also relevant to be noted. There is no independent witness of the incident. There is no medical report to support the allegations. From these facts, it appears that the applicant has cooked up a story merely to create a ground for transfer.

21. Any person should approach a Court of law with clean hands and should not conceal or suppress any fact and should not make any misstatement of facts. In *V. Chandrasekaran v. Administrative Officer*: (2012) 12 SCC 133, the Hon^{ble} Supreme Court held that: -

44. The appellants have not approached the court with clean hands, and are therefore, not entitled for any relief. Whenever a person approaches a court of equity, in the exercise of its extraordinary jurisdiction, it is expected that he will approach the said court not only with clean hands but also with a clean mind, a clean heart and clean objectives. Thus, he who seeks equity must do equity. The legal maxim *jure naturae aequum est neminem cum alterius detrimento et injuria fieri locupletiores*, means that it is a law of nature that one should not be enriched by causing loss or injury to another?.

(Emphasis added)

22. As has been noted above, the applicant has made both concealment and mis-statement of facts in the transfer application and yet she has failed to make out a ground for transfer of the criminal case filed by herself at Raibareli, to Hardoi.

23. The learned Counsel for the applicant lastly requested that there is a possibility of an amicable settlement of the dispute through the process of mediation and for this purpose, notice be issued to the opposite party. Mediation between the parties is possible in the pending case under Section 12 of the Protection of Women from Domestic Violence Act also and it is not necessary to multiply the proceedings and for a merely for making a reference to the mediation and conciliation center of this Court.

24. Moreover, there would only be a chance of success in the mediation when the parties participate with clean hands, a clean mind, a clean heart and clean objectives. It appears that no fruitful purpose will be served by referring the dispute to mediation when the applicant has approached this Court by making concealment and misstatements of facts.

25. For the foregoing discussions, I am of the considered view that the transfer application lacks merit and the same is accordingly dismissed.

(2026) 4 ILRA 1599
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 20.04.2026

BEFORE

THE HON'BLE SHREE PRAKASH SINGH, J.

Writ A No. 7257 of 2025

Braham Singh

...Petitioner

Versus

UCO Bank & Anr.

...Respondents

Issue(s) for consideration

- (a) In the inquiry report, if it is found that the charges are not proved, whether it can be said that no disciplinary proceeding is pending against an employee?
- (b) When would the pendency of criminal proceedings be said to become effective?
- (c) What is the precise legal threshold or date upon which a criminal proceeding is considered "pending" to justify or maintain a sealed cover procedure under U.P. Government Orders?
- (d) Whether the pendency of the matter for sanction of criminal prosecution would have any bearing on consideration of the promotion of an employee, by the DPC?

Headnotes

A. Service Law – Greator NOIDA Industrial Development Authority Service Regulations, 1993: Regulation 75 - The petitioner, Braham Singh, was appointed as an Assistant Manager (Civil) in the Greater NOIDA Industrial Development Authority in 2002 and climbed through the ranks to Manager Grade I by 2014. An adversarial complaint was lodged against him on 13.08.2014. He was completely exonerated by the State Government in departmental inquiry (Report dated 14.03.2018). However, following the introduction of the centralized service rules in June 2018 (making the State Government the official appointing authority), a second inquiry on the exact same charges was launched in August 2019. The inquiry officer in this second proceeding also found that the charges were not proved (Report dated 24.10.2019). (Para 26)

While the second inquiry report was awaiting final consideration by the disciplinary authority, the Departmental Promotion Committee (DPC) met on 24.12.2020, to consider promotions to Senior Manager (Civil). Due to the structural pendency of the disciplinary proceeding, the DPC adopted the "sealed cover procedure" for the petitioner, and his junior was promoted on 29.12.2020. In January 2022, the State Government disagreed with the inquiry officer's clean chit and awarded the petitioner a punishment of 'censure'. This censure was subsequently quashed by the State Public Services Tribunal in May 2023, and on 11.04.2025, the State Government formally cancelled the censure order entirely. Simultaneously, a vigilance/criminal anti-corruption investigation was underway; prosecution sanction was granted on 18.11.2022, and a criminal charge sheet was filed before the Special Judge, Anti-Corruption, Meerut, on 10.10.2023.

After his departmental censure was cancelled, the petitioner filed a representation on 16.04.2025, requesting that his sealed cover be opened and he be promoted retrospectively from the date his junior was promoted. The State Government rejected this representation on 12.06.2025, citing the ongoing, active anti-corruption criminal case. The petitioner challenged this rejection in the High Court.

B. In the inquiry report, if it is found that the charges are not proved, whether it can be said that no disciplinary proceeding is pending against an employee?

This Court examines the two main grounds taken while passing the order impugned herein. First, from the disciplinary proceedings instituted against the petitioner, it reveals that when the DPC was convened on 24.12.2020, the inquiry report was in motion, wherein the inquiry officer found that the charges were not proved against the petitioner. The law is very clear on this point that **it is not the pendency of the inquiry proceeding, but the pendency of the disciplinary proceeding, which is to be considered, while considering the provisions of clauses (2) and (3) of the GO dated 28.5.1997.** The same clearly speaks about the pendency of 'disciplinary proceedings', and therefore, **if the inquiry officer reaches to the conclusion that no charges are proved against an employee, that does not mean that no disciplinary proceeding is pending against such an employee.** Therefore, this Court finds that the DPC, which was convened on 24.12.2020, has rightly resorted to the procedure of sealed cover. The fact remains that the inquiry proceeding, which was instituted by the State Government, has been concluded, and the petitioner was awarded the punishment of 'Censure', though at a subsequent stage, i.e., on 11.4.2025, the State Government canceled the punishment of censure awarded on 25.1.2022. Thus, it is abundantly clear that no departmental proceeding is pending against the petitioner as of now. (Para 28)

C. When would the pendency of criminal proceedings be said to become effective?

Coming to the second issue, which, in fact, is in the way of opening of the sealed cover, is that the criminal proceedings are pending against the petitioner. The counter-affidavit filed by the State Government reveals that the prosecution sanction was granted, on 18.11.2022, and the charge sheet was submitted on 10.10.2023. Admittedly, the DPC for promotion of the Senior Manager (Civil) was held on 24.12.2020, and till that period of time, no criminal proceeding was initiated. Clause 2(c) of the GO dated 28.5.1997, is abundantly clear that **once the charge sheet is submitted in the court, by the prosecution, that would be the date, which will be considered for the pendency of criminal proceedings.** (Para 29)

D. Sealed cover procedure can be resorted to only after the charge memo is served upon the concerned official, in contemplation of the disciplinary proceeding or a charge sheet is filed before the criminal court, in a criminal proceeding. In the present case, the charge sheet was submitted in a criminal prosecution, in the court, on 10.10.2023. It is settled law that **no sealed cover proceeding could be undertaken, if, on the date of the DPC, no charge sheet had been issued in the matter of departmental proceedings, and in a criminal case, the charge sheet had not been submitted before the court concerned.** In the instant case, when the DPC was held, chargesheet was not submitted in the court, thus, the criminal proceeding cannot be said to be pending. (para 30)

E. Whether the pendency of the matter for sanction of criminal prosecution would have any bearing on consideration of the promotion of an employee, by the DPC?

The pendency of sanction of criminal prosecution would not suffice to enable the authorities to adopt the sealed cover procedure. So far as the present case is concerned, though the application for the prosecution's sanction was pending, but the decision was taken on 18.11.2022, that too after the DPC was convened on 24.12.2020, and therefore, the sanction of prosecution will not make any difference, for consideration of promotion of an employee, by the D.P.C. Thus, the fact that the sanction of prosecution was pending, would have no adversarial effect on, for consideration of promotion of the petitioner. (Para 31)

The provisions of GO dated 28.5.1997, has escaped the attention of the authorities for considering the case of the petitioner, in its right perspective. The order impugned dated 12.6.2025 is quashed. (Para 32, 33)

Writ petition allowed. (E-4)

Case Law Cited

1. Abhishek Prabhakar Awasthi Vs. New India Assurance Company, 2014 (32) LCD 405 (Para 15)
2. Union of India (UOI) and others Vs. K.V. Jankiraman and others, AIR 1991 SC 2010 (Para 16)
3. Union of India and others Vs. Doly Loyi, 2024 SCC Online SC 2613 (Para 20)

List of Acts

Greater NOIDA Industrial Development Authority Service Regulations, 1993.

List of Keywords

service, industrial, development, authority, promotion, complaint, departmental, inquiry, sealed cover, criminal prosecution.

Appearances for Parties

For Petitioner(s): Vijay Kumar Srivastava

For Respondent(s): C.S.C., Manoj Sahu

(Delivered by Hon'ble Shree Prakash Singh, J.)

1. Heard Mr. Vijay Kumar Srivastava, learned counsel for the petitioner and Mr. Brijendra Singh, learned Additional Chief Standing Counsel for the State.

2. By means of the present writ petition, the petitioner has challenged the order dated 12.6.2025 passed by the respondent no.1 whereby the representation of the petitioner for promotion to the post of Senior Manager (Civil) has been rejected.

3. The brief factual matrix of the case is that the petitioner had initially been appointed as Assistant Manager (Civil) in the department of Greater NOIDA Industrial Development Authority, Gautam Buddha Nagar, on 13.9.2002 and he was promoted to the post of Manager Grade II on 10.3.2008 and thereafter to the post of Manager Grade I within (Project), on 14.11.2014. The wife of the brother of the petitioner, namely, Smt. Suresh Devi, lodged an F.I.R. on 11.6.2014 against several accused persons, out of which one accused, namely, Tarun, being whimsical filed a complaint against the petitioner, on 13.8.2014, before the Principal Secretary to the Chief Minister, U.P. and Director, Enforcement Directorate, U.P.

4. Thereafter, by the order dated 1.10.2014, a departmental inquiry was instituted by the State Government on the above-stated complaint, and the petitioner was asked to submit a reply, vide letter dated 3.11.2014. In response thereto, a reply was submitted by the petitioner on 16.12.2014, whereupon the inquiry officer submitted his report on 14.3.2018, wherein the petitioner was exonerated from the charges leveled against him.

5. The appointing authority, being satisfied with the inquiry report, dropped the inquiry proceedings and submitted a report to the State Government vide letter dated 27.6.2018 but, since, in the meantime, the Uttar Pradesh Industrial Development Authorities Centralized Services Rules, 2018 (hereinafter referred to as 'the Rules 2018') were promulgated, which came into effect on 22.6.2018, wherein the State Government was made the appointing authority of the petitioner, therefore, another inquiry was instituted against the petitioner on 14.8.2019, under the Rules of 1999, on the basis of the same complaint dated 14.8.2014, and the charge sheet was served upon the petitioner on 14.8.2019, with the charges that the petitioner did not inform the competent

authority about the properties and cars purchased by him during the period from 16.9.2002 to 18.12.2015, wherein the reply was submitted by the petitioner on 30.9.2019 and the inquiry officer submitted his inquiry report on 24.10.2019 wherein the charges leveled against the petitioner were not found proved.

6. In the meantime, the Departmental Promotion Committee (hereinafter referred to as 'the DPC') was held on 24.12.2020, and the decision with respect to the promotion of the petitioner was kept in a sealed cover, while adopting the sealed cover procedure, on the ground that the departmental proceeding is pending against him and on the basis of the recommendation of the DPC, the person junior to the petitioner, namely, Anil Kumar Jauhri, was promoted to the post of Senior Manager (Civil), vide promotion letter dated 29.12.2020.

7. On 15.12.2021, the respondent no.1, issued a show cause notice to the petitioner, thereby mentioning disagreement with the inquiry report dated 24.10.2019, on the ground that the UP Government Servant Conduct Rules, 1956 (hereinafter referred to as 'the Conduct Rules 1956') are applicable to the employees of the Authority, in the light of Regulation 75 of Greater NOIDA Industrial Development Authority Service Regulations, 1993 (hereinafter referred to as 'the Regulations, 1993'), therefore, the petitioner has violated the provisions of Rule 24(3) of the Conduct Rules, 1956. After the aforesaid show cause notice was issued to the petitioner, he submitted his reply on 23.12.2021.

8. Considering the reply of the petitioner, on 25.1.2022 the respondent no.1/the State Government, passed the punishment order awarding the punishment of 'censure' to the petitioner, which was challenged by the petitioner in Claim Petition No. 1264 of 2022 with the prayer to quash the punishment order and also to direct the respondents to promote the petitioner on the post of Senior Manager (Project), with effect from the date, junior to the petitioner, namely, Anil Kumar Jauhri, was promoted, i.e., on 29.12.2020.

9. The learned Tribunal, after considering all the facts and circumstances, allowed the claim petition, vide judgment and order dated 17.5.2023 and quashed the punishment order dated 25.1.2022, while giving liberty to the respondents to issue fresh show cause notice and pass appropriate order within three months.

10. The facts remains that on the basis of the complaint dated 13.8.2014, with the same set of charges, a vigilance inquiry was also instituted by the respondent no.1, wherein prosecution sanction was granted on 18.11.2022, and the charge sheet was filed on 10.10.2023.

11. After the aforesaid judgment and order was passed by the Tribunal, when the respondent authority did not comply, the petitioner filed Contempt Petition No.37 of 2024, before the Tribunal, wherein notices were issued on 6.2.2024, whereafter on 4.11.2024, the respondent no.1 issued a show cause notice to the petitioner without seeking permission of the Court.

12. The show cause notice was challenged in Writ-A No.10861 of 2024, wherein an interim order was passed on 13.12.2024, providing that 'until further orders, no action would be taken by the respondents in pursuance to the notice dated 4.11.2024, against the petitioner. Thereafter, on

11.4.2025, the respondent no.1 passed the order, canceling the punishment of 'censure' awarded to the petitioner, on 25.12.2022. The petitioner preferred a representation before respondent no.1, on 16.4.2025, requesting that the petitioner be promoted to the post of Senior Manager, (Civil), with effect from the date, his junior was promoted, after opening the sealed cover, whereupon, the impugned order dated 12.6.2025 has been passed by the State Government, rejecting the claim of the petitioner made through representation dated 16.4.2025.

13. The contention put forth by the learned counsel for the petitioner is that the petitioner, after his initial appointment to the post of Assistant Manager (Civil), was promoted to Manager Grade II and thereafter Manager Grade I, and he is working in the Department to the best satisfaction of his superiors, and his career remained unblemished. He submitted that because of the annoyance of the complainant from bhabhi of the petitioner, who lodged FIR against several accused persons and out of whom, one Tarun, made complaint against the petitioner, under annoyance on 13.8.2014, and the inquiry proceeded against the petitioner and the inquiry officer, after conducting the inquiry, submitted its report while observing that no charge was found proved and thereafter, the matter was kept on pending with the appointing/disciplinary authority, but in the meantime, on 24.12.2020, the DPC was convened for the promotion to the post of Senior Manager (Civil), and uptill the DPC was convened, the factual position was that the inquiry officer did not find any charge proved against the petitioner, though the DPC has wrongly undertaken the sealed cover proceeding so far as the promotion of the petitioner is concerned.

14. He further submitted that after the Rules of 2018 were promulgated by the State Government, the State was made the appointing authority for the petitioner and thereafter, another inquiry was instituted by the State, wherein the punishment of 'censure' was awarded, though after filing the claim petition, the order was passed thereafter, the contempt petition was instituted, which resulted cancellation of the punishment order dated 25.1.2022. The order of punishment was cancelled on 11.4.2025, therefore, the petitioner had rightly moved a representation on 16.4.2025 for consideration of his promotion to the post of Senior Manager (Civil), but without application of mind, and in an arbitrary manner, the representation of the petitioner has been rejected by the order dated 12.6.2025.

15. Adding his arguments, he submitted that the show cause notice dated 4.11.2024 was issued to the petitioner, in compliance with the order dated 17.5.2023, passed by the learned Tribunal, i.e., after more than five and a half months of the order passed, which vitiates the proceedings of show cause notice in light of the judgment and order rendered in the case of Abhishek Prabhakar Awasthi Vs. New India Assurance Company, reported in 2014 (32) LCD 405.

16. Learned counsel for the petitioner has emphasized that since on the date of consideration of the promotion by the DPC, , i.e., on 24.12.2020, the report of the inquiry officer was in effect, wherein it was found that no charges were proved against the petitioner, and therefore, there was no inquiry pending as such or any adversarial fact available against the petitioner so as to lead the occasion for the DPC, adopting the sealed cover procedure. In support of his contention, he has placed reliance on a judgment rendered in the case of Union of India (UOI) and others versus K.V. Jankiraman and others reported in AIR 1991 SC 2010 and has referred to paragraph 6 of the judgment, which is extracted as under:-

"On the first question, viz., as to when for the purposes of the sealed cover procedure the Tribunal has held that it is only when a charge-memo in a disciplinary proceedings the disciplinary/criminal proceedings can be said to have commenced, the Full Bench of or a charge-sheet in a criminal prosecution is issued to the employee that it can be said that the departmental proceedings/criminal prosecution is initiated against the employee. The sealed cover procedure is to be resorted to only after the charge memo/charge-sheet is issued. The pendency of preliminary investigation prior to that procedure. We are in agreement with the Tribunal on this point. The contention not be sufficient to enable the authorities to adopt the sealed cover advanced by the learned Counsel for the appellant-authorities that when there are serious allegations and it takes time to collect necessary evidence to prepare and issue charge-memo/charge-sheet, it would not be in the Interest of the purity of administration to reward the employee with a promotion, increment etc. does not impress us. The acceptance of this contention would result in Injustice to the employees in many cases. As has been the experience so far, the preliminary investigations take an inordinately long time and particulariv when they are initiated at the instance of the Interested persons, they are kept pending deliberately. Many times they never result in the issue of any charge-memo/charge-sheet. If the allegations are serious and the authorities are keen in investigating them, ordinarily it should not take much time to collect the relevant evidence and finalise the charges. What is further, if the charges are that serious, the authorities have the power to suspend the employee under the relevant rules, and the suspension by itself permits a resort to the sealed cover procedure. The authorities thus are not without a remedy.

It was then contended on behalf of the authorities that conclusions nos 1 and 4 of the Full Bench of the Tribunal are inconsistent with each other. Those conclusions are as follows:

(1) consideration for promotion, selection grade, crossing the efficiency bar or higher scale of pay cannot be withheld merely on the ground of pendency of a disciplinary or criminal proceedings against an official;

(3)

(4)...

(4) the sealed cover procedure can be resorted only after a charge memo is served on the concerned official or the charge sheet filed before the criminal Court and not before.

There is no doubt that there is a seeming contradiction between the two conclusions. But read harmoniously, and that is what the Full Bench has intended, the two conclusions can be reconciled with each other. The conclusion No. 1 should be read to mean that the promotion etc. cannot be withheld merely because some disciplinary/criminal proceedings are pending against the employee. To deny the said benefit, they must be at the relevant time pending at the stage when charge-memo/charge-sheet has already been issued to the employee. Thus read, there is no Inconsistency in the two conclusions. We, therefore, repel the challenge of the appellant-authorities to the said finding of the Full Bench of the Tribunal."

17. Placing reliance on the aforesaid judgment, he submitted that the Hon'ble Supreme Court has held that pending of a preliminary investigation will not be sufficient to enable the authorities to adopt sealed cover procedure, and after the aforesaid judgment and order was passed, the Government of UP issued an exhaustive Government Order dated 28.5.1997, wherein in clauses 2, 3, and 4, the grounds for adopting sealed cover procedure have been given. Clauses (2), (3) & (4) of the Government Order dated 28.5.1997 are extracted as under:-

संस्तुतियों को मुहरबंद लिफाफेमें रखे जाने की परिस्थितियां

"(२) उपरोक्तानुसार विचार कर चयन समिति द्वारा स्पष्ट संस्तुति की जायेगी परन्तुचयन समिति की संस्तुति को निम्नलिखित परिस्थितियों में(चाहेचयन समिति द्वारा सम्बन्धित कार्मिक को प्रोन्नति केलिए संस्तुत किया गया हो या नहीं) अर्थात्दोनों ही दशाओं मेंकार्यवृत्त मेंअंकित नहीं किया जायेगा वरन्ऐसेकार्मिक केसम्बन्ध में कार्यवृत्त मेंमात्र यह अंकित करतेहुए कि चयन समिति की संस्तुति मुहरबंद लिफाफेमेंरखी ह,ै उस कार्मिक केविषय मेंचयन समिति की संस्तुति एक अलग शीट पर अंकित की जायेगी, जिसेमुहरबंद लिफाफे मेंरखा जायेगा और लिफाफे के ऊपर अंकित कर दिया जायेगा कि इसमें अमुक कार्मिक की झोन्नति केविषय में चयन समिति की सिफारिश रखी गयी ह-ै (क) यदि कार्मिक निलम्बित चल रहा ह,ै (ख) यदि कार्मिक केविरुद्ध अनुशासनिक कार्यवाही या प्रशासनाधिकरण की कार्यवाही लम्बित ह,ै जिसकेलिए आरोप-पत्र जारी किया जा चुका ह.ै (ग) यदि आपराधिक आरोप के आधार पर कार्मिक के विरुद्ध अभियोजन की कार्यवाही लम्बित हैअर्थात् न्यायालय में अभियोजन हतु आरोप-प े त्र प्रस्तुत किया जा चुका ह,ै

(3) जहां उपरोक्त परिस्थितियां विद्यमान न हों, वहां प्रत्येक मामलेमेंचयन समिति की संस्तुतियों के सक्षम स्तर सेअनुमोदनोपरान्त नियमानुसार, प्रोन्नति की कार्यवाही की जायेगी और जहां उपरोक्त परिस्थितियों के कारण चयन समिति की संस्तुतियां मुहरयन्द लिफाफे मेंरखी जायें, वहां मुहरबन्द लिफाफे का निस्तारण अग्रलिखित नीति के अनुसार किया जायेगा।

(4) यदि किसी कार्मिक केविषय मेंचयन समिति की संस्तुति को मुहरबन्द लिफाफेमेंरखा गया हो तो उसके लिए एक पद सुरक्षित रखा जायेगा ताकि उसके निर्दोष पायेजानेपर लिफाफे मेंरखी संस्तुति के अनुसार अथवा यथा-स्थिति-अग्रलिखित नीति केअनुसार मुहरबन्द लिफाफेमेंरखी संस्तुति पर पुनर्विचार केआधार पर चयन समिति द्वारा की गयी पुनर्संस्तुति केअनुसार (यदि प्रोन्नति कियेजानेकी संस्तुति या पुनसंस्तुति की गई हो) उक्त सुरक्षित पद केविरुद्ध उसे प्रोन्नत किया जा सके।

मुहरबन्द लिफाफे से सम्बन्धित मामले हतु े स्थान सुरक्षित रखना"

18. Referring the aforesaid, he submits that in fact, three exigencies are provided wherein the DPC can undertake the sealed cover procedure-first one is that if the employee is under suspension; secondly that if any disciplinary proceeding is pending for which the charge sheet is issued; and thirdly that if the charge sheet in a criminal case has been submitted before the Court by the prosecution.

19. He argued that information of the above conditions/terms are revalent as neither any inquiry proceeding is pending against the petitioner nor any charge sheet in any criminal prosecution has been served upon him, and furthermore, no criminal case is pending.

20. In addition, learned counsel for the petitioner has also placed reliance on the judgment and order rendered in the case of Union of India and others Vs. Doly Loyi, reported in 2024 SCC Online SC 2613, and has referred to paragraphs 9 and 14 of the judgment, which are quoted hereinbelow:-

"9. Shri Wasim Qadri, learned senior counsel appearing on behalf of the appellants drew the Court's attention towards the Office Memorandum (in short OM) dated 14 September, 1992 dealing with the Promotion of Government servants against whom disciplinary/court proceedings are pending or whose conduct is under investigation Procedure and guidelines to be followed the extract of the OM dated 14th September 1992 relied upon by the learned counsel for the appellants is reproduced below-

2. At the time of consideration of the cases of Government servant for promotion details of Government servant in the consideration zone for promotion falling under the following category should be specifically brought to the notice of the Departmental Promotion Committee –

I) Government servants under suspension.

II) Government servants in respect of whom, a charge sheet has been issued and the disciplinary proceedings are pending, and

III) Government servants in respect of whom prosecution for criminal charge is pending.

2.1. The Departmental Promotion Committee shall assess the suitability of Government servants coming within the purview of the circumstances mentioned above along with other eligible candidates without taking into consideration the case/criminal prosecution pending The disciplinary assessment of the DPC including "unfit for promotion and the grading awarded by it will be kept in a sealed cover. The cover will be superscribed 'Findings regarding suitability for promotion to the grade/post of of Shri. in respect (name of the Government servant). Not to be opened till the termination of the disciplinary case/criminal prosecution against Shri... The proceeding of the DPC need only contain the note. The findings are contained in the attached sealed cover' The authority competent to fill the vacancy should be separately advised to fill the vacancy in the higher grade only in an officiating capacity when the findings of the DPC in respect of the suitability of a Government servant for his promotion are kept in a sealed cover."

(emphasis supplied)

24. Considering the above position, the disciplinary/criminal proceedings can be said to be initiated against the employee only when a charge memo is issued to the employee in a disciplinary proceeding or a charge-sheet for a criminal prosecution is filed in the competent Court. The sealed cover procedure is to be resorted to only after issuance of the charge-memo/charge-sheet is issued. The pendency of investigation and grant of prosecution sanction will not be sufficient to enable the authorities to adopt the sealed cover procedure."

21. Referring to the aforesaid, he submitted that it has been held by the Apex Court that prosecution is not sufficient to enable the authorities to adopt the sealed cover procedure.

22. Concluding the argument, he submits that the order impugned by which the claim of the petitioner for promotion has been rejected, is erroneous and ambiguous and, therefore, the same may be quashed.

23. Per contra, Mr. Brijendra Singh, learned counsel for the State, has opposed the aforesaid contentions and submitted that, in the complaint dated 13.8.2014, moved by one Tarun, there are serious allegations against the petitioner as the petitioner retains a lot of cash as well as the movable and immovable properties, which were not brought to the notice of the department, which, in fact, is in violation of Rules 24(1) and (2) of the Conduct Rules, 1956. He further submitted that, for the institution of criminal proceedings, prosecution sanction was granted as per office memo dated 18.11.2022, and the criminal prosecution was pending against the petitioner, as on 10.10.2023, with the Special Judge, Anti-Corruption, Meerut. He argued that, on the application of the petitioner dated 16.4.2025, it was put up before the DPC, which was convened on 9.5.2025, for pending the sealed cover proceeding, but after discussion, it was found that the criminal case under the Anti-Corruption Act was pending against the petitioner, and therefore, the order dated 12.6.2025, has rightly been passed by the competent authority.

24. In support of his contention, he has also drawn attention towards paragraph 6 of the judgment and order of K.V. Jankiraman (supra) and paragraph 17 of Doly Loyi (supra). Para 17 of Dly Loyi (supra), which is quoted herein under:-

"17. He further drew the Court's attention to clause (iii) of Para No. 2 of OM dated 12th January, 1988 as per which the sealed cove. procedure could be adopted with regard to a Government servant in respect of whom the prosecution for a criminal charge was pending or sanction for prosecution had been issued or a decision had been taken to accord sanction for prosecution. The relevant para of OM dated 12th January, 1988 is reproduced hereinbelow:-

"Cases of Government Servants to whom Sealed Cover Procedure will be applicable

2. At the time of consideration of the cases of Government servants for promotion, details of Government servants in the consideration zone for promotion falling under the following categories should be specifically brought to the notice of the Departmental Promotion Committee –

(i) Government servants under suspension.

(ii) Government servants in respect of whom disciplinary proceedings are pending or a decision has been taken to Initiate disciplinary proceedings.

(iii) Government servants in respect of whom prosecution for a criminal charge is pending or sanction for prosecution has been issued or a decision has been taken for to accord sanction for prosecution.

(iv) Government servants against whom an investigation on serious allegations of corruption, bribery or similar grave misconduct is in progress either by the CBI or any other agency, departmental or otherwise."

(emphasis supplied)"

25. He submits that the sealed cover procedure could be adopted with regard to such Government Servant, in respect of whom, prosecution for criminal charges are pending, or sanction for prosecution has been issued, or a decision is taken to accord sanction for prosecution, therefore, submission is that there is no merit in the writ petition, thus, it is liable to be dismissed.

26. Upon considering the submissions of the learned counsel for the parties, and after perusal of the record, it transpires that the petitioner was initially appointed in the year 2002 and subsequently, he was promoted to Manager Grade II, in the year 2008 and Manager Grade I, in the year 2014, but on 13.8.2014, a complaint was made against the petitioner, which proceeded, and the inquiry proceeding was concluded. In the meantime, the State promulgated Rules 2018, wherein the State was made the appointing authority, in respect of the petitioner and, therefore, a further inquiry was instituted and the charge-sheet was served upon the petitioner, but in the meantime, the DPC was convened, on 24.12.2020, and observing that the disciplinary proceeding is pending against the petitioner, the sealed cover procedure has been adopted, by the DPC.

27. As is evident from the counter affidavit of the State, the second set of reason, given for adopting the sealed cover proceeding, is the pendency of the criminal proceedings against the petitioner. From paragraph 5 thereof, it is evident that the sanction for criminal prosecution was accorded, vide office memo dated 18.11.2022, and thereafter, the charge-sheet was submitted on 10.10.2023.

28. This Court examines the aforesaid two main grounds taken while passing the order impugned herein. First, from the disciplinary proceedings instituted against the petitioner, it reveals that when the DPC was convened on 24.12.2020, the inquiry report was in motion, wherein the inquiry officer found that the charges were not proved against the petitioner. Herein, the question which is to be replied is that, in the inquiry report, if it is found that the charges are not proved, whether it can be said that no disciplinary proceeding is pending against an employee? The law is very clear on this point that it is not the pendency of the inquiry proceeding, but the pendency of the disciplinary proceeding, which is to be considered, while considering the provisions of clauses (2) and (3) of the Government Order dated 28.5.1997. The same clearly speaks about the pendency of 'disciplinary proceedings', and therefore, if the inquiry officer reaches to the conclusion that no charges are proved against an employee, that does not mean that no disciplinary proceeding is pending against such an employee. Therefore, this Court finds that the DPC, which was convened on 24.12.2020, has rightly resorted to the procedure of sealed cover. The fact remains that the inquiry proceeding, which was instituted by the State Government, has been concluded, and the petitioner was awarded the punishment of 'Censure', though at a subsequent stage, i.e., on 11.4.2025, the State Government canceled the punishment of censure awarded on 25.1.2022. Thus, it is abundantly clear that no departmental proceeding is pending against the petitioner as of now.

29. Coming to the second issue, which, in fact, is in the way of opening of the sealed cover, is that the criminal proceedings are pending against the petitioner. The counter-affidavit filed by the State Government reveals that the prosecution sanction was granted, on 18.11.2022, and the charge sheet was submitted on 10.10.2023. Admittedly, the DPC for promotion of the Senior Manager (Civil) was held on 24.12.2020, and till that period of time, no criminal proceeding was initiated. The question is that when would the pendency of criminal proceedings be said to become effective?

Clause 2(c) of the Government Order dated 28.5.1997, is abundantly clear that once the charge sheet is submitted in the court, by the prosecution, that would be the date, which will be considered for the pendency of criminal proceedings.

30. This issue has exhaustively been dealt with, in the judgment and order rendered in the case of K. V. Jankiraman (supra). The Hon'ble Supreme Court, while dealing with the issue regarding an analogous provision of the Government Order dated 28.5.1997, has held that sealed cover procedure can be resorted to only after the charge memo is served upon the concerned official, in contemplation of the disciplinary proceeding or a charge sheet is filed before the criminal court, in a criminal proceeding. In the present case, the charge sheet was submitted in a criminal prosecution, in the court, on 10.10.2023. It is settled law that no sealed cover proceeding could be undertaken, if, on the date of the DPC, no charge sheet had been issued in the matter of departmental proceedings, and in a criminal case, the charge sheet had not been submitted before the court concerned. In the instant case, when the DPC was held, chargesheet was not submitted in the court, thus, the criminal proceeding cannot be said to be pending.

31. The another question which seeks attention of this Court is whether the pendency of the matter for sanction of criminal prosecution would have any bearing on consideration of the promotion of an employee, by the DPC. This issue has candidly been considered, in Doly Loyi's case (supra), and in paragraph 24, the Hon'ble Apex Court has held in so many words, that the pendency of sanction of criminal prosecution would not suffice to enable the authorities to adopt the sealed cover procedure. So far as the present case is concerned, though the application for the prosecution's sanction was pending, but the decision was taken on 18.11.2022, that too after the DPC was convened on 24.12.2020, and therefore, the sanction of prosecution will not make any difference, for consideration of promotion of an employee, by the D.P.C. Thus, in the present case, the fact that the sanction of prosecution was pending, would have no adversarial effect on, for consideration of promotion of the petitioner.

32. In view of aforementioned submissions and discussions, this Court is of the considered opinion that the order impugned dated 12.6.2025, goes against, the law laid down in the cases of K. V. Jankiraman (supra), as well as Doly Loyi (supra). Further, the provisions of Government Order dated 28.5.1997, has escaped the attention of the authorities for considering the case of the petitioner, in its right perspective.

33. Resultantly, the order impugned dated 12.6.2025 passed by the respondent no.1, is unsustainable and the same is hereby quashed.

34. The competent authority is directed to take a fresh decision regarding the promotion of the petitioner, to the post of Senior Manager (Civil), within a period of eight weeks, from the date a certified copy of this order is produced before him, in the light of the observations made hereinabove.

35. The writ petition is allowed accordingly.

BEFORE

Civil Misc. Review Application No. 409 of 2024

Issue for Consideration

Head Notes

Held- Each and every aspect of the matter has been considered and thereafter, the writ petition in question was disposed of and there appears no apparent mistake in the judgment under review. Neither review court can examine the merits of the judgment as an appellate court nor in the garb of review petition, a rehearing of the matter can be permitted by this Court.

(Para 15, 16 & 26)

Writ-C No.32178 of 2023 (Smt. Champa Devi v. State of U.P. & Ors.); judgment dated 29.05.2023 passed in Writ-C No.17575 of 2023 (Smt. Premlata Pandey v. State of U.P. & Ors.); judgment dated 13.03.2024 in Writ-C No.1760 of 2024 (Gyan Prakash Chaturvedi v. State of U.P. & Ors); order dated 17.04.2026 in Writ-C

No.34909 of 2023 (Smt. Pushpa Devi v. State of U.P. & Ors.); order dated 17.04.2026 passed in Writ-C No.13325 of 2023 (Mst Usha Maurya v. State of U.P. & Ors.); order dated 09.05.2025 passed in Review Application No.410 of 2024 (State of U.P. & Ors. v. Smt. Champa Devi);Shivdeo Singh v. State of Punjab, AIR 1963 SC 1909;Aribam Tuleshwar Sharma v. Aribam Pishak Sharma and others, 1979 (4) SCC 389;Meera Bhanja v. Nirmla K. Chaudhary, 1995 (1) SCC 170;Satyanarayan Laxminarayan Hegde v. Mallikarjun Bhavanappa Tirumale, AIR 1960 SC 137 ;Parsion Devi and others v. Sumitri Devi and others, 1997 (8) J.T. SC 480;Smt. Meera Bhanja v. St. Nirmala Kumari Choudhary, 1985 (1) SCC 170;Aribam Tuleshwar Sharma v. Aribam Pishak Sharma & Ors. (1979 (4) SCC 389;Lily Thomas v. Union of India, AIR 2000 SC 1650;Subhash Vs. State of Maharastra & another, AIR 2002 SC 2537;State Haryana v. Mohinder Singh, JT 2002 (1) 197;Union of India v. B. Valluvar, 2006 (8) SCC 686;;State of Haryana and others v. M.P. Mohila, 2007 (1) SCC 457;Kamlesh Verma Vs. Mayawati and others 2013 (8) SCC 320;

List of Acts

The Code of Civil Procedure-1908; The Constitution of India-1950

List of Keywords

Review; Order 41 Rule 1; Section 114; Mistake or error on the face of record; Review not permissible; on ground ; decision was erroneous on merits

Case Arising From

Review application has been filed for reviewing the judgement and order dated 02.11.2023 in Writ-C No.31953 of 2023 (Smt. Krishna Singh v. State of U.P. & Ors.) by which the writ petition was disposed of in terms of judgment and order dated 03.10.2023 passed in Writ-C No.32178 of 2023 (Smt. Champa Devi v. State of U.P. & Ors.)

Appearances for Parties

Counsel for Applicant(s) : Pankaj Rai

Counsel for Opposite Party(s) : Sudhanshu Pandey

(Delivered by Hon'ble Mahesh Chandra Tripathi, J.

&

Hon'ble Prashant Kumar, J.)

1. Hon'ble Prashant Kumar, J. has joined the proceeding through video conferencing from Lucknow Bench of this Court.

2. Heard Shri Amit Saxena, learned Addl. Advocate General assisted by Shri Pankaj Rai, learned counsel for the applicants-respondents and Shri Sudhanshu Pandey, learned counsel for the opposite party-petitioner.

3. Shri Pankaj Rai, learned Addl. Chief Standing Counsel files the affidavit of compliance dated 30.04.2026 on behalf of Relief Commissioner, Revenue, Government of U.P., Lucknow-respondent no.2, which is taken on record.

4. This review application has been filed for reviewing the judgement and order dated 02.11.2023 in Writ-C No.31953 of 2023 (Smt. Krishna Singh v. State of U.P. & Ors.) by which the writ petition was disposed of in terms of judgment and order dated 03.10.2023 passed in Writ-C No.32178 of 2023 (Smt. Champa Devi v. State of U.P. & Ors.). For ready reference, the order dated 02.11.2023 is reproduced as under:-

"1. Heard learned counsel for the petitioner and Sri Devesh Vikram, learned Additional Chief Standing Counsel for the State-respondents.

2. Present writ petition is preferred under Article 226 of Constitution of India with request to issue a writ, order or direction in the nature of mandamus directing the respondents to release the ex-gratia compensation of Rs.50 lacs to the petitioner in pursuance of the Government order dated 11.04.2020 in lieu of death of her husband Sri Vijay Bahadur Singh, Head Constable U.P. Police due to Covid-19 while performing public duties and engaged in ensuring the Covid-19 protocol within some stipulated time.

3. Earlier the matter was taken up on 19.9.2023 and on the said date the Court had proceeded to pass following order:-

"1. The matter relates to ex-gratia compensation.

2. At the very outset, Sri R.M.Upadhyay, learned Additional Chief Standing Counsel has placed the detailed instructions dated 18.9.2023 sent by the Deputy Commissioner of Police Headquarter Commissionerate Prayagraj, which is taken on record. On the basis of instructions, he submits that the matter is ceased before the State Government and some breathing time may be accorded so that fate of the said proceeding may be apprised on the next date of listing. On his request, the case is passed over for the day.

3. Put up this matter on 9.10.2023 as fresh. Needless to say, the claim of the petitioner must be processed on or before the next date of listing."

4. Learned Additional Chief Standing Counsel submits that adequate information has already been sent to the concerned authority through e-mail on 21.9.2023 and the instructions are still awaited. He submits that further time may be accorded so that the order dated 19.9.2023 may be complied with.

5. Per contra, learned counsel for the petitioner states that the issue in hand is already settled by the Division Bench vide order dated 3.10.2023 in Writ C No.32178 of 2023 (Smt. Champa Devi vs. State of U.P. and others), wherein similarly situated incumbents have already been given the benefit in the light of the Government Order dated 11.4.2020. In the present matter, the competent authority vide order dated 14.11.2022 has already made recommendation for according ex-gratia payment in favour of legal heirs of late Vijay Bahadur Singh, Head Constable (husband of the petitioner) and Surendra Kumar, Jail Warder, Naini, Prayagraj, whereas the ex-gratia payment has been made to the dependents of late Sri Surendra Kumar but in spite of the aforesaid recommendation, the respondents have not taken any remedial measures for according ex-gratia payment to the petitioner till date. He has confined his prayer that the writ petition may be disposed of in the light of judgement in Smt. Champa Devi (supra).

6. Considering the facts and circumstances, we are of the view that no useful purpose would be served in keeping the present writ petition pending consideration and dispose of the writ petition in terms of our order dated 3.10.2023 passed in Smt. Champa Devi (supra)."

5. Shri Amit Saxena, learned Addl. Advocate General appearing on behalf of State-applicant has submitted that the Writ Court has passed the order in question only on the basis of instructions and has heavily relied upon the judgment passed by the Division Bench in Smt. Champa Devi (Supra). The judgment and order passed in Smt. Champa Devi (Supra) has already been challenged before the Apex Court and the matter is pending there for consideration. He submits that the case of the petitioner does not fall under the Government Order dated 11.4.2020 and as such the competent authority has rightly considered and negated the claim of the petitioner. He further submits that in

case the order in question is not reviewed, heavy financial burden will be fastened upon the State exchequer, which would have very serious financial implications.

6. Per contra, learned counsel for the opposite party-petitioner has vehemently opposed the review application as well as the arguments so advanced by learned Addl. Advocate General. He has submitted that the order in question dated 02.11.2023 has been passed relying on and in terms of Smt. Champa Devi (Supra). He submits that the judgment in Smt. Champa Devi (Supra) has been passed on 03.10.2023 and the State Government had assailed the same before Hon'ble Supreme Court with inordinate delay on 24.04.2026, having Diary No.25155 of 2026, just to deprive the petitioner from her rightful claim, even though Smt. Champa Devi has already been extended the benefit. Without there being any order in the matter pending in the Supreme Court, the order in question dated 02.11.2023 as well as the judgment in Smt. Champa Devi (Supra) are still holding the field and as such no interference is required in the instant matter.

7. Learned counsel for the opposite party-petitioner further submits that looking to the extreme and horrifying working conditions during the period of Covid-19, being a welfare State, the Government has issued the Government Order dated 11.04.2020 for giving immediate relief to the family of deceased employees, who had rendered their valuable service during that period. While issuing the said Government Order, the Government must have considered the financial implications and taken a conscious decision in this regard and as such at present the contention of financial implication is not justified.

8. Learned counsel for the opposite party-petitioner, in support of his submissions, has also placed reliance on successive Division Bench orders allowing the writ petitions and according relief to the petitioners (in the said writ petitions). In this regard, he has placed reliance on the judgment dated 29.05.2023 passed in Writ-C No.17575 of 2023 (Smt. Premrata Pandey v. State of U.P. & Ors.) passed by the Coordinate Bench, whereby the writ petition was allowed with following observations:-

".....9. Husband of the petitioner, Head Constable Ashok Kumar Pandey while working at Civil Airport Gorakhpur was involved in enforcement of COVID-19 protocol by ensuring social distancing among the passengers as well as forcing them to undergo corona test. Admittedly, there is no other force or employees except the policemen at airport who are deputed for this specific purpose. The State cannot make artificial distinction among its employees to depriving one class of employees from getting ex gratia compensation on their death despite the fact that they had received corona infection on duty during COVID-19 period. Every policeman or other government employee who has been discharging his duty during COVID-19 period for enforcing COVID-19 protocol will be deemed to be performing duty for prevention and protection of COVID-19 as mentioned in Government Order dated 11.4.2020 and if he dies because of corona infection during discharge of his duty then his dependents will be entitled to receive ex gratia compensation as per Government Order dated 11.4.2020.

10. In view of the above, husband of the petitioner Late Ashok Kumar Pandey (Head Constable) while working at Civil Airport Gorakhpur was involved in the duty of prevention, protection and treatment of COVID-19, therefore, on his death, the petitioner is entitled for ex gratia compensation as per the Government order dated 11.4.2020. The respondent No.1 is

directed to release the ex gratia compensation of Rs.50,00,000/- to the petitioner within a period of one month from today.

11. With the aforesaid direction, the writ petition is allowed."

9. He has also placed reliance on the judgment dated 13.03.2024 in Writ-C No.1760 of 2024 (Gyan Prakash Chaturvedi v. State of U.P. & Ors), whereby the Coordinate Bench has not only allowed compensation of Rs.50 lacs within two months but also considering the delay of almost two years, provided interest @ 8% from the date of occurrence of death till the date of actual payment. For ready reference, the operative portion of the order dated 13.03.2024 is reproduced as under:-

".....5. Learned Additional Chief Standing Counsel states no further written instructions have been received. Counsel for the petitioner states the amount has yet not been paid.

6. In view of the fact that the amount is due and has remained outstanding for almost two years, no useful purpose would be served in keeping the writ petition pending any further. It cannot be denied that interest is a natural accretion on capital. On the other hand money loses value due to inflationary forces. Since, no dispute exists with respect to the payment, otherwise due to the petitioner, minimal interest must be provided, less money compensation awarded loses value and purpose.

7. Accordingly, the writ petition is allowed with the direction upon respondent no. 1 to ensure due payment is made to the petitioner in respect of compensation of Rs. 50 lacs within a period of two months from today together with interest @ 8 % from the date of occurrence of death till the date of actual payment. "

10. He has also placed reliance on recent Coordinate Bench order dated 17.04.2026 in Writ-C No.34909 of 2023 (Smt. Pushpa Devi v. State of U.P. & Ors.) by which the writ petition was allowed with following observations:-

".....12. In view of the above and in our considered view as well the employees working in the electricity department, water supply department, telephone department, police department and such other essential services departments who worked during covid period would be taken to be on covid duty as their discharge of duties helped the State Government in containing the spread of pandemic covid-19 virus, treatment of the patients and their protection by keeping them in confinement.

13. In view of the above, we are unable to sustain the order passed by the State Government giving a very narrow interpretation to the covid duty only confining those people, who were specially assigned to discharge their duties in treatment of people physically in hospitals.

14. The writ petition succeeds and is allowed. The order dated 28.07.2023 passed by the State Government is hereby quashed. The State Government is directed to release the ex-gratia compensation to the petitioner within a period of 30 days from the date of presentation of certified copy of this order before it."

11. He has also placed reliance on the order dated 17.04.2026 passed in Writ-C No.13325 of 2023 (Mst Usha Maurya v. State of U.P. & Ors.) by which the writ petition was disposed of in

terms of the order passed in Smt. Pushpa Devi (Supra). For ready reference, the order dated 17.04.2026 is reproduced as under:-

"1. Disposed of in terms of order passed today in Writ-C No.34909 of 2023. 2. The order dated 25.02.2023 passed by the State Government impugned in this petition is also hereby quashed. The State Government is directed to release the ex-gratia compensation to the petitioner within a period of 30 days from the date of presentation of certified copy of this order before it."

12. Heard rival submissions, perused the record and respectfully considered the judgments cited at Bar.

13. On the matter being taken up on 16.04.2026, we have proceeded to pass detailed order, the operative portion of which, for ready reference, is reproduced as under:-

".....3. It is pointed out by learned counsel for the petitioner/opposite party that the instant review application is preferred with inordinate delay of ten months and the affidavit is sworn by Naib Tehsildar, P.W.D., Tahsil Sadar, Prayagraj on behalf of the applicants/State respondents. The petitioner/opposite party had preferred Writ C No.31953 of 2023, arraying five State respondents i.e. State of U.P. through Principal Secretary, U.P. Govt. Lucknow; Relief Commissioner, Revenue Section-11, Govt. of U.P. Lucknow; Secretary Home (Police) Anubhag-10 U.P. Lucknow; District Magistrate/Chairman, District Disaster Management Authority, Prayagraj and Commissioner of Police, Prayagraj. Nothing is brought on record to indicate that the State respondents have accorded any permission on their behalf to swear the affidavit by the Naib Tahsildar. Moreover, no reason has been given as to under what circumstances, after ten months the instant review application is preferred against the judgment and order dated 02.11.2023.

4. Learned counsel for the petitioner/opposite party has placed a copy of the order dated 21.04.2025, wherein it is indicated that in response to the order dated 03.10.2023 passed in Smt. Champa Devi (supra), even though the Committee had rejected the claim but later on, the benefit has been accorded to Smt. Champa Devi, who is widow of late Kamlesh Singh Yadav. The same is taken on record.

5. Learned counsel for the petitioner-opposite party submits that similar matter is engaging attention of this Court in Writ C No.34909 of 2023 (Smt. Pushpa Devi vs. State of UP and 6 others), wherein the Coordinate Bench in its order dated 20.03.2026 had observed that the question, which needed to be resolved in the case, is as to whether those, who were assigned duties to provide essential services to the State Government and public at large, should not be benefited with the compensation under the relevant Government Order, because they were not specifically assigned COVID duty. The said observation had been made in the backdrop that a narrow interpretation of the Government Order, which itself is a beneficial piece of subordinate legislation, would be not only against the public interest but will also even hit Article 14 of the Constitution of India. In the said proceeding, various other departments and instrumentalities of the State are also stakeholders and question before the Division Bench is whether in the light of the Government order, the said benefit has to be extended by the department concerned. Accordingly, the affidavit had been asked from the Additional Chief Secretary, Revenue Department as well as the Chief Secretary of Uttar Pradesh.

6. *We find that the Court had disposed of the Writ C No.31953 of 2023 filed by the petitioner/opposite party on 02.11.2023, relying upon the judgement and order dated 03.10.2023 passed in Writ-C No.32178 of 2023 (Smt. Champa Devi vs State of U.P. and 5 others) wherein the similar benefit has been extended in the light of a Government Order dated 11.04.2020. Admittedly, Smt. Champa Devi has been conferred with the benefit under the Government Order dated 11.04.2020.*

7. *Earlier the instant matter was taken up on 22.11.2024 and on the said date, we had accorded time to the learned counsel for opposite party/petitioner to file an objection to the review application. Again the matter was taken up on 09.05.2025 and on the request of Sri Manish Goyal, learned Additional Advocate General appearing for the applicants/State respondents, the matter was adjourned to enable him to get proper instructions.*

8. *What we find is that just to meet out the inordinate delay and laches, a very noble device has been coined by the applicants/State respondents by convening the meeting on 26.06.2024 just to negate and reject the rightful claim of the petitioner/opposite party. The applicants/State respondents have considered the claims of heirs of late Kamlesh Singh Yadav, Constable P.A.C. District Deoria and heirs of late Vijay Bahadur, Constable, Police Department, Prayagraj. Even though the Committee has declined to accord any ex-gratia payment in the light of the Government Order but later on, the benefit has been extended. Under the guise of the meeting dated 26.06.2024, the respondents have declined to accord any relief to the opposite party/petitioner, who is a widow and suffering since long.*

9. *In the facts and circumstances, as placed before us, surprisingly what we find is that the District Magistrate, Prayagraj has initially made an endorsement in favour of the petitioner in the light of a Government Order but just to circumvent the order passed by the Division Bench, later on, after eight months, the meeting was convened and rights of the petitioner have been denied. Such practice cannot be accepted.*

10. *Let the Relief Commissioner, Revenue, Govt. of U.P. Lucknow file personal response in the matter so that we can proceed to consider the claim of the opposite party/petitioner.*

11. *On the request of Sri Manish Goel, learned Additional Advocate General assisted by Sri Pankaj Rai, learned Additional Chief Standing Counsel, the matter is adjourned today.*

12. *Put up again on 30.04.2026 at 03.45 p.m. for further orders."*

(Emphasis supplied)

14. In the instant proceeding, we find that while disposing of the instant writ petition, two other writ petitions of similar nature were also disposed of on same terms. Later on along with the instant review application two other review applications namely Review Application No.348 of 2024 (State of U.P. & Ors. v. Smt. Sanju Yadav) as well as Review Application No.410 of 2024 (State of U.P. & Ors. v. Smt. Champa Devi) were also filed separately. Meanwhile, Review Application No.348 of 2024 and Review Application No.410 of 2024 were dismissed as not pressed on 09.05.2025 on the statement of Shri Manish Goel, learned Addl. Advocate General appearing on behalf of the State that the benefit is already extended to the petitioners in the light of Writ Court Order. For ready reference, the order dated 09.05.2025 passed in Review Application No.410 of 2024 (State of U.P. & Ors. v. Smt. Champa Devi) is reproduced as under:-

"1. Mr. Manish Goel, learned Additional Advocate General appearing on behalf of State submits that in the instant matter, benefit is already extended to the petitioner in the light of

Division Bench judgment of this Court dated 03.10.2023 passed in Writ-C No. 32178 of 2023; Smt. Champa Devi vs. State of U.P. and others, as such the present review petition may be dismissed as not pressed.

2. Learned counsel appearing for opposite party does not dispute the aforesaid fact as argued by learned counsel for the applicant. 3. Accordingly, the present review application is dismissed as not pressed."

15. We are surprised to note that on one hand the State Government has complied with the Writ Court order in Smt. Champa Devi (Supra) and accorded financial benefit to her and on the other hand they had challenged the Writ Court order in Smt. Champa Devi (Supra) before the Supreme Court with inordinate delay on 24.4.2026. In such circumstances, no plausible reason is before us to discriminate the petitioner (Smt. Krishna Singh) from getting her rightful claim and, therefore, no case is made out to review our order dated 02.11.2023 in the instant review application, which has been passed in terms of Smt. Champa Devi (Supra).

16. We also find that the scope and ambit of the review under Article 226 of the Constitution of India, in reviewing its own order, is very limited. The review application can be allowed only on (1) discovery of new and important matter of evidence which, after exercise of due diligence, was not within the knowledge of the person seeking review, or could not be produced by him at the time when the order was made, or (2) when some mistake or error on the face of record is found, or (3) on any analogous ground. Review is not permissible on the ground that the decision was erroneous on merits as the same would be the province of an Appellate Court.

17. In the case of **Shivdeo Singh v. State of Punjab**, AIR 1963 SC 1909, Hon'ble Apex Court took the view that there is nothing under Article 226 of the Constitution of India, which precludes High Court from exercising the power of review, which inheres in every Court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. It was held that the power of review under Article 226 of the Constitution of India, in reviewing its own orders, every Court including High Court inheres plenary jurisdiction, to prevent miscarriage of justice or to correct grave and palpable errors committed by it.

18. Hon'ble Apex Court in the case of **Aribam Tuleswar Sharma v. Aribam Pishak Sharma and others**, 1979 (4) SCC 389, has cautioned that power of review of the High Court is not the same as appellate powers and review on the ground that certain documents have not been considered, which formed the record, cannot be ground of Review. Hon'ble Apex Court in the case of **Meera Bhanja v. Nirmla K. Chaudhary**, 1995 (1) SCC 170, has taken the view that review must be confined to error apparent on the face of record, error must be such as would be apparent on mere looking without any long drawn process of reasoning, and reappraisal of evidence on record for finding out error would amount to exercise of appellate jurisdiction, which is not at all permissible.

19. In the case of **Satyanarayan Laxminarayan Hegde v. Mallikarjun Bhavanappa Tirumale**, AIR 1960 SC 137, Hon'ble Supreme Court has made the following observations in connection with an error apparent on the face of the record :-

"An error which has to be established by a long drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. Where an alleged error is far from self-evident and if it can be established, it has to be established, by lengthy and complicated arguments, such an error cannot be cured by a writ of certiorari according to the rule governing the powers of the superior Court to issue such a writ.

In our view the aforesaid approach of the Division Bench dealing with the review proceedings clearly shows that it has overstepped its jurisdiction under Order 47, Rule 1, C.P.C. By merely styling the reasoning adopted by the earlier Division Bench as suffering from a patent error. It would not become a patent error or error apparent in view of the settled legal position indicated by us earlier. In substance, the review Bench has re appreciated the entire evidence, sat almost as Court of appeal and has reversed the findings reached by the earlier Division Bench. Even if the earlier Division Bench findings regarding C.S. Plot No. 74 were found to be erroneous, it would be no ground for reviewing the same, as that would be the function of an appellate Court. Learned counsel for the respondent was not in a position to point out how the reasoning adopted and conclusion reached by the Review Bench can be supported within the narrow and limited scope of Order 47, Rule 1, C.P.C. Right or wrong, the earlier Division Bench judgment had become final so far as the High Court was concerned. It could not have been reviewed by reconsidering the entire evidence with a view to finding out the alleged apparent error for justifying the invocation of review powers. Only on that short ground, therefore, this appeal is required to be allowed. The final decision dated 8th July, 1986 of the Division Bench dismissing the appeal from appellate decree No.569 of 1973 insofar as C.S. Plot No. 74 is concerned as well as the review judgment dated 5th September, 1984 in connection with the very same plot, i.e. C.S. Plot No. 74 are set aside and the earlier judgment of the High Court dated 3rd August, 1978 allowing the Second Appeal regarding suit plot No. 74 is restored. The appeal is accordingly allowed. In the facts and circumstances of the case, there will be no order as to costs."

20. In **Parsion Devi and others v. Sumitri Devi and others**, 1997 (8) J.T. SC 480, Hon'ble Supreme Court has taken the view that review proceeding has to be strictly confined to the ambit and scope of Order 47, and therein the two earlier judgments referred to above have been relied upon. Again in **Smt. Meera Bhanja v. St. Nirmala Kumari Choudhary**, 1985 (1) SCC 170, while quoting this approval a passage from **Aribam Tuleshwar Sharma v. Aribam Pishak Sharma & Ors.** (1979 (4) SCC 389, Hon'ble Supreme Court once again held that review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 CPC.

21. Hon'ble Apex Court, in the case of **Lily Thomas v. Union of India**, AIR 2000 SC 1650, after considering the dictionary meaning of word "review" has taken the view that power of review can be exercised for correction of mistake and not to substitute a view. Such powers can be exercised within the limits of the statute, dealing with exercise of power; the review cannot be treated as an appeal in disguise, and mere possibility of two views on the subject is not a ground of Review.

22. Hon'ble the Apex Court in **Subhash Vs. State of Maharastra & another**, AIR 2002 SC 2537, the Apex Court emphasized that Court should not be misguided and should not lightly

entertain the review application unless there are circumstances falling within the prescribed limits for that as the Courts and Tribunal should not proceed to re-examine the matter as if it was an original application before it for the reason that it cannot be a scope of review. In **State Haryana v. Mohinder Singh**, JT 2002 (1) 197, the Apex Court disapproved the judgment of High Court, wherein earlier writ petition was disposed of by High Court being infructuous and giving some directions, and subsequent to the same, Review was sought, which was allowed, same was clearly termed to be overstepping of jurisdiction, and amounting to giving of one more chance of hearing.

23. In the case of **Union of India v. B. Valluvar**, 2006 (8) SCC 686, Hon'ble Apex Court has again considered the parameters of review jurisdiction of High Court, that same shall be exercised within the limitations as provided under Section 114 read with Order 47 Rule of C.P.C., and without recording finding as to there existed error apparent on the face of the record, merit cannot be gone into. Hon'ble Apex Court in the case of **State of Haryana and others v. M.P. Mohila**, 2007 (1) SCC 457, has taken the view that in the garb of clarification application, recourse to achieve the result of review application, cannot be permitted, as what can not be done directly, cannot be done indirectly.

24. In **Kamlesh Verma Vs. Mayawati and others** 2013 (8) SCC 320, the Apex Court said:

"19. Review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 of CPC. In review jurisdiction, mere disagreement with the view of the judgment cannot be the ground for invoking the same. As long as the point is already dealt with and answered, the parties are not entitled to challenge the impugned judgment in the guise that an alternative view is possible under the review jurisdiction.

Summary of the Principles:

20. Thus, in view of the above, the following grounds of review are maintainable as stipulated by the statute:

20.1. When the review will be maintainable:-

- (i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;*
- (ii) Mistake or error apparent on the face of the record;*
- (iii) Any other sufficient reason.*

The words "any other sufficient reason" has been interpreted in Chhajju Ram vs. Neki, AIR 1922 PC 112 and approved by this Court in Moran Mar Basselios Catholicos vs. Most Rev. Mar Poulouse Athanasius & Ors., AIR 1954 SC 526, to mean "a reason sufficient on grounds at least analogous to those specified in the rule". The same principles have been reiterated in Union of India vs. Sandur Manganese & Iron Ores Ltd. & Ors., 2013 (8) SCC 337.

22.2. When the review will not be maintainable:-

- (i) A repetition of old and overruled argument is not enough to reopen concluded adjudications.*
- (ii) Minor mistakes of inconsequential import.*
- (iii) Review proceedings cannot be equated with the original hearing of the case.*
- (iv) Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.*

(v) *A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected but lies only for patent error.*

(vi) *The mere possibility of two views on the subject cannot be a ground for review.*

(vii) *The error apparent on the face of the record should not be an error which has to be fished out and searched.*

(viii) *The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.*

(ix) *Review is not maintainable when the same relief sought at the time of arguing the main matter had been negated." (emphasis supplied)*

25. On the touchstone of the dictum noted above, the review is permissible only when there is error apparent on the face of record i. e. error should be grave and palpable, and the error must be such as would be apparent on mere looking of record, without requiring any long drawn process of reasoning, and reappraisal of entire evidence for finding the error, as the same would amount to exercise of appellate jurisdiction. Further, the review lies only on the grounds mentioned in Order 47, Rule 1 read with Section 141 CPC. The party must satisfy the Court that the matter or evidence discovered by it at a subsequent stage could not be discovered or produced at the initial stage though it had acted with due diligence. A party filing a review application on the ground of any other "sufficient reason" must satisfy that the said reason is analogous to the conditions mentioned in the said provision of C.P.C.

26. Perusal of judgment under review passed by us shows that each and every aspect of the matter has been considered and thereafter, the writ petition in question was disposed of and there appears no apparent mistake in the judgment under review. Neither review court can examine the merits of the judgment as an appellate court nor in the garb of review petition, a re-hearing of the matter can be permitted by this Court.

27. Consequently, the review application is **rejected**.

(2026) 4 ILRA 1620
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 22.04.2026

BEFORE

THE HON'BLE SANDEEP JAIN, J.

Habeas Corpus Writ Petition No. 442 of 2026

Smt. Deeksha & Anr.

...Petitioners

Versus

State of U.P. & Ors.

...Respondents

Issue for Consideration

Whether the corpus is in lawful custody of the State in pursuance of a judicial order and whether the present habeas corpus petition is not maintainable.

Head Notes

The Constitution of India, 1950-Article 226 (Habeas Corpus); The Juvenile Justice (Care and Protection of Children) Act, 2015- Section 27(9)- The Juvenile Justice Act, 2015 provides a complete mechanism dealing with welfare of the child. The 'Child Welfare Committee' exercises the power of Magistrate in view of the provision of Section 27 of the Juvenile Justice Act, 2015 and for all purposes, the Committee acts like the Magistrate. Once the order has been passed by the Magistrate, then it can only be assailed before the appropriate Court by filing an appeal or any other remedy as provided under the law.

Held- The corpus is in lawful custody of the State pursuant to judicial order passed by the Child Welfare Committee, Sambhal on 18.12.2025 under Section 27(9) of the Juvenile Justice (Care and Protection of Children) Act, 2015, the instant habeas corpus petition is not legally maintainable.

Petition dismissed. (E-15)

(Para 6 & 8)

Case Law Cited

Rachna and Another vs. State of UP and Others 2021 SCC OnLine All 211; Jayanti and Another vs. State of UP and others 2021 SCC OnLine All 760; Mayank Ojha (Minor) vs. State of UP Thru. Home Secretary Lko. and others 2025 SCC OnLine All 6064; Nirmala vs. Kulwant Singh and Others (2024) 10 SCC 595

List of Acts

The Constitution of India, 1950; The Juvenile Justice (Care and Protection of Children) Act, 2015

List of Keywords

Habeas Corpus; Not maintainable Judicial order passed by the Child Welfare Committee; Under Section 27(9) of the Juvenile Justice (Care and Protection of Children) Act, 2015;

Case Arising From

The corpus is the wife of the petitioner and is in illegal custody of the State, being kept in a Rajkiya Bal Grah (Balika), Vrindavan, Mathura against her wishes. The petitioner, being the husband of the corpus, is entitled to her lawful custody.

Appearances for Parties

Counsel for Petitioner(s) : Maohammd Nadeem

Counsel for Respondent(s) : G.A.

(Delivered by Hon'ble Sandeep Jain, J.)

1. Learned counsel for the petitioners submits that the corpus, Deeksha, is the wife of Arvind Kumar and is in illegal custody of the State, being kept in a Rajkiya Bal Grah (Balika), Vrindavan, Mathura against her wishes. It is submitted that the petitioner, being the husband of the corpus, is entitled to her lawful custody.

2. Per contra, learned AGA submitted that a criminal case is pending against the petitioner, who allegedly solemnized marriage with the corpus while she was a minor, and, as such, she has been lawfully detained in Rajkiya Bal Grah (Balika), Vrindavan, Mathura. It is submitted that since the corpus is in lawful custody of the State in pursuance of a judicial order, the present habeas corpus petition is not maintainable.

3. I have heard the learned counsel of the parties and perused the record.

4. A Full Bench of this Court in the case of ***Rachna and Another vs. State of UP and Others 2021 SCC OnLine All 211***, held as under:-

"80. We accordingly come on our conclusions in respect of question nos. 1, 2 and 3 for determination as follows:?"

Question No. 1: "(1) Whether a writ of habeas corpus is maintainable against the judicial order passed by the Magistrate or by the Child Welfare Committee appointed under Section 27 of the Act, sending the victim to Women Protection Home/Nari Niketan/Juvenile Home/Child Care Home?;

Answer : **If the petitioner corpus is in custody as per judicial orders passed by a Judicial Magistrate or a Court of Competent Jurisdiction or a Child Welfare Committee under the J.J. Act. Consequently, such an order passed by the Magistrate or by the Committee cannot be challenged/assailed or set aside in a writ of habeas corpus.**

Question No. 2: "Whether detention of a corpus in Women Protection Home/Nari Niketan/Juvenile Home/Child Care Home pursuant to an order (may be improper) can be termed/viewed as an illegal detention?"

Answer : An illegal or irregular exercise of jurisdiction by a Magistrate or by the Child Welfare Committee appointed under Section 27 of the J.J. Act, sending the victim to Women Protection Home/Nari Niketan/Juvenile Home/Child Care Home cannot be treated an illegal detention.

Question No. 3: "Under the Scheme of the Juvenile Justice (Care and Protection of Children) Act, 2015, the welfare and safety of child in need of care and protection is the legal responsibility of the Board/Child Welfare Committee and as such, the proposition that even a minor cannot be sent to Women Protection Home/Nari Niketan/Juvenile Home/Child Care Home against his/her wishes is legally valid or it requires a modified approach in consonance with the object of the Act?"

Answer : Under the J.J. Act, the welfare and safety of child in need of care and protection is the legal responsibility of the Board/Child Welfare Committee and the Magistrate/Committee must give credence to her wishes. As per Section 37 of the J.J. Act the Committee, on being satisfied through the inquiry that the child before the Committee is a child in need of care and protection, may, on consideration of Social Investigation Report submitted by Child Welfare Officer and taking into account the child's wishes in case the child is sufficiently mature to take a view, pass one or more of the orders mentioned in Section 37 (1) (a) to (h)." (emphasis supplied)

5. Similarly, a Coordinate Bench of this Court in the case of ***Jayanti and Another vs. State of UP and others 2021 SCC OnLine All 760***, held as under:-

"26. Having regard to the foregoing discussion, the legal position which emerges is that in a case where the custody of the petitioner corpus as been handed over as per a judicial order passed by Judicial Magistrate or a court of competent jurisdiction or a CWC constituted under the JJ Act, the said order cannot be assailed in a petition seeking a writ of habeas corpus."

6. A Division Bench of this Court again in the case of ***Mayank Ojha (Minor) vs. State of UP Thru. Home Secretary Lko. and others 2025 SCC OnLine All 6064***, held as under:-

"25. It is trite in law that writ of habeas corpus would not be maintainable, if the detention in custody is pursuant to judicial orders passed by a Judicial Magistrate or a court of competent jurisdiction or by the Child Welfare Committee. Section 27 of the Juvenile Justice Act defines the 'Child Welfare Committee' and provides that the State Government shall by notification in the Official Gazette constitute for every district, one or more Child Welfare Committees for exercising the powers and to discharge the duties conferred on such Committees in relation to 'child in need of care and protection' under the said Act. The powers of the Committee are defined in Section 27(9) of the Juvenile Justice Act. The said provision of the Act makes it clear that while passing such orders, the Committee exercises the power of Judicial Magistrate and functions as a Bench and shall have the powers conferred by the Criminal Procedure Code, 1973 (2 of 1974) on a Metropolitan Magistrate or, as the case may be, a Judicial Magistrate of First Class. The powers, functions and responsibilities of the Committee are defined under Section 29 and 30 of the Juvenile Justice Act. Section 30(vi) provides that it is the function of the Committee to ensure care, protection, proper rehabilitation or restoration of children in need of care and protection, based on the child's individual care plan and passing necessary directions to parents or guardians or fit persons or children's homes or fit facility in this regard. It further provides for selection of registered institution for placement of each children requiring institutional support, based on the child's age, gender, disability and needs and keeping in mind the available capacity of the institution. Further, the term 'Juvenile' has been defined in Section 2(35) of the Juvenile Justice Act to mean a child below the age of 18 years. The word 'Child' has been defined in Section 2(12) of the Juvenile Justice Act to mean a person who has not completed 18 years of. Age. The meaning of the phrase 'child in need of care and protection' is defined under Section 2(14) of the Juvenile Justice Act.

26. The Juvenile Justice Act, 2015 provides a complete mechanism dealing with welfare of the child. The 'Child Welfare Committee' exercises the power of Magistrate in view of the provision of Section 27 of the Juvenile Justice Act, 2015 and for all purposes, the Committee acts like the Magistrate. Once the order has been passed by the Magistrate, then it can only be assailed before the appropriate Court by filing an appeal or any other remedy as provided under the law.

27. At the cost of repetition, we reiterate that if the corpus is found a child, as defined under Section 2(12) of the Juvenile Justice Act, 2015, he/she would fall in the category of 'child in need of care and protection' in view of Clauses (iii), (viii) and (xii) of Sub-section (14) of Section 2 of the Juvenile Justice Act, 2015. Hence the order passed by the Child Welfare Committee placing the corpus in a protection home would be within its power conferred under Section 37 of the Juvenile Justice Act, 2015. **Thus, the person aggrieved by an order passed by the Child Welfare Committee can file an appeal under Section 101 of the Juvenile Justice Act, 2015. Further, the Juvenile Justice Act, 2015 provides the revisional forum before the High Court wherein the High Court may, at any time either on its own motion or an application received in this behalf, call for the record of any proceeding in which any Committee or Board or Children's Court, or court has passed an order, for the purpose of satisfying itself as to the legality or propriety of any such order and may pass such order in relation thereto as it thinks fit. Therefore, in such a situation, it cannot be presumed that in case the corpus is in Children's Home pursuant to an order passed by the 'Child Welfare Committee'; then the same is neither without jurisdiction nor illegal or perverse, keeping in mind the provisions of Juvenile Justice Act, 2015, the detention of the corpus cannot be said to be illegal and in case the petitioner is aggrieved by the order of the 'Child Welfare Committee', the petitioner is at liberty to take recourse of remedy of Appeal or Revision provided under Sections 101 & 102 of the Juvenile Justice Act.**

29. The order passed by the Committee pursuant to which the corpus has been sent to Children's Home is a judicial order and hence the detention of corpus cannot be termed to be illegal. Moreover, the order passed by the Committee is appealable. Thus, the instant Habeas Corpus Petition being not maintainable is liable to be dismissed.

30. ***

31. Having regard to the foregoing discussion, the legal position which emerges is that **in a case where the custody of the petitioner corpus has been handed over as per the order passed by the 'Child Welfare Committee', constituted under the Juvenile Justice Act, 2015, the said order cannot be assailed in a petition seeking a writ of habeas corpus.**" (emphasis supplied)

7. The Apex Court in the case of *Nirmala vs. Kulwant Singh and Others* (2024) 10 SCC 595, held that in matters of child custody, a writ of habeas corpus would ordinarily not be maintainable when an efficacious alternative remedy is available. Such a writ would lie only where the detention of the child is illegal, unauthorized, and contrary to the welfare and best interests of the child. The relevant extract is reproduced as under:

"23. It can thus be seen that this Court in *Tejaswini Gaud* case [*Tejaswini Gaud v. Shekhar Jagdish Prasad Tewari*, (2019) 7 SCC 42 : (2019) 3 SCC (Civ) 433] has held that the habeas corpus is a prerogative writ which is an extraordinary remedy. It has been held that recourse to such a remedy should not be permitted unless the ordinary remedy provided by the law is either not available or is ineffective. It has been held that in child custody matters, the power of the High Court in granting the writ is qualified only in cases where the detention of a minor by a person who is not entitled to his legal custody. It has further been held that in child custody matters, the writ of habeas corpus is maintainable where it is proved that the detention of a minor child by a parent or others was illegal and without any authority of law." (emphasis supplied)

8. It is apparent that, as the corpus is in lawful custody of the State pursuant to judicial order passed by the Child Welfare Committee, Sambhal on 18.12.2025 under Section 27(9) of the Juvenile Justice (Care and Protection of Children) Act, 2015, the instant habeas corpus petition is not legally maintainable.

9. Accordingly, the habeas corpus petition is **dismissed**.

(2026) 4 ILRA 1624
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 07.04.2026

BEFORE

THE HON'BLE SAURABH SHYAM SHAMSHERY, J.

Writ - A No. 58564 of 2009

Jamuna Prasad Nigam & Ors.

...Petitioners

Versus

State of U.P. & Ors.

...Respondents

Issue(s) for consideration

- (a) Whether there was any seniority list of *Awazdar* and whether some *Awazdar* were regularized or not?
- (b) Whether the petitioners were paid salary for only 10 days, even after working for 30 days?
- (c) Whether casual substitute workers (*Awazdars*) who are engaged sporadically for up to 10 days a month to fill temporary absences qualify as 'directly appointed daily wagers' under the U.P. Regularization Rules, 2001?

Headnotes

A. Labour Law – In 2009, five petitioners filed a writ petition claiming they had been working since 1990 as *Awazdar* employees (daily-wage substitutes) to perform the duties of a Switchman whenever a regular employee was absent. The petitioners alleged that although they worked all 30 days of a month, they were paid for only 10 days. They also claimed that Kanpur Nagar Nigam had prepared a seniority list of *Awazdars* in 1994, but the department had used a "pick and choose" policy to regularize their juniors while ignoring the petitioners' seniority.

The petitioners had previously approached the High Court in 2003 and 2006. The Court had directed the authorities to consider their cases for regularization under the U.P. Daily Wage Employees (Regularization of Group 'D' Post) Rules, 2001. In compliance with those orders, Kanpur Nagar Nigam evaluated their claims and issued an order on 02.02.2009, rejecting their regularization. The department found that they had only worked a maximum of 10 days a month as substitutes, never completed the mandatory 240 days of service in a year, and were not working against any legally sanctioned, substantive posts. The petitioners challenged this 2009 rejection order.

B. Petitioners have only made an averment in the writ petition in regard to regularization of some *Awazdar*, but have not placed any document on record to support it, whereas contesting respondents i.e. Nagar Nigam Kanpur has placed appointment letters of private respondents, and for reference appointment letter of respondent no. 9 (Subhash Chandra s/o Munir) is taken note of that he was appointed vide an appointment letter dated 12.01.2000, against a recruitment process through a Selection Committee being a fresh appointment against vacant post of Switchman due to death or retirement of substantive appointee or Switchman, therefore claim of petitioners that private respondents were regularized being working as *Awazdar* treating them as a daily wager is contrary to records. No contrary record was placed on record by the petitioner. (Para 14)

Kanpur Nagar Nigam had conducted a special drive to appoint Switchman under a category of OBC also, therefore, some appointments were made through special drive in due process and not from any alleged seniority list. (Para 16)

C. Referred documents though was named as a seniority list, but it was not a seniority list for the purpose of regularization and was not prepared under any provision of law, rather it was a list only for purpose to call *Awazdar* for work in absence of regular Switchman in a chronical manner as well as that it was never considered as a Seniority List for purpose of regularization and therefore, an argument that seniority list was prepared for purpose of regularization is not correct. **No service rule is placed on record by the petitioners to show that purported seniority list has statutory backup.** Respective appointment letters of private respondents are also not challenge either. (Para 15)

D. Petitioners' claim that they have worked for 30 days, but salary was paid for only 10 days, cannot be accepted since it not only remains a very vague claim which has been specifically denied by the respondents. (Para 19)

E. Since the petitioners were never directly appointed on daily wages on any Group 'D' post, rather they were working for few days when regularly appointed Switchman was absent as *Awazdar*, therefore, they would not fall within the definition of daily wager, required for consideration under 'Rules 2001' therefore, also no case of regularization is made out. (Para 21)

'Rules, 2001' provides that any person who- (a) was directly appointed on daily wage basis on a Group 'D' post in the Government service before 29.06.1991 and is continuing in service as such on the date of commencement of these rules; and (b) possessed requisite qualification prescribed for regular appointment for that post at the time of such appointment on daily wage basis under the relevant service rules, shall be considered for regular appointment in permanent or temporary vacancy, as may be available in Group D post, on the date of commencement of these rules on the basis of his record and suitability before any regular appointment is made in such vacancy in accordance with the relevant service rules or orders. (Para 20)

Writ petition dismissed. (E-4)

Case Law Cited

Mohd. Sagir Vs. Nagar Nigam Kanpur, 2026 SCC OnLine SC 473 (Para 22)

List of Acts

U.P. Daily Wage Employees (Regularization of Group 'D' Post) Rules, 2001.

List of Keywords

daily wager, seniority, regularized, service, substitute worker, temporary, *awazdar*.

Appearances for Parties

For Petitioner(s): Daya Shankar Singh, Shailendra

For Respondent(s): Abhinava Krishna Srivastava, Anil Tiwari, C.S.C., Chandan Sharma, Munna Pandey, Yashwant Singh

(Delivered by Hon'ble Saurabh Shyam Shamshery, J.)

1. Heard Sri. Daya Shankar Singh, learned counsel for the petitioners, Sri M.C. Chaturvedi, learned Senior Counsel, learned Additional Advocate General assisted by Mr. Abhinava Krishna Srivastava, learned counsel for respondent no.2, and Sri Yashwant Singh, learned Standing Counsel.

2. Present writ petition was filed in the year 2009 and no interim order was granted and finally it is decided after more than 17 years by present judgment.

3. Petitioners, five in numbers have approached this Court in the year 2009 that they were working since 1990 as Awazdar Karmchari, (एवजदार) on daily wage to undertake work of a Switch Man, in absence of regular Switchman.

4. It was further case of petitioners that though they worked for 30 days in a month, but were paid salary for only of 10 days, though said assertion remained without any supportive material as well as why any objection was not taken during last 19 years.

5. It was further case of petitioners that respondent Kanpur Nagar Nigam had prepared a seniority list of 'Awazdar', but respondents have adopted a pick and choose policy to regularize junior Awazdars, ignoring petitioners despite senior in said list.

6. In aforesaid circumstances, petitioners have earlier approached this Court when respondents were contemplating for a recruitment process for appointment of Switchman against vacant posts that before any such recruitment process commenced, petitioners' case for regularization be considered in terms of Government Order dated 10.7.2003 read with U.P. Daily Wage Employees (Regularization of Group 'D' Post) Rules, 2001 (in brief 'Rules, 2001').

7. The Writ Petition No.28786 of 2003, filed earlier by similarly situated persons was disposed of vide an order dated 14.8.2003. Subsequently, another Writ Petition No.15292 of 2006 was filed which was also disposed of vide an order dated 21.3.2006 with a direction that cases of petitioners and others, be considered for regularization in terms of aforesaid 'Rules 2001'.

8. In pursuance of above referred orders, cases of petitioners and others were considered, however, their respective claim for regularization was rejected on a ground that they do not fall within ambit of 'Rules, 2001' and they have worked as daily wagers for not more than 10 days in a month and accordingly have not worked for 240 days in a year and therefore, they were not 'daily wagers'. It was also mentioned that no seniority list in terms of any service rules was prepared for Awazdars and no procedure was undertaken to regularize any Awazdar independently or from purported list. No Awazdar was appointed against any substantive post. For reference, relevant part of the order is reproduced hereinafter:

“मैंने उपलब्ध अभिलेखों, शासनादेशों एवं सेवानियमों का परीक्षण किया और पाया कि निसार अहमद व अन्य 9 याचीगणों द्वारा मार्ग प्रकाश विभाग, नगर निगम, कानपुर में एवजदार के रूप में प्रत्येक माह में अधिकतम 10 दिन तक ही कार्य किया है जिसका भुगतान किया जा चुका है। याचीगणों ने कभी भी लगातार एक माह भी कार्य नहीं किया और प्रत्येक वर्ष में कभी भी 240 दिन कार्य नहीं किया और याचीगणों द्वारा मार्ग प्रकाश विभाग नगर निगम में कभी भी दैनिक वेतन पर कार्य नहीं किया गया है। इसलिए याचीगण U.P. Daily wage Employees (Regularization on Group D. Posts) Rules 2001 की परिधि में नहीं आते हैं। जिसमें यह निर्देश दिये गये हैं कि श्रमिक ने 29 जून, 1991 से निरन्तर 2001 तक दैनिक वेतन में कार्य कर रहा हो और प्रत्येक वर्ष 240 दिन कार्य किया हो उसी दैनिक वेतन भोगी कर्मचारी को नियमित करने हेतु उक्त नियमावली लागू होगी साथ ही साथ यह भी उल्लेखनीय है कि याचीगणों से अलग-अलग अवधि में एवजदार के रूप में कार्य लिया गया और उस कार्य का निर्धारित पारिश्रमिक का भुगतान किया जा चुका है। उत्तर प्रदेश नगर महापालिका सेवानियमावली के अधीन नगर निगम में एवजदार का कोई पद सृजित नहीं है और न ही उसके द्वारा कथित पद पर कार्य किया गया है। सेवानियमावली में विनिर्दिष्ट तथा नगर निगम द्वारा सृजित एवं नियमानुकूल चयन प्रक्रियाओं के अधीन नियुक्त कर्मचारी को ज्येष्ठता सूची तैयार की जाती है। इस प्रकार एवजदारी की न तो नियमानुकूल वरिष्ठता सूची तैयार की गयी और न ही अभिकथित प्रकार से वरिष्ठता सूची में याचीगणों का नाम अंकित है। एवजदारी का कोई पद न होने के कारण उनकी वरिष्ठता सूची तैयार किये जाने का नियमतः प्रश्न ही नहीं उठता है। इस सम्बन्ध में मा० उच्चतम न्यायालय द्वारा स्टेट ऑफ कर्नाटक बनाम उमादेवी नामक विशेष अनुमति याचिका में प्रतिपादित सिद्धान्तों एवं निर्णय के अनुसार यह प्रकरण प्रथम दृष्टया पोषणीय नहीं है। ऐसी स्थिति में याचीगणों द्वारा दिया गया प्रत्यावेदन नियमानुसार ग्राह्य न होने के कारण निरस्त किया जाता है। तदुसार याचीगणों को सूचित किया जाय।” (Emphasis supplied)

9. Above referred order dated 2.2.2009 was under challenge in the present writ petition, by petitioner's who are 5 in numbers.

10. Admittedly, petitioners have not worked after 2006 and no interim order was granted in the present writ petition, therefore it would be a major adverse factor even if petitioners make out a case that they can be considered for regularization.

11. In the present case pleadings were exchanged and this Court has passed several orders for filing affidavits for providing relevant informations such as seniority list, manner of regularization, manner of selections etc. For reference, relevant orders being orders dated 3.11.2025, 19.11.2025 and 3.12.2025 are reproduced hereinafter:

Order dated 03.11.2025

“Heard Mr. Daya Shankar Singh, learned counsel for the petitioners, Mr. Abhinava Krishna Srivastava, learned counsel for the respondents.

Learned counsel for the petitioners submits that the petitioners, who are five in number, were appointed as Awazdar/Switchman (Daily Wager) in the respondents’ department in the year 1990 for the purpose of regularization, as required under law. A seniority list was subsequently prepared by the department in the year 1994, wherein petitioner no.1 was placed at serial no.74 with the date of registration as 25.09.1990; petitioner no.2 at serial no.72, registered on 10.08.1990; petitioner no.3 at serial no.27, registered on 01.06.1987; petitioner no.4 at serial no.31, registered on 12.12.1987; and petitioner no.5 at serial no.52, registered on 10.05.1990.

When the persons junior to the petitioners were regularized, the petitioners approached this Court by filing a writ petition, wherein a direction was issued to the authorities concerned to consider the grievance of the petitioners. The names of the juniors who were regularized have been mentioned as Kamal Kumar, Rakesh Kumar, Ramesh Chandra, Daya Ram, Subhash Chandra, Pradeep Kumar, Kishan Lal, Jagdish Kannoja, Rajendra Kumar, Lalji Ram, Tamas, Sarju Prasad, Kuldeep, Arun Kumar, Kripa Shanker, Ramesh Chandra, and Shailendra Singh.

Pursuant to the order passed by the writ Court, the petitioners submitted representations before the authorities concerned, however, without passing any orders on the said representations, the respondents prepared two seniority lists, one comprising those who were permitted to continue as daily wagers in the department, and the other consisting of those who were stopped from performing their duties after filing of the earlier writ petition. The respondents, thereafter, have passed the impugned order without considering the fact that although the petitioners were permitted to work as daily wagers for 30 days but payment was made only for 10 days, showing it merely as an arrangement to fill in for any Switchman who was absent for any reason. Despite this, it has been stated that the petitioners were not working as daily wagers.

On a specific query as raised by the Court to learned counsel for the respondents, as to how it can be said that the petitioners were not working as daily wagers when in the first seniority list as issued in the year 1994 their names find place and persons from the same list have already been regularized.

To the aforesaid, Mr. Abhinava Krishna Srivastava, learned counsel for the respondents, requests for two weeks’ time to obtain instructions in the matter.

List on 19.11.2025.

Learned counsel for the petitioner shall be at liberty to make a mention for the matter to be taken up on the said date.

Order dated 19.11.2025

In compliance of order dated 03.11.2025, a supplementary counter affidavit has been filed, which does not mention the details of the juniors who were regularized, nor the category in which such regularization was made. It also does not contain any list showing the names of the persons whose cases were placed for consideration of regularization.

This Court finds that the instructions on the basis of which supplementary counter affidavit has been filed is not proper.

In these circumstances, respondent no.2, Nagar Ayukta, Nagar Nigam, Kanpur, is directed to remain present before this Court along with the entire records and to file an affidavit in respect of the aforesaid issues.

List on 03.12.2025.

Registrar (Compliance) as well as Mr. Abhinava Krishna Srivastava, learned counsel for the respondents shall look into compliance of this order.

Order dated 03.12.2025

In compliance of earlier order of this Court dated 19.11.2025, respondent no.2, Nagar Ayukta, Nagar Nigam, Kanpur, namely, Arpit Upadhyaya is present before this Court and has filed compliance affidavit in the Court today, which is taken on record.

Perusal of the compliance affidavit goes to show that though, the appointment letters of the persons named in the order dated 3.11.2025 have been annexed but the records pertaining to the Selection Committee and order passed by Mukhya Nagar Adhikari dated 10.01.2000, explaining the procedure of absorption and the manner of appointment has not been placed before this Court. Thus, the query of the Court still remains unanswered.

On the aforesaid, Mr. M.C. Chaturvedi, learned Senior Counsel assisted by Mr. Abhinava Krishna Srivastava, learned counsel for the respondent-Nagar Nigam requests for time to file a better affidavit, explaining the procedure of regularization as well as how the persons whose appointment letters have been annexed in the compliance affidavit dated 3.12.2025 have been absorbed.

List this case on 16th December, 2025, for further hearing. In the meantime, affidavit as prayed may be filed.

An oral request has been made by learned Senior Counsel appearing on behalf of the respondent-Nagar Nigam to exempt the appearance of the officer concerned, i.e. respondent no.2, Arpit Upadhyaya-Nagar Ayukta, Nagar Nigam, Kanpur.

The oral request is considered and liberty is granted to the counsel representing respondent no.2 to file an affidavit of exemption within two hours before the Court.

Ref: Order on Civil Misc. Exemption Application

Learned counsel appearing on behalf of respondent no.2 has filed exemption application at 2:00 pm today, which is kept on record. Office is directed to register the same.

The appearance of respondent no.2 is exempted until and unless required.

Accordingly, the exemption application stands disposed of.”

12. Aforesaid orders were passed on a premise that similarly situated some of the Awazdars were regularized on basis of a purported seniority list despite being junior. It was also alleged that some junior Awazdars were regularized and out of them some were arrayed as private respondents also.

13. In the aforesaid circumstances, first issue for consideration is as to whether there was any seniority list of Awazdar and whether some Awazdar were regularized or not?

14. Petitioners have only made an averment in the writ petition in regard to regularization of some Awazdar, but have not placed any document on record to support it , whereas contesting respondents i.e. Nagar Nigam Kanpur has placed appointment letters of private respondents, and for reference appointment letter of respondent no. 9 (Subhash Chandra son of Munir) is taken note of that he was appointed vide an appointment letter dated 12.1.2000, against a recruitment process through a Selection Committee being a fresh appointment against vacant post of Switchman due to death or retirement of substantive appointee or Switchman, therefore claim of petitioners that private respondents were regularized being working as Awazdar treating them as a daily wager is contrary to records. No contrary record was placed on **record** by the petitioner. For reference, scanned copy as well as typed copy of appointment letter of Subhash Chandra, (respondent no.9) is pasted hereinafter:

“कानपुर नगर निगम

(कार्मिक विभाग)

पत्रांक: 1358/व्यय.-39/2000/क

दिनांक: 12-01-2000

श्री सुभाष चन्द्र,

पुत्र श्री काशी राम,

एलनगंज कानपुर

उत्तर प्रदेश नगर निगम अधिनियम 1959 की धारा 106 के अधीन सृजित एवं शासन द्वारा स्वीकृत स्वीच मैन् के सेवानिवृत्त/मृत्यु के रिक्त पदों पर चयन समिति की बैठक दिनांक 06-01-2000 को लिए गये निर्णय में उपयुक्त पाये जाने के फलस्वरूप चयन समिति की अनुशंसा पर मुख्य नगर अधिकारी के आदेश दिनांक 10-01-2000 के अनुसार स्वीच मैन् के पद पर आपकी अस्थायी नियुक्ति वेतनमान रु० 2750-4400 एवं देय भत्तों सहित निम्न शर्तों के अधीन की जाती है :-

1. यह नियुक्ति पूर्णतया अस्थायी है जो किसी भी समय बिना किसी सूचना के समाप्त की जा सकती है।
2. इस नियुक्ति के सम्बन्ध में उत्तर प्रदेश नगर निगम अधिनियम के अन्तर्गत बने सेवा सम्बन्धी अधिनियम की सभी धारारें तथा इस सम्बन्ध में बने सभी नियम और विनियम लागू होंगे।
3. यह अस्थायी नियुक्ति स्वीच मैन् के पद पर प्रारम्भिक वेतन रु० 2750-4400 प्रतिमाह तथा शासन द्वारा समय-समय पर स्वीकृत महंगाई एवं अन्य भत्तों के साथ की जाती है।
4. मानसिक एवं शारीरिक उपयुक्तता के लिए तथा आयु निर्धारण के लिए कानपुर नगर निगम के नगर स्वास्थ्य अधिकारी (चिकित्सा) का प्रमाण-पत्र प्राप्त होने पर निर्धारित आयु सीमा के अन्तर्गत पाये जाने पर शारीरिक एवं मानसिक रूप से उपयुक्त पाये जाने पर ही आपकी उपस्थिति रिपोर्ट स्वीकार की जायेगी।
5. उपरोक्त पद का कार्यभार सम्भालने के लिए आपकी पदस्थापना मार्ग प्रकाश विभाग में की जाती है। अधि० अभियन्ता प्रकाश-4 में उल्लेखित के अनुसार ही उपस्थिति रिपोर्ट स्वीकार करेंगे तथा लिखित सूचना कार्मिक विभाग को उपलब्ध करायेंगे।
6. आप अपने पद का कार्यभार ग्रहण करने के लिए दिनांक ... तक उपस्थिति हों।
7. चरित्र के सम्बन्ध में उस संस्था के सर्वोच्च पदाधिकारी का प्रमाण-पत्र जिसमें आपने अन्त में शिक्षा पाई हो या नौकरी की हो अथवा क्षेत्र के किन्हीं ऐसे दो सभ्रान्त नागरिकों के प्रमाण पत्र जो आपसे सम्बन्धित न हो प्रस्तुत करना अनिवार्य होगा।
8. यह नियुक्ति जिलाधिकारी नगर द्वारा चरित्र सत्यापन के उपरान्त ही अन्तिम समझी जायेगी।
9. जाति के सम्बन्ध में जिलाधिकारी से प्राप्त प्रमाण पत्र प्रस्तुत करना होगा।
10. उत्तर प्रदेश नगर निगम सेवा नियमावली 1962 के नियम -7 के अनुसार आपको अपना वैवाहिक स्थिति स्पष्ट करना होगा।

ह० अप०

नियुक्ति प्राधिकारी”

15. Learned counsel for petitioners has placed heavy reliance on a purported seniority list annexed along with this writ petition and for that contents of affidavit filed on behalf of contesting respondents as well as submissions of learned Additional Advocate General appearing on behalf of Nagar Nigam Kanpur would be relevant that referred documents though was named as a seniority list, but it was not a seniority list for the purpose of regularization and was not prepared under any provision of law, rather it was a list only for purpose to call Awazdar for work in absence of regular Switchman in a chronical manner as well as that it was never considered as a Seniority List for purpose of regularization and therefore, an argument that seniority list was prepared for purpose of regularization is not correct. No service rule is placed on record by the petitioners to show that purported seniority list has statutory backup. Respective appointment letters of private respondents are also not challenge either.

16. Court also takes note of stand of respondent Kanpur Nagar Nigam that they have conducted a special drive to appoint Switchman under a category of OBC also, therefore, some appointments were made through special drive in due process and not from any alleged seniority list.

17. The facts mentioned in compliance affidavit dated 2.12.2025 remains uncontroverted since no reply was filed by the petitioners.

18. Only outcome of above discussion would be that very basis of claim of petitioners has no legs i.e. does not survive either on facts or on law.

19. Another claim of the petitioners that they have worked for 30 days, but salary was paid for only 10 days, cannot be accepted since it not only remains a very vague claim which has been specifically denied by the respondents.

20. 'Rules, 2001' provides that any person who- (a) was directly appointed on daily wage basis on a Group 'D' post in the Government service before June 29, 1991 and is continuing in service as such on the date of commencement of these rules; and

(b) possessed requisite qualification prescribed for regular appointment for that post at the time of such appointment on daily wage basis under the relevant service rules, shall be considered for regular appointment in permanent or temporary vacancy, as may be available in Group D post, on the date of commencement of these rules on the basis of his record and suitability before any regular appointment is made in such vacancy in accordance with the relevant service rules or orders.

21. However from the facts referred above, since the petitioners were never directly appointed on daily wages on any Group 'D' post, rather they were working for few days when regularly appointed Switchman was absent as Awazdar, therefore, they would not fall within the definition of daily wages, required for consideration under 'Rules 2001' therefore, also no case of regularization is made out.

22. Learned counsel for petitioners has placed reliance on judgment passed in Mohd. Sagir Vs. Nagar Nigam Kanpur, 2026 SCC OnLine SC 473, that in similar circumstances, a plea of a Awazdar was accepted that even he has not worked for 240 days in a year Award was restored, however, Court finds that in said case, an Award was passed by the Labour Court after considering the evidence, statement of witnesses etc. and that respondent Kanpur Nagar Nigam failed to produce records despite summoned, whereas such disputed questions of fact cannot be decided in writ jurisdiction as well as case placed by petitioners was of arbitrariness, which as referred above does not hold good, therefore, no benefit could be granted of the said judgment.

23. In view of above discussion on facts and law, the Court does not find any reason to interfere with the impugned order, which has assigned legally sustainable reasons.

24. Writ Petition is accordingly dismissed.

(2026) 4 ILRA 1634
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 07.04.2026

BEFORE

THE HON'BLE SIDDHARTHA VARMA, J.
THE HON'BLE ACHAL SACHDEV, J.

Criminal Misc. Review Application Defective No. 6 of 2026

Balwant Singh

...Applicants

Versus

State of U.P. & Ors.

...Opposite Parties

Issue for Consideration

Whether the order dated 3.12.2025 be reviewed and the writ petition be allowed on the ground that certain facts namely the filing of the suit and the filing of the writ petition, could not be brought to the notice of this Court.

Head Notes

The Constitution of India, 1950-Article 226- Review petition against order dated 3.12.2025 passed in Criminal Misc. Writ Petition No.25002 of 2025- Even if it is ignored that the review petition has not been filed by the lawyer who had filed and argued the writ petition then also it is found that the order passed by the learned Single Judge on 15.11.2025 was not placed before the Court on 3.12.2025 during the argument in Criminal Misc. Writ Petition No.25002 of 2025- Though a suit with regard to permanent injunction was mentioned in the writ petition but regarding it, no ground was raised at the time of the argument-The civil suit being Original Suit No.1689 of 2023 has been brought to the notice of the court and this suit which was challenging a certain will of the father of the petitioner and his brother Yashwant Singh had no bearing to the present case. Even though various civil suits etc. might have been there in existence but the main allegation in the FIR was with regard to the fabrication of the signatures by the first informant of the mother of the petitioner who had died and, therefore, definitely it was a case where investigation was required and it had to be found out prima facie if the accused in the FIR was guilty.

Held-The petitioner had availed the remedy of filing an anticipatory bail and, therefore, no interference in the instant review petition is called for- Review **Petition dismissed.** (E-15)

Case Law Cited

Tamil Nadu Electricity Board & Anr. vs. N. Raju Reddiar & Anr. reported in AIR 1997 SC 1005; Civil Misc. Review Application No.432 of 2023 decided on 31.10.2023; Vinita Bhatnagar vs. Union of India & Ors. reported in 2018 SCC OnLine All 6411

List of Acts

The Constitution of India, 1950; The Code of Civil Procedure-1908

List of Keywords

Review; Certain facts could not be brought to the notice of this Court; Main allegation in the FIR; Investigation was required;

Case Arising From

Review against the order dated 3.12.2025 passed in Criminal Misc. Writ Petition No.25002 of 2025

Appearances for Parties

Counsel for Applicant(s) : Ashok Kumar Pandey, Ashutosh Mishra

Counsel for Opposite Party(s) : G.A., Shri Krishan Yadav

(Delivered by Hon'ble Siddhartha Varma , J.
&
Hon'ble Achal Sachdev, J.)

Criminal Misc. Delay Condonation Application No.1 of 2026 :

1. This application has been filed for condoning the delay in filing the Review Application.

2. In view of the averments made in the affidavit filed in support of the application under Section 5 of the Limitation Act, we are satisfied that the applicant was prevented by sufficient cause from preferring the Review Application within the period of limitation.

3. The application is, accordingly, allowed.

Order on the Review Petition :

4. A First Information Report was lodged under sections 318(4), 319(2), 336(3), 338, 340(2), 351(3), 352 of Bharatiya Nyaya Sanhita, 2023 on 12.10.2025 alleging that the petitioner had without declaring that his mother Smt. Radhika Singh had died, continued to run various institutions in the name of a dead person. A writ petition was filed being Criminal Misc. Writ Petition No.25002 of 2025 which was sworn on 29.10.2025. The writ petition came to be heard by this Court on 3.12.2025 and was dismissed with the following order :-

"1. Heard learned counsel for the petitioner and learned A.G.A. for the State.

2. This writ petition has been filed for quashing the impugned First Information Report dated 12.10.2025 registered as Case Crime No. 205 of 2025, under Sections 318(4), 319(2), 336(3), 338, 340(2), 351(3), 352 B.N.S., Police Station- Pipari, District- Sonbhadra, and a direction to the respondent authorities not to arrest the petitioner in pursuance of the impugned first information report.

3. Submission of the learned counsel for the petitioner is that the petitioner has been falsely implicated.

4. Per contra, learned A.G.A. submits that a cognizable offence has been made out and, therefore, no interference is warranted in the impugned first information report.

5. Perusal of the impugned first information report prima facie reveals commission of cognizable offence.

*6. Therefore, in view of the law laid down by Hon'ble Supreme Court in the case of **State of Haryana and others vs. Bhajan Lal and others, 1992 Supp. (1) SCC 335 and M/s Neeharika Infrastructure Pvt. Ltd. vs. State of Maharashtra, AIR 2021 SC 1918 and in Special Leave to Appeal (Crl.) No.3262/2021 (Leelavati Devi @ Leelawati & another vs. the State of Uttar***

Pradesh) decided on 07.10.2021, no case has been made out for interference with the impugned first information report.

7. Therefore, the writ petition is dismissed leaving it open for the petitioner to apply before the competent court for anticipatory bail/bail as permissible under law and in accordance with law."

5. In the meantime, it has been stated by learned counsel for the petitioner that as per paragraph no.7 of the order, the petitioner had approached the Court for anticipatory bail which was numbered as 1171 of 2026. In the meantime, it has also been submitted that Yashwant Singh, the first informant had filed a writ petition being Writ-C No.28918 of 2025 wherein the Assistant Registrar, Firms, Societies and Chits, Sonbhadra was directed to look into the various contentions raised by various parties. This order was passed on 15.11.2025.

6. Learned counsel for the review petitioner has further submitted that also a suit was filed by the first informant being Original Suit No.1689 of 2023 with regard to properties which were inherited by the petitioner by means of a will and in that suit the will was challenged. Today, learned counsel for the review petitioner has also produced an order dated 3.4.2026 which has been passed in some suit being Original Suit No.97 of 2025 filed by Radhika Memorial Trust in which the petitioner is a defendant. Learned counsel for the petitioner, therefore, states that because these facts, namely the filing of the suit and the filing of the writ petition, could not be brought to the notice of this Court, the order dated 3.12.2025 be reviewed and the writ petition be allowed.

7. Learned counsel for the first informant Shri Krishan Yadav has, however, opposed the review petition and has submitted that the writ petition was in fact filed by learned counsel Sri Dharmendra Pratap Singh and Sri Sunil Kumar Singh while the Review Petition has now been filed by Sri Ashok Kumar Pandey and Sri Ashutosh Mishra, Advocates and relying upon a judgment of the Supreme Court in **Tamil Nadu Electricity Board & Anr. vs. N. Raju Reddiar & Anr. reported in AIR 1997 SC 1005**; a judgment of this Court in **Civil Misc. Review Application No.432 of 2023 decided on 31.10.2023** and upon a further Division Bench judgment of this Court in **Vinita Bhatnagar vs. Union of India & Ors. reported in 2018 SCC OnLine All 6411** has submitted that if the review petition was not filed by the counsel who had argued the case earlier, then the review petition cannot be entertained. He further has submitted that if the writ petition is perused, it could be seen that the grounds taken were as follows :-

"(a) Because on the basis of the aforesaid facts, the entire allegation levelled against the petitioner in the Application under Section 173(4) BNSS filed by the Respondent no.3 is totally false, frivolous and concocted, but learned Chief Judicial Magistrate, Sonbhadra without considering the real facts and circumstances of the case as well as without applying his judicial mind, allowed the Application u/s 173(4) BNSS vide his order dated 29.09.2025 by way of mechanical manner, which is illegal, arbitrary and against the provisions of law.

(b) Because the respondent no.3 has filed a civil suit against the petitioner before the concerned court on 26.05.2025 and same is still pending till date.

(c) Because regarding to the aforesaid dispute of the Samiti, the respondent no.3 has already filed a Writ petition no.28918 of 2025 (Yashwant Singh and 2 others Vs. State of U.P. and 2 Others), which is still pending till today.

(d) Because the matter belongs to civil dispute regarding to the aforesaid Samiti, but respondent no.3 has given colour of the case as criminal case and only view of the harassment and torturing to the petitioner, lodged and alleged FIR against him only for grabbing the aforesaid Samiti, while petitioner has not committed any offence as alleged against him.

(e) Because the petitioner has falsely been implicated in the aforesaid case, while he is innocent person.

(f) Because the petitioner is law abiding person and belonging to well reputed society at large and there is no any criminal antecedent against him, except to the present false case.

(g) Because the petitioner has falsely been implicated in the alleged case, while he has not committed any offence as alleged against him.

(h) Because from bare perusal of the entire evidence on record, no offence is made out against the petitioner under Sections 318(4), 319(2), 336(3), 338, 340(2), 351(3), 352 BNS.

(i) Because in spite of these, concerned police has made pressure upon the petitioner for arresting him, due to this petitioner has filed the present writ petition before this Hon'ble Court for staying the arrest of the petitioner.

(j) Because as per best knowledge of the petitioner, no charge sheet has been submitted by the Investigating Officer against the petitioner and investigation is going on till today.

(k) Because the concerned police regularly harassing to the petitioner and his entire family members for arresting the petitioner, while petitioner is innocent person and he has not committed any offence as alleged against him.

(l) Because the impugned F.I.R. is totally false, fabricated and concocted, nothing only abuse process of law only view to the harassment of the petitioner and action of the respondent authorities is illegal, arbitrary and against the principle of natural justice and the impugned alleged F.I.r. is liable to quashed by this Hon'ble Court.

(m) Because the entire proceedings have been initiated maliciously which are illusory, vexatious, scandalous and abuse of the process of the law and as such the entire proceedings are not tenable under law and thus the same are liable to be quashed by this Hon'ble Court."

8. Learned counsel for the first informant submits that the grounds as have been raised by the review petitioner today were not available to the petitioner at the time when the order dated 3.12.2025 was passed in the writ petition. What is more, learned counsel for the first informant submits that it could be seen that the writ petition was actually sworn in the month of October 2025 and the judgment of the learned Single Judge, which was passed in Writ-C No.28918 of 2025 on 15.11.2025, was not available to the petitioner at the time of the drafting of the writ petition. He, therefore, submits that the order dated 15.11.2025 was available to the petitioner on the date when the Criminal Misc. Writ Petition No.25002 of 2025 was being argued but it was never placed before the Court. Learned counsel for the first informant/respondent further submits that as per the order dated 3.12.2025, the petitioner had filed an application for the grant of anticipatory bail which was numbered as Criminal Misc. Anticipatory Bail Application U/S 482 BNSS No.1171 of 2026 and, therefore, he submits that no interference be made in the instant Review Application.

9. Having heard learned counsel for the review petitioner and the learned counsel for the respondent, we are of the view that definitely the review petition has not been filed by the lawyer who had filed and argued the writ petition. Be that as it may, even if we ignore this issue, we find that the order passed by the learned Single Judge on 15.11.2025 was not placed before the Court on

3.12.2025 during the argument in Criminal Misc. Writ Petition No.25002 of 2025. Still further we are of the view that though a suit with regard to permanent injunction was mentioned in the writ petition but regarding it, no ground was raised at the time of the argument. Also, today the civil suit being Original Suit No.1689 of 2023 has been brought to our notice and this suit which was challenging a certain will of the father of the petitioner and his brother Yashwant Singh had no bearing to this case. We also find that even though various civil suits etc. might have been there in existence but the main allegation in the FIR was with regard to the fabrication of the signatures by the first informant of the mother of the petitioner who had died and, therefore, definitely it was a case where investigation was required and it had to be found out *prima facie* if the accused in the FIR was guilty. Still further, we are of the view that the petitioner had availed the remedy of filing an anticipatory bail and, therefore, no interference in the instant review petition is called for.

10. The Review Application is, accordingly, dismissed.

(2026) 4 ILRA 1638
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 01.04.2026

BEFORE

THE HON'BLE SUBHASH VIDYARTHI, J.

Civil Misc. Review Application Defective No. 41 of 2026

Rajendra Prasad Tiwari

...Petitioner

Versus

State of U.P. & Ors.

...Opposite Party(s)

Issue for Consideration

Whether review petition cannot be filed through a counsel who was not a counsel in the writ petition

Head Notes

The Code of Civil Procedure-1908- Section 114; Order 47- Review application can only be filed where there is an error apparent on the face of the record and even where there is an error which is apparent on the face of record, the review application should be filed by the Counsel who had advanced submissions in the original proceedings- A review petition is not a rehearing or an appeal against the original order and, therefore, new grounds cannot be taken in a review petition- By seeking a review on the ground that the order impugned in the Writ Petition suffers from perversity, the review applicant is seeking a rehearing of the matter, which is not permissible in law.

Held- Review application filed through another Counsel cannot be entertained-Order sought to be reviewed does not suffer from any error, much less an error apparent on the face of the record. The Review Application lacks merit and the same is dismissed. (E-15)

(Para 8, 12, 16 & 21)

Case Law Cited

M. Poornachandran & Another Vs. State of Tamil Nadu and Others: (1996) 6 SCC 755; Tamil Nadu Electricity Board & Another Vs. N. Raju Reddiar & Anr: (1997) 9 SCC 736; Thungabhadra Industries Ltd. v. Govt. of

A.P.: AIR 1964 SC 1372; State of W.B. v. Jai Hind (P) Ltd.: 2026 SCC OnLine SC 157; Malleeswari v. K. Suguna: 2025 SCC OnLine SC 1927; Shankar Prasad v. State of U.P.: 2021 SCC OnLine All 1852;

List of Acts

The Code of Civil Procedure-1908

List of Keywords

Review Application; Can be filed: by the Counsel who had advanced submissions in the original proceedings; Review not a rehearing or an appeal

Case Arising From

The applicant is seeking review of a judgment and order dated 07.01.2026 passed by this Court dismissing WritC No. 41 of 2026, which was filed by the review applicant/petitioner challenging the validity of an order dated 21.05.2019 passed by the SubDivisional Magistrate, Ambedkar Nagar canceling the fair price shop license of the petitioner, which order had been affirmed by means of an order dated 08.12.2025 passed by the Deputy Commissioner, Ayodhya Division, Ayodhya in appeal filed by the petitioner under Para 13(3) of U.P. Essential Commodities(Regulation of Sale and Distribution) Order, 2016.

Appearances for Parties

Counsel for Applicant(s) : Saima Khan, Zainul Abbas

Counsel for Opposite Party(s) :

(Delivered by Hon'ble Subhash Vidyarthi, J.)

1. Heard Ms. Saima Khan, learned counsel for the review applicant and Sri Rahul Shukla, learned Additional Chief Standing Counsel alongwith Sri Alok Srivastava, learned Standing Counsel for the State of U.P. representing the respondents no. 1, 2 & 3.

2. By means of instant application, the applicant is seeking review of a judgment and order dated 07.01.2026 passed by this Court dismissing Writ-C No. 41 of 2026, which was filed by the review applicant/petitioner challenging the validity of an order dated 21.05.2019 passed by the Sub-Divisional Magistrate, Ambedkar Nagar canceling the fair price shop license of the petitioner, which order had been affirmed by means of an order dated 08.12.2025 passed by the Deputy Commissioner, Ayodhya Division, Ayodhya in appeal filed by the petitioner under Para 13(3) of U.P. Essential Commodities(Regulation of Sale and Distribution) Order, 2016.

3. The learned Additional Chief Standing Counsel has raised a preliminary objection that the writ petition had been filed through Sri Ajay Kumar Pandey, Advocate and the aforesaid counsel had advances submissions in support of the writ petition. The review application has been filed by another counsel Ms. Saima Khan. He has submitted that in view of the law laid down by the Hon'ble Supreme Court in the case of **M. Poornachandran & Another Vs. State of Tamil Nadu and Others: (1996) 6 SCC 755** and **Tamil Nadu Electricity Board & Another Vs. N. Raju Reddiar & Anr: (1997) 9 SCC 736**, a review petition cannot be filed through a counsel who was not a counsel in the writ petition. .

4. The learned counsel for the review applicant has also placed reliance on the decision of the Supreme Court in the Case of **Tamil Nadu Electricity Board and Another Vs. N. Raju Reddiar and Another: (1997) 9 SCC 736**.

5. In **M. Poornachandran v. State of T.N.**, (1996) 6 SCC 755, a Review Petition No. 2670 of 1996 in CA No. 1867 of 1992, had been dismissed by holding as under: -

"The record of the appeal indicates that Shri Sudarsh Menon was the Advocate-on-Record when the appeal was heard and decided on merits. The review petition has been filed by Shri Prabir Chowdhury who was neither an arguing counsel when the appeal was heard nor was he present at the time of arguments. It is unknown on what basis he has written the grounds in the review petition as if it is a rehearing of an appeal against our order. He did not confine to the scope of review. It would not be in the interest of the profession to permit such practice. That apart, he has not obtained 'No Objection Certificate' from the Advocate-on-Record in the appeal, in spite of the fact that Registry had informed him of the requirement for doing so. Filing of the 'No Objection Certificate' would be the basis for him to come on record. Otherwise, the Advocate-on-Record is answerable to the Court. The failure to obtain the 'No Objection Certificate' from the erstwhile counsel has disintitled him to file the review petition. Even otherwise, the review petition has no merits. It is an attempt to reargue the matter on merits."

(Emphasis added)

6. Thereafter another application for clarification of the order, an application for review whereof had already been rejected vide judgment in the case of **M. Poornachandran v. State of T.N.** (supra) was filed through another Advocate. The Hon'ble Supreme Court dismissed the application by a judgment in **Tamil Nadu Electricity Board & Another Vs. N. Raju Reddiar & Anr:** (1997) 9 SCC 736 by observing that: -

"1. It is a sad spectacle that a new practice unbecoming and not worthy of or conducive to the profession is cropping up. Mr Mariaputham, Advocate-on-Record had filed vakalatnama for the petitioner-respondent when the special leave petition was filed. After the matter was disposed of, Mr V. Balachandran, Advocate had filed a petition for review. That was also dismissed by this Court on 24-4-1996. Yet another advocate, Mr S.U.K. Sagar, has now been engaged to file the present application styled as "application for clarification", on the specious plea that the order is not clear and unambiguous. When an appeal/special leave petition is dismissed, except in rare cases where error of law or fact is apparent on the record, no review can be filed; that too by the Advocate-on-Record who neither appeared nor was party in the main case. It is salutary to note that the court spends valuable time in deciding a case. Review petition is not, and should not be, an attempt for hearing the matter again on merits. Unfortunately, it has become, in recent time, a practice to file such review petitions as a routine; that too, with change of counsel, without obtaining consent of the Advocate-on-Record at earlier stage. This is not conducive to healthy practice of the Bar which has the responsibility to maintain the salutary practice of profession."

(Emphasis added)

7. The learned counsel for the review applicant has submitted that she has obtained a no objection certificate from the Counsel who had filed and argued the Writ Petition and, therefore, she has the right to file the review application. She has further submitted that even in **T.N. Electricity Board v. N. Raju Reddiar** (supra), the Hon'ble Supreme Court has carved out an

exception against the prohibition against filing of review petitions for the *"rare cases where error of law or fact is apparent on the record"*. She has submitted that the present case is one of those rare cases as it suffers from a patent error of fact. The petitioner was held prima facie guilty in a preliminary inquiry, thereafter, an opportunity to show cause was given to him and without any evidence having been led to prove the charges against the petitioner, he has been held guilty. She has submitted that as the order impugned in the writ petition suffers from perversity which renders it unsustainable in law, the present case falls in the category of those rare cases, in which a review of the order is permitted.

8. The aforesaid submission of the learned Counsel for the applicant is based on a misreading of the judgment of the Hon'ble Supreme Court. What the Hon'ble Supreme Court has laid down is, that a review application cannot be filed in a routine manner and it can only be filed in rare cases, where an error of law or fact is apparent on the face of the record. The second principle laid down by the Hon'ble Supreme Court is that review application can be filed by the Counsel who had advanced submissions in the original proceedings, as any other Counsel will not be in a position to point out what submissions had been advanced before the Court at the time of passing of the order sought to be reviewed. A review petition is not a rehearing or an appeal against the original order and, therefore, new grounds cannot be taken in a review petition. It would not be in the interest of the profession to permit such practice. The Hon'ble Supreme Court has not held that where the order suffers from an error apparent on the face of the record, a review application can be filed through a new Counsel also. A review application can only be filed where there is an error apparent on the face of the record and even where there is an error which is apparent on the face of record, the review application should be filed by the Counsel who had advanced submissions in the original proceedings. Therefore, the submission of the learned Counsel for the review applicant is misconceived and the same is rejected.

9. The learned counsel for the review applicant next submitted that the provision for filing applications for review before this High Court is contained in Chapter V Rule 12 of the Allahabad High Court Rules, which reads as follows: -

"12. Application for review. :- An application for the review of a Judgment shall be presented to the Registrar General, who shall endorse thereon the date when it is presented and lay the same as early as possible before the Judge or Judges by whom such judgment was delivered along with an office report as to limitation and sufficiency of courtfees. If such Judge or Judges or any one or more of such Judges be no longer attached to the court, the application shall laid before the Chief Justice who shall having regard to the provisions of Rule 5 of Order XL VII of the Code, nominate a Bench for the hearing of such applications :

Provided that an application for the review of a judgment of one Judge who is precluded by absence or other cause for a period of six months next after the presentation of the application from considering the decree or order to which the application refers, shall be heard or disposed of by a single Judge, and that an application for the review of a judgment of two or more Judges, any one or more of whom is or are precluded by absence or other cause for a period of six months next after the presentation of the application from considering the decree or order to which the application refers, shall be heard or disposed of by a Bench consisting of the same or a greater number of Judges. Explanation:- For the purposes of this rule the expression 'no longer attached to

the Court' shall be deemed to include absence from the permanent place of sitting on account of the directions given under rule 17 of this Chapter, illness or any other cause.."

10. The learned Counsel for the applicant has submitted that the aforesaid Rule permits hearing of a review application by a Judge other than the Judge who had decided the original proceedings, in case of non-availability of the Judge who had decided the original proceedings. As per the learned counsel for the petitioner the same analogy should be applied to the counsel also and if the earlier counsel is not available for filing review application or advancing submissions, another counsel should be permitted to file a review application and advance submissions in support thereof.

11. I am unable to accept the aforesaid submission of the learned counsel for the review applicant as firstly, in case the judge who had decided the earlier original proceedings is not attached to the Court, the review applicant can not be left remedy-less and in that case the Rule rightly provides that the review application shall be heard and disposed of by another Bench. It is not the case that the counsel who had filed the writ petition and had advanced submissions in support thereof, is not practicing before this Court any more and it is not the case that the counsel is not available for filing the review petition and advancing submissions in support thereof. The only thing is that the applicant/petitioner has chosen to avail the services of another counsel. Therefore the analogy of Chapter V Rule 12 of the Allahabad High Court Rules, as pressed by the learned counsel for the petitioner, would not apply to the present case.

12. Therefore, I find force in the submission of Sri Rahul Shukla, learned Additional Chief Standing Counsel, that the review application filed through another Counsel cannot be entertained.

13. The order sought to be reviewed is a detailed order, wherein this Court has noted that the order dated 21.12.2019 shows that during inquiry, statements of 40 persons have been recorded who pointed out the illegalities committed by the petitioner in distribution of essential commodities. The Village Pradhan gave written statement stating that the essential commodities for the month of October 2018 had not been distributed till 27.10.2018. After a complaint was made by the card holders, the petitioner made inadequate distribution on 28/29.10.2018. He has charged excessive amount from the card holders. After recording of statements of card holders, the petitioner's shop was inspected. The stock register was not available in the shop. The petitioner's brother who was present at the shop at the time of inspection was directed to produce the stock register the following day, but the petitioner did not do so. It was also found during inspection that the sign board, stock board, rate board, notice board and toll free number of the department was not displayed at the shop. The petitioner was not using electronic weighing scale or standard weights and weighing scale certified by the legal meteorology department. The petitioner's license was suspended by means of order dated 06.11.2018. The petitioner submitted his explanation on 11.10.2018 along with a copy of the stock register. He stated that he could not distribute the essential commodities because of some criminal actions committed on 30.09.2018 in which he and his family members had suffered injuries and were under going treatment and he had remained admitted to hospital since 30.09.2018 to 09.10.2018. He had started distribution through an assistant since 12.10.2018. It is recorded in the impugned order that the petitioner's explanation and the evidence adduced by him, including the distribution register, was examined by the Regional

Food Officer who found that the distribution register had not been properly filled. Some pages thereof contained signature of large number of persons than the persons whose names were mentioned and some other pages mentioned lesser number of signatures than the names of persons mentioned. The distribution register had not been verified by the competent officer from which it appeared that the petitioner had fabricated the register.

14. This Court has also taken into consideration that Para 7 (8) of U.P. Essential Commodities (Regulation of Sale and Distribution) Order, 2016 merely provides that an inquiry regarding irregularities in distribution by a fair price shop owner shall be conducted by the designation officer or by the District Magistrate. After inquiry, if the license of fair price shop owner is suspended along with a show cause notice by the competent authority, then the reply/ explanation of show cause notice by fair price shop owners will be examined by an officer at least one rank above the inquiry officer. If the preliminary inquiry had been conducted by a district level officer, then the explanation by fair price shop owners shall be examined by another district level officer. It does not provide for recording of statements of witnesses and giving opportunity of their cross-examination by the shop holder.

15. This Court has already examined the plea raised on behalf of the petitioner that the impugned order suffers from perversity and after a detailed discussion, has concluded in para 8 of the judgment dated 07.01.2026 that *"the S.D.M. arrived at a finding of guilt of the petitioner after taking into consideration the entire record and the order cannot be said to be perverse. The findings of S.D.M. has been affirmed by the Deputy Commissioner, Food during appeal."*

16. Now by seeking a review on the ground that the order impugned in the Writ Petition suffers from perversity, the review applicant is seeking a rehearing of the matter, which is not permissible in law.

17. In **Thungabhadra Industries Ltd. v. Govt. of A.P.:** AIR 1964 SC 1372, the Hon'ble Supreme Court held that: -

"7....A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error. We do not consider that this furnishes a suitable occasion for dealing with this difference exhaustively or in any great detail, but it would suffice for us to say that where without any elaborate argument one could point to the error and say here is a substantial point of law which stares one in the face, and there could reasonably be no two opinions, entertained about it, a clear case of error apparent on the face of the record would be made out..."

18. The aforesaid principle has consistently been followed till date, and it has recently been followed in **State of W.B. v. Jai Hind (P) Ltd.:** 2026 SCC OnLine SC 157.

19. In **Malleeswari v. K. Suguna:** 2025 SCC OnLine SC 1927, the Hon'ble Supreme Court held that: -

"15. It is axiomatic that the right of appeal cannot be assumed unless expressly conferred by the statute or the rules having the force of a statute. The review jurisdiction cannot be assumed unless it is conferred by law on the authority or the Court. Section 114 and Order 47, Rule 1 of CPC deal with the power of review of the courts. The power of review is different from appellate power and is subject to the following limitations to maintain the finality of judicial decisions:

15.1 The review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 of CPC.

15.2 Review is not to be confused with appellate powers, which may enable an appellate court to correct all manner of errors committed by the subordinate court.

15.3 In exercise of the jurisdiction under Order 47 Rule 1 of CPC, it is not permissible for an erroneous decision to be reheard and corrected. A review petition, it must be remembered, has a limited purpose and cannot be allowed to be an appeal in disguise.

15.4 The power of review can be exercised for the correction of a mistake, but not to substitute a view. Such powers can be exercised within the limits specified in the statute governing the exercise of power.

15.5 The review court does not sit in appeal over its own order. A rehearing of the matter is impermissible. It constitutes an exception to the general rule that once a judgment is signed or pronounced, it should not be altered. Hence, it is invoked only to prevent a miscarriage of justice or to correct grave and palpable errors.

16. To wit, through a review application, an apparent error of fact or law is intimated to the court, but no extra reasoning is undertaken to explain the said error. The intimation of error at the first blush enables the court to correct apparent errors instead of the higher court correcting such errors. At both the above stages, detailed reasoning is not warranted.

17. Having noticed the distinction between the power of review and appellate power, we restate the power and scope of review jurisdiction. Review grounds are summed up as follows:

17.1 The ground of discovery of new and important matter or evidence is a ground available if it is demonstrated that, despite the exercise of due diligence, this evidence was not within their knowledge or could not be produced by the party at the time, the original decree or order was passed.

17.2 Mistake or error apparent on the face of the record may be invoked if there is something more than a mere error, and it must be the one which is manifest on the face of the record. Such an error is a patent error and not a mere wrong decision. An error which has to be established by a long-drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record.

17.3 Lastly, the phrase 'for any other sufficient reason' means a reason that is sufficient on grounds at least analogous to those specified in the other two categories.

18. Courts ought not mix up or overlap one jurisdiction with another jurisdiction..."

20. Sri Rahul Shukla, learned Additional Chief Standing Counsel has placed reliance on a decision in **Shankar Prasad v. State of U.P.**: 2021 SCC OnLine All 1852, wherein a Division Bench of this Court examined the following two questions referred to it: -

"(a) What are the parameters of principles of natural justice to be followed in inquiries conducted by Licensing Authority on complaints of irregularities in the distribution of Essential Commodities?

(b) Whether the observation made in Paragraph 35 of the Full Bench decision in Puran Singh v. State of U.P. (2010) 2 UPLBEC 947 regarding holding of "full fledged enquiry" after suspension of license can be read in such a manner as would require the whole gamut of steps required in disciplinary proceedings of Government servants to be followed?"

The Division Bench gave the following answers to the questions: -

*(i) It is held that the parameters for an enquiry to be conducted against the licensee for the irregularities committed by the licensee in terms of the Distribution of Essential Commodities is on broad principles of natural justice where **the competent authority shall provide a show cause notice to the licensee indicating the violations and irregularities committed by the licensee with sufficient particularity to enable him to respond to the same and after affording an opportunity of hearing, the decision can be taken by the competent authority by a reasoned and a speaking order. The enquiry envisaged is summary in nature and does not entail a detailed hearing, akin to a departmental enquiry;***

(ii) It is held that the words "full fledged enquiry" as used by the Full Bench of this Court in the decision of Puran Singh (supra) has to be read in context with paras 4 and 5 of the Government Order of July 2004 and the scheme therein which merely requires adherence to the principles of natural justice and does not provide for a detailed enquiry involving various stages and steps as are required to be met in disciplinary enquiry against a government servant."

(Emphasis added)

21. The order sought to be reviewed is in conformity with the aforesaid principles laid down by the Division Bench in **Shankar Prasad v. State of U.P.** (supra) and it does not suffer from any error, much less an error apparent on the face of the record. The Review Application lacks merit and the same *is dismissed*.

(2026) 4 ILRA 1645
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 30.04.2026

BEFORE

THE HON'BLE RAJNISH KUMAR, J.
THE HON'BLE MRS. BABITA RANI, J.

Government Appeal No. 91 of 1987

State of U.P.

...Appellant

Versus

Tulsi Ram

...Respondent

Issue for Consideration

A. Whether the learned Trial Court has rightly accorded the benefit of self-defence to the accused?

B. Whether the failure of the prosecution in explaining the injuries on the person of the accused renders the entire prosecution story untrustworthy?

C. Whether the impugned order and judgment of acquittal bears any illegality or perversity?

Head Notes

The Indian Evidence Act, 1872-Section 105; The Indian Penal Code, 1860-Sections 96, 99 & 100- Evidence proved by prosecution reasonably established that incident was authored and provoked by accused. It is not the case of accused that deceased and injured criminally trespassed their premises with weapons and they had no safe alternative, but to inflict injuries to them to save themselves. No evidence what so ever, has been adduced by accused to prove that they acted in self defence, except the doctor who proved injuries on the body of accused Harnaam. Therefore, observations of learned trial court that accused acted in self defence and rendering them benefit of acquittal bears material illegality-Even if it is accepted that there was some quarrel and heated exchange between accused and the informant and his deceased brother, it cannot be accepted that such a heated exchange gave the accused the right to self-defence to the extent of causing death.

The injuries established on the person of accused are simple in nature, therefore, in the wake of evidence on record, non-explanation of his injuries is not so much fatal which may render the case of prosecution as unreliable

The injuries were not result of intentional killing but the accused certainly must have been aware of the fact that blow from such weapon could even result in death- It is clear that despite knowing that blow of bhala could have caused death of victim, both accused with common intention and in a fit of rage, gave blow resulting in the death of victim, and therefore, are found guilty of committing offence of culpable homicide not amounting to murder and causing simple hurt to complainant.

Held-That impugned judgement and order passed by learned trial court acquitting the accused from all the charges, is patently perverse and not sustainable in the eyes of law and is hereby liable to be reversed and set aside and accused Jagat Pal and Harnaam are liable to be held guilty for committing the offence under Section 304 Part II/34 and under Section 323/34 of IPC.

Appeal allowed. (E-15)

(Para 27, 28, 38, 43, 44 & 45)

Case Law Cited

State of Madhya Pradesh v. Ramesh; (2005) 9 SCC 705, Lakshmi Singh and Others v. State of Bihar; (1976) 4 SCC 394 and State of Gujarat v. Bai Fatima & Another; (1975) 2 SCC 7; Vijayee Singh and Ors v. State Of Uttar Pradesh; (1990) 3 SCC 190; Darshan Singh v. State of Punjab; (2010) 2 SCC 333; Bihari Lal v. State of Bihar (now Jharkhand) (2008) 15 SCC 778; Thoti Manohar v. State of Andhra Pradesh (2012) 7 SCC 723

List of Acts

The Indian Evidence Act, 1872; The Indian Penal Code, 1860

List of Keywords

Accused clearly exceeded the force by causing more harm than was required ; Right of private defence; Does not extend to inflicting more harm than necessary; Non-explanation of minor injuries sustained by accused; Is not fatal to the prosecution

Case Arising From

Present appeal has been filed by the State of U.P. challenging the judgment and order dated 31.03.1986 passed by the Special Sessions Judge, Unnao acquitting the respondents for the charges under Sections 302/323 read with Section 34 of the Indian Penal Code, 1860 in re: State v. Tulsi Ram and others, bearing S.T.

No. 386/84 and in re: State vs. Harnaam, under Section 25 of the Arms Act in S.T. No. 235/85, police station Makhi, District Unnao.

Appearances for Parties

Counsel for Appellant(s) : Shri Bireshwar Nath,
Counsel for Respondent(s) : Ram Naresh Singh Chauhan

(Delivered by Hon'ble Mrs. Babita Rani, J.)

1. Heard Sri Arunendra, learned AGA for the State/appellant and Shri Ram Naresh Singh Chauhan, learned counsel for the respondents.

2. The present appeal has been filed by the State of U.P. challenging the judgment and order dated 31.03.1986 passed by the Special Sessions Judge, Unnao acquitting the respondents (hereinafter referred to as accused) for the charges under Sections 302/323 read with Section 34 of the Indian Penal Code, 1860 (hereinafter referred to as 'IPC' for brevity) in re: State v. Tulsi Ram and others, bearing S.T. No. 386/84 and in re: State vs. Harnaam, under Section 25 of the Arms Act in S.T. No. 235/85, police station Makhi, District Unnao.

3. During pendency of the appeal, accused Tulsiram and Lakshmi Narain, had passed away and thus, the instant appeal was abated on their behalf by this Court vide order dated 28.11.2022. Now instant appeal survives only for accused Jagat Pal and Harnaam.

4. Brief facts of the case are that on 15.06.1984, at about 10:00 AM, the informant's brother, Jamuna Prasad (deceased) was fixing parnala on his roof and the informant, Amrit Lal (PW1), was putting up mud on his rooftop. The accused opposed installation of parnala on the ground that the same would result in the flow of water on their roof. However, Jamuna Prasad refused to budge and continued fixing the parnala stating that the rain water had been flowing to the roof of the accused through the parnala from old times. This resulted in a heated exchange between the two sides, and on the instigation of accused Tulsi Ram, accused Lakshmi Narayan with lathi, Harnaam with bhala and Jagat Pal with lathi having iron rings on it, came and assaulted the person of Jamuna Prasad (deceased) with their lethal weapon. PW1, who was on his roof, rushed to save his brother Jamuna Prasad and in this process, he was also beaten up by them. The incident was witnessed by PW2, who was working on his roof as well as other neighbours working on their roof who assembled on hearing the hues and cries. The accused, thereafter, fled away from the spot with their weapons. When the injured Jamuna Prasad was being taken to hospital for treatment by complainant Amrit Lal by a bullock cart, he succumbed to injuries. Complainant Amrit Lal submitted an application of incident to the police concerned to lodge the first information report.

5. On the basis of written tehrir (Ex. Ka.1) of complainant Amrit Lal (PW1), the first information report (Ex. Ka.3) was registered in Police Station- Makhi on 15.06.1984 under Sections 302/323 of IPC by PW 4 Head Constable Shubh Karan Singh. The investigation was entrusted to PW7, Sh Ram Lal Yadav, who reached on the spot and after nomination of panch, prepared the panchnama of the body Ex. Ka10 and collected blood soaked clothes

and soil samples vide recovery memo Ex. Ka14 and 15 as well. The site plan Ex. Ka16 was prepared at the instance of complainant PW1. Post-mortem of the body was conducted by Dr. S.P. Rastogi (PW5), who prepared the report Ex. Ka-8. On 17.06.1984, the accused namely Harnaam and Lakshmi Narayan were arrested. Accused Harnaam in custody made a disclosure statement that he had hidden the lathi and bhala used in the incident in his house. He led to the place and got the bhala and lathi recovered from the dung store. The subjected weapons were taken into possession and sealed on the spot in presence of witnesses vide recovery memo Ex. Ka 2, and site plan of recovery of weapons was prepared. On 17.06.1984, on the basis of recovery of bhala by PW7, first information report was registered by PW4 against accused Harnaam under Sections 4/25 of Arms Act, 1959.

6. After the completion of entire investigation and prima-facie evidence collected against accused, charge-sheet was filed against all accused under Sections 302/323 IPC including section 4/25 of Arms Act against accused Harnaam. The magistrate took cognisance of case and committed the case for trial to the court of sessions. Learned Sessions Judge framed charges under Section 302 read with Section 34 IPC and Section 323 IPC against Harnaam, Jagat Pal and Lakshmi Narayan and Section 302 read with Section 114 IPC against Tulsi Ram whereas in connected Sessions Trial No. 235/85, charge against accused Harnaam was framed under Section 25 of the Arms Act, 1959, to which they all pleaded not guilty and claimed a trial.

7. The prosecution examined as many as 9 witnesses in it's support and closed evidence while accused examined Dr. L.D. Shukla, the jail doctor as DW-1 who examined Harnaam on 17.06.1984.

8. PW1, the informant and injured witness, stated that on the day of occurrence, his brother Jamuna Prasad (deceased) was fixing an old parnala on his roof, which is above the roof of the accused respondents. Accused Tulsi Ram told Jamuna Prasad not to fix the parnala but Jamuna Prasad refused to budge and told Tulsi Ram that the parnala was an old one and the water has always flown towards the roof of the accused. Tulsi Ram then instigated Lakshmi Narain, Jagat Pal and Harnaam to bring lathi and bhala and immediately accused Lakshmi Narayan with lathi, Jagat Pal with lathi and Harnaam with bhala came on the roof of Jamuna Prasad and started assaulting him with the lathis and bhala. When PW1 Amrit Lal tried to intervene, the respondents assaulted him too. Neighbours Ramsevak, Baijnath, Guruprasad and Dayashankar, who were also working on their roofs, came rushing upon hearing the screams of PW1 and his brother. The accused respondents then fled away from the scene and PW1 started carrying his injured brother Jamuna Prasad to the police station. However, just outside the village, Jamuna Prasad succumbed to his injuries, so PW1 brought his deceased brother back home. Thereafter, PW1 wrote a complaint (Ex Ka1) and handed over the same in the police station. PW2, Guruprasad, is eye witness of the incident and has corroborated the testimony of PW1. PW3, Ram Chandra, is a witness to the recovery of the bhala and lathi at the instance of accused Harnaam and proved not only the disclosure statement of accused and recovery of weapons, but also his undoubted presence at the time of recovery of weapon in question.

9. PW5, Dr S.P. Rastogi conducted the autopsy of Jamuna Prasad and prepared the post-mortem report (Ex Ka 8) on 16.06.1984, which disclosed the following injuries:

a. Lacerated wound 1.5" x 3" x scalp deep, present on left side scalp-middle part, 5.5" above the left eye brow and 3.5" above the left ear, 1" outer (left) to mid-line, 3" distal to the choti, clotted blood adherent to the margin.

b. Stab wound 0.5" x 0.5" x chest cavity deep, present on left side scalp middle part of back, 8" below the lower end of left scapula and 1" left to the vertebral column. Directions of the wound is from left oblique upwards, medially on opening the chest cavity, left side chest cavity full of fluid and clotted blood, left lung lower lobe at its dorsal aspect shows stab 0.3" x 0.3" and left verticle 0.2" x 0.2" stab wound.

The injuries were reported to be about one day old. The internal examination disclosed stab wound present on the left lung and the cause of death was reported to be shock and haemorrhage as a result of ante mortem injury no. 2. PW5 stated in his testimony that the injury no. 2 was more likely to have been caused by a bhala. Genuineness of the post-mortem report was admitted by the respondents under Section 294 of the Code of Criminal Procedure, 1973.

10. PW6, Dr G.P. Awasthi, medically examined the informant PW1 Amrit Lal and found the following injuries on his person (Ex Ka 9):

a). Lacerated wound 2 cm x 0.5 cm x scalp deep present on the occipital region of the skull.

b). Contusion 6 cm x 3 cm present over the back left scapular region

c). Traumatic swelling 4 cm x 2 cm present over the dorsal aspect of left foot. The aforementioned injuries, in the opinion of PW6, were of a simple nature and had been caused by a blunt object.

11. The sole defence witness (DW1), Dr LD Shukla, performed the medical examination of accused Harnaam on 19.06.1984 and found the following injuries on his person.

a). Contusion 2 c.m. x 1 c.m. on right side of face at maxillary prominence.

b.) Traumatic injury on dorsum of right hand measuring 10 c.m. x 8 c.m. swelling is covered by multiple contusions

c). Circumferential traumatic swelling around the wrist joint in left hand. Swelling is extending up to 4 c.m. above wrist left forearm.

d). Complaint of pain on both buttock and right foot but no visible injury seen

On the nature of injuries, DW1 stated that the injuries were simple in nature and were caused by a blunt object. The injuries were reported to be around 5 days old. The medical report was marked as Ex. Khal.

12. Upon appreciating the evidence available on record and on the basis of the testimonies of the various witnesses, the learned Trial Court came to the conclusion that the

accused had acted in self-defence for the protection of their person and property and thus, the accused were acquitted of all the charges. The learned Trial Court found that the prosecution had failed to explain the injuries as recorded on the person of the accused Harnaam by DW1 and such a failure was held to be fatal on the part of the prosecution.

13. The learned counsel for the appellant /state has challenged the impugned judgment primarily on the ground that the learned Trial Court wrongly and erroneously observed that the presence of unexplained simple injuries on the person of accused Harnaam entitled him to claim the plea of self-defence. The counsel for the state vociferously contended that the injuries on the body of the accused were of such a minor and simple nature, that the prosecution was not required to explain them. Further, the learned Trial Court failed to appreciate that in view of the minor and trivial nature of the injuries, the right of self-defence cannot be said to have extended to the extent of causing death. The learned counsel submitted that the case of the prosecution had been established beyond reasonable doubt by adducing the cogent, consistent and reliable ocular evidence of eyewitness PW2 as well as injured witness PW1, thus, the acquittal as recorded by the learned Trial Court was not sustainable. Concluding the arguments, the appellant placed on reliance on the law laid down by Hon'ble supreme court in **State of Madhya Pradesh v. Ramesh; (2005) 9 SCC 705, Lakshmi Singh and Others v. State of Bihar; (1976) 4 SCC 394 and State of Gujarat v. Bai Fatima & Another; (1975) 2 SCC 7.**

14. Per contra, the learned counsel for the respondents has contended that on 15.06.1984, the informant and his brother were fixing the parnala on their roof to which the respondents objected and this resulted in a hot exchange between the two sides. Thereafter, the informant and his brother, Jamuna Prasad started assaulting accused Harnaam with a lathi and resultantly, accused Harnaam sustained injuries. This forced the accused to act in defence of their person and property which resulted in the death of Jamuna Prasad. The accused/respondents thereafter approached police station for lodging an FIR against the informant and his deceased brother but the police did not register the FIR and instead took them in custody on the same day.

15. The respondents have further contended that their plea of self-defence stands corroborated by the injuries present on the body of accused Harnaam as recorded by the Jail doctor (DW1). The prosecution has failed to explain his injuries and thus, the learned trial court has passed a well-reasoned and sound legal principle-based judgment extending them the benefit of self-defence and thereby acquitting them observing the presentation version being produced with concealment of true and material facts of not explaining injuries of accused. The accused in support of their arguments, placed reliance in the principles laid down by Hon'ble Supreme Court in **Kumar v. State represented by Inspector of police; (2018) 7 SCC 536, Mohan Alias Srinivas v. State of Karnataka; AIR ONLINE 2021 SC 1184, Lakshmi Singh and Others v. State of Bihar; (1976) 4 SCC 394, State of UP v. Atar Singh and others; AIR 2008 Supreme Court 411, Anwar Ali v. State of Himachal Pradesh; AIR 2020 SC (Criminal) 1649, Supreme Court and Jairam & Others v. State of U.P.; Criminal Appeal No. 877 of 1982 (judgment dated 28.11.2025).** Concluding the

arguments, it is submitted that the order and judgement of acquittal passed by learned trial court warrants no interference and appeal deserves to be dismissed.

ISSUES EMERGED FOR CONSIDERATION AND ADJUDICATION:-

16. Having heard the rival submissions advanced by the learned counsels for the contesting parties and having meticulously perused the record, the following issues emerge for consideration and record:

- a. Whether the learned Trial Court has rightly accorded the benefit of self-defence to the accused?*
- b. Whether the failure of the prosecution in explaining the injuries on the person of the accused renders the entire prosecution story untrustworthy?*
- c. Whether the impugned order and judgment of acquittal bears any illegality or perversity?*

ANSWER TO THE HEREIN ABOVE FORMULATED ISSUES:-

17. Before commencing to pen down an answer to Issue No. (a), it is deemed appropriate to refer to some significant provisions and judicial precedents which are germane to the facts and disputes of the present case.

18. The right to private defence is contained under Chapter IV of IPC, which deals with General Exceptions. Section 96 of IPC states that nothing is an offence which is done in exercise of the right of private defence. Section 99 of IPC states that the right of private defence does not extend to inflicting more harm than necessary of the purpose of self-defence. Section 100 of IPC stipulates the circumstances under which the right to self-defence extends to causing death. The relevant sections are reproduced hereunder:

“96. Things done in private defence.-Nothing is an offence which is done in the exercise of the right of private defence.

97. Right of private defence of the body and of property.-Every person has a right, subject to the restrictions contained in section 99, to defend-

First.-His own body, and the body of any other person, against any offence affecting the human body;

Secondly.-The property, whether movable or immovable, of himself or of any other person, against any act which is an offence falling under the definition of theft, robbery, mischief or criminal trespass, or which is an attempt to commit theft, robbery, mischief or criminal trespass.

99. Acts against which there is no right of private defence.-There is no right of private defence against an act which does not reasonably cause the apprehension of death

or of grievous hurt, if done, or attempted to be done by a public servant acting in good faith under colour of his office, though that act may not be strictly justifiable by law.

There is no right of private defence against an act which does not reasonably cause the apprehension of death or of grievous hurt, if done, or attempted to be done, by the direction of a public servant acting in good faith under colour of his office though that direction may not be strictly justifiable by law.

There is no right of private defence in cases in which there is time to have recourse to protection of the public authorities.

Extent to which the right may be exercised.-*The right of private defence in no case extends to the inflicting of more harm than it is necessary to inflict for the purpose of defence.*

Explanation 1.-*A person is not deprived of the right of private defence against an act done, or attempted to be done, by a public servant, as such, unless he knows or has reason to believe, that the person doing the act is such public servant.*

Explanation 2.-*A person is not deprived of the right of private defence against an act done, or attempted to be done, by the direction of a public servant, unless he knows, or has reason to believe, that the person doing the act is acting by such direction, or unless such person states the authority under which he acts, or if he has authority in writing, unless he produces such authority, if demanded.*

100. When the right of private defence of the body extends to causing death.-*The right of private defence of the body extends, under the restrictions mentioned in the last preceding section, to the voluntary causing of death or of any other harm to the assailant, if the offence which occasions the exercise of the right be of any of the descriptions hereinafter enumerated, namely:-*

First.-*Such an assault as may reasonably cause the apprehension that death will otherwise be the consequence of such assault;*

Secondly.-*Such an assault as may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such assault;*

Thirdly.-*An assault with the intention of committing rape;*

Fourthly.-*An assault with the intention of gratifying unnatural lust;*

Fifthly.-*An assault with the intention of kidnapping or abducting;*

Sixthly.-*An assault with the intention of wrongfully confining a person, under circumstances which may reasonably cause him to apprehend that he will be unable to have recourse to the public authorities for his release.*

Seventhly.-*An act of throwing or administering acid or an attempt to throw or administer acid which may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such act.*

19. Section 105 of the Indian Evidence Act, 1872 states that the burden of proving the plea of self-defence is on the accused person who takes such defence. The plea of self-defence is a question of fact which has to be determined on the basis of the facts of each case. The accused is not required to prove the defence beyond reasonable doubt and it will suffice if the accused is able to show the preponderance of probability in favour of the plea of right of self-defence.

20. In **Vijayee Singh and Ors v. State Of Uttar Pradesh; (1990) 3 SCC 190** the Hon'ble Supreme Court observed that:

"16. The phrase "burden of proof" is not defined in the Act. In respect of criminal cases, it is an accepted principle of criminal jurisprudence that the burden is always on the prosecution and never shifts. This flows from the cardinal principle that the accused is presumed to be innocent unless proved guilty by the prosecution and the accused is entitled to the benefit of every reasonable doubt. Section 105 of the Evidence Act is in the following terms:

"105. When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the General Exceptions in the Indian Penal Code, or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances."

*The Section to some extent places the onus of proving any exception in a penal statute on the accused. The burden of proving the existence of circumstances bringing the case within the exceptions mentioned therein is upon him. The Section further lays down that the Court shall presume non-existence of circumstances bringing the case within an exception." The words "the burden of proving the existence of circumstances" occurring in the Section are very significant. It is well settled that "this burden" which rests on the accused does not absolve the prosecution from discharging its initial burden of establishing the case beyond all reasonable doubts. It is also well-settled that the accused need not set up a specific plea of his offence and adduce evidence. That being so the question is: what is the nature of burden that lies on the accused under Section 105 if benefit of the general exception of private defence is claimed and how it can be discharged? In *Woolmington v. The Director of Public Prosecutions*, [1935] Appeal Cases 462, Viscount Sankey, L.C. observed:*

"When evidence of death and malice has been given (this is a question for the jury), the prisoner is entitled to show by evidence or by examination of the circumstances adduced by the Crown that the act on his part which caused death was either unintentional or provoked. If the jury are either satisfied with his explanation or, upon a review of all, the evidence are left in reasonable doubt whether, even if his explanation be not accepted, the act was unintentional or provoked, the prisoner is entitled to be acquitted."

It is further observed:

"Just as there is evidence on behalf of the prosecution so there may be evidence on behalf of the prisoner which may cause a doubt as to his guilt. In either case, he is entitled to the benefit of the doubt. But while the prosecution must prove the guilt of the prisoner, there is no such burden laid on the prisoner to prove his innocence and it is sufficient for him to raise a doubt as to his guilt; he is not bound to satisfy the jury of his innocence ...

Throughout the web of the English criminal law one golden thread is always to be seen, that it is the duty of the prosecution to prove the prisoner's guilt subject to what I have already said as to the defence of insanity and subject also to any statutory exception. If, at the end of and on the whole of the case, there is reasonable doubt created by the evidence

given by either the prosecution or the prisoner as to whether the prisoner killed the deceased with a malicious intention, the prosecution has not made out the case and the prisoner is entitled to an acquittal. No matter what the charge or where the trial, the principle that the prosecution must prove the guilt of the prisoner is part of the common law of England and no attempt to whittle it down can be entertained."

(Emphasis added by court)

21. In Ramesh (supra) the Hon'ble Supreme Court made the following observations regarding the plea of self-defence:

"10. Only question which needs to be considered, is the alleged exercise of right of private defence. Section 96, IPC provides that nothing is an offence which is done in the exercise of the right of private defence. The Section does not define the expression 'right of private defence'. It merely indicates that nothing is an offence which is done in the exercise of such right. Whether in a particular set of circumstances, a person legitimately acted in the exercise of the right of private defence is a question of fact to be determined on the facts and circumstances of each case. No test in the abstract for determining such a question can be laid down. In determining this question of fact, the Court must consider all the surrounding circumstances. It is not necessary for the accused to plead in so many words that he acted in self-defence. If the circumstances show that the right of private defence was legitimately exercised, it is open to the Court to consider such a plea. In a given case the Court can consider it even if the accused has not taken it, if the same is available to be considered from the material on record. Under Section 105 of the Indian Evidence Act, 1872 (in short 'the Evidence Act'), the burden of proof is on the accused, who sets up the plea of self-defence, and, in the absence of proof, it is not possible for the Court to presume the truth of the plea of self-defence. The Court shall presume the absence of such circumstances. It is for the accused to place necessary material on record either by himself adducing positive evidence or by eliciting necessary facts from the witnesses examined for the prosecution. An accused taking the plea of the right of private defence is not necessarily required to call evidence; he can establish his plea by reference to circumstances transpiring from the prosecution evidence itself. The question in such a case would be a question of assessing the true effect of the prosecution evidence, and not a question of the accused discharging any burden. Where the right of private defence is pleaded, the defence must be a reasonable and probable version satisfying the Court that the harm caused by the accused was necessary for either warding off the attack or for forestalling the further reasonable apprehension from the side of the accused. The burden of establishing the plea of self-defence is on the accused and the burden stands discharged by showing preponderance of probabilities in favour of that plea on the basis of the material on record. (See Munshi Ram and Ors. v. Delhi Administration (AIR 1968 SC 702), State of Gujarat v. Bai Fatima (AIR 1975 SC 1478), State of U.P. v. Mohd. Musheer Khan (AIR 1977 SC 2226), and Mohinder Pal Jolly v. State of Punjab (AIR 1979 SC 577). Sections 100 to 101 define the extent of the right of private defence of body. If a person has a right of private defence of

body under Section 97, that right extends under Section 100 to causing death if there is reasonable apprehension that death or grievous hurt would be the consequence of the assault. The oft quoted observation of this Court in *Salim Zia v. State of U.P.* (AIR 1979 SC 391), runs as follows:

"It is true that the burden on an accused person to establish the plea of self-defence is not as onerous as the one which lies on the prosecution and that, while the prosecution is required to prove its case beyond reasonable doubt, the accused need not establish the plea to the hilt and may discharge his onus by establishing a mere preponderance of probabilities either by laying basis for that plea in the cross-examination of the prosecution witnesses or by adducing defence evidence."

The accused need not prove the existence of the right of private defence beyond reasonable doubt. It is enough for him to show as in a civil case that the preponderance of probabilities is in favour of his plea.

11. The number of injuries is not always a safe criterion for determining who the aggressor was. It cannot be stated as a universal rule that whenever the injuries are on the body of the accused persons, a presumption must necessarily be raised that the accused persons had caused injuries in exercise of the right of private defence. The defence has to further establish that the injuries so caused on the accused probabilise the version of the right of private defence. Non-explanation of the injuries sustained by the accused at about the time of occurrence or in the course of altercation is a very important circumstance. But mere non-explanation of the injuries by the prosecution may not affect the prosecution case in all cases. This principle applies to cases where the injuries sustained by the accused are minor and superficial or where the evidence is so clear and cogent, so independent and disinterested, so probable, consistent and credit-worthy, that it far outweighs the effect of the omission on the part of the prosecution to explain the injuries. [See *Lakshmi Singh v. State of Bihar* (AIR 1976 SC 2263)]. A plea of right of private defence cannot be based on surmises and speculation. While considering whether the right of private defence is available to an accused, it is not relevant whether he may have a chance to inflict severe and mortal injury on the aggressor. In order to find whether the right of private defence is available to an accused, the entire incident must be examined with care and viewed in its proper setting."

(Emphasis added by court)

22. The right of private defence is a defensive right, serving a social purpose, which cannot be given such a wide meaning as to sub serve vindictive purposes. In **Darshan Singh v. State of Punjab; (2010) 2 SCC 333**, the Hon'ble Apex Court held:

"54. In *Vidhya Singh v. State of Madhya Pradesh* (1971) 3 SCC 244, the court observed that

"18. The right of self-defence is a very valuable right, serving a social purpose and should not be construed narrowly..... Situations have to be judged from the subjective point of view of the accused concerned in the surrounding excitement and confusion of the

moment, confronted with a situation of peril and not by any microscopic and pedantic scrutiny. In adjudging the question as to whether more force than was necessary was used in the prevailing circumstances on the spot it would be inappropriate, as held by this court, to adopt tests by detached objectivity which would be so natural in a court room, or that which would seem absolutely necessary to a perfectly cool bystander. The person facing a reasonable apprehension of threat to himself cannot be expected to modulate his defence step by step with any arithmetical exactitude of only that much which is required in the thinking of a man in ordinary times or under normal circumstances."

23. In view of the above-mentioned legal position, we proceed to analyse the facts of the instant case. It is worth-while to mention here that the accused have not disputed the day, time, place of occurrence and further the injuries inflicted on the person of deceased Jamuna Prasad, who succumbed due to the injuries sustained in occurrence. Moreover, there is no dispute that both are neighbours and had adjacent rooftop of their respective houses. The rooftop of deceased on which he was installing parnala, was higher to that of the accused and the water had to flow to the roof of the accused, to which they raised objection. But the deceased ignored the protest of accused and continued with his work, and therefore, a dispute arose over this matter. Further, this fact is also not disputed that PW1 informant Amrit Lal along with deceased and accused was present on the spot at the relevant time. The accused has not confronted substantially the lacerated and stab injuries sustained by deceased and rather had admitted genuineness of post mortem report of deceased, and thus the fact of injuries being outcome of lathi and bhala as opined by PW5 is not disputed. Prosecution further led evidence of PW3 Ram Chandra and PW 7 investigating officer who deposed and corroborated the fact of arrest of accused Lakshmi Narayan and disclosure statement of accused Harnaam regarding hiding of weapons used in offence and to get them recovered and further leading recovery of weapons in their presence and same was taken into custody on the spot vide recovery memo under the signature of witnesses. Thus, in view of admitted incident by accused and adducing ocular evidence, prosecution successfully proved its case beyond reasonable doubt.

24. On the contrary, accused submitted that on being opposed for not installing parnala on his roof as the water would be flowing on their roof, the deceased became violent and opened assault on them. It is further case of accused that it was the deceased, who was adamant to damage their roof and the act of deceased was falling in the category of offence of mischief and they got every right to protect their property, therefore, in order to protect their person and property as well, the deceased sustained and succumbed to injuries, while PW1 received simple injuries in same occurrence. According to the submissions of accused, they had clear case of right of private defence but the prosecution has not put forth the true material facts of occurrence and narrated only their injuries in complete non-explanation of injuries suffered by accused Harnaam during the occurrence, therefore, learned trial court while taking serious note of non- explanation of injuries of accused, rightly disbelieved prosecution version and observed that accused were acting in the self defence while causing injuries and acquitted them.

25. Now the question that needs redressal is whether informant and his brother can be termed aggressors on the basis of the facts and evidence available on record, thus, entitling the accused to claim the benefit of plea of self-defence. As observed above, it is not disputed that PW1 along with his brother Jamuna Prasad and accused were present on their respective roofs on the day of occurrence. PW2 has deposed and established his presence on his roof at the relevant time. Jamuna Prasad was repairing the parnala, while PW1 was putting mud on his roof. The repair work being carried on was opposed by accused, due to the reason of deceased having the roof higher than the accused and installation of parnala in the direction of roof of accused, would have caused flow of water on their roof, but deceased did not pay heed and on the instigation of Tulsi Ram, co-accused Harnaam and Lakshmi Narayan attributed fatal injuries to Jamuna Prasad leading to his death and when PW1 tried to interfere and save his brother, he was also given beatings by accused. PW1 and PW2 corroborated the prosecution story and narrated the eye account verbatim. PW1 is not only the eye account, but also injured in the incident.

26. In his cross examination, PW1 stated that by the time accused came to the place of occurrence, the deceased kept on installing drain. In reply to the specific question regarding having any weapon with Jamuna Prasad and PW1, PW1 categorically denied the same stating that neither he or the deceased was having any lathi or danda at the time of repairing the parnala, nor any bucket was there for getting the repair work done. Explaining the reason, PW 1 specifically stated that due to having wet soil, deceased was working with hands, so he had no danda or bucket etc. Therefore, it is indicative on record from the cross-examination of PW1, that the deceased or PW1 was not having any weapon when the incident occurred. It also emerged from his evidence that the deceased was working till the accused reached his roof with lethal weapons and was not ready for the fight and had no occasion to arrange the weapon for assault. PW2, who was also present on his roof and witnessed the incident stated in his cross-examination that he saw no lathi or danda in hands of Jamuna Prasad or Amrit Lal. He categorically stated that accused Harnaam was not assaulted by them, nor he received any injury. The statement of PW2 is in corroboration and consonance to the statement of PW1. Both the witnesses were put to detailed cross-examination by the accused with regard to the accused being aggressor, but nothing adverse could be brought on record, rather this fact was proved by prosecution witnesses that deceased and PW1 were empty handed at the time of occurrence and they had no occasion and opportunity to cause injuries to any of accused. It is pertinent to mention here that in order to show that accused acted in their self defence, there must be some cogent and concrete material on record to demonstrate that the injured or deceased were having the fatal weapons and sufficient preparation to put the accused in constraint to use force and weapon to protect themselves. Needless to say, it is established on record in the above discussion that to assault the informant and his deceased brother, accused Harnaam had used a Bhala and accused Lakshmi Narayan used Lathi while Jagat Prasad used Lathi with iron rings. Nothing is on record to indicate that informant and his diseased brother were armed with any weapons.

27. Another aspect to be considered is that who had immediate motive to attack. In order to address the issue, it is apposite to mention here that PW1 is an injured and eye

witness. PW2 is also an eyewitness, who was also repairing his roof at the relevant time of occurrence and has supported the prosecution version. Nothing adverse could be brought on record which may lead us to disbelieve his presence and eye account. PW7, investigating officer prepared the site plan at the instance of PW1 and collected the blood stain and plain earth from the roof of the deceased and sealed them on the spot itself. The place from where the plain and bloodstained earth was taken into possession by the investigating officer PW7, has been indicated in the site plan as well, to which accused could not produce anything adverse. Therefore, from the ocular evidence produced by prosecution, it is established that the injuries were inflicted on the deceased on his roof at the time when he was deeply engaged in his work. Even otherwise, the respondents have not raised any dispute regarding the place of occurrence being the roof of deceased. The attending circumstances are clearly indicative of the fact that it was the accused party who chose to jump into the initiation of aggression. PW1 and PW2 categorically stated that Jamuna Prasad fell down by the blow given by co-accused **Jagat Pal** and within no time, accused Harnaam gave a blow of bhala on his back. The testimony of both witnesses is corroborated by the medical evidence of PW5 who found lacerated wound on head and stab wound on the back of chest. This impeccable and unchallenged evidence proved by prosecution has reasonably established that incident was authored and provoked by accused. It is not the case of accused that deceased and injured criminally trespassed their premises with weapons and they had no safe alternative, but to inflict injuries to them to save themselves. No evidence what so ever, has been adduced by accused to prove that they acted in self defence, except the doctor who proved injuries on the body of accused Harnaam. Therefore, observations of learned trial court that accused acted in self defence and rendering them benefit of acquittal bears material illegality and we are unable to agree with the observations recorded by learned trial court, to this effect.

28. There is yet another aspect that needs to be considered. The right to private defence does not extend to using disproportionate force and Section 99 of IPC categorically states that only such force as is reasonably necessary should be used in private defence. In assaulting the informant and his deceased brother, accused Harnaam had used a bhala without a handle, accused Laxmi Narayan used a lathi and accused Jagat Pal used a lathi with iron rings. There is nothing on record to indicate that the informant and his deceased brother were armed with similar weapons. The nature and type of the weapons used by the accused persons speaks volumes of their intent and by no stretch of imagination can it be said that they used such deadly weapons for mere self-defence. The injuries sustained by accused Harnaam, as evident from the report prepared by DW1, Dr LD Shukla, were of a simple nature. Even if it is accepted that there was some quarrel and heated exchange between accused and the informant and his deceased brother, it cannot be accepted that such a heated exchange gave the accused the right to self-defence to the extent of causing death.

29. In the case of **Bihari Lal v. State of Bihar (now Jharkhand) (2008) 15 SCC 778**, the Hon'ble Supreme Court held that:

“Merely because there was a quarrel and some of the accused persons sustained injuries, that does not confer a right of private defence extending to the extent of causing

death as in this case. Though such right cannot be weighed in golden scales, it has to be established that the accused persons were under such grave apprehension about the safety of their life and property that retaliation to the extent done was absolutely necessary. No evidence much less cogent and credible was adduced in this regard. The right of private defence as claimed by the accused persons have been rightly discarded.

(Emphasis added by court)

In **Darshan Singh** (supra), the Hon'ble Supreme Court observed:

55. *In Jai Dev v. State of Punjab AIR 1963 SC 612 the court held as under:-*

"....as soon as the cause for the reasonable apprehension has disappeared and the threat has either been destroyed or has been put to rout, there can be no occasion to exercise the right of private defence."

56. *In order to find out whether right of private defence is available or not, the injuries received by the accused, the imminence of threat to his safety, the injuries caused by the accused and the circumstances whether the accused had time to have recourse to public authorities are all relevant factors to be considered. "*

30. The deceased Jamuna Prasad was fixing a parnala on his roof. Even if the respondents were infuriated by the fixing of the parnala, they could have approached the local police or municipal authorities. There was no occasion for them to assault the informant or his brother. The act of fixing parnala cannot be said to have amounted to initiation of aggression. Even if we were to accept the story of the respondents that Jamuna Prasad was aggressively fixing the parnala and attacked them upon being restrained, they had all opportunity to approach the local municipal or state authorities against any unauthorised installation. Instead, they decided to inflict such lethal disproportionate blows on Jamuna Prasad, which resulted in his death. The magnitude of force used by them cannot be said to be that which a reasonable person would have inflicted under similar circumstances. PW1 admitted in his testimony that after a month of incident, the investigating officer resolved the cause of dispute and re-installed the parnala by changing it's flow towards the house of deceased itself. The circumstance speaks in volume that had the accused adopted the legal recourse available to them in law, then the situation would have been resolved by the authorities without the cost of life of deceased, in which accused acted in complete illogical, irrational and unwarranted manner and took life of deceased.

31. Against such a backdrop, we find that it was rather the accused who had initiated the aggression and resorted to violence upon being enraged by the act of fixing of the parnala by the deceased. The deceased Jamuna Prasad was merely fixing a parnala on his own rooftop. Such an act did not cause any immediate threat to the person or property of the accused. In our society, such trivial disputes relating to flow of rainwater are not uncommon but these disputes cannot be said to confer a right on either side to take the law in their own hand and resort to any kind of violence only to claim the right of self-defence, when held accountable. Hence, we reached on conclusion that accused has been wrongly provided right of private defence by learned trial court.

Point of Determination No.2:-

32. To know as to when and how fatal it is for prosecution not to describe the injuries of accused, it is apposite to refer to the observations made by the Hon'ble Supreme Court, in **Lakshmi Singh** (supra), wherein the Apex Court held that:

"12.....According to the Doctor injury No. 1 was grievous in nature as it resulted in compound fracture of the fibula bone. The other two injuries were also serious injuries which had been inflicted by a sharp-cutting weapon. Having regard to the circumstances of the case there can be no doubt that Dasrath Singh must have received these injuries in the course of the assault, because it has not been suggested or contended that the injuries could be self-inflicted nor it is believable. In these circumstances, therefore, it was the bounden duty of the prosecution to give a reasonable explanation for the injuries sustained by the accused Dasrath Singh in the course of the occurrence. Not only the prosecution has given no explanation, but some of the witnesses have made a clear statement that they did not see any injuries on the person of the accused. Indeed if the eye-witnesses could have given such graphic details regarding the assault on the two deceased and Dasain Singh and yet they deliberately suppressed the injuries on the person of the accused, this is a most important circumstance to discredit the entire prosecution case. It is well settled that fouler the crime, higher the proof, and hence in a murder case where one of the accused is proved to have sustained injuries in the course of the same occurrence, the non-explanation of such injuries by the prosecution is a manifest defect in the prosecution case and shows that the origin and genesis of the occurrence had been deliberately suppressed which leads to the irresistible conclusion that the prosecution has not come out with a true version of the occurrence. This matter was argued before the High Court and we are constrained to observe that the learned Judges without appreciating the ratio of this Court in Mohar Rai v. State of Bihar tried to brush it aside on most untenable grounds. The question whether the Investigating Officer was informed about the injuries is wholly irrelevant to the issue, particularly when the very Doctor who examined one of the deceased and the prosecution witnesses is the person who examined the appellant Dasrath Singh also. In the case referred to above, this Court clearly observed as follows:

The trial Court as well as the High Court wholly ignored the significance of the injuries found on the appellants. Mohar Rai had sustained as many as 13 injuries and Bharath Rai 14. We get it from the evidence of P.W. 15 that he noticed injuries on the person of Mohar Rai when he was produced before him immediately after the occurrence. Therefore the version of the appellants that they sustained injuries at the time of the occurrence is highly probalised. Under these circumstances the prosecution had a duty to explain those injuries.... In our judgment the failure of the prosecution to offer any explanation in that regard shows that evidence of the prosecution witnesses relating to the incident is not true or at any rate not wholly true. Further those injuries probalise the plea taken by the appellants."

This Court clearly pointed out that where the prosecution fails to explain the injuries on the accused, two results follow: (1) that the evidence of the prosecution witnesses is untrue: and (2) that the injuries probalise the plea taken by the appellants. The High Court in the present case has not correctly applied the principles laid down by this Court in

the decision referred to above. In some of the recent cases, the same principle was laid down. In *Puran Singh v. The State of Punjab* (1975) 4 SCC 518, which was also a murder case, this Court, while following an earlier case, observed as follows:

"In *State of Gujarat v. Bai Fatima* (1975) 2 SCC 7, one of us (Untwalia, J.), speaking for the Court, observed as follows:

In a situation like this when the prosecution fails to explain the injuries on the person of an accused, depending on the facts of each case, any of the three results may follow:

(1) That the accused had inflicted the injuries on the members of the prosecution party in exercise of the right of self defence.

(2) It makes the prosecution version of the occurrence doubtful and the charge against the accused cannot be held to have been proved beyond reasonable doubt.

(3) It does not affect the prosecution case at all.

The facts of the present case clearly fall within the four corners of either of the first two principles laid down by this judgment. In the instant case, either the accused were fully justified in causing the death of the deceased and were protected by the right of private defence or that if the prosecution does not explain the injuries on the person of the deceased the entire prosecution case is doubtful and the genesis of the occurrence is shrouded in deep mystery, which is sufficient to demolish the entire prosecution case. It seems to us that in a murder case, the non-explanation of the injuries sustained by the accused at about the time of the occurrence or in the course of altercation is a very important circumstance from which the Court can draw the following inferences:

(1) that the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version:

(2) that the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and therefore their evidence is unreliable;

(3) that in case there is a defence version which explains the injuries on the person of the accused it is rendered probable so as to throw doubt on the prosecution case.

The omission on the part of the prosecution to explain the injuries on the person of the accused assumes much greater importance where the evidence consists of interested or inimical witnesses or where the defence gives a version which competes in probability with that of the prosecution one. In the instant case, when it is held, as it must be, that the appellant Dasrath Singh received serious injuries which have not been explained by the prosecution, then it will be difficult for the Court to rely on the evidence of PWs. 1 to 4 and 6 more particularly, when some of these witnesses have lied by stating that they did not see any injuries on the person of the accused. Thus neither the Sessions Judge nor the High Court appears to have given due consideration to this important lacuna or infirmity appearing in the prosecution case. We must hasten to add that as held by this Court in *State of Gujarat v. Bai Fatima* (1975) 2 SCC 7 there may be cases where the non-explanation of the injuries by the prosecution may not affect the prosecution case. This principle would obviously apply to cases where the injuries sustained by the accused are minor and superficial or where the evidence is so clear and cogent, so independent and disinterested, so probable, consistent and credit-worthy, that it far outweighs the effect of the omission on the part of the prosecution to explain the injuries. The present, however, is certainly not

such a case, and the High Court was, therefore, in error in brushing aside this serious infirmity in the prosecution case on unconvincing premises.

(Emphasis added by Court)

33. In **Thoti Manohar v. State of Andhra Pradesh (2012) 7 SCC 723**, the Hon'ble Supreme Court made the following observations:

“28. Now, we shall proceed to dwell with the criticism on the base of which the case of the prosecution is sought to be demolished. The learned counsel for the appellant would submit that the injuries sustained by the accused have not been explained. On a perusal of the evidence of PW-20, the Investigating Officer, it appears that when he arrested A-1 and A-2, there were certain injuries on their person and they stated that they had received the injuries at the hands of the deceased. It is worth noting that the injuries are superficial in nature, the accused were not sent for medical examination and further there is no suggestion whatsoever as regards the injuries sustained by them to any of the witnesses. The story built up as regards the fight between the two groups does not remotely appeal to common sense and, more so, in the absence of any evidence, it is like building a castle in Spain.

29. Quite apart from the above, nonexplaining of injuries of the accused persons is always not fatal to the case of the prosecution. In this context, we may usefully refer to Sri Ram v. State of M.P. (2004) 9 SCC 292 wherein it has been held that mere non-explanation of the injuries by the prosecution may not affect the prosecution case in all cases and the said principle applies to cases where the injuries sustained by the accused are minor and superficial or where the evidence is so clear and cogent, so independent and disinterested and so probable, consistent and creditworthy that it far outweighs the effect of the omission on the part of the prosecution to explain the injuries. Hence, we repel the said submission of the learned counsel for the appellants.

(Emphasis added by Court)

34. It is true that explaining the injuries of the accused is an important circumstance and non-explanation of injuries of accused is manifest error as observed by Hon'ble Supreme Court in *Lakshmi Singh* (supra) provided that such injuries are grievous in nature. However, in *Thoti Manohar* (supra), it has been propounded by Hon'ble Supreme Court that in case injuries are simple and artificial in nature, non-explanation of such injuries is not always fatal to the prosecution. In the instant case, admittedly injuries of accused has not been brought on record, therefore, the effect of failure to do so on the credibility of the prosecution's case has to be determined in lieu of the facts and evidence available on record. Now it remains to be seen that whether injuries suffered by accused Harnaam were self-inflicted and sustained in the course of occurrence. So far as infliction of injuries on the person of accused is concerned, it has emerged in the statement of PW1 and PW2 that during the course of assault by accused person, accused Harnaam sustained no injury. Nothing could be brought on record by the accused that PW1 and deceased were having any weapon with them at the time of occurrence or thereafter. However, PW4 scribe of first

information report and PW7, Investigating officer admitted the fact that at the time of arrest, accused Harnaam had two-three injuries on his body which were about 3-4 days old. Accused Harnaam with co-accused was arrested on 17.06.84 and surprisingly despite having injuries on his person, he was not medico-legally examined after arrest. On 19.06.1984, accused was medico legally examined in jail by Dr.L.K. Shukla who, was examined as DW1 and corroborated the evidence of PW4 and PW7 of the accused Harnaam having three simple injuries on his person, which were about five days old and that same might have been caused by blunt object. The injuries were found on his face and in form of traumatic swelling on his right wrist. Keeping in view of evidence on record, duration of injuries and admitted presence of accused on place of occurrence, it transpires that he may have sustained injuries during the occurrence. As per DW1, he can't state that injuries of accused were self inflicted or inflicted. Although, nothing emerged on record that prosecution witnesses ever inflicted injuries to him, but existence of injuries has established the fact that accused Harnaam may have sustained injuries during the course of the incident.

35. Now this question requires answer as to whether non-explanation of injuries of accused vitiate the entire prosecution version? Once it is established on record that the deceased and PW1 were empty-handed and did not use any force or assault against accused, observation of trial court that accused received those injuries due to assault by deceased, appears manifestly erroneous and purely on the basis of assumptions. The above observation of trial Court holds no water in the peculiar circumstances of the case where accused did not even care to adduce any ocular evidence to create even a doubt in story of prosecution. Admittedly, the place of occurrence was roof of the deceased, which was higher than that of accused, therefore, in absence of proof of any intentional assault, there is every likelihood of receiving of such injuries during the process of their assault or while enabling their fleeing from the spot with weapons. Therefore, in absence of intentional attribution of trivial and simple injuries found on person of accused by deceased and PW1 and further in absence of reliable evidence, it can't be safely observed that injuries were caused by deceased or injured to the accused. Keeping in view of above fact and circumstances, the observation recorded by trial court is not sustainable.

36. It has been held by Hon'ble Supreme Court in **Bai Fatima** (supra) that non-explanation of minor and superficial injuries sustained by accused is not fatal to the prosecution, where the evidence is so clear and cogent, so independent and disinterested, so probable, inconsistent and creditworthy that it far outweighs the effect of the omission on the part of prosecution to explain the injuries. In the instant case, it is established that injuries have not been inflicted by PW 1 and deceased and more so are superficial and simple in nature to justify the fatal injuries attributed by them to Jamuna Prasad, of which he succumbed immediately

37. Further, as per Section 105 of the Indian Evidence Act, 1872, the burden of proving the exception of private defence is on the accused. While the burden contemplated under Section 105 is of a relatively light character, the accused still has a duty to establish a reasonable probability in their favour. We do not find any material on record that indicates that the accused faced any sudden or imminent threat to their person or property, which

entitled them to claim the right of self-defence to the extent as observed by learned trial court.

38. The injuries established on the person of accused are simple in nature, therefore, in the wake of evidence on record, non-explanation of his injuries is not so much fatal which may render the case of prosecution as unreliable and is squarely covered with the principle laid down in *Bai Fatima* (supra) by Hon'ble Supreme Court where the non- explanation of simple and superficial injuries were held not to be fatal and falsify the entire prosecution story. The law laid down by Supreme Court in *Lakshmi Singh* (supra) has no applicability in the facts of the case in hands as in the facts of this case, the accused had also suffered grievous injuries and the doctor who conducted the post-mortem report of deceased had also conducted the medical of accused but inspite of that prosecution didn't explain the injuries of prosecution, therefore, in the peculiar facts, the Hon'ble Court took adverse inference of non-explanation of injuries of accused. The Learned trial court wrongly observed that since the roof of the deceased was on higher pedestal than that of accused, therefore, it was the right of the accused to defend their property. Further, we found that learned trial court has recorded its findings beyond the evidence and purely on the basis of assumption observing that when Harnaam resisted them, then it must have annoyed the deceased and injured and they had taken law in their hands, assaulting Harnaam, who in retaliation would have attacked Jamuna Prasad and Amrit Lal, and consequently, Jamuna Prasad lost his life.

39. We also consider it appropriate to deal with one more argument as raised by learned AGA, who had submitted that learned Trial Court passed the judgment of acquittal in favour of accused Harnaam in Sessions Trial no. 235/85 under Section 25 of Arms Act, without appreciation of any additional evidence and merely on the set of evidence of Session Trial No. 386/84, under Sections 302 and 323 of IPC and therefore in complete violation of theory of fair trial and natural justice. From the perusal of impugned judgment and order, we found force in the arguments that learned Trial Court has not appreciated the evidence produced by prosecution for charges under the Arms Act and merely on the basis of the finding that alleged recovery was unreliable, impugned judgement of acquittal was passed. However, since the occurrence pertains to the year 1984 and appeal before us is to be assessed on point of law and facts and being part of trial, therefore, it would be in the interest of justice to assess at the stage of appeal as to what was the evidence brought by prosecution against the accused for charges under Section 25 of Arms Act.

40. PW7 is complainant and PW8 is investigating officer of Arms Act. Accused Harnaam after his arrest is said to have made a disclosure statement in presence of PW3 and PW7 investigating officer to the effect that the weapon in question is in his house and he can get it recovered from there and in pursuance of disclosure, he led the recovery of lathi and bhala from his house. PW3 stated in his cross-examination that the police had recovered the weapon in question, that is lathi and bhala, in his presence, but the memo was not prepared in his presence and same was prepared later on. The witness further clarified that being illiterate, he couldn't know about the writing prepared by PW7. Although this witness has supported the fact of recovery in his chief and cross-examination as well, however, he has not placed a reliable testimony regarding the preparation of recovery memo on the spot

itself. Admittedly, neither the disclosure statement made by accused was reduced into writing by PW7 investigating officer separately, nor any explanation has been offered on record by him regarding the same. The investigating officer PW7 has not produced on record the GD entry of his departure from the police station to arrest the accused, despite receipt of secret information in advance. Further more, no dimension of alleged bhala and lathi has been described in recovery memo by adducing reliable evidence. The mere material which has been brought on record is that the bhala was handleless. However, nothing has been placed on record how the said bhala was attracting the provisions of Section 25 of Arms Act. PW8, who is the investigating officer of the FIR under the Arms Act, has not placed even an iota of evidence in his testimony that how and what investigation was conducted by him under Section 25 of Arms act. PW7 was the complainant in the FIR lodged under the Arms Act and PW8 categorically admitted that he is junior officer to that of the PW7. We are astonished by entrustment of investigation to the junior officer, where the complainant himself is a senior officer. A junior officer should not be appointed as investigating officer in such cases as there is every likelihood of unfair and bias investigation. In this way. due to absence of incriminating evidence against accused, it cannot be said that the accusations under Section 25 of the Arms Act have been successfully established against the accused beyond reasonable doubt. Therefore, the accused Harnaam is entitled for acquittal in respect of the charges framed under the Arms Act and the acquittal in respect of such charges is sustained herewith.

41. However, needless to mention here at this juncture that it is a settled principle of law that even though the recovery of weapon has not been established or the charges of Arms Act have not been proven against the accused, even then the accused can be safely convicted in case, cogent, consistent, and reliable evidences are found against them.

42. Having concluded that the benefit of right of private defense has been wrongly extended to the accused, we now proceed to examine whether the accused can be said to have inflicted lethal blows on the deceased in a free fight. As mentioned above, the fact of injuries found on the person of the accused Harnaam is not disputed and same have not been explained by prosecution. It is also admitted between the parties that the genesis of dispute was fixing of parnala by deceased and the resultant heated exchange. We have already observed herein before that accused clearly exceeded the force by causing more harm than was required for the purpose. Further, the accused suddenly and without reasonable provocative impulse, unnecessarily used a weapon like bhala and executed excessive force on empty handed deceased and victim. Further, the above incident cannot be considered a free fight as no weapons were found with the deceased or complainant, as discussed above.

43. Now we proceed to examine whether the accused can be said to have inflicted such lethal blows on deceased with such degree of intention and knowledge so as to convict them for the offense of murder. As per the testimony of PW1, accused Jagat Pal had given a single blow of lathi on the head of the deceased following which accused Harnaam also struck a single blow of bhala on the back of the deceased. Once Jamuna Prasad fell down, no more blows are said to have been inflicted on him. Jamuna Prasad was alive at the time of the incident and succumbed to his injuries while his brother was carrying him on a bullock cart.

PW5 Dr. S.P. Rastogi found the lacerated wound caused by hard and blunt object on the hand of deceased and also found a stab wound on left lung and pericardium during internal examination of dead body of victim and this injury was said to be cause of death. Bringing such a lethal weapon from home on a trivial dispute and then using it in a fit of fury clearly shows that accused was certainly aware of the fact that its blow may take life of anyone. There is no dispute that accused Jagat Pal and Harnaam had inflicted only single injury each by their lathi and bhala and did not attempt to strike again with their deadly weapons, despite of having opportunity. Nothing is on record that there was any enmity between the two before the incident, rather admittedly both were neighbours having cordial relations. As per prosecution witnesses, the incident occurred within two minutes. Prior to open attack on victim, accused alarmed him and asked him to desist of the installation of parnala towards their roof, which was illegal in itself but victim was adamant and being enraged by the same, accused in a fit of fury, armed with lathi and bhala, attacked the accused. It appears that by that time the activity was done only to stop the victim from the act he was doing. But when they found that victim still was persistent to install parnala, they used force upon him to stop him. Hence from the facts and circumstances and on applying the proposition of law and scrutiny of evidence on record, it emerges that the injuries inflicted on the person of deceased were not caused with the intention to cause his death. But this fact cannot be ignored that though the injuries were not result of intentional killing but the accused certainly must have been aware of the fact that blow from such weapon could even result in death. Considering all the circumstances and at the cost of repetition, it is clear that despite knowing that blow of bhala could have caused death of victim, both accused with common intention and in a fit of rage, gave blow resulting in the death of victim, and therefore, are found guilty of committing offence of culpable homicide not amounting to murder and causing simple hurt to complainant.

44. In light of entire facts and circumstances, we are of opinion that impugned judgement and order passed by learned trial court acquitting the accused from all the charges, is patently perverse and not sustainable in the eyes of law and is hereby liable to be reversed and set aside and accused Jagat Pal and Harnaam are liable to be held guilty for committing the offence under Section 304 Part II/34 and under Section 323/34 of IPC. However, for the reasons discussed herein above, the acquittal of respondent No.4 under Section 25 of the Arms Act as recorded by the learned trial court in S.T. No. 235/85 warrants no interference and is liable to be confirmed.

45. Therefore, the appeal is accordingly **allowed**. Judgment and order dated 31.03.1986 is hereby set-aside and the accused Jagat Pal and Harnaam are held guilty for commission of offence under Section 304 Part II/34 IPC and Section 323/34 IPC.

46. Accused Jagat Pal and Harnaam are on bail. Their bail bonds are cancelled and sureties stand discharged. They be taken in custody. Their nonailable warrants be issued through Chief Judicial Magistrate concerned to produce them before this Court to hear them on point of sentence on 11.05.2026.

47. List on 11.05.2026.

(2026) 4 ILRA 1667
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 29.04.2026

BEFORE

THE HON'BLE DR. YOGENDRA KUMAR SRIVASTAVA, J.

Transfer Application (Civil) No. 140 of 2026

M/s Virola International ...Applicant
Smt. Sunita Sachdeva & Ors. ...Opposite Parties
Versus

Issue for Consideration

Whether continuation of the proceedings before the same forum has become impracticable from the standpoint of maintaining confidence in the adjudicatory process

Head Notes

The Code of Civil Procedure, 1908-Section 24; The Arbitration and Conciliation Act, 1996- Section 37(2)(b)-That transfer of a case on the ground of bias, particularly when directed against a Presiding Officer, is a matter of serious consequence. Such an order, if passed without adequate basis, has the potential to cast unwarranted aspersions on the integrity and independence of the judicial officer concerned. The power under Section 24 CPC, though wide, is to be exercised with circumspection and only in cases where the ends of justice so demand on the basis of cogent and compelling circumstances. Allegations touching upon the impartiality of a judicial officer are required to be made with due care and circumspection, and must be founded on cogent material. Such pleas, if resting on vague or unsubstantiated assertions, carry the potential to undermine confidence in the judicial process and ought not to be lightly entertained.

Accepting allegations of the present nature, which are neither supported by material nor demonstrative of any real prejudice, would open the door to litigants seeking transfer on tenuous grounds, thereby encouraging forum shopping and impeding the orderly administration of justice. The Court cannot permit its process to be invoked in a manner that undermines the confidence in the institutional framework of the judiciary.

Held- Applicant have failed to make out any case warranting transfer of the proceedings. The apprehension expressed by them is neither reasonable nor substantiated so as to justify exercise of jurisdiction under Section 24 CPC.

Application dismissed. (E-15)

Case Law Cited

Maneka Sanjay Gandhi v. Ram Jethmalani (1979) 4 SCC 167; P.K. Ghosh v. J.G. Rajput (1995) 6 SCC 744; State of West Bengal v. Shivananda Pathak (1998) 5 SCC 513; Kulwinder Kaur v. Kandi Friends Education Trust (2008) 3 SCC 659; Ranjit Thakur v. Union of India (1987) 4 SCC 611; State of Punjab v. V.K. Khanna (2001) 2 SCC 330; Allinson v. General Council of Medical Education and Registration (1894) 1 QB 750; Metropolitan Properties Co. (F.G.C.) Ltd. v. Lannon (1969) 1 QB 577; (2000) 7 SCC129 R. Balakrishna Pillai v. State of Kerala; Kumaon Mandal Vikas Nigam Ltd. v. Girja Shankar Pant (2001) 1 SCC 182; R v. Sussex Justices, ex parte McCarthy (1924) 1 KB 256; Porter v. Magill (2002) 2 AC 357 (HL); Locabail (U.K.) Ltd. v. Bayfield Properties Ltd (2000) QB 451; Allinson v. General Council of Medical Education and Registration

(1894) 1 QB 750; Metropolitan Properties Co. (F.G.C.) Ltd. v. Lannon (1969) 1 QB 577; Liteky v. United States 510 US 540 (1994); Ebner v. Official Trustee in Bankruptcy (2000) 205 CLR 337; Polsen v Harrison (2021) NSWCA 23; BW v Secretary, Department of Communities and Justice (2024) NSWSC 1354; Isbester v Knox City Council (2015) 255 CLR

List of Acts

The Code of Civil Procedure, 1908- The Arbitration and Conciliation Act, 1996

List of Keywords

Transfer on ground of "Bias": Against Presiding Officer: Must be founded on cogent material; Vague or unsubstantiated assertions; Carry the potential to undermine confidence in the judicial process

Case Arising From

Transfer application has been preferred by the applicant/appellant under Section 24 of the Code of Civil Procedure, 1908, seeking transfer of proceedings arising out of Arbitration Appeal No.15 of 2025, instituted under Section 37(2)(b) of the Arbitration and Conciliation Act, 1996, presently pending before the Court of Presiding Officer, Commercial Court No. 1, Agra

Appearances for Parties

Counsel for Applicant(s) : Rishabh Agarwal

Counsel for Opposite Party(s) : Ajay Kumar Pandey

(Delivered by Hon'ble Dr. Yogendra Kumar Srivastava, J.)

1. Heard Sri Anil Tiwari, learned Senior Counsel appearing along with Sri Rishabh Agarwal, for the applicant and Sri Rakesh Pande, learned Senior Counsel appearing along with Sri Ajay Kumar Pandey, for the opposite parties.

2. The present transfer application has been preferred by the applicant/appellant under Section 24 of the Code of Civil Procedure, 1908, seeking transfer of proceedings arising out of Arbitration Appeal No.15 of 2025, instituted under Section 37(2)(b) of the Arbitration and Conciliation Act, 1996, presently pending before the Court of Presiding Officer, Commercial Court No. 1, Agra. The principal relief sought is for transfer of the said proceedings to the Court of Commercial Court No. 2, Agra, or to any other court of competent jurisdiction, in order to secure a fair, impartial and unbiased adjudication of the dispute.

3. A supplementary affidavit has also been filed on behalf of the applicant bringing on record certain additional facts. Counsel for respondent no.1 has filed a short counter affidavit placing on record the order-sheets of the case in question. Counsel for the applicant has stated that no rejoinder affidavit was required, inasmuch as only order-sheets were being brought on record.

4. The dispute arises out of a commercial transaction between M/s Virola International (applicant/appellant) and Smt. Sunita Sachdeva (respondent). The respondent invoked arbitration by instituting Arbitration Case No. 06 of 2023 before a learned Sole Arbitrator, seeking recovery of substantial amounts towards alleged capital balance and unsecured loans. Along with the statement of claim dated 28.11.2023, an application under Section 17 of the Arbitration and Conciliation Act, 1996 was also filed seeking interim directions for payment of approximately Rs.15.85 crores along with interest.

5. The applicant entered appearance before the learned Arbitral Tribunal and contested the proceedings, including filing objections to the application under Section 17. The learned Arbitral Tribunal, by order dated 06.07.2024, partly allowed the said application and directed the applicant to pay a sum of Rs.8,88,75,863/- towards capital balance and Rs.5,95,99,772/- towards unsecured loans.

6. Aggrieved thereby, the applicant preferred an appeal under Section 37(2)(b) of the Arbitration and Conciliation Act, 1996 before the Commercial Court at Agra, which was registered as Arbitration Appeal No. 15 of 2025. Along with the appeal, an application for interim stay of the impugned arbitral order was also filed. The respondent entered appearance and filed objections, to which the applicant filed a rejoinder.

7. Learned counsel for the applicant submits that the case has been listed on several dates before the Court of Presiding Officer, Commercial Court No. 1, Agra. It is contended that on earlier dates, i.e., 09.12.2025 and 20.12.2025, despite the presence of the applicant's counsel, arguments were not advanced on behalf of the respondent. It is further submitted that the case was thereafter fixed for 11.02.2026, on which date the applicant's counsel sought a short adjournment on account of personal difficulty. According to the applicant, notwithstanding the said request, the learned court proceeded to hear the respondent and fixed the proceedings for further hearing on behalf of the applicant.

8. It is further stated that, while fixing the next date, an oral observation was made by the learned Presiding Officer to the applicant's representative (pairokar) to the effect that arrangements be made for payment to the respondent. According to the applicant, such observation, in the backdrop of the ongoing adjudication of the stay application and appeal, has given rise to a reasonable apprehension in their mind that the matter may not receive an impartial consideration.

9. In the aforesaid circumstances, the applicant submits that the cumulative effect of the proceedings, particularly the sequence of hearings coupled with the aforesaid observation, has led to a bona fide and reasonable apprehension regarding the neutrality of the forum. It is, therefore, in the interest of justice that the proceedings be transferred to another competent court to ensure that justice is not only done but is manifestly seen to be done.

10. Learned counsel for the applicant submits that the present transfer application is not an attempt to seek a forum of choice, but is necessitated to preserve the fairness and integrity of the judicial process. It is submitted that, in the circumstances aforesaid, continuation of proceedings before the same forum has become impracticable from the standpoint of maintaining confidence in the adjudicatory process.

11. The principal ground urged by the applicant is that the aforesaid oral observation, made during the pendency of the stay application and the appeal, has created an impression in the mind of the applicant that the issues involved may stand prejudged. The apprehension, it is contended, is not founded on mere conjecture but on a tangible circumstance which bears upon the perception of impartial adjudication.

12. Relying upon the decision in **Maneka Sanjay Gandhi v. Ram Jethmalani**, it is urged that assurance of a fair trial is an integral facet of Article 21 of the Constitution, and any circumstance giving rise to a reasonable apprehension in the mind of a litigant would warrant transfer of proceedings. It is submitted that the test is not whether actual bias exists, but whether the situation is such as would lead a reasonable person to apprehend that justice may not be done.

13. Learned counsel further submits that the settled legal position is that even an appearance of bias or a perceived predisposition is sufficient to erode the confidence of a litigant in the judicial process. In this regard, reliance is placed upon **P.K. Ghosh v. J.G. Rajput** and **State of West Bengal v. Shivananda Pathak**, to contend that the test is not whether bias has in fact influenced the decision, but whether there exists a reasonable apprehension in the mind of a party that justice may not be done. It is, therefore, submitted that where circumstances give rise to such apprehension, the Court ought to exercise its power of transfer to preserve the fairness and credibility of the adjudicatory process.

14. Reliance is placed upon **Kulwinder Kaur v. Kandi Friends Education Trust** to submit that the power of transfer under Section 24 CPC is wide and is to be exercised wherever it is expedient in the interest of justice. It is urged that, in the facts of the present case, the sequence of proceedings coupled with the alleged observation has given rise to a bona fide and reasonable apprehension in the minds of the applicant, warranting transfer to another competent court so as to ensure that justice is both done and seen to be done.

15. Drawing support from **Ranjit Thakur v. Union of India**, it is contended that the governing test is that of "real likelihood of bias", namely, whether a reasonable person would apprehend a predisposition in the mind of the adjudicating authority. Impartiality, it is submitted, constitutes the very foundation of adjudication, and even an appearance of bias is sufficient to vitiate the proceedings.

16. Reference is also made to **State of Punjab v. V.K. Khanna** to contend that fairness in adjudicatory or administrative action is synonymous with reasonableness, and that bias, being a facet of mala fides, vitiates such action. While mala fides must ordinarily be supported by cogent material, it is urged that a predetermined approach or failure to apply an independent mind may itself indicate bias.

17. In addition, reliance is placed upon **Allinson v. General Council of Medical Education and Registration** to submit that in cases of non-pecuniary bias, the relevant test is whether a reasonable and informed person would apprehend bias, and that a substantial likelihood of partiality is sufficient to vitiate the decision.

18. Lastly, **Metropolitan Properties Co. (F.G.C.) Ltd. v. Lannon** is cited to contend that justice must not only be done but must also appear to be done, and that even the appearance of bias, judged from the standpoint of reasonable persons, is sufficient to invalidate the proceedings.

19. Opposing the present transfer application, learned counsel for the respondent submits that the same is wholly misconceived and has been instituted with the sole object of delaying the

proceedings in the pending arbitration appeal. It is contended that no legally sustainable ground has been made out for exercise of powers under Section 24 of the Code of Civil Procedure, 1908, as there is no material on record to indicate any real likelihood of bias on the part of the Presiding Officer.

20. Referring to the order-sheets forming part of the record, it is urged that the conduct of the applicant reflects a consistent pattern of seeking repeated adjournments on varying and untenable grounds, thereby delaying the proceedings. The learned Commercial Court has recorded that on multiple dates, including 17.10.2025, 31.10.2025, 21.11.2025, 09.12.2025 and thereafter on 17.02.2026, adjournments were sought by the applicant on different pretexts, despite sufficient opportunity having been granted to address arguments. It is submitted that such repeated requests, often coupled with absence of counsel or authorized representatives, indicate a lack of diligence in prosecuting the appeal.

21. It is further pointed out that even after imposition of costs and grant of last opportunity on 17.02.2026, the applicant continued to adopt dilatory tactics by filing successive adjournment applications on 25.02.2026, 06.03.2026, 07.04.2026 and 16.04.2026, including on grounds such as personal inconvenience, non-preparation of the case, or pendency of transfer proceedings before this Court. The record, it is submitted, reflects that the respondent had already concluded arguments, whereas the applicant failed to complete their submissions despite repeated directions. In such circumstances, the present application is asserted to be a calculated attempt to delay adjudication and avoid conclusion of proceedings.

22. The allegation regarding the oral observation attributed to the court is stated to be vague, unsubstantiated, and taken out of context. It is contended that stray or casual observations, even if assumed to have been made, cannot form the basis for alleging bias or seeking transfer, unless supported by cogent material demonstrating a real and reasonable apprehension of prejudice.

23. It is also urged that the present application amounts to an abuse of the process of law and, in substance, constitutes forum shopping under the guise of alleging apprehension of bias. The applicant, it is submitted, cannot be permitted to seek transfer merely because the proceedings are not progressing in a manner convenient to them or on account of any perceived adversity arising from the arbitral proceedings.

24. In view of the aforesaid, it is contended that the apprehension expressed by the applicant is neither reasonable nor bona fide and does not satisfy the settled parameters governing transfer of cases. The application, therefore, deserves to be dismissed with costs.

25. Heard learned counsel for the parties at length. The controversy is examined in the backdrop of Section 24 of the Code of Civil Procedure, 1908, which confers discretionary powers upon the High Court and the District Court to transfer or withdraw any suit, appeal, or other proceeding at any stage.

26. The object of the aforesaid provision is to ensure that the ends of justice are effectively subserved by enabling transfer in appropriate cases. While the power is broad in its amplitude, it is required to be exercised judiciously and with due circumspection.

27. It is well settled that such power is not to be invoked for mere convenience of a party or on account of subjective apprehensions. The jurisdiction is to be exercised only where there exist circumstances giving rise to a reasonable and bona fide apprehension that justice may not be done, or where transfer becomes necessary to preserve the fairness and credibility of the adjudicatory process.

28. In continuation of the discussion on the scope of power under Section 24 CPC, it becomes necessary to examine the concept of bias, particularly when urged as a ground for transfer. Bias, in its ordinary connotation, denotes a predisposition or pre-judgment which detracts from the requirement of even-handed justice. A judicial authority is expected to approach every matter with an independent and impartial mind, uninfluenced by any inclination towards either party, and any deviation from this standard strikes at the very foundation of the adjudicatory process.

29. The determination of bias does not rest upon the actual state of mind of the Presiding Officer, but upon the impression which the surrounding circumstances are capable of creating in the mind of a reasonable and informed observer. The applicable test is whether there exists a real likelihood or real danger of bias. Such apprehension must be founded on tangible material and objective circumstances; mere surmise, conjecture, or fanciful suspicion cannot constitute a valid basis. The Court is, therefore, required to adopt an objective standard and assess whether the facts on record would lead a reasonable person to apprehend that the matter may not be decided with an open and unbiased mind.

30. At the same time, the concept of bias cannot be confined within a rigid or straitjacket formula and must necessarily depend upon the facts and circumstances of each case. Not every observation made in the course of proceedings, nor every instance of active judicial engagement in regulating the hearing, can be construed as indicative of pre-judgment. A Judge is not expected to remain a silent spectator, and observations made for the purpose of clarifying issues, testing submissions, or managing proceedings cannot, by themselves, be treated as evidence of bias. A careful distinction must, therefore, be maintained between legitimate judicial conduct and circumstances which genuinely give rise to an apprehension of prejudice.

31. In the context of exercise of power under Section 24 CPC, these principles assume added significance, as allegations of bias are often invoked as a ground for transfer. While the power of transfer is undoubtedly wide, it is to be exercised with circumspection, particularly where imputations are directed against a Presiding Officer. Such allegations, if accepted lightly, have the potential to erode institutional confidence in the judicial process. The paramount consideration, therefore, remains the ends of justice, and the Court must be satisfied that the apprehension expressed is reasonable, bona fide, and founded on cogent material indicating that a fair adjudication may not be possible before the concerned forum.

32. Ultimately, while assurance of a fair trial is of paramount importance, a plea for transfer on the ground of bias cannot be founded on mere hypersensitivity, convenience, or trivial grievances. The Court must be satisfied that there exists something more substantial and compelling which justifies such transfer. The test is whether the apprehension is reasonable and bona fide, supported by objective circumstances, and not based on conjecture or subjective perception. In this regard, the importance of a fair trial as the governing consideration in matters of transfer has been succinctly emphasised in **Maneka Sanjay Gandhi v. Rani Jethmalani**. The Supreme Court held that the foremost imperative in the dispensation of justice is the assurance of a fair trial. While considering a motion for transfer, the Court is not guided by the hypersensitivity of a party, comparative convenience, ease of access to legal services, or similar minor grievances. What is required is something substantially more compelling and of such gravity as to imperil public justice or the fairness of the adjudicatory environment. It is only upon disclosure of such weighty circumstances that the extraordinary power of transfer is to be exercised.

33. Equally, the law recognises that observations or expressions made by a Presiding Officer during the course of hearing cannot lightly be construed as indicative of bias. During the hearing of a case, a judicial officer may express tentative views or put forth opinions for the purpose of eliciting further clarification, testing rival submissions, or enabling counsel to address the concerns of the Court. Such exchanges are part of the ordinary process of adjudication and do not imply that the Court has predetermined the issues involved. Judges cannot be expected to remain silent throughout the hearing; reasoned interventions and comments on the merits, when made in the course of argument, are intended to clarify disputed issues and ought not to be mistaken as a final expression of decision.

34. While considering such a plea, the Court must adopt a cautious and balanced approach. Mere observations made during the course of hearing, or regulation of proceedings in exercise of judicial discretion, cannot be construed as indicative of bias or pre-judgment. A Judge is expected to actively engage with the matter, and such engagement cannot be mistaken as an expression of a concluded opinion. Stray remarks or dissatisfaction with the manner in which proceedings are conducted would not, by themselves, justify transfer.

35. At the same time, the Court cannot be oblivious to the principle that where circumstances exist giving rise to a reasonable apprehension in the mind of a litigant that justice may not be done, it becomes not only the power but the duty of the Court to order transfer so as to uphold the sanctity of the judicial process. The paramount factor remains the ends of justice, and each case must be examined on its own facts, keeping in view whether the apprehension is genuine and whether denial of transfer would result in miscarriage of justice.

36. Guidance on the test of reasonable apprehension in transfer matters is furnished by **R. Balakrishna Pillai v. State of Kerala**. It was held that while one of the foundational principles of administration of justice is that justice must not only be done but must also appear to have been done, a mere allegation or assertion that justice may not be done is by itself insufficient. Before directing transfer, the Court must satisfy itself that the apprehension projected is reasonable, genuine and justifiable, and not founded upon conjecture or subjective suspicion.

37. Similar principles stand reiterated in **Kumaon Mandal Vikas Nigam Ltd. v. Girja Shankar Pant**, where the governing test was further elucidated. The enquiry is not whether there exists a mere apprehension of bias, but whether the surrounding circumstances, when objectively assessed, disclose a real danger or reasonable likelihood of bias. For that purpose, all relevant facts and attendant circumstances are required to be collated and carefully examined. Where the conclusion of real likelihood of bias is inescapable, appropriate corrective action would follow. Conversely, where allegations are fanciful, speculative, or advanced merely to avoid a particular court, tribunal or authority, such pleas merit rejection.

38. These authorities firmly establish that the doctrine of bias is anchored in public perception of fairness, rather than proof of actual prejudice. The emphasis is on maintaining confidence in the administration of justice by ensuring that adjudication is free not only from actual bias but also from circumstances which reasonably give rise to its appearance.

39. At the same time, the standard of “reasonable apprehension” must be applied with care and restraint. The apprehension must be that of a reasonable, informed and objective person, and not that of a litigant who is overly sensitive or inclined to read into routine judicial conduct an element of prejudice. The test strikes a balance between preserving public confidence in the judiciary and preventing misuse of the doctrine as a tool to seek transfer on untenable grounds.

40. The concept of judicial bias has also been extensively examined in comparative jurisprudence and authoritative legal writings, which reinforce the principles governing the present issue. One of the most frequently cited formulations is found in **R v. Sussex Justices, ex parte McCarthy**, where **Lord Hewart, C.J.**, famously observed:

“It is not merely of some importance but is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done.

..... Nothing is to be done which creates even a suspicion that there has been an improper interference with the course of justice.”

Few judicial aphorisms have been quoted more often than the celebrated dictum that **justice must not only be done, but must also be seen to be done**. The principle underscores that the legitimacy of the judicial process rests not merely on actual impartiality, but equally on the perception of fairness in the eyes of the public.

41. The modern test for bias has been articulated in **Porter v. Magill**, wherein the House of Lords reformulated the standard in the following terms:

“The question is whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased.

“This formulation has been widely accepted across common law jurisdictions and aligns closely with the “reasonable apprehension” test applied by Indian courts.

42. Similarly, in **Locabail (U.K.) Ltd. v. Bayfield Properties Ltd.**, the Court of Appeal emphasized the contextual nature of bias and cautioned against overextension of the doctrine:

It would be dangerous and futile to attempt to define or list the factors which may or may not give rise to a real danger of bias. Everything will depend on the facts, which may include the nature of the issue to be decided.... By contrast, a real danger of bias might well be thought to arise if there were personal friendship or animosity between the judge and any member of the public involved in the case; or if the judge were closely acquainted with any member of the public involved in the case.... or if.... the judge had expressed views.... in such extreme and unbalanced terms as to throw doubt on his ability to try the issue with an objective judicial mind.... The mere fact that a judge.... had commented adversely on a party or witness.... would not without more found a sustainable objection.

43. The law, however, also recognizes the practical limits of the doctrine of bias. In *re Linahan*, 138 F.2d 650, **Jerome Frank**, speaking for the Court, made a significant observation on the human element in adjudication:

“If, however, ‘bias’ and ‘partiality’ be defined to mean the total absence of preconceptions in the mind of the judge, then no one has ever had a fair trial and no one will. The human mind, even at infancy, is no blank piece of paper. We are born with predispositions.... Much harm is done by the myth that, merely by taking the oath of office as a judge, a man ceases to be human and strips himself of all predilections, becomes a passionless thinking machine.”

44. The above exposition highlights an important distinction between predisposition and disqualifying bias. While impartiality is an essential attribute of judicial adjudication, the law does not demand the impossible standard of a mind entirely devoid of all prior impressions. What is required is not the absence of all predispositions, but the capacity of the Judge to decide the matter on the basis of the record and the law, uninfluenced by extraneous considerations.

45. Thus, the test is not whether a Judge has any initial impressions or engages actively with the matter, but whether there exists such a degree of pre-judgment or predisposition that it renders the adjudicatory process unfair. The emphasis remains on the ability to bring an open and receptive mind to bear upon the issues in controversy.

46. The standard for determining likelihood of bias has consistently been held to be an objective one, resting on the reasonableness of the apprehension in the mind of a party. The proper approach is not for the Judge to introspect upon his own state of mind and enquire whether he is in fact biased, but to consider whether the circumstances are such as would give rise to a reasonable apprehension in the mind of a litigant.

47. This principle was articulated early in **Allinson v. General Council of Medical Education and Registration**, where **Lord Esher** observed:

“The question is not whether in fact he was or was not biased. The Court cannot inquire into that.... In the administration of justice.... public policy requires that.... any person who is to take part in it should not be in such a position that he might be suspected of being biased.

48. The same principle was reiterated with greater clarity in **Metropolitan Properties Co. (F.G.C.) Ltd. v. Lannon**, where **Lord Denning, M.R.**, observed:

“...in considering whether there was a real likelihood of bias, the court does not look at the mind of the justice himself... It does not look to see if there was a real likelihood that he would, or did, in fact favour one side... The court looks at the impression which would be given to other people. Even if he was as impartial as could be, nevertheless if right-minded persons would think that... there was a real likelihood of bias... then he should not sit...”

49. These authorities collectively establish two complementary propositions: first, that public confidence in the judiciary requires that justice must appear to be done; and second, that this principle cannot be stretched to treat every judicial observation or procedural order as indicative of bias. The doctrine is intended to safeguard fairness, not to obstruct adjudication or enable litigants to avoid an inconvenient forum.

50. It is equally well settled that the law does not require a Judge to remain a silent spectator during the course of proceedings. Expression of tentative views or *prima facie* observations, with a view to test the submissions of counsel or to elicit clarification, is a normal and integral part of the adjudicatory process and does not, by itself, establish bias. Judicial engagement in the course of hearing is both permissible and necessary for effective adjudication.

51. Equally, the mere expression of *prima facie* or tentative views during the course of hearing does not, by itself, establish bias or prejudgment. In **Liteky v. United States**, it was authoritatively held that judicial remarks made during proceedings ordinarily do not support a challenge of bias unless they display a deep-seated favoritism or antagonism rendering fair adjudication impossible. Thus, judicial engagement through questioning and tentative observations is a normal and necessary facet of adjudication and cannot, without more, be construed as indicative of bias.

52. The distinction, however, lies between a tentative view and a concluded opinion. A tentative expression is in the nature of a working hypothesis, amenable to persuasion and subject to reconsideration upon hearing the parties, whereas bias, in its legal sense, implies a closed mind incapable of being influenced by further submissions. The determinative question, therefore, is not whether the Court has indicated a *prima facie* view, but whether such indication discloses a pre-determined approach rendering the hearing an empty formality.

53. The test for determining whether a judge should be disqualified on the ground of apprehended bias is whether a fair-minded and informed observer might reasonably apprehend that the judge might not bring an impartial and unprejudiced mind to the resolution of the question required to be decided. This test of bias has been authoritatively explained in **Ebner v. Official Trustee in Bankruptcy**, wherein it was held that the assessment is to be made not with the benefit of hindsight but in the light of the facts as they existed at the time the alleged circumstances arose.

Its application involves two steps: first, the identification of the circumstance which is said might lead the judge to decide the case otherwise than on its legal and factual merits; and second, the articulation of a logical connection between that circumstance and the apprehended deviation from a decision on merits.

54. The “fair-minded lay observer”, who forms the fulcrum of the test for apprehended bias, is a hypothetical construct grounded in the necessity of maintaining public confidence in the administration of justice. Such an observer is neither unduly sensitive or suspicious, nor complacent, but is informed of the legal, statutory and factual context in which the decision arises. The observer is taken to recognise ordinary human frailty and would not readily infer bias from stray or isolated exchanges, particularly where such remarks are taken out of context or divorced from the overall conduct of proceedings. The observer would also appreciate that interventionist questions or comments by a judge are often motivated by a legitimate desire to clarify issues, understand the evidence, and facilitate the adjudicatory process. These principles find articulation in **Polson v Harrison** and **BW v Secretary, Department of Communities and Justice**, the latter also reiterating, with reference to **Isbester v Knox City Council**, that the fair-minded observer is to be attributed knowledge of the surrounding legal and factual framework.

55. The governing standard in this regard remains that of a reasonable apprehension of bias, namely, whether a fair-minded and informed observer would, in the given circumstances, conclude that there exists a real likelihood of predisposition.

56. The law, however, also recognises the practical limits of the doctrine of bias and the inescapable human element in adjudication. If bias or partiality were to be understood as requiring the total absence of all preconceptions or prior impressions in the mind of a Judge, no person could ever be said to receive a fair trial. The human mind is not a blank slate, nor does a Judge, merely by assuming judicial office, cease to be human or become a passionless thinking machine divested of all predispositions. What the law requires is not the impossible standard of complete mental neutrality in the abstract, but the capacity to decide the controversy fairly, with an open mind, on the basis of the record and the law.

57. It follows that a trial judge is not required to remain in stony silence or refrain from indicating tentative views for fear of attracting allegations of bias. The expression of prima facie views during the course of hearing, on matters where parties are afforded full opportunity to address the Court, is a recognised and legitimate feature of judicial process and does not, by itself, evince partiality. Whether judicial interventions or observations transgress the bounds of propriety must be assessed in the totality of circumstances of the case. The articulation of tentative views in the course of argument does not manifest bias. Further, the assessment cannot be founded upon selective extraction or “cherry-picking” of isolated portions of the record; the entirety of the proceedings must be considered in context. Judicial engagement, including robust exchange and probing of issues, is not impermissible; indeed, genuine debate on critical questions is an accepted facet of adjudication. Even critical, strong or candid observations, viewed in their proper setting, do not necessarily lead to an inference of bias.

58. Active participation by the Court, including posing questions, expressing doubts, or indicating tentative views, cannot be construed as bias unless it is shown that the Court has foreclosed consideration of the issues or is unwilling to be persuaded by legitimate argument. To hold otherwise would render the adjudicatory process sterile and impede effective judicial functioning.

59. Thus, while the principle that justice must not only be done but must also appear to be done remains fundamental, it cannot be extended to equate every judicial observation with pre-judgment. The apprehension of bias must be real, reasonable, and based on cogent circumstances, and not on isolated remarks or subjective perceptions of a litigant.

60. The caution required while entertaining allegations against a Presiding Officer has repeatedly been emphasised. An application seeking transfer of proceedings on such grounds cannot be dealt with in a casual or light-hearted manner. Transfer of a case from one court to another, particularly when founded on allegations directed against the Presiding Officer, inevitably carries implications touching upon the integrity, competence and reputation of the judicial officer concerned. For that reason, such relief cannot be granted on fanciful apprehensions or mere dissatisfaction of a litigant, but only where sufficiently cogent, substantial and credible grounds are disclosed.

61. The enquiry of the Court, while examining a plea of bias, is not whether any earlier order passed by the Presiding Officer may be erroneous, adverse, or even legally vulnerable, since such matters are amenable to challenge in appropriate appellate or supervisory proceedings. The real question is whether the conduct complained of discloses a demonstrable manifestation of prejudice, partiality, or a reasonable apprehension that the matter would not receive fair consideration.

62. Equally, transfer of a case from one Judge to another cannot be ordered merely on a party's perceived notion of bias. Judicial orders, by their very nature, may operate to the advantage of one party and to the detriment of the other. The fact that an order is adverse to a litigant, or that the court has not accepted a party's submissions, does not by itself reflect any bias on the part of the Presiding Officer. To hold otherwise would permit every unsuccessful party to seek transfer on the basis of dissatisfaction with the course or outcome of proceedings, a consequence plainly impermissible in law.

63. It must be emphasised that judges are duty-bound to discharge their functions unless disqualified in accordance with law, and ought not to accede lightly to recusal or transfer requests, lest litigants be permitted, in effect, to choose the forum of their preference. The mere fact that adverse orders have been passed against a party does not furnish a ground for disqualification. The doctrine of apprehended bias is concerned with a reasonable likelihood of prejudice or partiality, and not with the subjective perceptions or expectations of an individual litigant.

64. The Court must zealously guard the right to a fair and impartial trial, it must equally ensure that the extraordinary power of transfer is not invoked on the basis of vague, unsubstantiated, or fanciful allegations, or as a device to delay proceedings or avoid a particular forum.

65. The principles emerging from the aforesaid discussion governing the exercise of jurisdiction under Section 24 CPC, particularly where transfer is sought on allegations of bias, may be succinctly summarised thus:

65.1 The power of transfer under Section 24 CPC is wide but discretionary, and must be exercised sparingly, judiciously, and only to secure the ends of justice.

65.2 Transfer cannot be granted on mere convenience, dissatisfaction, or subjective apprehension of a party.

65.3 Where bias is alleged, the test is objective, namely, whether a fair-minded, informed, and reasonable observer would apprehend a real likelihood of prejudice or that justice may not be done.

65.4 Such apprehension must be bona fide, reasonable, and founded on cogent, tangible, and contemporaneous material, and not on conjecture, suspicion, or isolated impressions.

65.5 Justice must not only be done but must also appear to be done; however, this principle cannot be extended to treat every adverse order, procedural direction, or judicial remark as evidence of bias.

65.6 A Judge is not expected to remain silent. Active judicial engagement, questioning, prima facie observations, regulation of proceedings, or tentative views expressed during hearing are normal incidents of adjudication and do not by themselves establish prejudice.

65.7 Only conduct indicative of a closed mind, pre-judgment, personal interest, hostility, or unwillingness to consider legitimate submissions may justify transfer on the ground of bias.

65.8 Allegations against a Presiding Officer are serious in nature and must be examined with caution, since unfounded accusations may erode institutional confidence and judicial independence.

65.9 The power of transfer must not be permitted to become an instrument of forum shopping, delay, or avoidance of an inconvenient forum.

65.10 Ultimately, each case turns on its own facts, with the paramount consideration being whether denial of transfer would realistically undermine the fairness, impartiality, or credibility of the adjudicatory process.

66. Having noticed the governing principles, this Court now proceeds to examine whether, in the facts of the present case, the apprehension expressed by the applicant satisfies the threshold of a real and reasonable likelihood of bias so as to warrant exercise of power under Section 24 CPC.

67. From the record, it transpires that the grievance of the applicant rests essentially on two circumstances: firstly, that on the date fixed, the learned court proceeded to hear the respondent when an adjournment was sought on behalf of the applicant; and secondly, that an oral remark is

alleged to have been made by the Presiding Officer advising the applicant to arrange funds to pay the respondent, which, according to them, indicates a predisposition in the matter.

68. Insofar as the first ground is concerned, this Court finds that the regulation of proceedings, including the grant or refusal of adjournments and the decision to proceed with hearing, squarely falls within the domain of judicial discretion. The record does not disclose any denial of opportunity of hearing to the applicant; rather, it reflects that the matter was adjourned thereafter for hearing on their behalf. The mere fact that the court proceeded to hear the respondent on a particular date, especially when an adjournment was sought by the applicant, cannot be construed as indicative of bias or prejudice. Such orders are part of routine judicial functioning and, in the absence of demonstrable prejudice, cannot be elevated to a ground for transfer.

69. This inference stands further reinforced by the contention of the respondent based on the order-sheets, in respect whereof this Court finds considerable merit in the submission that the conduct of the applicant reflects a consistent pattern of seeking repeated adjournments on varying and untenable grounds. The record reveals that on several dates adjournments were sought despite sufficient opportunity having been granted to address arguments. The learned Commercial Court has also recorded that such repeated requests, often accompanied by absence of counsel or authorised representatives, indicate that the applicant were not serious in prosecuting the appeal and were seeking to prolong the proceedings at their convenience.

70. It is further evident from the record that even after imposition of costs and grant of last opportunities, the applicant continued to adopt dilatory tactics by filing successive adjournment applications on grounds such as personal inconvenience, lack of preparation, or pendency of transfer proceedings. Significantly, the respondent had already concluded arguments, whereas the applicant failed to complete their submissions despite repeated directions.

71. Viewed in this backdrop, the record does not disclose any denial of opportunity of hearing to the applicant; rather, it reflects that the proceedings were adjourned thereafter for hearing on their behalf. In such circumstances, the contention of the respondent that the present transfer application is not founded on any bona fide apprehension of bias, but is a device to delay adjudication and avoid conclusion of the proceedings, appears to be well-founded.

72. As regards the second ground relating to the alleged oral remark, it is to be noted that no contemporaneous record, order-sheet entry, or any other material has been placed on record to substantiate the same. The allegation rests solely on an assertion made in the application. Even assuming, for the sake of argument, that some observation to the effect indicated was made, such remarks, if made in the course of hearing, may at best reflect a tentative view, a suggestion for exploring settlement, or an attempt to test the stand of the parties. It is well settled that expressions made by a court during the course of hearing cannot be read in isolation or treated as a final pronouncement on the merits.

73. A Presiding Officer is expected to actively engage with the matter, pose questions, and even indicate prima facie impressions so as to facilitate effective adjudication. To construe every such observation as evidence of pre-judgment would render the process of judicial hearing

impracticable. The law, as noticed hereinabove, draws a clear distinction between a tentative observation made in the course of proceedings and a concluded determination, and only the latter, if demonstrably established, can give rise to a legitimate apprehension of bias.

74. During the course of hearing, a Presiding Officer is entitled to actively engage with the matter by putting questions, seeking clarifications, and even indicating prima facie views so as to facilitate effective adjudication. It cannot be expected that the Judges should be silent without expressing any opinion; a "sphinx-like" attitude is not expected from the Presiding Officer. Mere observations made in the course of proceedings, unless demonstrably indicative of a closed mind or final determination, cannot be construed as evidence of bias so as to vitiate the proceedings.

75. Tested on the touchstone of a reasonable and informed observer, this Court is of the considered view that the apprehension expressed by the applicant does not rise beyond a subjective perception. There is no tangible material on record from which it can be inferred that there exists a real likelihood of bias or that the learned Presiding Officer would not adjudicate the matter in accordance with law. The allegations, in their present form, fall short of the standard of being reasonable, bona fide, and substantiated.

76. It must also be borne in mind that transfer of a case on the ground of bias, particularly when directed against a Presiding Officer, is a matter of serious consequence. Such an order, if passed without adequate basis, has the potential to cast unwarranted aspersions on the integrity and independence of the judicial officer concerned. The power under Section 24 CPC, though wide, is to be exercised with circumspection and only in cases where the ends of justice so demand on the basis of cogent and compelling circumstances. Allegations touching upon the impartiality of a judicial officer are required to be made with due care and circumspection, and must be founded on cogent material. Such pleas, if resting on vague or unsubstantiated assertions, carry the potential to undermine confidence in the judicial process and ought not to be lightly entertained.

77. The allegations of bias in the present case are founded solely on an isolated observation made during the course of hearing, which, when viewed in their proper perspective, falls well within the permissible bounds of judicial engagement. No material whatsoever has been placed on record to establish any real likelihood of bias or to indicate that the learned court below has pre-judged the matter or closed its mind to the issues involved. The apprehension sought to be projected by the applicant is thus wholly subjective, speculative, and devoid of any reasonable or cogent foundation.

78. Accepting allegations of the present nature, which are neither supported by material nor demonstrative of any real prejudice, would open the door to litigants seeking transfer on tenuous grounds, thereby encouraging forum shopping and impeding the orderly administration of justice. The Court cannot permit its process to be invoked in a manner that undermines the confidence in the institutional framework of the judiciary.

79. Insofar as the authorities relied upon by the applicant are concerned, this Court finds that the propositions laid down therein are well settled and cannot be disputed. The decisions in **Gurcharan Das Chadha** and **Maneka Sanjay Gandhi** reiterate that justice must not only be done

but must also appear to be done, and that a fair trial is an integral component of Article 21. Likewise, the judgments in **P.K. Ghosh** and **Shivananda Pathak** emphasize that even an appearance of bias may vitiate proceedings, while **Kulwinder Kaur** recognizes the wide amplitude of powers under Section 24 CPC to secure the ends of justice. Similarly, in **Ranjit Thakur** and allied authorities, the test of “real likelihood of bias” has been explained as one based on the perception of a reasonable and informed person, and not on proof of actual prejudice.

80. However, the applicability of these principles necessarily depends upon the factual foundation laid in each case. As noticed hereinabove, the apprehension projected by the applicant is not supported by any cogent or contemporaneous material and rests primarily on conjecture and subjective perception. None of the cited authorities dispense with the requirement that such apprehension must be reasonable, bona fide, and based on tangible circumstances. In the absence of any material demonstrating a real likelihood of bias, the reliance placed on the aforesaid judgments does not advance the case of the applicant, and the same are clearly distinguishable on facts.

81. In view of the foregoing discussion, this Court finds that the applicant have failed to make out any case warranting transfer of the proceedings. The apprehension expressed by them is neither reasonable nor substantiated so as to justify exercise of jurisdiction under Section 24 CPC.

82. Consequently, this Court finds no merit in the present transfer application, which is, accordingly, **dismissed**.

83. It is, however, clarified that the observations made herein are confined solely to the adjudication of the present transfer application and shall not be construed as any expression on the merits of Arbitration Appeal No.15 of 2025 or the stay application pending therein, which shall be considered and decided independently by the court concerned, strictly in accordance with law.

84. The appellate court shall endeavour to dispose of the pending appeal expeditiously, in accordance with law, after affording due opportunity of hearing to all parties concerned. The applicant as well as the respondents are directed to extend full cooperation in the proceedings and to remain duly represented on the dates fixed, so that the proceedings in the appeal may be concluded without any further delay.

(2026) 4 ILRA 1682
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 08.04.2026

BEFORE

THE HON'BLE DR. YOGENDRA KUMAR SRIVASTAVA, J.

Matters Under Article 227 No. 1563 of 2026

Ashish Kumar Agarwal

...Petitioner

Versus

Shri Chitrakoot Ramlila Samiti & Ors. ...Respondents

Issue for Consideration

Whether impleadment of only one legal heir or co-tenant of a deceased tenant is sufficient for the continuation of eviction proceedings, or whether all co-tenants are required to be mandatorily impleaded; and further, whether non-impleaded co-tenants may seek impleadment at their own instance during the pendency of such proceedings

Head Notes

The Constitution of India, 1950-Article 227; The Code of Civil Procedure, 1908- Order XXII- Upon the death of a tenant, the tenancy devolves upon the legal heirs as a joint and indivisible tenancy, retaining its unity vis-à-vis the landlord. In such a situation, any one of the joint tenants who is in possession or otherwise effectively representing the tenancy is deemed in law to represent the entire body of co-tenants. Consequently, impleadment of all legal heirs is not a sine qua non for the maintainability or validity of eviction or release proceedings, and proceedings instituted against one or more such joint tenants are maintainable and binding upon all, unless a case of distinct, independent, or severed tenancy rights is specifically pleaded and established. The determinative test is one of effective and adequate representation of the tenancy, and not of formal or exhaustive impleadment. At the same time, a co-tenant, if so advised, may seek impleadment to safeguard his or her interest; however, such a right of participation cannot be elevated to a mandatory requirement so as to vitiate proceedings in its absence.

Held- Impleadment of all co-tenants is not mandatory, there exists no legal bar for any other heir to approach the Court and seek impleadment for protection of his or her interest. However, such a right cannot be enforced at the instance of the petitioner so as to compel mandatory impleadment of all heirs.

Petition dismissed. (E-15)

(Para 42, 43 & 54)

Case Law Cited

Gauri Shankar Gupta v. Anita Mishra and another 2003 SCC Online All 1516 Lalit Kumar v. Neel Kantheshwar and others 2006 SCC Online All 498 ;Textile Association (India) Bombay Unit v. Balmohan Gopal Kurup and another (1990) 4 SCC 700;Suresh Kumar Kohli v. Rakesh Jain and another (2018) 6 SCC 708;Harish Tandon v. Additional District Magistrate, Allahabad, U.P. and others 1995 (1) SCC 537;Binod Pathak and others v. Shankar Choudhary and others 2025 SCC Online SC 1411;Uday Bhan Tiwari v. Pashupati Colonizers Pvt. Ltd. and others 2021 SCC OnLine All 272;Kanta Goel v. B.P. Pathak and others (1977) 2 SCC 814;H.C. Pandey v. G.C. Paul (1989) 3 SCC 77;Ashok Chintaman Juker and others v. Kishore Pandurang Mantri and another (2001) 5 SCC 1

List of Acts

The Constitution of India-1950; The Code of Civil Procedure-1908

List of Keywords

Impleatment; All legal Heirs of the deceased tenant; Not sine qua non for the maintainability of eviction or release proceedings; Proceedings against one or more such joint tenants are maintainable and binding upon all

Case Arising From

Orders dated 26.11.2025, 18.07.2023, and 18.02.2021 passed in Small Causes Suit No. 18 of 2014. The principal relief sought is the setting aside of the substitution order dated 18.02.2021, whereby only the petitioner alone was impleaded as the legal heir of the deceased tenant, along with a consequential direction to implead all the legal heirs of the deceased defendant

Appearances for Parties

Counsel for Petitioners(s) : Ashok Kumar Upadhyay, Triloki Nath

Counsel for Respondent(s) : Ritvik Upadhya

(Delivered by Hon'ble Dr. Yogendra Kumar Srivastava, J.)

1. Heard Sri Triloki Nath Tiwari, learned counsel for the petitioner and Sri Vinod Kumar Upadhya, learned Senior Counsel appearing along with Sri Ritvik Upadhya, learned counsel for the respondents.

2. The present petition calls in question the orders dated 26.11.2025, 18.07.2023, and 18.02.2021 passed in Small Causes Suit No. 18 of 2014. The principal relief sought is the setting aside of the substitution order dated 18.02.2021, whereby only the petitioner alone was impleaded as the legal heir of the deceased tenant, along with a consequential direction to implead all the legal heirs of the deceased defendant.

3. The factual matrix, in brief, is that the plaintiff respondent instituted Small Causes Suit No. 18 of 2014 seeking eviction, recovery of arrears of rent, and damages in respect of the disputed non-residential premises. The original defendant, Krishna Gopal Gupta, contested the suit by filing a written statement during his lifetime.

4. During the pendency of the suit, the original defendant expired on 14.02.2019. Thereafter, the plaintiff filed a substitution application dated 22.08.2019, pursuant to which the present petitioner, Ashish Kumar Agarwal, came to be impleaded as the sole legal representative of the deceased defendant by order dated 18.02.2021.

5. Subsequently, on account of non-appearance, the trial court proceeded ex parte against the defendants by order dated 27.04.2022. Upon acquiring knowledge of the said proceedings, the petitioner filed a recall application seeking recall of both the substitution order dated 18.02.2021 and the ex parte order dated 27.04.2022, inter alia, on the ground that all the legal heirs of the deceased defendant had not been impleaded and that proper service had not been effected.

6. The trial court, by order dated 18.07.2023, partly allowed the recall application by setting aside the ex parte proceedings dated 27.04.2022; however, it declined to recall the substitution order dated 18.02.2021. The revision preferred thereagainst was dismissed by the revisional court on 26.11.2025, affirming the view taken by the trial court.

7. Aggrieved by the aforesaid orders, the petitioner has instituted the present petition invoking the supervisory jurisdiction of this Court under Article 227 of the Constitution of India.

8. Learned counsel for the petitioner has vehemently contended that the courts below have committed a manifest error of law in permitting the suit to proceed without impleading all the legal heirs of the deceased tenant, late Krishna Gopal Gupta. It is submitted that upon the death of the original tenant, the tenancy rights devolved upon all his legal heirs in accordance with the provisions of the Hindu Succession Act, 1956, and consequently, each of them acquired a joint and indivisible interest in the tenancy.

9. It is further contended that the non-impleadment of the widow, Smt. Neelam Agarwal, as well as the daughters of the deceased tenant, renders the proceedings fundamentally defective, inasmuch as they are necessary and proper parties whose rights stand directly affected by any decree of eviction. It is urged that failure to implead all such heirs results in denial of opportunity of hearing and constitutes a clear infraction of the principles of natural justice.

10. Placing reliance upon *Gauri Shankar Gupta v. Anita Mishra and another*¹, *Lalit Kumar v. Neel Kantheshwar and others*², and *Textile Association (India) Bombay Unit v. Balmohan Gopal Kurup and another*³, it is submitted that although the legal heirs of a deceased tenant succeed as joint tenants, the principle that one joint tenant may represent the entire body of co-tenants cannot be applied in a rigid or mechanical manner so as to defeat the substantive rights of other co-tenants.

11. It is further submitted that the supplementary affidavit filed before this Court demonstrates that Smt. Neelam Agarwal has become the proprietor of the business being carried on from the disputed premises, as evidenced by GST registration, and therefore has a direct and substantial interest warranting her impleadment.

12. Per contra, learned counsel for the respondents has supported the impugned orders and submitted that the petitioner is the sole person in possession and effective control of the tenanted premises and is adequately representing the tenancy.

13. Reliance has been placed upon *Suresh Kumar Kohli v. Rakesh Jain and another*⁴ and *Harish Tandon v. Additional District Magistrate, Allahabad, U.P. and others*⁵, to contend that tenancy devolves as a joint and indivisible unit, and impleadment of one joint tenant is sufficient.

14. It is further contended that objections regarding non-impleadment raised at a belated stage are liable to be rejected as attempts to delay proceedings.

15. Reliance is also placed on *Binod Pathak and others v. Shankar Choudhary and others*⁶ to submit that procedural provisions should advance justice and cannot be invoked belatedly.

16. Further reliance is placed on *Uday Bhan Tiwari v. Pashupati Colonizers Pvt. Ltd. and others*⁷ to contend that impleadment of all co-tenants is not mandatory.

17. In view of the rival submissions advanced by learned counsel for the parties, the issue that falls for consideration before this Court is whether impleadment of only one legal heir or co-tenant of a deceased tenant is sufficient for the continuation of eviction proceedings, or whether all co-tenants are required to be mandatorily impleaded; and further, whether non-impleaded co-tenants may seek impleadment at their own instance during the pendency of such proceedings.

18. The controversy in the present case lies at the intersection of two well-settled principles of law, namely, the nature of devolution of tenancy upon the death of a tenant, and the requirement

of representation of the estate of the deceased in pending proceedings. The resolution of the issue requires a harmonious construction of these principles in the context of eviction proceedings.

19. At the outset, it may be noted that in *Kanta Goel v. B.P. Pathak and others*⁸, it was held that one co-owner sufficiently represents the entire body of co-owners and that non-impleadment of all co-owners does not render the proceedings defective. This principle, though enunciated in the context of co-ownership, has been consistently applied by analogy to tenancy matters.

20. The law relating to succession to tenancy stands authoritatively settled. *In H.C. Pandey v. G.C. Paul*⁹, it was held that upon the death of the original tenant, the tenancy devolves upon the heirs as a single, indivisible unit, and the heirs succeed as joint tenants. It was further clarified that there is no division of the premises or rent, and acts done by one heir are deemed to be on behalf of all.

21. The aforesaid position was reaffirmed and clarified in *Harish Tandon*, wherein the apparent conflict in earlier decisions was resolved by holding that the tenancy does not fragment upon succession. The heirs step into the shoes of the deceased tenant as joint tenants, and the tenancy remains a single, indivisible unit. The Court cautioned that any other interpretation would lead to anomalous consequences, particularly requiring landlords to establish eviction grounds separately against each heir.

22. In *Ashok Chintaman Juker and others v. Kishore Pandurang Mantri and another*¹⁰, it was further held that notice to one joint tenant is sufficient, a suit against one is maintainable, and a decree passed therein binds all co-tenants. The Court also emphasized that where other heirs are not in possession or have not asserted independent rights, their non-impleadment does not vitiate the proceedings.

23. The concepts of joint tenancy and tenancy-in-common were considered in detail in *Suresh Kumar Kohli (supra)*. It was held that the two concepts are distinct in form and substance. A joint tenancy is characterized by unity of title, unity of commencement, unity of interest, unity of possession, and unity of equal shares, coupled with the right of survivorship, thereby creating a single and consolidated tenancy. In contrast, tenancy-in-common is marked by unity of possession alone, without unity of title or interest, and each co-tenant holds a distinct and identifiable share in the estate.

24. It was clarified that while inter se the heirs may hold the property as tenants-in-common with separate shares under the law of succession, their position vis-à-vis the landlord stands on a different footing. Each such heir, though having a distinct share inter se, retains the right to possess the entirety of the tenanted premises, and privity of estate continues to subsist between the landlord and each co-tenant in respect of the tenancy.

25. Relying upon the decision in *H.C. Pandey*, it was reiterated that upon the death of the original tenant, the tenancy devolves upon the heirs as a joint tenancy qua the landlord, and not as

separate or fragmented tenancies. The tenancy thus continues as a single and indivisible unit, and cannot be split or partitioned so far as the landlord-tenant relationship is concerned.

26. Consequently, it is not incumbent upon the landlord to implead each and every legal heir. Impleadment of one or more heirs who are in occupation or otherwise effectively representing the tenancy is sufficient in law. A decree of eviction passed against such joint tenant(s) binds all co-tenants, and objections founded on non-joinder of every heir are untenable, particularly in the absence of proof of separate possession or independent tenancy rights.

27. Before adverting to the rival contentions on merits, it would be apposite to notice the procedural doctrine governing substitution and representation of estate under Order XXII of the Code of Civil Procedure, 1908¹¹.

28. It is trite that the requirement in law is one of effective representation and not exhaustive impleadment. This principle constitutes a cornerstone of representative litigation and service of process within civil jurisprudence, striking a balance between the demands of due process and the practical necessity of ensuring that adjudication is not stultified by insistence on impleading every individual having a remote or derivative interest. The doctrine postulates that for a court to pass an effective and enforceable decree, it is not invariably necessary that each and every person having an interest be arrayed as a party; rather, what is essential is that the estate or interest in question is adequately, bona fide, and competently represented by those already on record.

29. In the context of Order XXII CPC, upon the death of a party, the requirement is to bring on record the legal representatives of the deceased. Where there are multiple heirs, and those who are primarily managing or representing the estate are impleaded in good faith, the estate is, in the eye of law, treated as being sufficiently represented. The provisions of Order XXII are not intended to be construed in a manner that defeats substantive rights; they must receive a pragmatic and liberal construction so as to advance substantial justice rather than to obstruct adjudication on technical grounds. As has been consistently emphasized, if the estate is represented, the non-impleadment of every single heir is not fatal.

30. In this context, a three-fold test has been evolved to determine the adequacy of such representation: (i) bona fide conduct – whether the litigation has been prosecuted or defended honestly and with due diligence by the parties on record; (ii) identity of interest – whether the interest of the non-impleaded party is identical to, and not in conflict with, that of the party representing the estate; and (iii) absence of prejudice – whether the omission to implead a particular heir has resulted in any failure of justice or a distorted or one-sided presentation of the case.

31. If these conditions are satisfied, the non-impleadment of every heir does not render the proceedings defective, nor does it result in abatement. The emphasis thus shifts from a mechanical requirement of exhaustive impleadment to a functional requirement of effective representation, namely, whether the interest of the deceased is being adequately and fairly defended before the

Court. So long as such representation exists, the proceedings remain valid and binding, and cannot be invalidated on technical grounds of non-joinder.

32. The petitioner's contention proceeds on the premise that each legal heir possesses an independent and indivisible right in the tenancy requiring mandatory impleadment. However, such a premise overlooks the settled distinction between tenancy-in-common and joint tenancy. As held in **Suresh Kumar Kohli**, while heirs may hold rights inter se as tenants-in-common, vis-à-vis the landlord, the tenancy remains joint and indivisible.

33. The judgments relied upon by the petitioner, namely **Gauri Shankar Gupta** and **Lalit Kumar**, do not lay down a contrary proposition. They merely recognize that where a co-tenant independently approaches the Court seeking impleadment, such request ought ordinarily to be considered to avoid prejudice. These decisions carve out a limited equitable exception but do not dilute the settled principle that one joint tenant can represent the tenancy.

34. On the other hand, the authorities relied upon by the respondents, including **Uday Bhan Tiwari** reaffirm that tenancy devolves as a single, indivisible unit and that impleadment of one joint tenant is sufficient. These decisions also emphasize that in the absence of separate possession or independent tenancy, a decree binds all co-tenants.

35. Further, reliance placed on **Binod Pathak** reinforces the principle that procedural provisions must be construed to advance justice and cannot be invoked belatedly to unsettle proceedings. The Court emphasized that parties cannot take advantage of their own omission or delay.

36. The principles laid down in **Harish Tandon** and **Suresh Kumar Kohli** further fortify the position that occupation or representation by one heir is deemed to be on behalf of all, and that impleadment of every heir is not mandatory. The aforesaid doctrine has also been consistently applied and it has been held that eviction proceedings against one or more joint tenants in possession are maintainable and binding upon all heirs. Thus, upon a holistic examination, it emerges that while co-heirs undoubtedly inherit rights in the tenancy, the law does not mandate their compulsory impleadment in eviction proceedings. The tenancy being joint and indivisible, effective representation by one co-tenant suffices.

37. At the same time, the right of a co-tenant to seek impleadment cannot be ignored. As indicated in **Gauri Shankar Gupta and Lalit Kumar**, a co-tenant may, if aggrieved, approach the Court and seek impleadment. However, such right does not translate into a mandatory obligation upon the landlord or the Court to implead all heirs.

38. It is also well settled that upon the death of a tenant, his heirs succeed as joint tenants, and a decree passed against one joint tenant binds the others. This principle has been consistently applied in eviction jurisprudence.

39. The concept of joint tenancy implies that the tenancy remains a single, indivisible entity. All heirs collectively represent the estate of the deceased tenant, and representation by one is, in law, representation of all.

40. In this context, the object of substitution under Order XXII CPC assumes significance. The purpose is to ensure representation of the estate and not to insist upon mechanical impleadment of all heirs. Where one heir, particularly one in possession and actively conducting business, is on record, the requirement of representation stands satisfied.

41. The distinction between a "necessary party" and a "proper party" is also relevant. A necessary party is one in whose absence no effective decree can be passed. In cases of joint tenancy, one joint tenant is sufficient for passing an effective decree. Other heirs fall within the category of proper parties, whose impleadment is discretionary and not mandatory.

42. From the aforesaid discussion, the following principles emerge:

42.1 Upon the demise of a tenant, the tenancy does not stand fragmented but devolves upon the heirs as a joint and indivisible tenancy, the unity of the tenancy being preserved vis-à-vis the landlord.

42.2 Such joint tenancy carries with it the principle of representative possession, wherein any one of the joint tenants in occupation or control of the tenanted premises is deemed, in the eye of law, to represent the entire body of co-tenants.

42.3 Consequently, impleadment of each and every legal heir is not a sine qua non for the maintainability or validity of eviction or release proceedings, and non-joinder of some co-tenants does not ipso facto vitiate the proceedings.

42.4 A decree or order passed against one or more joint tenants, particularly those in possession or effectively representing the tenancy, enures to the benefit of and binds all co-tenants, unless a case of distinct, independent, or severed tenancy rights is specifically pleaded and established.

42.5 The test is one of effective and adequate representation of the tenancy and the estate of the deceased, and not of exhaustive or mechanical impleadment of all legal heirs. Where it is established that the tenancy or estate is bona fide and competently represented by a person in possession or control, the proceedings cannot be invalidated on technical grounds of non-impleadment. The provisions of Order XXII of the Code of Civil Procedure are to be construed pragmatically and liberally so as to advance substantial justice; in the absence of demonstrable prejudice, non-impleadment of every legal heir is not fatal.

42.6 The burden to establish that a non-impleaded heir was a necessary party by virtue of independent possession or distinct tenancy rights lies upon the person raising such objection, and in the absence of such pleading and proof, the objection cannot be sustained.

42.7 At the same time, the law recognizes that a co-tenant, if so advised, may seek impleadment to safeguard his or her interest, and such impleadment ought ordinarily to be permitted to advance the cause of complete adjudication; however, such permissibility cannot be elevated to a mandatory requirement so as to render proceedings defective in its absence.

42.8 Thus, the jurisprudential distinction lies between what is indispensable and what is merely facilitative—while the presence of all heirs is not a legal necessity, the door remains open for their participation where they choose to assert an interest.

43. The legal position, thus crystallized, may be succinctly stated that upon the death of a tenant, the tenancy devolves upon the legal heirs as a joint and indivisible tenancy, retaining its unity vis-à-vis the landlord. In such a situation, any one of the joint tenants who is in possession or otherwise effectively representing the tenancy is deemed in law to represent the entire body of co-tenants. Consequently, impleadment of all legal heirs is not a sine qua non for the maintainability or validity of eviction or release proceedings, and proceedings instituted against one or more such joint tenants are maintainable and binding upon all, unless a case of distinct, independent, or severed tenancy rights is specifically pleaded and established. The determinative test is one of effective and adequate representation of the tenancy, and not of formal or exhaustive impleadment. At the same time, a co-tenant, if so advised, may seek impleadment to safeguard his or her interest; however, such a right of participation cannot be elevated to a mandatory requirement so as to vitiate proceedings in its absence.

44. At this juncture, having considered the rival submissions advanced by learned counsel for the parties and the legal principles emanating from the judicial precedents governing the field, it becomes necessary for this Court to examine the controversy in the light of the settled doctrine of joint tenancy and the scope of impleadment of legal heirs in eviction proceedings.

45. At the outset, it is to be noted that both the trial court and the revisional court have concurrently recorded findings of fact that the petitioner, Ashish Kumar Agarwal, was the person actively carrying on the business in the tenanted premises and was in effective control and possession thereof. These findings are findings of fact based on appreciation of evidence and have neither been shown to be perverse nor based on no evidence. On the contrary, they clearly indicate that the tenancy, as a functional and commercial unit, was being effectively represented by the petitioner alone.

46. It further transpires from the record that during the pendency of the suit, the plaintiff had moved an application bringing on record the death of the original tenant, Krishna Gopal Gupta, and had specifically asserted that the present petitioner, being his legal heir, had succeeded to the tenancy and was carrying on the business from the disputed premises. Significantly, such assertions were not specifically denied or controverted by the petitioner in the recall application subsequently filed by him. The absence of a categorical denial to such material pleadings amounts to an implied admission, thereby reinforcing the conclusion that the petitioner had stepped into the shoes of the original tenant and was effectively representing the tenancy both in possession and in conduct.

47. In the aforesaid factual backdrop, the settled legal principle that heirs of a deceased tenant succeed as joint tenants assumes determinative significance. The doctrine of joint tenancy, as consistently applied in tenancy law, recognizes that the tenancy remains a single and indivisible interest, and representation of such tenancy by one of the co-tenants is, in appropriate cases, sufficient for the purposes of litigation. Consequently, the mere non-impleadment of all legal heirs does not, by itself, vitiate the proceedings, so long as the tenancy is adequately and effectively represented.

48. The revisional court, while affirming the order of the trial court, has rightly relied upon the principle that only those heirs who are actively involved in the tenancy or in the business carried on in the tenanted premises are to be treated as necessary parties. In the present case, it has been specifically found that the widow and daughters of the deceased tenant were neither participating in the business nor shown to be in possession of the tenanted premises. In the absence of any such participation, possession, or demonstrable assertion of independent rights, their impleadment cannot be said to be mandatorily required.

49. The subsequent filing of the supplementary affidavit by the petitioner, asserting that Smt. Neelam Agarwal has been allotted a GST registration and has become the proprietor of the business, does not, ipso facto, alter the legal position. Firstly, this assertion pertains to a subsequent development which was neither pleaded nor substantiated before the courts below at the relevant stage when the substitution order was passed. Secondly, the mere existence of a GST registration, in the absence of cogent material demonstrating actual possession, control, or active conduct of business in the tenanted premises at the relevant point of time, does not conclusively establish that she was a necessary party whose non-impleadment would vitiate the proceedings.

50. More importantly, the law does not mandate that every heir must necessarily be impleaded in an eviction suit. The requirement is of effective representation of the tenancy and not exhaustive or mechanical impleadment. Once it is found that the petitioner was representing the tenancy and has been afforded full opportunity to contest the proceedings on merits after recall of the ex parte order, the proceedings cannot be held to be defective merely on account of non-impleadment of other heirs.

51. At the same time, the legal position as elucidated *in Gauri Shankar Gupta* and *Lalit Kumar* must be harmoniously applied. These decisions lay down that although impleadment of one joint tenant is sufficient in law, a co-tenant who independently approaches the Court seeking impleadment during the pendency of proceedings may ordinarily be permitted to be impleaded, so as to avoid prejudice and ensure complete adjudication.

52. However, a crucial distinction must be maintained. The aforesaid judgments do not lay down that impleadment of all co-tenants is mandatory in every case; rather, they recognize a right to seek impleadment, not a corresponding obligation upon the Court to suo motu implead all heirs. In the present case, it is noteworthy that no independent application has been filed by Smt. Neelam Agarwal or any other alleged co-heir seeking impleadment in their own right. The plea for impleadment has been raised only by the petitioner, who is already on record and adequately

representing the tenancy. Therefore, the ratio of the aforesaid judgments does not advance the petitioner's case to the extent of rendering the substitution order illegal.

53. In view of the foregoing discussion, this Court is of the considered opinion that the substitution of the petitioner alone as the legal representative of the deceased tenant does not suffer from any legal infirmity. The consistent judicial position clearly establishes that upon the death of a tenant, the tenancy devolves as a joint and indivisible unit, and one joint tenant is competent to represent the entire tenancy. In the facts of the present case, the petitioner has been found to be in effective control and possession of the tenanted premises and has been afforded full opportunity to contest the proceedings on merits. The non-impleadment of other heirs, in such circumstances, cannot be said to vitiate the proceedings or render the substitution order illegal.

54. At the same time, it is equally well settled that while impleadment of all co-tenants is not mandatory, there exists no legal bar for any other heir, if so advised, to approach the Court and seek impleadment for protection of his or her interest. However, such a right cannot be enforced at the instance of the petitioner so as to compel mandatory impleadment of all heirs.

55. In view of the foregoing discussion and the settled legal position, this Court finds no illegality, perversity, or jurisdictional error in the impugned orders dated 18.02.2021, 18.07.2023 (to the extent challenged), and 26.11.2025 passed by the courts below, warranting interference in exercise of supervisory jurisdiction under Article 227 of the Constitution of India.

56. The petition, being devoid of merit, is accordingly *dismissed*.

57. The trial court shall proceed with the suit expeditiously and endeavour to conclude the same, in accordance with law, preferably within a period of *six months* from the date of production of a certified copy of this order, without granting unnecessary adjournments to either party.

58. It is made clear that the observations made in this judgment are confined to the issues raised herein and shall not be construed as an expression on the merits of the case, which shall be decided independently by the trial court.

(2026) 4 ILRA 1692
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 09.04.2026

BEFORE

THE HON'BLE JASPREET SINGH, J.

Matters Under Article 227 No. 1597 of 2026

Vaishnavi Mishra & Anr.

...Petitioners

Versus

State of U.P.

...Respondent

Issue for Consideration

Whether directing the parties to go for mediation again, though they had mediated at an early point of time in some other proceedings and was unsuccessful, can it be a ground to waive the cooling period as the parties cannot be made to undergo another mediation.

Head Notes

The Constitution of India, 1950-Article 227; The Hindu Marriage Act, 1955- Section 13-B- Petitioners have not indicated what are those accentuating circumstances which falls within the scope of grounds seeking exemption of the cooling period except the fact that when the parties were contesting the proceedings under Section 13 of the Act of 1955, they were subjected to mediation which failed- Failure of mediation at one stage does not necessarily imply that subsequent mediation cannot take place and even if it does, then it has to fail thus, on this assumption a subsequent mediation cannot be ordered by the Court, cannot be legally valid submissions.

Held- The ground upon which the petitioners seek to assail the order dated 07.02.2026, already stood complied with and, therefore, if that grounds is subtracted from the entire application there is no other ground upon which the petitioners seeks the exemption of cooling of period.

Petition dismissed. (E-15)

(Para 27, 28, 29, 30 & 31)

Case Law Cited

M/s. Godrej Sara Lee Ltd. v. The Excise and Taxation Officer and others, 2023 SCC OnLine SC 95; Smt. Kiran Bala Srivastava v. Jai Prakash Srivastava, 2005 (23) LCD 1; Chintels India Ltd. v. Bhayana Builders Pvt. Ltd., (2021) 4 SCC 602; Inderjit Singh Grewal v. State of Punjab and another, (2011) 12 SCC 588; Amit Kumar v. Suman Beniwal, (2023) 17 SCC 648

List of Acts

The Constitution of India, 1950; The Hindu Marriage Act, 1955

List of Keywords**Case Arising From**

Petitioners assail the order dated 07.02.2026, passed by the Family Court in Case No.4208/2025, whereby an application for seeking exemption of the cooling period of six months, as provided under Section 13-B of the Hindu Marriage Act, 1955 has been rejected.

Appearances for Parties

Counsel for Petitioner(s) : Pradeep Kumar, Adarsh Tripathi

Counsel for Respondent(s) : C.S.C.

(Delivered by Hon'ble Jaspreet Singh, J.)

1. Heard learned counsel for the petitioners.

2. By means of the instant petition, the petitioners assail the order dated 07.02.2026, passed by the Family Court in Case No.4208/2025, whereby an application for seeking exemption of the cooling period of six months, as provided under Section 13-B of the Hindu Marriage Act, 1955 (for short, 'the Act of 1955'), has been rejected.

3. The submission of the learned counsel for the petitioners is that the Family Court has erred in rejecting the application without noticing the fact that all the conditions applicable and necessary for exempting the cooling of period relating to a petition under Section 13-B of the Act of 1955, were duly met.

4. The trial Court upon entertaining the petition under Section 13-B of the Act of 1955 fixed the next date as 27.05.2026 for filing of the second motion. By the very same order, the Family Court directed the parties to appear before the Mediation and Conciliation Centre on 20.01.2026.

5. It is urged that the first and foremost, the parties had already mediated while they were contesting the proceedings under Section 13 of the Act of 1955, but the mediation failed. The petitioners thereafter finding that there was no element of reconciliation and they were also living apart since more than one year, hence, they preferred a petition under Section 13-B of the Act of 1955 for dissolution of their marriage by mutual consent.

6. It is further submitted that once the mediation had failed, it was not open for the Family Court to have directed the parties to undergo the exercise of mediation again while their petition under Section 13-B of the Act of 1955 was pending, hence, prolonging the agony of the petitioners. The Court was required to consider the dictum and the conditions laid down by the Apex Court in **Amardeep Singh v. Harveen Kaur, (2017) 8 SCC 746**, however, the same was not noticed and the application preferred by the petitioners for seeking exemption of cooling period has been rejected by means of the impugned order dated 07.02.2026, which cannot be sustained and deserves to be set aside.

7. The Court has put a query to the learned counsel for the petitioners to address the Court on the under mentioned two grounds:-

(a) Regarding the availability of statutory remedy of appeal as provided under Section 19 of the Family Courts Act, 1984 (for short, 'the Act of 1984');

(b) What could be the ground upon which the application seeking exemption of cooling period can be made and whether requiring the parties to go for a mediation would stand exempted because, some mediation at some earlier point of time in respect of different set of proceedings had taken place.

8. Learned counsel for the petitioners, at the outset, submitted that since the order dated 07.02.2026 is an interlocutory order, hence, in terms of Section 19(1) of the Act of 1984, the appeal as contemplated would not lie and in such circumstances, a petition under Article 227 of the Constitution of India would be maintainable.

9. Examining the aforesaid submission, insofar as the powers of the Court to entertain and exercise its powers in terms of under Article 227 of the Constitution of India is concerned, the same are very wide, deep and pervasive. The Constitutional power cannot be abridged merely because an order is made appealable under a Statute. The difference between the right to entertain a petition is

altogether different from the right to maintain a petition. [See : **M/s. Godrej Sara Lee Ltd. v. The Excise and Taxation Officer and others, 2023 SCC OnLine SC 95**].

10. It is now too well settled that even though the bar of alternate remedy is not an absolute bar but where the forum and remedy is created under a Statute then unless grave and accentuating circumstances are pointed out, which are within the well accepted perimeters till then the said bar operates nearly as an absolute bar notwithstanding that the powers under Articles 226 and 227 of the Constitution of India are purely equitable and discretionary.

11. The perimeters within which a petition under Article 227 of the Constitution of India is entertained while assailing an order of a Court can be summarily mentioned as under:-

- (a) where the order impugned is an outcome of erroneous assumption of jurisdiction;
- (b) where the Court refuses to exercise jurisdiction vested in it in law;
- (c) The order is in violation of principles of natural justice;
- (d) The order is an outcome of arbitrary exercise of authority or discretion by Court;
- (e) The order is perverse or based on no material;
- (f) The order is an outcome of a patent error of jurisdiction or procedure;
- (g) If an order is allowed to stand it would occasion manifest injustice.

12. At this stage, it will be relevant to notice the provision of Section 19 of the Act of 1984 and for the sake of convenience, the aforesaid provision is being reproduced hereinafter:-

"Section 19. Appeal.?(1) Save as provided in sub-section (2) and notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908) or in the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law, an appeal shall lie from every judgment or order, not being an interlocutory order, of a Family Court to the High Court both on facts and on law.

(2) No appeal shall lie from a decree or order passed by the Family Court with the consent of the parties [or from an order passed under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974):

Provided that nothing in this sub-section shall apply to any appeal pending before a High Court or any order passed under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974) before the commencement of the Family Courts (Amendment) Act, 1991 (59 of 1991)].

(3) Every appeal under this section shall be preferred within a period of thirty days from the date of the judgment or order of a Family Court.

[(4) The High Court may, of its own motion or otherwise, call for and examine the record of any proceeding in which the Family Court situate within its jurisdiction passed an order under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974) for the purpose of satisfying itself as to the correctness, legality or propriety of the order, not being an interlocutory order, and as to the regularity of such proceeding.]

(5) Except as aforesaid, no appeal or revision shall lie to any court from any judgment, order or decree of a Family Court.

(6) An appeal preferred under sub-section (1) shall be heard by a Bench consisting two or more judges."

13. The issue in context with the word 'interlocutory' used in Section 19(1) of the Act of 1984 came up for consideration before a Full Bench of this Court in **Smt. Kiran Bala Srivastava v. Jai Prakash Srivastava, 2005 (23) LCD 1** and the Full Bench observed as under:-

"23. Before we consider whether orders under Section 24 granting pendent lite maintenance to the party to the matrimonial dispute, possesses characteristics and trappings of a "judgment", we would like to refer to two Supreme Court cases, namely *Amar Nath v. State of Haryana* : AIR 1977 SC 2185 and *Madhu Limaye v. State of Maharashtra* : AIR 1978 SC 47. The controversy in *Amar Nath's* case centred around the meaning of the expression "interlocutory order" appearing in sub-section (2) of Section 397 of the Code of Criminal Procedure. Relying on earlier view in *Mohan Lal Magan Lal Thakkar v. State of Gujarat* : AIR 1968 SC 733 the Apex Court said:

"The term "interlocutory order" is a term of well-known legal significance and does not present any serious difficulty. It has been used in various statutes including the Code of Civil Procedure, Letters Patent of the High Courts and other like statutes. In Webster's New World Dictionary "interlocutory" has been defined as an order other than final decision. Decided cases have laid down that interlocutory orders to be appealable must be those which decide the right? and liabilities of the parties concerning a particular aspect. It seems to us that the term "interlocutory order" in Section 397(2) of the 1973 Code has been used in a restricted sense and not in any broad or artistic sense. It merely denotes orders of a purely interim or temporary nature which do not decide or touch the important rights or the liabilities of the parties. Any order which substantially affects the rights of the accused, or decides certain rights of the parties cannot be said to be an interlocutory order so as to bar a revision to the High Court against that order, because that would be against the very object which formed the basis for insertion of this particular provision in Section 397 of the 1973 Code. Thus, for instance, orders summoning witnesses, adjourning cases, passing orders for bail, calling for reports and such other steps in aid of the pending proceeding may no doubt amount to interlocutory orders against which no revision would lie under Section 397(2) of the 1973 Code. But orders which are matters of moment and which affect or adjudicate the rights of the accused or a particular aspect of the trial cannot be said to be interlocutory order so as to be outside the purview of the revisional jurisdiction of the High Court."

* * *

28. The learned counsel for the respondents has referred to the definition of "interlocutory orders" in Vol. 22 of the third edition of Halsbury's Law of England and also to Central Bank of India v. Gokul Chand : AIR 1967 SC 799 and also to Amar Nath's case and Madhu Limaye's case (supra), so as to say that order under Section 24 of the Act of 1955 are just steps in aid of the main proceedings and have no existence independent of the main proceedings, so will not fall within the definition of the judgment and will be only an interlocutory order. We are of the view that in view of the discussion made above order of pendent lite maintenance has all the characteristics and trappings of the judgment as it decides the valuable rights and liabilities of the parties to the proceedings. In so far as those rights and liabilities are concerned the order is final. The fact that the considerations that matter in granting or refusing pendent lite maintenance under Section 24, have no connection with issues in the main proceedings or the question that even after disposal of application under Section 24, the main petition remains alive for disposal, do not prevent the order under Section 24 from falling within the definition of the "judgment". We are also of the view that the expression "interlocutory order" appearing in sub-section (1) of Section 19 of the Act 1984 qualify the word "order" only and does not qualify the word "judgment" appearing before the word "order". In other words, if order of pendent lite maintenance is a "judgment" for all legal and practical purposes, it matters, little whether the same is interlocutory or final."

14. Now, it will be relevant to examine Section 115 CPC as amended in the State of U.P., which reads as under:-

"115.(1) A superior court may revise an order passed in a case decided in an original suit or other proceeding by a subordinate court where no appeal lies against the order and where the subordinate court has-

- (a) exercised a jurisdiction not vested in it by law; or
- (b) failed to exercise a jurisdiction so vested; or
- (c) acted in exercise of its jurisdiction illegally or with material irregularity.

(2) A revision application under sub-section (1), when filed in the High Court, shall contain a certificate on the first page of such application, below the title of the case, to the effect that no revision in the case lies to the district court but lies only to the High Court either because of valuation or because the order sought to be revised was passed by the district court.

(3) The superior court shall not, under this section, vary or reverse any order made except where,-

(i) the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceeding, or

(ii) the order, if allowed to stand, would occasion a failure of justice or cause irreparable injury to the party against whom it is made.

(4) A revision shall not operate as a stay of suit or other proceeding before the court except where such suit or other proceeding is stayed by the superior court.

Explanation -I. In this section,-

(I) the expression 'superior court' means-

(a) the district court, where the valuation of a case decided by a court subordinate to it does not exceed five lakh rupees;

(b) the High Court, where the order sought to be revised was passed in a case decided by the district court or where the value of the original suit or other proceedings in a case decided by a court subordinate to the district court exceed five lakh rupees;

(ii) the expression 'order' includes an order deciding an issue in any original suit or other proceedings.

Explanation -II. The provisions of this section shall also be applicable to orders passed, before or after the commencement of this section, in original suits or other proceedings instituted before such commencement."

15. If the aforesaid provision is seen and more particularly the sub-Section (3) of Section 115 CPC, it would reveal that any order impugned, deciding an issue and if such an order is varied and reversed, it would finally dispose of the suit or other proceedings or the said order impugned if allowed to stand would cause failure of justice or irreparable injury to the party against whom it is passed, then a revision under Section 115 CPC can be maintained.

16. Now if the order impugned is seen, it would reveal that if such order is varied or reversed then by virtue of the 'effect doctrine' as explained by the Apex Court in **Chintels India Ltd. v. Bhayana Builders Pvt. Ltd., (2021) 4 SCC 602**, it would amount to waiving off the cooling period of six months and once the said period is waived, it would amount to allowing the petition under Section 13-B of the Act of 1955. Thus, effectively under normal circumstances, a revision would be maintainable against such an order. But by virtue of Section 19(1) of the Act of 1984 every order passed by the Family Court which is not interlocutory in nature, is appealable. Furthermore, the provisions of the Family Court Act has an overriding effect by virtue of Section 20 of the Act of 1984.

17. Thus, considering the meaning of the word 'interlocutory' as explained by the Full Bench of this Court in **Kiran Bala Srivastava** (supra) and also noticing the impact of an order waiving the cooling off period and its effect, it would leave no doubt that refusing to waive off the cooling off period cannot be treated as an interlocutory order. Thus, ordinarily against such an order, an appeal would be maintainable in terms of Section 19(1) of the Act of 1984, unless for special reasons, this Court finds it to be a case within the perimeter noticed above to entertain a petition under Article 227 of the Constitution of India. Thus, the first ground is decided accordingly.

18. Next, if the contention of the learned counsel for the petitioners in relation to the second ground is seen, as to whether directing the parties to go for mediation again, though they had mediated at an early point of time in some other proceedings and was unsuccessful, can it be a ground to waive the cooling period as the parties cannot be made to undergo another mediation.

19. In this regard, it will be appropriate to notice the provision of Section 13-B of the Act of 1955, which reads as under:-

"Section 13-B. Divorce by mutual consent.-(1) Subject to the provisions of this Act a petition for dissolution of marriage by a decree of divorce may be presented to the district court by both the parties to a marriage together, whether such marriage was solemnized before or after the commencement of the Marriage Laws (Amendment) Act, 1976 (68 of 1976), on the ground that they have been living separately for a period of one year or more, that they have not been able to live together and that they have mutually agreed that the marriage should be dissolved.

(2) On the motion of both the parties made not earlier than six months after the date of the presentation of the petition referred to in sub-section (1) and not later than eighteen months after the said date, if the petition is not withdrawn in the meantime, the court shall, on being satisfied, after hearing the parties and after making such inquiry as it thinks fit, that a marriage has been solemnized and that the averments in the petition are true, pass a decree of divorce declaring the marriage to be dissolved with effect from the date of the decree.]"

20. It will also be relevant to point out that certain ingredients are mentioned in Section 13-B of the Act of 1955 which permits the parties to file a petition for dissolution of their marriage with mutual consent. The said ingredients as mentioned in Section itself are (i) the parties have been staying separately for over a year; (ii) they have not been able to live together and (iii) they have agreed mutually to get their marriage dissolved.

21. The basic purpose of putting in a cooling period of six months before moving the second motion has been explained by the Apex Court in **Inderjit Singh Grewal v. State of Punjab and another, (2011) 12 SCC 588** and is as under:-

"25. As per the statutory requirement, the purpose of the second motion after a period of six months is that the parties may make further efforts for reconciliation in order to save their marriage. There is also an obligation on the part of the court under Section 23(2) of the 1955 Act to make every endeavour to bring about a reconciliation between the parties. In Jagraj Singh v. Birpal Kaur [(2007) 2 SCC 564 : AIR 2007 SC 2083] this Court held that conjugal rights are not merely creature of statute but inherent in the very institution of marriage. Hence, the approach of a court of law in matrimonial matters should be 'much more constructive, affirmative and productive rather than abstract, theoretical or doctrinaire'. The court should not give up the effort of reconciliation merely on the ground that there is no chance for reconciliation or one party or the other says that there is no possibility of living together. Therefore, it is merely a misgiving that the courts are not concerned and obligated to save the sanctity of the institution of marriage.

26. In *Sureshta Devi v. Om Prakash* [(1991) 2 SCC 25 : 1991 SCC (Cri) 292 : AIR 1992 SC 1904] this Court held that mere filing of the petition for divorce by mutual consent does not authorise the court to make a decree for divorce. The interregnum waiting period from 6 to 18 months is obviously intended to give time and opportunity to the parties to reflect on their move and seek advice from relations and friends. In this transitional period one of the parties may have a second thought and change the mind not to proceed with the petition. The court must be satisfied about the bona fides and the consent of the parties for the reason that the court gets jurisdiction to make a decree for divorce only on mutual consent at the time of enquiry. The consent must continue to decree nisi and must be valid subsisting consent when the case is heard. Thus, withdrawal of consent can be unilateral prior to the second motion.

27. The Court further observed : (*Sureshta Devi* case [(1991) 2 SCC 25 : 1991 SCC (Cri) 292 : AIR 1992 SC 1904] , SCC p. 29, para 9)

“9. The ‘living separately’ for a period of one year should be immediately preceding the presentation of the petition. It is necessary that immediately preceding the presentation of petition, the parties must have been living separately. The expression ‘living separately’, connotes to our mind not living like husband and wife. It has no reference to the place of living. The parties may live under the same roof by force of circumstances, and yet they may not be living as husband and wife. The parties may be living in different houses and yet they could live as husband and wife. What seems to be necessary is that they have no desire to perform marital obligations and with that mental attitude they have been living separately for a period of one year immediately preceding the presentation of the petition. The second requirement that they ‘have not been able to live together’ seems to indicate the concept of broken down marriage and it would not be possible to reconcile themselves. The third requirement is that they have mutually agreed that the marriage should be dissolved.”

(emphasis added)

28. For grant of divorce in such a case, the Court has to be satisfied about the existence of mutual consent between the parties on some tangible materials which demonstrably disclose such consent. (*Vide Hitesh Bhatnagar v. Deepa Bhatnagar* [(2011) 5 SCC 234 : (2011) 2 SCC (Civ) 701 : AIR 2011 SC 1637] .)”

Thus, it would reveal that the basic purpose of six months is to give a chance to the parties to give another thought to their decision to dissolve the marriage.

22. At this stage, it will also be relevant to note the aim, object and reason for enacting the Family Court Act, 1984 and it inter alia provided:-

"STATEMENT OF OBJECTS AND REASONS

Several associations of women, other organisations and individuals have urged, from time to time, that Family Courts be set up for the settlement of family disputes, where emphasis should be laid on conciliation and achieving socially desirable results and adherence to rigid rules of

procedure and evidence should be eliminated. The Law Commission in its 59th report (1974) had also stressed that in dealing with disputes concerning the family the court ought to adopt an approach radically different from that adopted in ordinary civil proceedings and that it should make reasonable efforts at settlement before the commencement of the trial. The Code of Civil Procedure was amended in 1976 to provide for a special procedure to be adopted in suits or proceedings relating to matters concerning the family. However, not much use has been made by the courts in adopting this conciliatory procedure and the courts continue to deal with family disputes in the same manner as other civil matters and the same adversary approach prevails. The need was, therefore, felt, in the public interest, to establish Family Courts for speedy settlement of family disputes.

2. The Bill inter alia seeks to –

(a) provide for establishment of Family Courts by the State Governments;

(b) make it obligatory on the State Governments to set up a Family Court in every city or town with a population exceeding one million;

(c) enable the State Governments to set up, such courts, in areas other than those specified in (b) above:

(d) exclusively provide within the jurisdiction of the Family Courts the matters relating to-

(i) matrimonial relief, including nullity of marriage, judicial separation, divorce, restitution of conjugal rights, or declaration as to the validity of marriage or as to the matrimonial status of any person;

(ii) the property of the spouses or of either of them;

(iii) declaration as to the legitimacy of any person;

(iv) guardianship of a person or the custody of any minor,

(v) maintenance, including proceedings under Chapter IX of the Code of Criminal Procedure,

(e) make it obligatory on the part of the Family Court to endeavour, in the first instant to effect a reconciliation or a settlement between the parties to a family dispute. During this stage, the proceedings will be informal and rigid rules of procedure shall not apply,

(f) provide for the association of social welfare agencies, counsellors, etc., during conciliation stage and also to secure the service of medical and welfare experts;

(g) provide that the parties to a dispute before a Family Court shall not be entitled, as of right, to be represented by legal practitioner. However, the court may, in the interest of justice, seek assistance of a legal expert as *amicus curiae*;

(h) simplify the rules of evidence and procedure so as to enable a Family Court to deal effectively with a dispute;

(i) provide for only one right of appeal which shall lie to the High Court."

23. In this context, it will also be relevant to notice Section 9 of the Act of 1984, which reads as under:-

"9. Duty of Family Court to make efforts for settlement.-(1) In every suit or proceeding endeavour shall be made by the Family Court in the first instance, where it is possible to do so consistent with the nature and circumstances of the case, to assist and persuade the parties in arriving at a settlement in respect of the subject-matter of the suit or proceeding and for this purpose a Family Court may, subject to any rules made by the High Court, follow such procedure as it may deem fit.

(2) if, in any suit or proceeding, at any stage, it appears to the Family Court that there is a reasonable possibility of a settlement between the parties, the Family Court may adjourn the proceedings for such period as it thinks fit to enable attempts to be made to effect such a settlement

(3) The power conferred by sub-section (2) shall be in addition to, and not in derogation of any other power of the Family Court to adjourn the proceedings."

24. The aforesaid provision is in consonance with the aim and object of the Act of 1984 as noticed above and has been couched in a mandatory form. Such powers can be exercised at any stage and such powers are also in addition and not in derogation of the other powers of the Court, under the Act of 1984.

25. Now, at this stage, it will be relevant to note the observations made by the Apex Court in **Amardeep Singh** (supra), which is being reproduced hereinafter:-

"19. Applying the above to the present situation, we are of the view that where the court dealing with a matter is satisfied that a case is made out to waive the statutory period under Section 13-B(2), it can do so after considering the following:

(i) the statutory period of six months specified in Section 13-B(2), in addition to the statutory period of one year under Section 13-B(1) of separation of parties is already over before the first motion itself;

(ii) all efforts for mediation/conciliation including efforts in terms of Order 32-A Rule 3CPC/Section 23(2) of the Act/Section 9 of the Family Courts Act to reunite the parties have failed and there is no likelihood of success in that direction by any further efforts;

(iii) the parties have genuinely settled their differences including alimony, custody of child or any other pending issues between the parties;

(iv) the waiting period will only prolong their agony.

The waiver application can be filed one week after the first motion giving reasons for the prayer for waiver. If the above conditions are satisfied, the waiver of the waiting period for the second motion will be in the discretion of the court concerned.

20. Since we are of the view that the period mentioned in Section 13-B(2) is not mandatory but directory, it will be open to the court to exercise its discretion in the facts and circumstances of each case where there is no possibility of parties resuming cohabitation and there are chances of alternative rehabilitation.”

26. The Apex Court in **Amit Kumar v. Suman Beniwal, (2023) 17 SCC 648** had the occasion to consider the provision of Section 13-B of the Act of 1955 and the object of the cooling off period. It also considered the decision of **Amardeep Singh** (supra) and clarified the law as under:-

"16. The legislature has, in its wisdom, enacted Section 13-B(2) of the Hindu Marriage Act to provide for a cooling period of six months from the date of filing of the divorce petition under Section 13-B(1), in case the parties should change their mind and resolve their differences. After six months if the parties still wish to go ahead with the divorce, and make a motion, the court has to grant a decree of divorce declaring the marriage dissolved with effect from the date of the decree, after making such enquiries as it considers fit.

17. The object of Section 13-B(2) read with Section 14 is to save the institution of marriage, by preventing hasty dissolution of marriage. It is often said that 'time is the best healer'. With passage of time, tempers cool down and anger dissipates. The waiting period gives the spouses time to forgive and forget. If the spouses have children, they may, after some time, think of the consequences of divorce on their children, and reconsider their decision to separate. Even otherwise, the cooling period gives the couple time to ponder and reflect and take a considered decision as to whether they should really put an end to the marriage for all time to come.

18. Where there is a chance of reconciliation, however slight, the cooling period of six months from the date of filing of the divorce petition should be enforced. However, if there is no possibility of reconciliation, it would be meaningless to prolong the agony of the parties to the marriage. Thus, if the marriage has broken down irretrievably, the spouses have been living apart for a long time, but not been able to reconcile their differences and have mutually decided to part, it is better to end the marriage, to enable both the spouses to move on with life.

* * *

20. The factors mentioned in **Amardeep Singh v. Harveen Kaur** [**Amardeep Singh v. Harveen Kaur**, (2017) 8 SCC 746 : (2017) 4 SCC (Civ) 804 : (2017) 3 SCC (Cri) 505], in para 19

are illustrative and not exhaustive. These are factors which the court is obliged to take note of. If all the four conditions mentioned above are fulfilled, the court would necessarily have to exercise its discretion to waive the statutory waiting period under Section 13-B(2) of the Marriage Act.

21. The Family Court, as well as the High Court, have misconstrued the judgment of this Court in *Amardeep Singh v. Harveen Kaur* [*Amardeep Singh v. Harveen Kaur*, (2017) 8 SCC 746 : (2017) 4 SCC (Civ) 804 : (2017) 3 SCC (Cri) 505] and proceeded on the basis that this Court has held that the conditions specified in para 19 of the said judgment, quoted hereinabove, are mandatory and that the statutory waiting period of six months under Section 13-B(2) can only be waived if all the aforesaid conditions are fulfilled, including, in particular, the condition of separation of at least one-and-half year's before making the motion for decree of divorce.

22. It is well settled that a judgment is a precedent for the issue of law that is raised and decided. A judgment is not to be read in the manner of a statute and construed with pedantic rigidity. In *Amardeep Singh v. Harveen Kaur* [*Amardeep Singh v. Harveen Kaur*, (2017) 8 SCC 746 : (2017) 4 SCC (Civ) 804 : (2017) 3 SCC (Cri) 505], this Court held that the statutory waiting period of at least six months mentioned in Section 13-B(2) of the Hindu Marriage Act was not mandatory but directory and that it would be open to the Court to exercise its discretion to waive the requirement of Section 13-B(2), having regard to the facts and circumstances of the case, if there was no possibility of reconciliation between the spouses, and the waiting period would serve no purpose except to prolong their agony."

27. The pith and substance of the aforesaid discussions, the legal provisions involved and how a Court must deal with an application for seeking waiver of the cooling off period of six months are summarized as under:-

(A) It first must be borne in mind that under the Hindu Marriage Act there is a distinct legal threshold which gives eligibility to file a petition for dissolution of marriage by mutual consent. This is quite different from the grounds and justification required to skip the waiving/cooling off period.

(B) Now, in order to seek waiver of this six months of cooling off period, the grounds as set out and specially by the Apex Court **in Amardeep** (supra) would indicate that though some grounds are common to the ones which must exist before a petition under Section 13-B of the Act of 1955 can be filed yet the said grounds for cooling off the period of six months require more stringent scrutiny.

(C) At the stage, when the Court is confronted with an application seeking waiver of the cooling off period then the Court should ascertain that-

(i) whether all matters between to the parties, such as custody of children, distribution of properties, and alimony etc. are fully settled and done between the parties;

(ii) what has been the period of separation between the parties, beyond one year prior to the date of institution of the petition under Section 13-B of the Act of 1955;

(iii) the Court must be satisfied that in the circumstances of the case before it, the waiting period will only prolong the agony of the parties;

(iv) The Court must also keep in mind that as per the legislative intent, the six months period as provided in Section 13-B is the Rule and waiving the six months period is the exception. Thus, in order to seek waiver of the cooling off period, it becomes necessary to plead the grounds of seeking exemption with sufficient particularity so that the Court dealing with the said application has enough material before it to objectively consider the application seeking waiver of the cooling off period;

(v) It also must be seen that what is the urgency or the hardship which compels the parties to seek waiver of the cooling off period of six months. Since, this urgency or hardship clause will be the decisive factor, hence, it must be clearly pleaded with sufficient particularity to make out a clear case and the Court should be able to discern it and not give into an artificial urgency created by mere clever drafting. Though, no straitjacket formula nor all circumstances can be illustrated but nevertheless the following grounds and its like can be a useful guide for the Court:-

(a) a party may have a firm job opportunity aboard or visa aboard may be expiring;

(b) advanced age or failing health of any party;

(c) any circumstances which may restrict the movement of a party including any service condition relatable to any member of the armed forces or in cases of sportsperson who have to travel for their sports training or competition, etc.;

(d) any other similar cause which may be time sensitive;

(e) long period of acrimonious litigation between the parties which has already shattered the very bedrock of the institution of marriage and there can be no reconciliation;

(f) anyone parent/party, who has the custody of the child/children has to travel for education or like purpose for the betterment and welfare of the child.

28. Now, coming to the facts of the instant case, it would reveal that the petitioners have not indicated what are those accentuating circumstances which falls within the scope of grounds seeking exemption of the cooling period as noticed above except the fact that when the parties were contesting the proceedings under Section 13 of the Act of 1955, they were subjected to mediation which failed.

29. Failure of mediation at one stage does not necessarily imply that subsequent mediation cannot take place and even if it does, then it has to fail thus, on this assumption a subsequent mediation cannot be ordered by the Court, cannot be legally valid submissions.

30. In the instant case, the record would reveal that after the entertainment of the first motion by the Family Court, by means of the order dated 26.11.2025, it had directed the parties to

appear before the mediation on 20.01.2026. It is also not disputed that the parties abided by the said order and they also participated in the mediation, however, the same was not successful and the mediator on 03.04.2026 had sent its report indicating the failure of mediation.

31. In this view of the matter, the ground upon which the petitioners seek to assail the order dated 07.02.2026, already stood complied with and, therefore, if that grounds is subtracted from the entire application there is no other ground upon which the petitioners seeks the exemption of cooling of period. 32. For the aforesaid reasons, this Court does not find that it is a fit case for this Court to entertain a petition under Article 227 of the Constitution of India as it does not fall within the perimeter set by the Court and as explained hereinabove. Accordingly, for the aforesaid reason, the petition is **dismissed**. There shall be no order as to costs.

(2026) 4 ILRA 1706
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 02.04.2026

BEFORE

THE HON'BLE DR. YOGENDRA KUMAR SRIVASTAVA, J.

Matters Under Article 227 No. 3045 of 2026

Shyam Pal

...Petitioner

Versus

B.S. Enterprises

...Respondent

Issue for Consideration

Whether under the scheme of Section 21(2)(m) of the Uttar Pradesh Regulation of Urban Premises Tenancy Act, 2021, the landlord is merely to demonstrate that the premises are required for his occupation, or whether such requirement must also satisfy the test of "bona fide need" as was contemplated under the erstwhile U.P. Act No. 13 of 1972

Head Notes

The Constitution of India-1950-Article 227; The Uttar Pradesh Regulation of Urban Premises Tenancy Act, 2021- Section 21 (a), (b) & (m)- According to sub-section (2)(m) of Section 21 of the Act, 2021, the landlord is only required to demonstrate that the premises are required for his occupation. The provision, in its plain terms, is clearly distinguishable from the provisions contained in the erstwhile U.P. Act No. 13 of 1972, wherein the landlord was obligated to establish not only his bona fide requirement but also to satisfy the test of comparative hardship. The omission of these requirements under the present enactment is neither incidental nor insignificant, but a conscious legislative departure.

In the absence of the expression "bona fide requirement," the landlord is only required to demonstrate that the premises are needed for his occupation, either in its existing form or after demolition. Once such requirement is duly asserted, the onus shifts upon the tenant to specifically deny the same and substantiate such denial with cogent material. A mere bald or vague plea would not suffice to rebut the statutory ground.

Held- Orders passed by the Rent Authority and the Rent Tribunal are in consonance with the statutory scheme of Section 21(2)(m) of the Act, 2021 and do not suffer from any perversity, illegality, or jurisdictional error. The requirement of the landlord having been duly established within the limited scope of the provision, and there being no material on record to dislodge the same, no ground for interference is made out in exercise of supervisory jurisdiction under Article 227 of the Constitution of India.

Petition dismissed. (E-15)

Case Law Cited

Phiroze Bamanji Desai v. Chandrakant N. Patel (1974) 1 SCC 661; Shiv Sarup Gupta v. Mahesh Chand Gupta (1999) 6 SCC 222;; Bhuwalka Steel Industries Ltd. v. Bombay Iron & Steel Labour Board (2010) 2 SCC 273; Ganga Sagar Sethi and others v. Rajeev Kumar Jain Matters under Article 227 No. 13809 of 2025; Mahesh Chandra Agarwal v. Rent Tribunal, Lucknow Writ-A No. 7791 of 2023; State of Jharkhand v. Govind Singh (2005) 10 SCC 437; Ireland v. Taylor [1949] 1 K.B. 300

List of Acts

The Constitution of India-1950; The Uttar Pradesh Regulation of Urban Premises Tenancy Act, 2021

List of Keywords

Section 21(2)(m); Uttar Pradesh Regulation of Urban Premises Tenancy Act, 2021; landlord only required to demonstrate that premises is needed for occupation; **absence of the expression "bona fide requirement"; distinguishable from U.P. Act No. 13 of 1972.**

Case Arising From

Rent Authority, by order dated 19.06.2025, allowed the release application and directed eviction of the petitioner and thereafter petitioner preferred an appeal under Section 35 of the Act, which came to be dismissed by the Rent Tribunal vide order dated 30.01.2026, affirming the findings recorded by the Rent Authority

Appearances for Parties

Counsel for Petitioners(s) : Prakash Chandra Dwivedi, Raunak Gupta

Counsel for Respondent(s) : Kunal Shah, Nidhi

(Delivered by Hon'ble Dr. Yogendra Kumar Srivastava, J.)

Heard Sri Atul Dayal, learned Senior Counsel appearing along with Sri Prakash Chandra Dwivedi, for the petitioner and Sri Kunal Shah, learned counsel appearing for the respondent.

2. The petitioner, claiming to be a tenant in respect of a shop situated at 106/376, Gandhi Nagar, □P□ Road, Kanpur Nagar, at a monthly rent of Rs.500/-, has filed the present petition. The respondent□landlord instituted proceedings under Section 21(2)(a), (b) and (m) of the Uttar Pradesh Regulation of Urban Premises Tenancy Act, 2021 (hereinafter referred to as □the Act, 2021□), seeking release of the premises in question on the ground that he had acquired ownership thereof by inheritance and that the same was required for expansion of his business.

2.1 In support of the application, it was averred by way of affidavit that the landlord was in possession of a non-residential area measuring approximately 150 square yards, being utilized as a godown, while an area ad-measuring about 90 square yards on the first floor was being used as a furniture workshop. It was further stated that, in the event possession of the premises in question is

secured, the landlord would be in a position to shift the furniture workshop to the ground floor and utilize the first floor portion for residential purposes.

2.2 It was also asserted that a notice dated 02.06.2023 had been issued, along with an intimation purportedly under Section 4(3) of the Act, 2021, and that the rent, as assessed on the basis of the applicable circle rate, would be Rs.1,00,000/- per month.

3. The petitioner□tenant appeared and contested the proceedings, inter alia asserting that the agreed rent was Rs. 500/- per month; that the alleged enhancement of rent to Rs.1,00,000/- was impermissible under the Act; that no valid notice had been served; and that the alleged refusal of notice was incorrect. It was further contended that the landlord□s requirement was not genuine and that alternative accommodations were available to him, whereas the tenanted shop constituted the sole source of livelihood of the petitioner.

4. The parties exchanged pleadings and filed affidavits in support of their respective claims. The landlord reiterated his requirement of the premises for personal use, while the petitioner denied the same and raised objections regarding maintainability, service of notice, and compliance with statutory requirements.

5. The Rent Authority, by order dated 19.06.2025, allowed the release application and directed eviction of the petitioner. It recorded that the rate of rent was Rs. 500/- per month and that there was no default in payment of rent. The application, however, was allowed under Section 21(2)(m) of the Act, 2021 on the ground of personal requirement of the landlord.

6. Aggrieved, the petitioner preferred an appeal under Section 35 of the Act, which came to be dismissed by the Rent Tribunal vide order dated 30.01.2026, affirming the findings recorded by the Rent Authority.

7. The petitioner has now approached this Court under Article 227 of the Constitution of India challenging the aforesaid orders.

8. The core issue that arises for consideration is whether, under the scheme of Section 21(2)(m) of the Uttar Pradesh Regulation of Urban Premises Tenancy Act, 2021, the landlord is merely to demonstrate that the premises are required for his occupation, or whether such requirement must also satisfy the test of □bona fide need□ as was contemplated under the erstwhile U.P. Act No. 13 of 1972.

9. The petitioner has assailed the impugned orders contending that the requirement set up by the landlord is neither genuine nor pressing and is merely a pretext to evict the tenant. It is urged that the landlord is possessed of alternative accommodations which could sufficiently meet his alleged need, yet the same have not been considered by the authorities below. It is further submitted that relevant material on record has been ignored, and the proceedings are vitiated on account of non-compliance with statutory requirements, including improper service of notice and an impermissible attempt to enhance the rent. In support of the aforesaid submissions, reliance has been placed on **Phiroze Bamanji Desai v. Chandrakant N. Patell** , wherein it has been held that

the expression "requires" must be construed to mean an element of actual need and not a mere desire, and that such requirement must satisfy the test of bona fide necessity. Further reliance has been placed on **Shiv Sarup Gupta v. Mahesh Chand Gupta**², to contend that the requirement of the landlord must be genuine and real for eviction, and that the Court is obliged to scrutinize the same objectively on the basis of pleadings and evidence on record.

10. Per contra, the respondent has supported the impugned orders contending that the requirement of the landlord stands duly established within the meaning of Section 21(2)(m) of the Act, 2021 and does not call for any further scrutiny on the touchstone of bona fide need or comparative hardship. It is submitted that the statutory provision is clear and unambiguous and merely requires the landlord to demonstrate that the premises are needed for his occupation, which has been duly pleaded and accepted by both the authorities below. In this regard, reliance has been placed on **Bhuwalka Steel Industries Ltd. v. Bombay Iron & Steel Labour Board**³ to contend that where the language of the statute is plain, it must be given its literal meaning and no words can be added or read into it. Reliance has also been placed on the decision of the Court of Appeal in *Ireland v. Taylor*⁴ to emphasize adherence to the plain meaning rule of interpretation. Further reliance has been placed on **Ganga Sagar Sethi and others v. Rajeev Kumar Jain**⁵ and **Mahesh Chandra Agarwal v. Rent Tribunal, Lucknow**⁶ to submit that under the Act, 2021, the scope of inquiry is limited and once the requirement of the landlord is established, the question of examining alternative accommodation or comparative hardship does not arise.

11. At this stage, it would be apposite to notice the statutory requirement as engrafted in Section 21(2)(m) of the Act, 2021. The provision postulates only the existence of the requirement of the landlord for occupation of the premises, without incorporating any further condition or qualification. The relevant portion of the act is extracted below :

“21. Protection of tenant against eviction. 21. (1) A tenant shall not be evicted during the continuance of tenancy agreement unless otherwise agreed to in writing by the landlord and tenant, except in accordance with the provisions of sub-section (2) or in accordance with the provisions of section

(2) The Rent Authority may, on an application made to it by the landlord in such manner as may be prescribed, make an order for eviction and recovery of possession of the premises on one or more of the following grounds, namely:

(m) that the premises **are required** by landlord either in its existing form, or after demolition and new construction thereof for the purpose of its occupation by landlord.□

12. According to sub-section (2)(m) of Section 21 of the Act, 2021, the landlord is only required to demonstrate that the premises are required for his occupation. The provision, in its plain terms, is clearly distinguishable from the provisions contained in the erstwhile U.P. Act No. 13 of 1972, wherein the landlord was obligated to establish not only his bona fide requirement but also to satisfy the test of comparative hardship. The omission of these requirements under the present enactment is neither incidental nor insignificant, but a conscious legislative departure. Relevant portion under U.P. Act No. 13 of 1972, is given below :

“21. Proceedings for release of building under occupation of tenant-

(1) The prescribed authority may, on an application of the landlord in that behalf, order the eviction of a tenant from the building under tenancy or any specified part thereof if it is satisfied that any of the following grounds exists; namely: --

(a) that the building is bona fide required either in its existing form or after demolition and new construction by the landlord for occupation by himself or any member of his family, or any person for whose benefit it is held by him, either for residential purposes or for purposes of any profession, trade or calling, or where the landlord is the trustee of a public charitable trust, for the objects of the trust.□”

13. A perusal of the statutory framework of the Act, 2021 shows that the legislature has employed language materially different from that contained in the erstwhile enactment of the Act no. 13 of 1972. The provision does not incorporate expressions such as □bona fide requirement□ or any reference to comparative hardship, which were integral to the earlier regime. This change in phraseology assumes significance while construing the scope and ambit of the provision.

14. The manner in which Section 21(2)(m) is structured indicates that the emphasis is placed on the requirement of the premises by the landlord for occupation, either in its existing form or after demolition and reconstruction. The absence of additional qualifying expressions suggests that the provision is intended to be applied on its own terms, in accordance with the language employed by the legislature.

15. The grounds urged by the petitioner have been duly considered.

16. The submission that the authorities below failed to consider the actual requirement of the landlord and ignored the availability of alternative accommodations cannot be accepted. Under Section 21(2)(m) of the Act, 2021, the landlord is only required to demonstrate that the premises are required for his occupation, either in its existing form or after demolition. The earlier requirement of proving □bona fide need□ or undertaking a comparative assessment of hardship, as contemplated under U.P. Act No. 13 of 1972, has been consciously omitted. The Court cannot reintroduce such considerations, and consequently, the plea regarding alternative accommodation or absence of pressing need is not relevant for adjudication under the present statute.

17. The further contention that the landlord must still establish a higher threshold of genuine or actual need is equally misconceived. The exclusion of the expression □bona fide requirement□ has materially altered the legal position, and the statutory obligation stands satisfied once the landlord asserts and demonstrates that the premises are required for his occupation. In the present case, such requirement has been specifically pleaded, and there is no substantive material brought on record by the petitioner to dislodge the same. In the absence of any credible rebuttal, the requirement stands established within the meaning of Section 21(2)(m).

18. The allegation that the Rent Tribunal has dismissed the appeal in a mechanical manner also does not merit acceptance. Both the Rent Authority and the Rent Tribunal have recorded

concurrent findings of fact regarding the requirement of the landlord. Non-consideration of aspects which are no longer germane under the statutory scheme would not render the orders as mechanical or indicative of non-application of mind. The findings are based on the pleadings and material on record and do not suffer from perversity.

19. The contention that omission of the words "bona fide requirement" would allow eviction without pleadings or evidence is also misplaced. The statute still requires the landlord to plead and demonstrate his requirement; however, once such assertion remains unrebutted by any cogent material from the tenant, the authorities are justified in allowing the application. The provision does not envisage any inquiry beyond the limited requirement so prescribed.

20. It is also pertinent that the eviction application was filed, inter alia, under Section 21(2)(m) of the Act, 2021, specifically asserting personal requirement of the landlord. The Rent Authority has allowed the application solely on this ground, without passing any order regarding arrears of rent, which clearly indicates that eviction has been directed only on the basis of personal requirement as contemplated under the said provision. The authorities below have, thus, acted strictly within the confines of the statutory framework.

21. Reliance has been placed by the petitioner on **Phiroze Bamanji Desai** (supra) to contend that the expression "requires" must necessarily be construed to mean an element of actual need as distinguished from a mere desire, and that such requirement must be established on the touchstone of bona fide necessity along with other considerations such as comparative hardship. The said decision was rendered in the context of the Section 13(1)(g) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, which provides that a landlord shall be entitled to recover possession of any premises if the Court is satisfied that the premises are "reasonably and bona fide required" by the landlord for occupation by himself or by any person for whose benefit the premises are held, or where the landlord is a trustee of a public charitable trust, that the premises are required for occupation for the purposes of the trust.

22. The principle relied upon by petitioner, arises from a statutory framework materially different from the one governing the present case. Under Section 21(2)(m) of the Act, 2021, the legislature has consciously omitted the requirement of proving "bona fide requirement" and has also done away with any inquiry into comparative hardship. The scope of examination, therefore, stands confined to whether the premises are required by the landlord for his occupation. In view of this clear legislative departure, the interpretation of the expression "requires" as laid down in the aforesaid judgment, which is rooted in a different statutory context, cannot be applied to proceedings under the Act, 2021.

23. Reliance placed by the respondent on **Bhuwalka Steel Industries Ltd.** (supra) is to emphasize the principle of statutory interpretation that where the language of a provision is clear and unambiguous, it must be given its plain meaning and no external aids or interpretative additions can be resorted to; further, that the Court cannot supply a casus omissus where the legislature has consciously omitted certain expressions. The relevant extract from the judgment is as follows:

“44. It must, at this juncture, be noted that in spite of Section 2(11), which included the words □ but for the provisions of this Act is not adequately protected by legislation for welfare and benefits of the labour force in the State□, these precise words were removed by the legislature and the definition was made limited as it has been finally legislated upon. It is to be noted that when the Bill came to be passed and received the assent of the Vice-President on 5-6-1969 and was first published in the Maharashtra Government Gazette Extraordinary, Part IV on 13-6-1969, the aforementioned words were omitted. Therefore, this would be a clear pointer to the legislative intent that the legislature being conscious of the fact and being armed with all the Committee reports and also being armed with the factual data, deliberately avoided those words. What the appellants are asking was to read in that definition, these precise words, which were consciously and deliberately omitted from the definition. That would amount to supplying the casus omissus and we do not think that it is possible, particularly, in this case. The law of supplying the casus omissus by the courts is extremely clear and settled that though this Court may supply the casus omissus, it would be in the rarest of the rare cases and thus supplying of this casus omissus would be extremely necessary due to the inadvertent omission on the part of the legislature. But, that is certainly not the case here.”

24. In **Bhuwalka Steel Industries Ltd. (supra)**, the Supreme Court reiterated the settled principle of statutory interpretation that where the legislature has consciously omitted certain words from the final enactment, such omission is indicative of deliberate legislative intent, and it is not open to the Court to read those words back into the provision, as doing so would amount to supplying a casus omissus. It was also observed that such judicial supplementation is permissible only in the rarest of cases where the omission is clearly inadvertent, and not where it is deliberate. The judgment thus underscores that a provision must be interpreted as it stands, and neither expanded nor curtailed by importing considerations which the legislature has consciously chosen to exclude.

25. The principle relating to casus omissus is well settled. In **State of Jharkhand v. Govind Singh**⁷, the Supreme Court held that a casus omissus cannot be supplied by the Court except in a case of clear necessity and when such necessity is discernible from the four corners of the statute itself. It was further observed that a casus omissus ought not to be readily inferred, nor can the Court, under the guise of interpretation, create or fill in omissions in the statutory scheme, as that would amount to legislating. The Court emphasized that statutory provisions must be construed as a whole so as to give effect to the legislative intent, and unless the language leads to manifest absurdity or defeats the object of the enactment, it is not open to the Court to read into the statute words which are not there. Relevant portion of the judgment is as follows:

21. Two principles of construction □ one relating to casus omissus and the other in regard to reading the statute as a whole □ appear to be well settled. Under the first principle a casus omissus cannot be supplied by the court except in the case of clear necessity and when reason for it is found in the four corners of the statute itself but at the same time a casus omissus should not be readily inferred and for that purpose all the parts of a statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statute. This would be more so if literal construction of a particular clause leads to

manifestly absurd or anomalous results which could not have been intended by the legislature. □ An intention to produce an unreasonable result□, said Danckwerts, L.J. in *Artemiou v. Procopiou* [(1966) 1 QB 878 : (1965) 3 All ER 539 : (1965) 3 WLR 1011 (CA)] (All ER p. 544 I), □ is not to be imputed to a statute if there is some other construction available□. Where to apply words literally would □ defeat the obvious intention of the legislation and produce a wholly unreasonable result□, we must □ do some violence to the words□ and so achieve that obvious intention and produce a rational construction. [Per Lord Reid in *Luke v. IRC* [1963 AC 557 : (1963) 1 All ER 655 : (1963) 2 WLR 559 (HL)] where at AC p. 577 (All ER p. 664 I) he also observed: □ This is not a new problem, though our standard of drafting is such that it rarely emerges.□]

22. It is then true that, □ when the words of a law extend not to an inconvenience rarely happening, but due to those which often happen, it is good reason not to strain the words further than they reach, by saying it is *casus omissus*, and that the law intended *quae frequentius accidunt*□. □ But□, on the other hand, □ it is no reason, when the words of a law do enough extend to an inconvenience seldom happening, that they should not extend to it as well as if it happened more frequently, because it happens but seldom□. (See *Fenton v. Hampton* [(1858) 11 Moo PC 347 : 6 WR 341] .) A *casus omissus* ought not to be created by interpretation, save in some case of strong necessity. Where, however, a *casus omissus* does really occur, either through the inadvertence of the legislature, or on the principle *quod semel aut bis existit praetereunt legislatores*, the rule is that the particular case, thus left unprovided for, must be disposed of according to the law as it existed before such statute □ *casus omissus et oblivioni datus dispositioni communis juris relinquitur*; □ a *casus omissus*□, observed Buller, J. in *Jones v. Smart* [1 TR 44 : 99 ER 963] (TR at p. 52 : ER at p. 967), □ can in no case be supplied by a court of law, for that would be to make laws□.

26. In view of the aforesaid principles laid down by the Supreme Court, it is clear that statutory provisions must be interpreted on the basis of their plain language, and the Court cannot read into them words or conditions which the legislature has consciously omitted. Applying the same to Section 21(2)(m) of the Act, 2021, once the legislature has deliberately excluded the expression □ *bona fide* requirement□ and any element of comparative hardship, it is not open to the Court to import such requirements under the guise of interpretation. Any attempt to reintroduce notions of □ *genuine*,□ □ *pressing*,□ or □ *bona fide*□ while construing the expression □ *required*□ under Section 21(2) (m) would amount to supplying a *casus omissus*, which is impermissible. The provision must, therefore, be given effect as it stands, confining the inquiry strictly to whether the premises are required by the landlord for his occupation.

27. A useful exposition of the meaning of the expression □ *requires*□ is found in the decision of the Court of Appeal in ***Ireland v. Taylor***⁸ wherein it was observed that the term □ *requires*□ is satisfied if the landlord establishes a genuine intention to occupy the premises, and does not necessarily import an element of reasonableness or need. It was further held that, so long as the intention of the landlord is real and not a mere pretence, it is not for the Court to examine the reasonableness of such intention or to substitute its own assessment in place thereof. The Court clarified that the word □ *requires*□ cannot be equated with □ *reasonably requires*□ or □ *needs*,□ and that the inquiry is confined to the genuineness of the landlord's intention to occupy. It is pertinent to refer to the observations of **Lord Tucker** :

“The evidence of Mr. Taylor, one of the landlords, was that he required possession of the house so that he might use the large lounge as a studio for portrait painting, for which purpose it was suitable by reason of its size and lighting□...If Mr. Taylor, in fact, desires to get possession of this house and genuinely intends to use it for this purpose I can see no ground for saying that he does not "require" it within the meaning of sub-para. (i) of para. (8) of sub-s. (3) of s. 5, which contains the words "the premises are required for occupation by himself." If he required it for this purpose, then his wife who was living with him clearly also required it apart altogether from the other reasons which she gave in evidence some of which clearly could not be substantiated. The referee had interpreted the word "required" as if it meant "needed," somewhat on the lines of the words "reasonably required". □□.in my opinion, in this part of the section the landlord must be the sole arbiter of his own requirements, provided he proves that he, in fact, desires possession and genuinely intends to occupy.”

In the same decision, **Somervell, L. J** has observed that

“The referee in his report construed "requires" as meaning "needs," and came to the conclusion that the landlords did not need this large house. □...The learned judge did not regard "requires" as meaning "reasonably requires or needs," but as a somewhat stronger word than "intends". □□.In *Clift v. Taylor*, it is said that any real ambiguity of language ought to be resolved in favour of maintaining common law rights. I doubt if there is any real ambiguity. "Requires" may, of course, have different senses in different contexts. In its present context it is, I think, satisfied if a landlord establishes, as these landlords did, that he wants and intends to occupy the premises. Apart from the Act that is his common law right, If the legislature had intended to place some burden on him of establishing that he was reasonable or not unreasonable in requiring what was his own, plain words would have been used. Of course, if a court came to the conclusion that the evidence of intention was false and that the landlord did not genuinely intend to occupy the premises, the claim would fail. There is, however, no trace of any finding to this effect. On this view it is unnecessary to consider the question of "reasonableness."

28. The aforesaid observations unequivocally demonstrate that the expression □requires□ does not import an obligation upon the landlord to establish reasonableness or necessity in an objective sense, but is satisfied once a genuine and bona fide intention to occupy the premises is established. The Court expressly disapproved of substituting judicial assessment in place of the landlord's own requirement and held that, so long as the intention is real and not a mere pretence, the landlord is the sole arbiter of his requirement. The enquiry, therefore, stands confined to the genuineness of the intention, and not its reasonableness.

29. Reliance placed by the petitioner on **Shiv Sarup Gupta** (supra) is misplaced and distinguishable. The said judgment was rendered in the context of Section 14(1)(e) of the Delhi Rent Control Act, 1958, which specifically governs eviction on the ground of bona fide residential requirement, coupled with the statutory condition that the landlord must not have any other reasonably suitable residential accommodation. The legislative framework under the Delhi Act is thus materially different.

30. In a recent decision of this Court, in **Mahesh Chandra Agarwal** (supra), it has been observed that under Section 21(2)(m) of the Act, 2021, the landlord is only required to demonstrate that the premises are needed for his own occupation, and the earlier requirement of establishing □bona fide need□ or undertaking any comparative assessment of hardship, as was contemplated under the repealed Act of 1972, no longer survives. It was further held that once the requirement of the landlord for personal occupation is established and remains uncontroverted, there is no scope for interference with the orders of eviction passed by the authorities below.

31. A similar position has been noted by this Court in **Ganga Sagar Sethi** (supra), wherein it was observed that with the enforcement of the U.P. Regulation of Urban Premises Tenancy Act, 2021, the earlier regime under U.P. Act No. 13 of 1972 stood materially altered. The Court took note of the legislative shift whereby the requirement of establishing □bona fide need□ and undertaking a comparative assessment of hardship has been consciously done away with, and the statutory focus now stands confined to the □requirement□ of the landlord. It was held that in view of the clear legislative intent, the Rent Authority is required to adjudicate the claim strictly within the framework of Section 21(2)(m) of the Act, 2021, without importing considerations of bona fide need or comparative hardship as were applicable under the repealed enactment.

32. The Act of 2021 marks a paradigm shift from the earlier regime under the U.P. Act No. 13 of 1972, particularly in the matter of eviction on the ground of landlord's requirement. While the earlier enactment mandated a rigorous inquiry into □bona fide requirement□ coupled with a comparative assessment of hardship between the landlord and the tenant, the present Act consciously departs from that framework.

33. The scheme of Section 21(2)(m) of the Tenancy Act, 2021, when read in its plain and unambiguous terms, makes it evident that the legislature has departed from the earlier statutory framework. Unlike the provisions contained in the erstwhile U.P. Act No. 13 of 1972, the requirement of establishing bona fide need coupled with comparative hardship is conspicuously absent. The legislative intent, therefore, appears to be to simplify the ground of eviction by requiring the landlord to merely demonstrate that the premises are required for his occupation.

34. The omission of the expression □bona fide requirement□ assumes significance and materially alters the nature of adjudication under the present enactment. Consequently, the scope of inquiry stands confined to examining whether the requirement of the landlord for occupation of the premises is made out, either in its existing form or after reconstruction.

35. This evident shift is reflected in the legislative omission of expressions such as □bona fide requirement□ and in the complete absence of any provision mandating a comparative hardship analysis. Such omissions cannot be treated as accidental; rather, they signify a conscious legislative intent to narrow the scope of adjudication.

36. It is a settled principle of statutory interpretation that the Court cannot supply a casus omissus. An omission in the statute cannot be filled by judicial interpretation unless such necessity is evident from the scheme of the Act itself. The Court must construe the provision as it stands and give effect to the legislative intent as expressed, without adding or subtracting words. Where the

legislature has consciously omitted a requirement, it is not open to the Court to reintroduce it under the guise of interpretation. Any such exercise would amount to legislating, which lies beyond the judicial function. Accordingly, the statutory provision must be applied in its plain terms, and no additional conditions can be read into it by implication.

37. In view of the altered statutory position, the Court is not required to undertake a comparative assessment of hardship between the parties, nor is it expected to scrutinize the degree or genuineness of the need in the manner contemplated under the repealed enactment. The jurisdiction is limited to ascertaining the existence of the requirement as pleaded by the landlord.

38. In the absence of the expression "bona fide requirement," the landlord is only required to demonstrate that the premises are needed for his occupation, either in its existing form or after demolition. Once such requirement is duly asserted, the onus shifts upon the tenant to specifically deny the same and substantiate such denial with cogent material. A mere bald or vague plea would not suffice to rebut the statutory ground.

39. Consequently, the nature of adjudication under the Act, 2021 stands fundamentally altered. The focus is no longer on testing the degree, urgency, or genuineness of the landlord's need in comparison with the tenant's hardship, but is limited to examining whether the requirement, as pleaded, exists. Once such requirement is established and remains un rebutted by cogent material, the statutory ground for eviction stands satisfied.

40. In the present case, though a denial of the landlord's requirement has been set up in the pleadings, the same remains unsubstantiated. No substantive material has been brought on record, either before the authorities below or before this Court, to dislodge the claim that the premises are required for personal occupation. The pleadings, in this regard, lack material particulars and are not supported by any credible evidence in rebuttal. Consequently, the defence raised by the tenant does not create any real or substantial doubt as to the genuineness of the landlord's requirement.

41. In view of the foregoing discussion, this Court finds that the orders passed by the Rent Authority and the Rent Tribunal are in consonance with the statutory scheme of Section 21(2)(m) of the Act, 2021 and do not suffer from any perversity, illegality, or jurisdictional error. The requirement of the landlord having been duly established within the limited scope of the provision, and there being no material on record to dislodge the same, no ground for interference is made out in exercise of supervisory jurisdiction under Article 227 of the Constitution of India.

42. Learned counsel, at this stage, has sought an indulgence, praying for an additional time of eight months to vacate the premises in question.

43. Counsel appearing for the respondent submits that he has no objection to the prayer so made by the petitioner.

44. Having regard to the aforesaid and in view of the request so made by counsel for the petitioner, while dismissing the petition, this Court grants **eight months'** time to the petitioner to

vacate and handover peaceful possession of the premises in question, to respondent-landlord, **on or before 2nd December, 2026**, subject to the following conditions:

(i) The tenant-petitioner shall file an undertaking before the Rent Authority, Kanpur Nagar, to the effect that he shall handover peaceful possession of the premises in question, to the respondent-landlord on or before 2nd December, 2026;

(ii) The said undertaking shall be filed within a period of two weeks from today; and

(iii) The tenant-petitioner shall also regularly deposit a monthly amount of Rs.2000/- towards 'use and occupation charges' by the 7th day of each month, during the period of extended occupation.

45. It is made clear that in the event of default in compliance of any of the aforesaid conditions, the protection granted by this Court, shall stand vacated automatically and it shall be open to the respondent-landlord to seek execution of the order passed in the Rent Case in accordance with law.

46. Subject to the aforesaid directions, the petition stands **dismissed**.

(2026) 4 ILRA 1717
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 29.04.2026

BEFORE

THE HON'BLE ABDUL MOIN, J.
THE HON'BLE PRAMOD KUMAR SRIVASTAVA, J.

Habeas Corpus Writ Petition No. 137 of 2026

Manoj Kumar

...Petitioner

Versus

State of U.P. & Ors.

...Respondents

Issue for Consideration

Why exemplary cost should not be awarded to the petitioner for his illegal incarceration in jail since 27.01.2026 till date comprising of a period of almost three months, as the life and personal liberty of the petitioner has been curtailed by the respondent authorities/State.

Head Notes

The Constitution of India, 1950-Article 226 (Habeas Corpus)-The grounds of arrest have been perused and considered by the Court in the order dated 24.04.2026 and this court has recorded a categorical finding in the said order, after considering the judgment of the Hon'ble Supreme Court in the case of Dr. Rajinder Rajan versus Union of India that the arrest of the petitioner on 27.01.2026 has been made without complying with the procedure as directed by the Hon'ble Supreme Court in the case of Mihir Rajesh Shah meaning thereby that the arrest of the petitioner on 27.01.2026 is illegal. It is further recorded that the remand order granted by the learned

Magistrate dated 28.01.2026, being based on the illegal arrest of the petitioner, is also liable to be set aside keeping in view the judgment of this Court in the case of Shivam Chaurasiya vs. State of U.P. and others. This Court was also of the view that the writ petition deserves to be allowed with exemplary cost and consequently directed the Additional Chief Secretary (Home) to submit his reply as to why exemplary cost should not be awarded to the petitioner for his illegal incarceration in jail since 27.01.2026 till date comprising of a period of almost three months.

Additional Chief Secretary (Home) has failed to file a reply with regard to submission of a reply as to why exemplary costs should not be imposed rather -It thus appears that Additional Chief Secretary (Home) has not even cared to go through the order of this Court dated 24.4.2026 which, as we have already indicated above, required him to file a reply as to why exemplary cost should not be imposed for the illegal incarceration of the petitioner.

The personal affidavit of the Additional Chief Secretary (Home) does not even contain a whisper regarding the explanation as to why exemplary cost should not be imposed. If this is the non-application of mind at the end of the highest authority of the Home Department we can well understand as to how the other authorities of the State are working!!!

Held- Considering the illegal arrest of the petitioner since 27.1.2026 which continues even as of date i.e. 29.4.2026 and his illegal incarceration in jail being of more than three months, the Court is of the view that exemplary costs quantified at Rupees Ten Lakhs are also imposed on the State authorities.

Petition Allowed. (E-15)

(Para 5, 8, 9 & 15)

Case Law Cited

Mihir Rajesh Shah Vs. State of Maharashtra; 2026 (1) SCC 500; Dr Rajinder Rajan vs Union of India : 2026 Live Law (SC) 327; Shivam Chaurasiya Vs. State of U.P. and Others; 2026:AHC-LKO:10501-DB;

List of Acts

The Constitution of India, 1950

List of Keywords

Illegal incarceration; Habeas Corpus petition; Deserves to be allowed with exemplary cost; No whisper in the affidavit; Regarding explanation to why exemplary cost not imposed; Cost of Rupees Ten Lakhs ;Imposed on the State authorities

Case Arising From

Prayer to issue a writ, order of direction in the nature of Habeas Corpus declaring the petitioner's arrest & detention illegal, pass an order setting aside the remand order dated 28.01.2026 passed by the Additional Chief Judicial Magistrate-III, Unnao in Case Crime No.244 of 2024, Police Station Asiwan, District Unnao and direct the respondent No.1, 2, 3 and 4 to release the petitioner forthwith.

Appearances for Parties

Counsel for Petitioner(s) : Akhilesh Kumar Tripathi, Prashant Tiwari

Counsel for Respondent(s) : G.A.,

(Delivered by Hon'ble Abdul Moin, J.

&

Hon'ble Pramod Kumar Srivastava, J.)

1. Personal affidavit of the Additional Chief Secretary (Home), Government of U.P. filed today in Court is taken on record.

2. Heard learned counsel for the petitioner, learned AGA for respondents no.1 to 4 and perused the records including the case diary as produced by the learned AGA.

3. There is consensus at the bar that the facts of the case including the points in dispute and the consideration of the same has already been made by this Court vide order dated 24.04.2026. For the sake of convenience, the order dated 24.04.2026 is reproduced below:-

"1. Heard learned counsel for the petitioner and learned AGA appearing for the respondent nos.1 to 4. Perused the records produced by the learned AGA.

2. No notice be issued to respondent no.5, who is the complainant.

3. By means of the instant petition in the nature of habeas corpus, the petitioner has prayed for the following reliefs:-

"(i) issue a writ, order of direction in the nature of Habeas Corpus declaring the petitioner's arrest & detention illegal, pass an order setting aside the remand order dated 28.01.2026 passed by the Additional Chief Judicial Magistrate-III, Unnao in Case Crime No.244 of 2024, Police Station Asiwan, District Unnao and direct the respondent No.1, 2, 3 and 4 to release the petitioner forthwith, in the interest of justice.

(ii) Issue any other writ, order or direction which this Hon'ble Court may deem fit and proper in the circumstances of the case.

(iii) Award the cost of the writ petition to the petitioner."

4. Admittedly, the First Information Report was lodged against the petitioner as FIR No. 244 of 2024, dated 03.09.2024, at Police Station- Asiwan, District- Unnao by the Respondent No. 4/complainant.

5. In pursuance thereof, the petitioner has been arrested on 27.01.2026. A copy of the arrest memo is annexed as annexure no.3 to the petition. The reasons for arrest have been indicated in Column no.13 of the arrest memo, which only indicates about the aforesaid case crime number being lodged against the petitioner.

6. The learned Magistrate vide its order dated 28.01.2026 has granted remand to the petitioner. The petitioner filed an application for anticipatory bail vide Anticipatory Bail Application No.3614 of 2025 in re: Manoj Vs. State of U.P. before the learned District & Sessions Judge, Unnao, which has been rejected vide order dated 07.01.2026, a copy of which is annexed as annexure no.6 to the petition.

7. The primary and legal ground raised by the learned counsel for the petitioner in the instant petition of habeas corpus challenging his illegal arrest is based on the judgment of the Hon'ble Supreme Court in **Mihir Rajesh Shah Vs. State of Maharashtra; 2026 (1) SCC 500**, wherein the Hon'ble Supreme Court has categorically held, after considering Article 22(1) of the Constitution of India, that no person who is arrested shall be detained in custody without being informed of the grounds of such arrest. This casts a mandatory and unexceptional duty on the State to provide the arrested person with the grounds of such arrest. Supply of grounds of arrest have also been held to be grounded in fundamental right of life and personal liberty under Article 21 of the Constitution of India and the requirement of informing the arrested person of the grounds of arrest is not a mere formality but a mandatory, binding constitutional safeguard which has been included in Part III of the Constitution under the head of "Fundamental Rights".

8. For the sake of convenience, relevant observations of the Hon'ble Supreme Court in the case of *Mihir Rajesh Shah (Supra)* are reproduced below:-

"28. It was said that any breach of the constitutional safeguards provided under Article 22 would vitiate the lawfulness of arrest and subsequent remand and entitle the arrested person to be set at liberty. The relevant portion in *Prabir Purkayastha [Prabir Purkayastha v. State (NCT of Delhi), (2024) 8 SCC 254 : (2024) 3 SCC (Cri) 573]* is reproduced herein: (SCC pp. 276 & 278, paras 19-21 & 28-29)

"19. Resultantly, there is no doubt in the mind of the court that any person arrested for allegation of commission of offences under the provisions of UAPA or for that matter any other offence(s) has a fundamental and a statutory right to be informed about the grounds of arrest in writing and a copy of such written grounds of arrest have to be furnished to the arrested person as a matter of course and without exception at the earliest. The purpose of informing to the arrested person the grounds of arrest is salutary and sacrosanct inasmuch as this information would be the only effective means for the arrested person to consult his advocate; oppose the police custody remand and to seek bail. Any other interpretation would tantamount to diluting the sanctity of the fundamental right guaranteed under Article 22(1) of the Constitution of India.

20. The right to life and personal liberty is the most sacrosanct fundamental right guaranteed under Articles 20, 21 and 22 of the Constitution of India. Any attempt to encroach upon this fundamental right has been frowned upon by this Court in a catena of decisions. In this regard, we may refer to the following observations made by this Court in *Roy V.D. v. State of Kerala [Roy V.D. v. State of Kerala, (2000) 8 SCC 590 : 2001 SCC (Cri) 42] : (SCC p. 593, para 7)*

'7. The life and liberty of an individual is so sacrosanct that it cannot be allowed to be interfered with except under the authority of law. It is a principle which has been recognised and applied in all civilised countries. In our Constitution, Article 21 guarantees protection of life and personal liberty not only to citizens of India but also to aliens.'

Thus, any attempt to violate such fundamental right, guaranteed by Articles 20, 21 and 22 of the Constitution of India, would have to be dealt with strictly.

21. *The right to be informed about the grounds of arrest flows from Article 22(1) of the Constitution of India and any infringement of this fundamental right would vitiate the process of arrest and remand. Mere fact that a charge-sheet has been filed in the matter, would not validate the illegality and the unconstitutionality committed at the time of arresting the accused and the grant of initial police custody remand to the accused.*

28. *The language used in Article 22(1) and Article 22(5) of the Constitution of India regarding the communication of the grounds is exactly the identical. Neither of the constitutional provisions require that the "grounds" of "arrest" or "detention", as the case may be, must be communicated in writing. Thus, interpretation to this important facet of the fundamental right as made by the Constitution Bench while examining the scope of Article 22(5) of the Constitution of India would ipso facto apply to Article 22(1) of the Constitution of India insofar as the requirement to communicate the grounds of arrest is concerned.*

29. *Hence, we have no hesitation in reiterating that the requirement to communicate the grounds of arrest or the grounds of detention in writing to a person arrested in connection with an offence or a person placed under preventive detention as provided under Articles 22(1) and 22(5) of the Constitution of India is sacrosanct and cannot be breached under any situation. Non-compliance of this constitutional requirement and statutory mandate would lead to the custody or the detention being rendered illegal, as the case may be."*

31. The relevant portion of Vihaan Kumar [Vihaan Kumar v. State of Haryana, (2025) 5 SCC 799 : (2025) 2 SCC (Cri) 762] is reproduced herein: (SCC pp. 814-15, 817 & 822-23, paras 15, 21 & 40-42)

"15. The view taken in Pankaj Bansal [Pankaj Bansal v. Union of India, (2024) 7 SCC 576 : (2024) 3 SCC (Cri) 450] was reiterated by this Court in Prabir Purkayastha [Prabir Purkayastha v. State (NCT of Delhi), (2024) 8 SCC 254 : (2024) 3 SCC (Cri) 573] . In paras 28 and 29, this Court held thus: (Prabir Purkayastha case [Prabir Purkayastha v. State (NCT of Delhi), (2024) 8 SCC 254 : (2024) 3 SCC (Cri) 573] , SCC p. 278)

'28. *The language used in Article 22(1) and Article 22(5) of the Constitution of India regarding the communication of the grounds is exactly the identical. Neither of the constitutional provisions require that the "grounds" of "arrest" or "detention", as the case may be, must be communicated in writing. Thus, interpretation to this important facet of the fundamental right as made by the Constitution Bench while examining the scope of Article 22(5) of the Constitution of India would ipso facto apply to Article 22(1) of the Constitution of India insofar as the requirement to communicate the grounds of arrest is concerned.*

29. *Hence, we have no hesitation in reiterating that the requirement to communicate the grounds of arrest or the grounds of detention in writing to a person arrested in connection with an*

offence or a person placed under preventive detention as provided under Articles 22(1) and 22(5) of the Constitution of India is sacrosanct and cannot be breached under any situation. Non-compliance of this constitutional requirement and statutory mandate would lead to the custody or the detention being rendered illegal, as the case may be.'

21. An attempt was made by the learned Senior Counsel appearing for the first respondent to argue that after his arrest, the appellant was repeatedly remanded to custody, and now a charge-sheet has been filed. His submission is that now, the custody of the appellant is pursuant to the order taking cognizance passed on the charge-sheet. Accepting such arguments, with great respect to the learned Senior Counsel, will amount to completely nullifying Articles 21 and 22(1) of the Constitution. Once it is held that arrest is unconstitutional due to violation of Article 22(1), the arrest itself is vitiated. Therefore, continued custody of such a person based on orders of remand is also vitiated. Filing a charge-sheet and order of cognizance will not validate an arrest which is per se unconstitutional, being violative of Articles 21 and 22(1) of the Constitution of India. We cannot tinker with the most important safeguards provided under Article 22.

N. Kotiswar Singh, J. (supplementing)?I had the benefit of going through the draft opinion of my esteemed Brother Hon'ble Mr Justice Abhay S. Oka and I concur with the analysis and conclusions arrived at. However, I wish to add a few lines in supplement to the aforesaid opinion.

41. The issue on the requirement of communication of grounds of arrest to the person arrested, as mandated under Article 22(1) of the Constitution of India, which has also been incorporated in the Prevention of Money Laundering Act, 2002 under Section 19 thereof has been succinctly reiterated in this judgment. The constitutional mandate of informing the grounds of arrest to the person arrested in writing has been explained in Pankaj Bansal [Pankaj Bansal v. Union of India, (2024) 7 SCC 576 : (2024) 3 SCC (Cri) 450] so as to be meaningful to serve the intended purpose which has been reiterated in Prabir Purkayastha [Prabir Purkayastha v. State (NCT of Delhi), (2024) 8 SCC 254 : (2024) 3 SCC (Cri) 573] . The said constitutional mandate has been incorporated in the statute under Section 50CrPC (Section 47 of the BNSS). It may also be noted that the aforesaid provision of requirement for communicating the grounds of arrest, to be purposeful, is also required to be communicated to the friends, relatives or such other persons of the accused as may be disclosed or nominated by the arrested person for the purpose of giving such information as provided under Section 50-A CrPC. As may be noted, this is in the addition of the requirement as provided under Section 50(1)CrPC.

42. The purpose of inserting Section 50-A CrPC, making it obligatory on the person making arrest to inform about the arrest to the friends, relatives or persons nominated by the arrested person, is to ensure that they would be able to take immediate and prompt actions to secure the release of the arrested person as permissible under the law. The arrested person,

because of his detention, may not have immediate and easy access to the legal process for securing his release, which would otherwise be available to the friends, relatives and such nominated persons by way of engaging lawyers, briefing them to secure release of the detained person on bail at the earliest. Therefore, the purpose of communicating the grounds of arrest to the detenue, and in addition to his relatives as mentioned above is not merely a formality but to enable the detained person to know the reasons for his arrest but also to provide the necessary opportunity to him through his relatives, friends or nominated persons to secure his release at the earliest possible opportunity for actualising the fundamental right to liberty and life as guaranteed under Article 21 of the Constitution. Hence, the requirement of communicating the grounds of arrest in writing is not only to the arrested person, but also to the friends, relatives or such other person as may be disclosed or nominated by the arrested person, so as to make the mandate of Article 22(1) of the Constitution meaningful and effective failing which, such arrest may be rendered illegal."

(emphasis in original)

35. In *Joginder Kumar v. State of U.P.* [*Joginder Kumar v. State of U.P.*, (1994) 4 SCC 260 : 1994 SCC (Cri) 1172] , this Court while framing guidelines regarding the rights of an arrested person has observed that the existence of a power to arrest and the justification to use such power are two different aspects. The person making arrest must be able to justify the arrest with reasons apart from his power to do so. Arrest of a person can cause irreversible damage to his reputation in the society as well as his self-esteem, therefore, arrest cannot be made in a routine manner. The police officer making an arrest must be cautious while arresting a person and ought to satisfy himself after a reasonable investigation to justify the person's complicity and also the effect as well as the need of arrest. This Court has further observed that except in heinous offences, arrest must be avoided.

37. The mandate contained in Article 22(1) of the Constitution of India is unambiguous and clear in nature, it provides that the arrested person must be informed of the grounds of arrest as soon as they can be. It further provides that the arrested person has the right to defend himself by consulting a legal practitioner of his choice. This constitutional mandate has been effectuated by the legislature in Section 50CrPC (now Section 47 of BNSS 2023) which provides that an arrested person shall be forthwith communicated with the grounds of his arrest.

41. The purpose of securing legal assistance before remand is not merely symbolic, but it is to ensure that the accused is afforded an effective opportunity to oppose the prayer for police custody and to place before the Magistrate any circumstances that may warrant refusal or limitation of such custody. If the accused is not represented through a counsel, he/she should be made aware that he/she is entitled for legal aid. As far as possible, it shall be ensured that every accused person is represented by an advocate, if he is not able to avail such assistance, he should

be given free legal aid. A three-Judge Bench of this Court in Ashok v. State of U.P. [Ashok v. State of U.P., (2025) 2 SCC 381 : (2025) 1 SCC (Cri) 744] held that an accused who is not represented by an advocate is entitled for free legal aid at all material stages starting from remand.

43. Section 167CrPC (now Section 187 of BNSS 2023) while dealing with remand provides for a positive mandate on the police officer to forward the accused to the Magistrate before expiry of such period as fixed under Section 57CrPC (now Section 58 of BNSS 2023) when investigation cannot be completed in twenty-four hours. It further mandates that the Magistrate to not authorize the detention of accused unless he is physically produced before him. The purpose of this provision mandating the production of accused before Magistrate for exercise of the power of remanding him to custody under this section is with the dual purpose. First, ensuring physical presence of the accused and second to afford him an opportunity to be heard. The intent of this provision is not merely to be heard at the stage of remand but to be represented by the counsel of his choice. Thereafter, the duty is cast upon the Magistrate to apply his judicial mind to the material produced before him, hear the accused or the counsel representing him to determine whether the accused should be remanded to police custody or should be detained at all within the parameters prescribed in Section 167CrPC (Section 187 of BNSS 2023). The Magistrate is not acting as a post office simply putting a stamp of approval to the remand papers as presented before him. In Manubhai Ratilal Patel v. State of Gujarat [Manubhai Ratilal Patel v. State of Gujarat, (2013) 1 SCC 314 : (2013) 1 SCC (Cri) 475] this Court held that it is obligatory on the part of the Magistrate to satisfy himself whether the materials placed before him justify such a remand.

45. A plain reading of Article 22(1) of the Constitution of India shows that the intent of the Constitution makers while incorporating the provisions was not to create any exceptional circumstances, instead it reads as "No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest?.". it casts a mandatory unexceptional duty on the State to provide the arrested person with the grounds of such arrest with the objective to enable that person to be able to defend himself by consulting a legal practitioner of his choice. This mandate of Article 22(1) is notwithstanding any exception. This Court has made it explicit that the constitutional obligation under Article 22 is not statute-specific and it is grounded in fundamental right of life and personal liberty under Article 21 of the Constitution of India, therefore making it applicable to all offences including those under the Penal Code, 1860 (now BNS 2023).

46. The requirement of informing the arrested person the grounds of arrest, in the light of and under Article 22(1) of the Constitution of India, is not a mere formality but a mandatory binding constitutional safeguard which has been included in Part III of the Constitution under the head of Fundamental Rights. Thus, if a person is not informed of the grounds of his arrest as soon as maybe, it would amount to the violation of his fundamental rights thereby curtailing his right to life and personal liberty under Article 21 of the Constitution of India, rendering the arrest illegal.

48. As mentioned above, it has been held while dealing with the mode of communicating the grounds of arrest so as to serve the intended purpose of the constitutional mandate that the language used in Articles 22(1) and 22(5) regarding communication of the grounds is identical and therefore the interpretation of Article 22(5) shall ipso facto apply to Article 22(1). The grounds of arrest must be furnished in writing, in order to attend the true intended purpose of Article 22(1). Reference at this stage may be made to the Constitution Bench judgment of this Court in *Harikisan [Harikisan v. State of Maharashtra, 1962 SCC OnLine SC 117]* wherein while dealing with Article 22(5) of the Constitution of India in the context of the right of a detainee to be made aware of the grounds of arrest, it has been held that the same should be furnished in a language which he can understand and in a script which he can read, if he is a literate person.

50. Further, the above judgment has been reiterated and followed by this Court in *Lallubhai Jogibhai Patel v. Union of India [Lallubhai Jogibhai Patel v. Union of India, (1981) 2 SCC 427 : 1981 SCC (Cri) 463 : (1982) 52 Comp Cas 543]* wherein it has been reaffirmed that grounds of detention must be communicated to the detenu in writing in a language which he understands.

51. On perusal of the above two judgments, it turns out that mere communication of the grounds in a language not understood by the person arrested does not fulfil the constitutional mandate under Article 22 of the Constitution of India. The failure to supply such grounds in a language understood by the arrestee renders the constitutional safeguards illusory and infringes the personal liberty of the person as guaranteed under Articles 21 and 22 of the Constitution of India. The objective of the constitutional mandate is to place the person in a position to comprehend the basis of the allegations levelled against him and it can only be realised when the grounds are furnished in a language understood by the person, thereby enabling him to exercise his rights effectively.

52. From the catena of decisions discussed above, the legal position which emerges is that the constitutional mandate provided in Article 22(1) of the Constitution of India is not a mere procedural formality but a constitutional safeguard in the form of fundamental rights. The intent and purpose of the constitutional mandate is to prepare the arrested person to defend himself. If the provisions of Article 22(1) are read in a restrictive manner, its intended purpose of securing personal liberty would not be achieved rather curtailed and put to disuse.

55. This Court is of the opinion that to achieve the intended objective of the constitutional mandate of Article 22(1) of the Constitution of India, the grounds of arrest must be informed to the arrested person in each and every case without exception and the mode of the communication of such grounds must be in writing in the language he understands.

57. *The second issue which requires consideration is when grounds of arrest are not furnished either prior to arrest or immediately after the arrest, would it vitiate the arrest for non-compliance of the provisions of Section 50CrPC (now Section 47 of BNSS 2023) irrespective of certain exigencies where furnishing such grounds would not be possible forthwith.*

58. *It is by now settled that if the grounds of arrest are not furnished to the arrestee in writing, this non-compliance will result in breach of the constitutional and statutory safeguards hence rendering the arrest and remand illegal and the person will be entitled to be set at liberty. The statute is silent with regard to the mode, nature or the time and stage at which the grounds of arrest has to be communicated. Article 22 says "as soon as may be" which would obviously not mean prior to arrest but can be on arrest or thereafter. The indication is as early as it can be conveyed. There may be situations wherein it may not be practically possible to supply such grounds of arrest to the arrested person at the time of his arrest or immediately.*

62. *We thus hold, that, in cases where the police are already in possession of documentary material furnishing a cogent basis for the arrest, the written grounds of arrest must be furnished to the arrestee on his arrest. However, in exceptional circumstances such as offences against body or property committed in flagrante delicto, where informing the grounds of arrest in writing on arrest is rendered impractical, it shall be sufficient for the police officer or other person making the arrest to orally convey the same to the person at the time of arrest. Later, a written copy of grounds of arrest must be supplied to the arrested person within a reasonable time and in no event later than two hours prior to production of the arrestee before the Magistrate for remand proceedings. The remand papers shall contain the grounds of arrest and in case there is delay in supply thereof, a note indicating a cause for it be included for the information of the Magistrate.*

64. *In view of the above, we hold with regard to the second issue that non-supply of grounds of arrest in writing to the arrestee prior to or immediately after arrest would not vitiate such arrest on the grounds of non-compliance with the provisions of Section 50CrPC (now Section 47 of BNSS 2023) provided the said grounds are supplied in writing within a reasonable time and in any case two hours prior to the production of the arrestee before the Magistrate for remand proceedings.*

68. *We are cognizant that there existed no consistent or binding requirement mandating written communication of the grounds of arrest for all the offences. Holding as above, in our view, would ensure implementation of the constitutional rights provided to an arrestee as engrafted*

under Article 22 of the Constitution of India in an effective manner. Such clarity on obligation would avoid uncertainty in the administration of criminal justice. The ends of fairness and legal discipline therefore demand that this procedure as affirmed above shall govern arrests henceforth."

9. Recently the Hon'ble Supreme Court in the judgment of **Dr Rajinder Rajan vs Union of India : 2026 Live Law (SC) 327** has also held that the grounds of arrest must be furnished in writing to the arrested person, in order to attend the true intended purpose of Article 22(1) of the Constitution of India. As such it is apparent that supply of grounds of arrest to the person being arrested is a constitutional mandate. The Hon'ble Supreme Court has also held that if the grounds of arrest are not furnished to the arrestee in writing, the non-compliance will result in breach of the constitutional and statutory safeguards hence rendering the arrest and remand illegal and the person will be entitled to be set at liberty. The aforesaid directions in the case of **Mihir Rajesh Shah (Supra)** have been directed to govern all arrests with effect from the date of judgment of the Hon'ble Supreme Court, which is 06.11.2025.

10. Thus considering the aforesaid it is apparent that since the pronouncement of the judgment on 06.11.2025, the respondents authorities are required to adhere to the directions which have been issued by the Hon'ble Supreme Court in the case of Mihir Rajesh Shah (Supra) meaning thereby that if the grounds of arrest are not furnished to the arrestee in writing, this non-compliance will result in breach of the constitutional and statutory safeguards hence rendering the arrest and remand illegal.

11. Perusal of the grounds of arrest, a copy of which has been annexed as annexure-3 to the petition, would indicate that the said grounds of arrest are only indicating about the case crime number which has been lodged against the petitioner without indicating the grounds on which the petitioner is sought to be arrested.

12. Hon'ble Supreme Court recently in the case of **Dr Rajinder Rajan (supra)** after considering Mihir Rajesh Shah (Supra) has held as under:-

20. It is no longer res integra that supplying the grounds of arrest to the accused in writing before the arrest or, in a given case, under exceptional circumstances, immediately thereafter, is the mandate of the constitutional guarantees provided under Article 22(1) read with Article 21 of the Constitution of India. The ratio of the judgment in Mihir Rajesh Shah (supra) conclusively holds that any deviation from the above principle would lead to the arrest of the accused being declared illegal entitling such accused to be released forthwith.

13. Interestingly, indication of the case crime number in the memo of arrest without indicating the grounds of arrest has been considered by the Apex Court in the case of Dr. Rajinder Rajan (supra) wherein the ground taken by the authorities was that as the case crime number has been mentioned in the memo of arrest that would suffice. However, the Apex Court was of the view that supplying the ground of arrest to the accused in writing before the arrest is a mandate of Constitutional guarantees provided under Article 22 (1) read with Article 21 of the Constitution of India and that any deviation from the principles laid down by the Apex Court in the case of Mihir

Rajesh Shah (supra) would lead to the arrest of accused being declared illegal entitling such accused to be released forthwith.

14. Thus, it is apparent that the petitioner has been arrested on 27.01.2026 without complying with the procedure as directed by the Hon'ble Supreme Court in the case of *Mihir Rajesh Shah (Supra)*, meaning thereby that the arrest of petitioner with effect from 27.01.2026 is illegal. The remand order which has been granted by the learned Magistrate dated 28.01.2026, is based on the illegal arrest of the petitioner and is thus also liable to be set-aside, keeping in view the judgment of this Court in the case of *Shivam Chaurasiya Vs. State of U.P. and Others; 2026:AHC-LKO:10501-DB*, wherein, in a similar matter, this court has held as under:-

"27. So far as the argument of the learned AGAs that as the petitioner is now in custody in pursuance to the remand order passed by the learned Magistrate and thus the illegality, if any, in the arrest gets obliterated which argument has been advanced on the basis of the judgment of the Apex Court in the case of *Mihir Rajesh Shah (supra)*, the same merits to be rejected inasmuch as it is a settled proposition of law that once the edifice goes the super structure collapses meaning thereby that in case the arrest itself is declared illegal even if the remand order has been passed, the same would also be rendered bad keeping in view the law laid down by the Apex Court in the case of *Mihir Rajesh Shah (supra)*."

15. On the other hand, the learned AGA does not dispute the judgments of the Hon'ble Supreme Court in the cases of *Mihir Rajesh Shah (Supra)* and *Dr Rajinder Rajan (supra)* and *Shivam Chaurasiya (Supra)*, and the principles of law as laid down in the aforesaid judgments.

16. Considering the aforesaid, we are of the view that this petition deserves to be allowed. The fact that the petitioner has been in jail since 27.01.2026, and as already observed above, his continued incarceration would be in violation of the law laid down by the Hon'ble Supreme Court in the case of *Mihir Rajesh Shah (Supra)*.

17. However, before allowing the writ petition we are of the view that the writ petition deserves to be allowed with exemplary costs, particularly when the petitioner has lost his personal liberty on account of an illegal act on the part of the authorities, who have failed to follow the law laid down by the Hon'ble Supreme Court in the case of *Mihir Rajesh Shah (Supra)*, wherein it was categorically held that informing a person of the grounds of arrest is not a mere formality but a mandatory, binding constitutional safeguard. Thus, it is apparent that the authorities have flagrantly violated the constitutional safeguards provided by the Hon'ble Supreme Court in the case of *Mihir Rajesh Shah (Supra)*. Thus, it is apparent that the petitioner has lost his personal life and liberty for no fault on his part but on account of the authorities not following the Constitutional safeguards directed to be followed by the Apex Court.

18. Considering the aforesaid, we direct the Additional Chief Secretary, Home, Government of U.P. i.e the respondent no. 1 to submit a reply as to why exemplary costs should not be awarded to the petitioner for his illegal incarceration in jail from 27.01.2026 until the present date, comprising a period of almost three months.

19. Let the reply be filed within three days.

20. List this case on 29.04.2026 at 02:15 PM.

21. In the event the reply is not submitted, the Additional Chief Secretary, Home, Government of U.P, Lucknow shall appear in person, along with all relevant records, to assist the Court.

22. The learned AGA shall communicate this order to the Additional Chief Secretary (Home) forthwith, without waiting for a certified copy.

23. The A.G.A. shall again produce the records including case diary etc. on the date fixed."

4. From the perusal of the aforesaid order dated 24.04.2026, it emerges that the petitioner has approached this Court being aggrieved by his arrest and illegal detention and the remand order dated 28.01.2026.

5. The sheet anchor of the argument of the learned counsel for the petitioner is the judgment of the Hon'ble Supreme Court in the case of **Mihir Rajesh Shah versus State of Maharashtra : 2026 (1) SCC 500** wherein the Hon'ble Supreme Court, after considering Article 22(1) of the Constitution of India, has held that no person who is arrested shall be detained in custody without being informed of the grounds of such arrest. The grounds of arrest have also been perused and considered by this Court in the order dated 24.04.2026 and this court has recorded a categorical finding in the said order, after considering the judgment of the Hon'ble Supreme Court in the case of **Dr. Rajinder Rajan versus Union of India : 2026 LiveLaw (SC) 327**, that the arrest of the petitioner on 27.01.2026 has been made without complying with the procedure as directed by the Hon'ble Supreme Court in the case of **Mihir Rajesh Shah (Supra)** meaning thereby that the arrest of the petitioner on 27.01.2026 is illegal. It is further recorded that the remand order granted by the learned Magistrate dated 28.01.2026, being based on the illegal arrest of the petitioner, is also liable to be set aside keeping in view the judgment of this Court in the case of **Shivam Chaurasiya vs. State of U.P. and others : 2026:AHC-LKO:10501-DB**. This Court was also of the view that the writ petition deserves to be allowed with exemplary cost and consequently directed the Additional Chief Secretary (Home) to submit his reply as to why exemplary cost should not be awarded to the petitioner for his illegal incarceration in jail since 27.01.2026 till date comprising of a period of almost three months.

6. At the outset, learned AGA states that the petitioner still continues to remain in jail and has not been released despite the observations made in the order dated 24.04.2026.

7. As regards the reply pertaining to explaining as to why exemplary cost should not be awarded learned AGA has filed the personal affidavit of the Additional Chief Secretary (Home).

8. The Court is constrained to observe that the Additional Chief Secretary (Home) has failed to file a reply with regard to submission of a reply as to why exemplary costs should not be

imposed rather has concluded in the penultimate paragraph of the personal affidavit i.e. paragraph 14, that prompt action has been taken by the State authorities in compliance of the order dated 24.04.2026 and necessary steps have been initiated including seeking a detailed report from Director General of Police. It has further been indicated that the matter is under active consideration of the Government and appropriate action shall be taken in accordance with law upon receipt of the report. It thus appears that Additional Chief Secretary (Home) has not even cared to go through the order of this Court dated 24.4.2026 which, as we have already indicated above, required him to file a reply as to why exemplary cost should not be imposed for the illegal incarceration of the petitioner in jail for almost three months.

9. As already indicated above, the personal affidavit of the Additional Chief Secretary (Home) indicates that appropriate action is being taken or shall be taken after receipt of the report and the personal affidavit does not even contain a whisper regarding the explanation as to why exemplary cost should not be imposed. If this is the non-application of mind at the end of the highest authority of the Home Department i.e. Additional Chief Secretary (Home), we can well understand as to how the other authorities of the State are working!!!

10. Accordingly, considering the aforesaid, more particularly when no reply has been filed with regard to explaining as to why exemplary costs should not be imposed, the Court is of the view that while allowing the writ petition, keeping in view the detailed consideration of the facts including the judgments on the relevant point pertaining to the arrest of the petitioner since 27.1.2026, some exemplary cost should also be imposed as the life and personal liberty of the petitioner has been curtailed by the respondent authorities/State in gross violation of the law laid down by the Hon'ble Supreme Court in the case of **Mihir Rajesh Shah (Supra)**.

11. Further, despite the order of this court dated 24.4.2026, the respondent authorities have failed to wake up from their slumber and the illegal incarceration of the petitioner still continues.

12. Keeping the aforesaid discussion, the Court now proceeds to consider as to the amount of costs which are to be awarded to the petitioner for his illegal incarceration in jail for more than three months as of date.

13. In this regard, it would be apt to refer to the judgment of the Hon'ble Supreme Court in the case of **Rini Johar and Another versus State of Madhya Pradesh and Others: 2016 (11) SCC 703**, wherein in a case of the petitioners having been arrested without complying with the procedural requirements, the Hon'ble Supreme Court was of the view that as the arrest was in violation of the due procedure, seriously jeopardizing the dignity of the arrested petitioners consequently, in view of their illegal arrest for a period of 17 days and three weeks for the petitioners, the Hon'ble Supreme Court awarded compensation of Rupees Five Lakhs each to the petitioners to be paid by the State Government. For the sake of convenience, relevant observations of the Hon'ble Supreme Court in the case of Rini Johar (supra) are reproduced below:-

“23□...It is also clear that liberty of the petitioner was curtailed in violation of law. The freedom of an individual has its sanctity. When the individual liberty is curtailed in an unlawful

manner, the victim is likely to feel more anguished, agonized, shaken, perturbed, disillusioned and emotionally torn. It is an assault on his/her identity. The said identity is sacrosanct under the Constitution. Therefore, for curtailment of liberty, requisite norms are to be followed. Fidelity to statutory safeguards instil faith of the collective in the system. It does not require wisdom of a seer to visualize that for some invisible reason, an attempt has been made to corrode the procedural safeguards which are meant to sustain the sanguinity of liberty. The investigating agency, as it seems, has put its sense of accountability to law on the ventilator. The two ladies have been arrested without following the procedure and put in the compartment of a train without being produced before the local Magistrate from Pune to Bhopal. One need not be Argus eyed to perceive the same. Its visibility is as clear as the cloudless noon day. It would not be erroneous to say that the enthusiastic investigating agency had totally forgotten the golden words of Benjamin Disraeli:

“I repeat □. that all power is a trust □ that we are accountable for its exercise □ that, from the people and for the people, all springs and all must exist.”

24. We are compelled to say so as liberty which is basically the splendor of beauty of life and bliss of growth, cannot be allowed to be frozen in such a contrived winter. That would tantamount to comatosing of liberty which is the strongest pillar of democracy.

25. Having held thus, we shall proceed to the facet of grant of compensation. The officers of the State had played with the liberty of the petitioners and, in a way, experimented with it. Law does not countenance such kind of experiments as that causes trauma and pain. In Mehmood Nayyar Azam v. State of Chhattisgarh-(2012) 8 SCC 1, while dealing with the harassment in custody, deliberating on the concept of harassment, the Court stated thus:-

“22. At this juncture, it becomes absolutely necessary to appreciate what is meant by the term □harassment□. In P. Ramanatha Aiyar□s Law Lexicon, 2nd Edn., the term □harass□ has been defined thus:

“Harass.□□Injure□ and □injury□ are words having numerous and comprehensive popular meanings, as well as having a legal import. A line may be drawn between these words and the word □harass□, excluding the latter from being comprehended within the word □injure□ or □injury□. The synonyms of □harass□ are: to weary, tire, perplex, distress tease, vex, molest, trouble, disturb. They all have relation to mental annoyance, and a troubling of the spirit.□”

The term □harassment□ in its connotative expanse includes torment and vexation. The term □torture□ also engulfs the concept of torment. The word □torture□ in its denotative concept includes mental and psychological harassment. The accused in custody can be put under tremendous psychological pressure by cruel, inhuman and degrading treatment.□

26. In the said case, emphasizing on dignity, it has been observed:-

“36□..The majesty of law protects the dignity of a citizen in a society governed by law. It cannot be forgotten that the welfare State is governed by the rule of law which has paramourcy. It has been said by

Edward Biggon "the laws of a nation form the most instructive portion of its history". The Constitution as the organic law of the land has unfolded itself in a manifold manner like a living organism in the various decisions of the court about the rights of a person under Article 21 of the Constitution of India. When citizenry rights are sometimes dashed against and pushed back by the members of City Halls, there has to be a rebound and when the rebound takes place, Article 21 of the Constitution springs up to action as a protector."

27. In the case at hand, there has been violation of Article 21 and the petitioners were compelled to face humiliation. They have been treated with an attitude of insensibility. Not only there are violation of guidelines issued in the case of *D.K. Basu vs. State of W.B.* (1997) 1 SCC 416, there are also flagrant violation of mandate of law enshrined under Section 41 and Section 41-A of CrPC. The investigating officers in no circumstances can flout the law with brazen proclivity. In such a situation, the public law remedy which has been postulated in *Nilabati Behera vs. State of Orissa* - (1993) 2 SCC 746, *Sube Singh v. State of Haryana*-(2006) 3 SCC 178, *Hardeep Singh v. State of M.P.* - (2012) 1 SCC 748 comes into play. The constitutional courts taking note of suffering and humiliation are entitled to grant compensation. That has been regarded as a redeeming feature. In the case at hand, taking into consideration the totality of facts and circumstances, we think it appropriate to grant a sum of Rs.5,00,000/- (rupees five lakhs only) towards compensation to each of the petitioners to be paid by the State of M.P. within three months hence. It will be open to the State to proceed against the erring officials, if so advised."

14. Keeping the aforesaid discussion, the writ petition is **allowed**. A writ of habeas corpus is issued declaring the arrest of the petitioner as illegal. The remand order dated 28.1.2026 being consequential to the illegal arrest is also set aside. The petitioner be set free provided he is not wanted in any other case. However, it would be open for the respondents to proceed in accordance with law.

15. Further, considering the illegal arrest of the petitioner since 27.1.2026 which continues even as of date i.e. 29.4.2026 and his illegal incarceration in jail being of more than three months, the Court is of the view that exemplary costs quantified at Rupees Ten Lakhs are also imposed on the State authorities.

16. The said cost shall be paid at the first instance by the State Government with the liberty to recover the same from the officials who were responsible in accordance with law. The said cost shall be paid to the petitioner within four weeks from the date of receipt of a certified copy of this order.

(2026) 4 ILRA 1732
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 23.04.2026

BEFORE

THE HON'BLE SANDEEP JAIN, J.

Habeas Corpus Writ Petition No. 243 of 2026

Dr. Bhavna Singh & Anr.

...Petitioners

Versus

State of U.P. & Ors.

...Respondents

Issue for Consideration

Whether custody of the Corpus (minor child) be given to the petitioner (mother) on the ground that the Respondent (father) is habitually addicted to alcohol, has a history of domestic violence, and lacks the requisite financial stability to ensure the proper upbringing and welfare of the minor.

Head Notes

The Constitution of India, 1950-Article 226 (Habeas Corpus)- Petitioner is a well-educated, professionally qualified, and financially independent individual, fully capable of securing the welfare and future prospects of the minor- Petitioner has secured admission of the corpus in Bishop Cotton School, Shimla, and has already deposited a substantial amount towards the fees for the Academic Session 2026–27, wherein the corpus is to be enrolled in Class V. The said institution, being a reputed residential school of high academic standing, offers significantly superior educational and developmental opportunities when compared to the available institutions in District Meerut- Respondent No. 3 suffers from chronic alcoholism, has undergone a liver transplant on 12.01.2025, and has demonstrated financial dependency, as evidenced by the fact that the medical expenses for the said procedure were borne by his mother- Entrusting the custody of the minor to the father would not be conducive to the child's overall welfare, stability, and long-term development.

Held-The paramount consideration is the welfare and best interests of the child, which must override all other considerations, including the legal rights of the parents. Applying this settled principle to the facts of the present case, this Court is of the considered view that the welfare of the corpus would be best served by allowing him to continue his education at Bishop Cotton School, Shimla, as arranged by the petitioner.

Petition disposed of. (E-15)

(Para 9, 10 & 11)

Case Law Cited

Rajeshwari Chandrasekar Ganesh vs. State of Tamil Nadu (2023) 12 SCC 472 :Nilanjan Bhattacharya vs. State of Karnataka and others (2021) 12 SCC 376; Rohith Thammana Gowda vs. State of Karnataka and Ors. (2022) 20 SCC 550;

List of Acts

The Constitution of India, 1950

List of Keywords

Custody of Minor child; Paramount consideration; Welfare of child; Override all other considerations; **Habeas Corpus**

Case Arising From

Petition for issuance of a writ of habeas corpus has been instituted by the petitioner, mother of the minor child. The petitioner asserts her lawful entitlement to the custody of the corpus on the grounds that Respondent No. 3, the father, is habitually addicted to alcohol, has a history of domestic violence, and lacks the requisite financial stability to ensure the proper upbringing and welfare of the minor.

Appearances for Parties

Counsel for Petitioner(s) : Pranshu Gupta, Vinayak Mithal

Counsel for Respondent(s) : G.A., Mohit Kumar, Sai Girdhar, Vandana Mishra

(Delivered by Hon'ble Sandeep Jain, J.)

1. Heard Sri Vikrant Rana learned Senior Counsel assisted by Sri Chandra Rai Singh learned counsel for the petitioner and counsel for the respondent.

2. The present petition for issuance of a writ of habeas corpus has been instituted by the petitioner, Dr. Bhavna Singh, the biological mother of the minor child (hereinafter referred to as the ?corpus?). The petitioner asserts her lawful entitlement to the custody of the corpus on the grounds that Respondent No. 3, the father, is habitually addicted to alcohol, has a history of domestic violence, and lacks the requisite financial stability to ensure the proper upbringing and welfare of the minor.

3. It is submitted that the petitioner is a qualified medical professional residing in Gautam Buddh Nagar and is financially self-sufficient. The corpus, presently aged about ten years, has been admitted to class V in Bishop Cotton School, Shimla for the Academic Session 2026?2027, and the petitioner has incurred substantial expenditure amounting to approximately Rs. 17,00,000/- towards admission and related costs. Learned counsel for the petitioner further contends that owing to irreconcilable matrimonial discord and ideological incompatibility between the parties, cohabitation is no longer feasible. It is, therefore, urged that this Court may be pleased to pass appropriate orders keeping paramount consideration of the welfare, education, and holistic development of the minor, and permit the corpus to continue his education at the said institution with structured visitation rights to both parents.

4. Per contra, learned counsel appearing on behalf of Respondent No. 3 does not dispute that the respondent has been suffering from chronic alcoholism, resulting in permanent liver damage and necessitating a liver transplant. However, it is contended that the corpus is presently residing with the father and has been enrolled in Brainz Edu World school in Meerut, where he is receiving adequate education. It is further submitted that the corpus shares a strong emotional bond with his father and has expressed his preference to remain in his custody. The respondent asserts that he possesses sufficient means of sustenance through rental and agricultural income and is physically capable of taking care of the minor.

5. This Court has heard the learned counsel for the parties at length, perused the material on record, and has also interacted with the corpus in chambers.

6. The Apex Court in the case of *Rajeshwari Chandrasekar Ganesh vs. State of Tamil Nadu (2023) 12 SCC 472* and *Nilanjan Bhattacharya vs. State of Karnataka and others (2021) 12 SCC 376 (By 3 Judges)* has held that in a petition seeking writ of habeas corpus in matter relating to custody of child, the paramount consideration of the Court is to ascertain the welfare and best interest of the child.

7. Further, the Apex Court in the case of *Rohith Thammana Gowda vs. State of Karnataka and Ors. (2022) 20 SCC 550*, while drawing a clear distinction between the “best interest of the child” and the mere ?wish or desire of the child,? has authoritatively held that in proceedings under a writ of habeas corpus relating to child custody, paramount consideration must be accorded to the welfare and best interest of the child, and not solely to the expressed preference of the child. It is quoted as under:-

"11. At the outset we may state that in a matter involving the question of custody of a child it has to be borne in mind that the question ?what is the wish/desire of the child? is different

and distinct from the question ?what would be in the best interest of the child?. Certainly, the wish/desire of the child can be ascertained through interaction but then, the question as to ?what would be in the best interest of the child? is a matter to be decided by the court taking into account all the relevant circumstances.

12. When couples are at loggerheads and wanted to part their ways, as Parthian shot they may level extreme allegations against each other so as to depict the other unworthy to have the custody of the child. In the circumstances, we are of the view that for considering the claim for custody of a minor child, unless very serious, proven conduct which should make one of them unworthy to claim for custody of the child concerned, the question can and shall be decided solely looking into the question as to, ?what would be the best interest of the child concerned?. In other words, welfare of the child should be the paramount consideration..."

8. During the course of such interaction, the corpus expressed his inclination to reside with his father and levelled certain allegations against the petitioner, including instances of scolding and physical reprimand. The corpus also alleged that the petitioner consumes alcohol. However, upon careful observation of the demeanor and responses of the minor, this Court is of the considered opinion that the statements so made appear to be influenced and tutored, lacking spontaneity and comprehension expected of a child of his age. The allegations, being exaggerated and beyond the natural understanding of the minor, do not inspire confidence and are, therefore, not relied upon.

9. A perusal of the record unequivocally establishes that the petitioner is a well-educated, professionally qualified, and financially independent individual, fully capable of securing the welfare and future prospects of the minor. It is also an admitted position that the petitioner has secured admission of the corpus in Bishop Cotton School, Shimla, and has already deposited a substantial amount towards the fees for the Academic Session 2026?27, wherein the corpus is to be enrolled in Class V. The said institution, being a reputed residential school of high academic standing, offers significantly superior educational and developmental opportunities when compared to the available institutions in District Meerut.

10. In contrast, the material on record reflects that Respondent No. 3 suffers from chronic alcoholism, has undergone a liver transplant on 12.01.2025, and has demonstrated financial dependency, as evidenced by the fact that the medical expenses for the said procedure were borne by his mother. In such circumstances, this Court is constrained to observe that entrusting the custody of the minor to the father would not be conducive to the child?s overall welfare, stability, and long-term development.

11. It is a well-settled principle of law that in matters concerning custody of a minor, the paramount consideration is the welfare and best interests of the child, which must override all other considerations, including the legal rights of the parents. Applying this settled principle to the facts of the present case, this Court is of the considered view that the welfare of the corpus would be best served by allowing him to continue his education at Bishop Cotton School, Shimla, as arranged by the petitioner.

12. Accordingly, it is directed that both parents shall be entitled to visit the corpus, either jointly or individually, once every month, in a congenial and non-disruptive environment within the premises of the school. The Headmaster of Bishop Cotton School, Shimla, is hereby directed to facilitate such visitation without any obstruction or inconvenience. The parties are at liberty to bring to the notice of this Court, any grievance in this regard, for appropriate directions.

13. The parties are further directed to ensure that the corpus is duly admitted to Bishop Cotton School, Shimla, on 26.04.2026. A copy of this order shall be transmitted to the Headmaster of the said institution for information, compliance, and necessary action by the Registrar Compliance.

14. It is further clarified that during school vacations, the custody of the corpus shall be equally shared between the parents, subject to the wishes, comfort, and well-being of the minor, ensuring that his emotional and psychological needs are duly respected. 15. In view of the above, the present habeas corpus petition is **disposed of**.

(2026) 4 ILRA 1736
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 16.04.2026

BEFORE

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

Habeas Corpus Writ Petition No. 781 of 2025

Javed & Anr.

...Petitioner

Versus

State of U.P. & Ors.

...Respondents

Issue for Consideration

Whether the detaining authority has not applied his mind, making the detention order mechanically and arbitrarily on the recommendation of the Sponsoring Authority, and the grounds of detention are not proper and the detention is based on speculation; not reality and whether offences attributed to the petitioner are such that these would constitute no more than violation of the law and order

Head Notes

The Constitution of India, 1950-Article 226 (Habeas Corpus); The National Security Act, 1980-Section 3(3)- The petitioner was found indulging in a particular kind of an offence that spontaneously arouses religious passions amongst a large section of the community, inciting them to indulge in violence with the imminent likelihood of vitiation of public order in the locale. They have slaughtered a cow, which, like always, led to frayed tempers and violent emotions displayed by members of the public, agitating and blockading the road, and throwing life out of gear in the locale. It is not a case, where for a simple violation of law and order or an irrelevant consideration, like past instances of violations of law and order were taken into consideration by the detaining Authority to infer that the detainee, if released on bail, would indulge in similar acts, that would lead to public order being prejudicially affected.

No representation made by the petitioner against his detention, either to the State Government or the Advisory Board, which might have been considered and decided by these two Authorities under the NSA before confirming the petitioner's detention-It is not disputed by the petitioner that the Advisory Board heard him in person before they advised the State Government to confirm the detention order.

Held- No infirmity in the order impugned, ordering the petitioner's detention under the NSA.
Petition dismissed. (E-15)

(Para 34, 41 & 43)

Case Law Cited

Sameer and another v. State of U.P. and others, 2026:AHC:83732-DB;

List of Acts

The Constitution of India, 1950; The National Security Act, 1980

List of Keywords

Habeas Corpus ;Section 3(3); NSA; Committed offence; Arouses religious passions; Not simple violation of law; Detenue if released on bail; Would indulge in similar acts

Case Arising From

Detenue under the National Security Act, 1980, has petitioned this Court for the grant of a writ in the nature of habeas corpus, declaring his detention pursuant to the order dated 05.06.2025, passed by the District Magistrate, Shamli, illegal and with a prayer that the rule be made absolute, ordering him to be set at liberty.

Appearances for Parties

Counsel for the Petitioners : Brijesh Kumar Yadava, Narendra Kumar

Counsel for the Respondents : Arvind Kumar Goswami, G.A., Shiv Kumar Pal

(Delivered by Hon'ble J.J. Munir, J.)

1. Javed, a detenue under the National Security Act, 1980, has petitioned this Court for the grant of a writ in the nature of habeas corpus, declaring his detention pursuant to the order dated 05.06.2025, passed by the District Magistrate, Shamli, illegal and with a prayer that the rule be made absolute, ordering him to be set at liberty.

2. The case against the petitioner, on the foot of which he has been detained vide order dated 05.06.2025 passed by the District Magistrate, Shamli under Section 3(2) of the National Security Act, 1980 (for short, 'the NSA'), is copiously set out in the grounds of detention, upon which the order of detention is founded.

3. According to the grounds of detention, on the 15th of March, 2025, Sub-Inspector Gyanendra Singh, Chowki In-charge Chausana, Police Station Jhijnjhana, District Shamli, had left the Chowki along with his companion policemen in the official vehicle for the purpose of maintaining law and order, doing inquiries and serving processes etc. The Sub-Inspector had left his Chowki at 10:10 a.m. vide G.D. Entry No.14. When the police party reached the jungle of Village Lavvadaudpur, they received information that in the same locale in the sugarcane field of one Sandeep son of Aval Singh, some remains of the cows progeny lying strewn. The police party reached the spot, that is to say, the sugarcane field owned by Sandeep and found all around the

place, remains of the cows progeny were lying. There were eleven dismembered feet, four tails, parts of the head, besides parts of skin and a wooden block. For the purpose of inspecting these, the Sub-Inspector summoned Dr. Imran Ansari, a Veterinary Medical Officer, calling him over his mobile number. The doctor, upon arrival at the spot, inspected the remains and identified these as ones belonging to the cows' progeny. Apparently, these remains of the cows progeny showed that unknown man/ men had slaughtered cows and left these remains behind. The remains were taken into custody by the Police, and according to the Veterinary Doctor's instructions, in order to prevent foul stench from spreading and proliferation of infectious disease, buried them at an appropriate place, after digging up earth. The wooden block was marked with a chit and seized. Since this happened at the time of Holi, members of the Hindu community had frayed tempers. A memorandum was drawn up by Sub-Inspector Gyanendra Singh, which was read out to his companions and got signed by them.

4. The police party along with the recovery in hand returned to the police station and on the basis of the memorandum drawn up at the spot, Crime No. 99 of 2025, under Section 3/8 of the Uttar Pradesh Prevention of Cow Slaughter Act, 1955 (for short, 'the Act of 1955'), P.S. Jhinhana, District Shamli, was registered against unknown men vide G.D. No. 17 on 15.03.2025. The investigation was assigned to Sub-Inspector Pramod Kumar. The Investigating Officer proceeded to the spot, that is to say, Sandeep's sugarcane field, located in the jungle of Village Lavvadaudpur, where he found a crowd gathered, amongst whom were members of the Hindu community, who were much enangered. Their feelings had to be assuaged and the men persuaded to keep calm. An I-surveillance team and an S.O.G. team were also present at the spot, who were already about their task. The Investigating Officer undertook the necessary steps while commencing investigation, the chief amongst which was to ascertain the identity of the offenders.

5. Upon hearing of this occurrence, the Inspector In-charge, P.S. Jhinhana, himself, along with a companion force, arrived at the spot only to witness a large crowd gathered there. The members of this crowd had tempers running high over this incident of cow slaughter. This crowd had amongst them members of various organizations, including the Hindu organizations, such as the Rashtriya Bajrang Dal, the Pashchimi Uttar Pradesh Sanyukt Udyog Vyapar Mandal, the Shiv Sena Mandal Saharanpur Unit, and the Akhil Bharatiya Pradhan Sangthan. These men were raising slogans, demanding arrest of the accused, who were involved in the crime. This crowd blockaded the Jhinhana-Thana Bhawan Road, leading to a long queue of vehicles on both sides of the blockade. The wayfarers and the travellers were put to much trouble on this count. This jamming of the road on account of the blockade lasted for long hours, in consequence of which public order in the area was torn asunder.

6. Upon receipt of information, the Circle Officer, Kairana, along with his companion police force, also arrived and made attempts to pacify the agitated members of the crowd, who had blockaded the public road. In the meantime information of this occurrence was sent to adjoining police stations and additional forces summoned to the spot. The forces, that were called, were from Police Stations Thana Bhawan, Garhipukhta, Babri. The additional forces were deployed on the spot and the agitated residents of the villages assured about their security and that of their animals. The police force had to patrol for a number of days in villages Naya Gaon, Dathaida, Gangarampur Khedki, Lavvadaudpur, Shamli-Shamla, Panthupura, Jijaula, Ballamajra, Toda, Khodsama and

Laxmipura. These efforts had to be undertaken by the police force, that was summoned in order to restore peace, where public order had been disturbed.

7. On 16.03.2025, Sub-Inspector Pramod Kumar left the station for Village Lavvadaudpur and arriving there, he summoned a police informer and spoke to him. The informer gave him information that in Village Basi Chundyari, there was much talk and information of the fact that residents of that village, Iqbal son of Rashid, Jaane Alam son of Sagir, along with his companions, Javed son of Islam (the petitioner), Wasim alias Gullu son of Salim, and Sameer son of Shamshad, had together committed the offence of cow slaughter under investigation. The informer said that he was gathering further details, which he would post the Investigating Officer with as soon as he had them. The Investigating Officer proceeded along with his companions to Village Basi Chundyari, visiting the houses of Iqbal and Jane Alam, one after the other looking. The two were not found at home and their family members could not tell the Police about their whereabouts. Next, the Investigating Officer proceeded to Village Mundet Khadar, looking for the petitioner, where he too was not found at home. The petitioner's family did not disclose the details of his whereabouts. Inquiries were made by the Police in the neighbourhood after taking them into confidence, who disclosed that the petitioner these days was spending a lot of money and in the evenings outsiders too come to visit him. It was revealed that the petitioner was not in the village since the day before.

8. On 16.03.2025, various police teams were going about their duties, including checking of vehicles. Information came through a secret informer that the offenders, who were involved in the incident of cow slaughter in Village Lavvadaudpur on 15.03.2025, would be proceeding from Chausana to Mundet Khadar and they would be armed. The Police, which included an S.O.G. Team, intensified their checking of vehicles. After passage of a short time, a motorcycle with two pillion riders □ three in all □ were seen to approach from the side of Chausana. They were attempted to be stopped, but the rider accelerated it, turning it to the left in a bid to escape. However, this led the two wheeler being dis-balanced and it slipped, throwing the rider and the pillions down. The three men riding it attempted to escape. Seen themselves surrounded by a police party, they opened fire employing the illicit firearms they were carrying. The Police sustained no injury and one of the offenders was hit by a bullet. They were overpowered. One of them was the petitioner, who disclosed his name as Javed son of Islam. Upon the search of his person a 0.315 bore country-made pistol was recovered, which had an empty in its chamber. The others, who were apprehended, were Iqbal and Raees son of Mumtaj.

9. Shorn of unnecessary details, upon apprehension, the petitioner along with the two others, during investigation gave out the names of the remainder of their two companions and confessed to the cow slaughter done in the sugarcane field, situate in the jungle of Village Lavvadaudpur in the night intervening 12/ 13.03.2025. They confessed that they had slaughtered two calves and a cow, who were roaming untethered and homeless. They revealed that the flesh from the cows they sold fetched them Rs.20,000/-. Out of the proceeds, Iqbal purchased a mobile handset of POCO Make for a sum of Rs.5,999/-. The balance of the proceeds were equally divided amongst the five men involved. The petitioner along with the two others are said to have confessed to the fact that they were on the lookout for more stray cows, when apprehended by the Police. The petitioner and Iqbal had been shot in their lower limbs and there was blood loss. A ligature was tied to prevent further loss of blood and both of them were conveyed to the CHC for initial medical aid.

Later, in the police lock too, after receiving treatment, the petitioner confessed to their crime in association with others and corroborated the story that he had narrated at the time of his arrest. The other two were also apprehended in due course, but facts relating to them, that are also detailed in the grounds of detention in order to disclose the entire circumstances, bearing on the conduct of the petitioner and the co-accused, leading to the detention order, need not be narrated here.

10. It is then said in the grounds of detention that the petitioner was remanded in Crime No. 99 of 2025, under Section 3/5A/8 of the Act of 1955 and Crime No. 104 of 2025, under Section 109(1) B.N.S. and Section 3/25/27 Arms Act, both relating to P.S. Jhinhana, District Shamli, and he was in judicial custody, incarcerated in the District Jail, Muzaffar Nagar.

11. Noting this fact, the detaining Authority has remarked in the grounds of detention that the petitioner was consistently attempting to ensure his release from prison on bail. He had moved the learned Magistrate's Court for bail, but failed there. Next, he moved the learned Sessions Judge for bail, but again failed. He then applied for bail to this Court, which was granted. This fact was clearly within the cognizance of the detaining Authority, besides the fact that notwithstanding the grant of bail, the petitioner was still detained in the Muzaffar Nagar District Jail, awaiting release. The detaining Authority has remarked that his release from jail is close at hand. It is then observed by the detaining Authority that considering the petitioner's criminal propensity, there was the likelihood that once released from prison, he would commit offences of a kind in the local limits of P.S. Jhinhana and adjoining areas, that would prejudicially affect public order.

12. The basis of the detaining Authority's satisfaction that once released from prison on bail, the petitioner would again indulge in the same kind of offences, is based on three different items of material: The first is an information sent back home from jail by the petitioner that he would be released on bail pursuant to orders of this Court, and once released, he would carry on with slaughtering cows because it was his livelihood. This material figured in a Beat Constables' report, jointly submitted by two members of the police force, a Head Constable and a Constable, who heard about it in their beat on 16.05.2025 and made an entry of it upon return to the police station vide G.D. No.28 at 19.40 hours.

13. The second item of material is the report of Sub-Inspector Pramod Kumar, who inquired into the truth of this Beat Constables' report and found that the contents of G.D. No. 28 dated 16.05.2025 were correct and he made his report that was entered vide G.D. Entry No. 10 dated 17.05.2025 at 10.30 hours.

14. In addition, the third item of material, that was taken into consideration, is a report of the Local Intelligence Unit dated 29.04.2025, affirming the fact of the petitioner having conveyed such intentions of his to his associates upon being released from prison.

15. It is on all this basis that the District Magistrate said that he was subjectively satisfied that upon release from jail, the petitioner would indulge in repetition of offences, that would prejudicially affect public order. In order to prevent the petitioner from committing offences that would prejudicially affect public order, it was necessary to detain him on a preventive basis, invoking the provisions of the NSA.

16. The grounds of detention, that were served upon the petitioner, state that he had a right under Section 8 of the NSA to represent his case to the detaining Authority as also the State Government. It was clarified that if the petitioner wanted to exercise his right to represent as aforesaid to the District Magistrate, he could do so within twelve days of the detention order or before approval of the order by the State Government. The right could be exercised by submitting a representation through the Superintendent of the Jail, where he was detained. It was further mentioned in the grounds that in order to represent to the State Government, he could address his representation to the Secretary, Department of Home, Government of U.P., Lucknow and submit it through the Superintendent of the Jail, where he was detained.

17. It was then conveyed through the grounds that under Sections 9 and 10 of the NSA, the petitioner had a right to represent his case before the Uttar Pradesh Advisory Board, Lucknow and the representation had to be addressed to the Registrar, Uttar Pradesh Advisory Board, Lucknow. The representation aforesaid could be submitted through the Superintendent of the Jail, where he was detained. The grounds also say that under Section 10 of the NSA, his case would be placed before the Advisory Board within three weeks of his detention, and if the petitioner's representation was received belatedly, it would not be considered. The petitioner was also informed of his right to be heard personally before the Advisory Board, in case he elected to do so, demanding that right through his representation to be submitted to the State Government through the Superintendent of the Jail, where he was detained.

18. It was next enumerated in the grounds that the petitioner also had a right to represent his case to the Central Government. That right the petitioner could exercise by addressing his representation to the Secretary, Ministry of Home, Government of India through the Deputy Secretary (Security), Security Division, Centre-II Building, Jai Singh Road, Near Royal Park, Jantar Mantar, New Delhi, which too had to be submitted through the Superintendent of the Jail, where he was detained.

19. The detention order dated 05.06.2025 was confirmed by the State Government on 14.06.2025 under Section 3(4) of the NSA, and finally by an order made on 29.07.2025, after receipt of report from the Advisory Board for the entire duration of twelve months.

20. Aggrieved, this petition for a writ of habeas corpus has been filed.

21. This petition was instituted on 27.08.2025 and came up before the Division Bench on 29.08.2025. A notice of motion was issued on 27.08.2025, requiring parties to exchange affidavits. On 07.10.2025, rule nisi was granted and the petition directed to come up for hearing on 28.10.2025.

22. Heard Mr. Brijesh Kumar Yadav, learned Counsel for the petitioners, Mr. Deepak Mishra, learned Additional Government Advocate-I appearing on behalf of the State and Mr. Arvind Kumar Goswami, learned Central Government Counsel appearing on behalf of the Union of India.

23. A perusal of the counter affidavit filed on behalf of the detaining Authority shows that the petitioner was arrested on 16.03.2025 in two cases, to wit: (1) Case Crime No. 99 of 2025, under Section 3/5A/8 of the Act of 1955, P.S. Jhinhana, District Shamli; and, Case Crime No. 104 of 2025, under Section 109(1) B.N.S. and Section 3/25/27 Arms Act, P.S. Jhinhana, District Shamli. In both these matters, the petitioner was remanded by the learned Additional Chief Judicial Magistrate, Shamli, to judicial custody on 17.03.2025. He was served with the detention order passed under Section 3(2) of the NSA on 05.06.2025, while still in jail in connection with the aforesaid crimes. The detaining Authority has taken the stand that the petitioner was served with the grounds of detention and other materials through the Jail Authorities on 05.06.2025 together with the detention order. The detaining Authority sent the order of detention to the State Government for their approval on 05.06.2025 through a special messenger. The State Government approved the order of detention on 16.06.2025, which was forwarded to the Jail Authorities for its service upon the petitioner.

24. The detaining Authority has taken the stand that the petitioner did not send any representation to the U.P. Advisory Board through the Jail Authorities, a fact which the petitioner has denied in paragraph no. 6 of the rejoinder affidavit filed in answer to the counter affidavit filed on behalf of the detaining Authority. He has asserted that a representation to the Advisory Board was sent. However, no date of the representation finds mention, much less evidence or a copy thereof annexed to the rejoinder. The stand of the State Government is also the same that is that no representation was submitted by the petitioner to the Advisory Board against his detention. Be that as it may.

25. The Advisory Board sent a communication dated 07.07.2025 to the effect that the date of hearing fixed before them was 09.07.2025. The petitioner was sent to attend before the Advisory Board, that is to say, for a personal hearing on the date fixed. The petitioner appeared before the Advisory Board on the said date. The Advisory Board submitted a report, favouring confirmation of the detention order. The State Government then passed orders on 29.07.2025, confirming the detention order, on the basis of the Advisory Board's report for the entire period of twelve months. The fact that the petitioner was personally heard before the Advisory Board is not denied in the rejoinder put in to the detaining Authority's counter affidavit. The State Government's counter affidavit is consistent with the detaining Authority's return.

26. There is a counter affidavit also filed on behalf of the Superintendent, District Jail Muzaffar Nagar. In paragraph no. 8 of the counter affidavit, it is asserted that the petitioner did not submit any representation to the Authorities at the District Jail Muzaffar Nagar. No rejoinder has been filed in answer to the Jail Superintendent's counter affidavit with the result that the assertion in paragraph no. 8 of the counter affidavit aforesaid remains unrebutted.

27. A counter affidavit has also been filed on behalf of the Union of India, where in paragraph no. 5, it is asserted that no representation either from the detainee or on his behalf has been received in the Section concerned of the Ministry of Home Affairs so far. There is no rejoinder in answer to the aforesaid counter affidavit.

28. Mr. Brijesh Kumar Yadav, learned Counsel for the petitioner, has urged that the detaining Authority has not applied his mind, making the detention order mechanically and arbitrarily on the recommendation of the Sponsoring Authority, that is to say, the Police. It is next argued that the grounds of detention are not proper and the detention is based on speculation; not reality. The next submission is that the offences attributed to the petitioner are such that these would constitute no more than violation of the law and order, even if established at the trial. These can never constitute violation of public order, on the basis of which the petitioner can be preventively detained. There is no material to show that the offences attributed to the petitioner could or did lead to vitiation of public order. Since there is no case, more than that of a violation of the law and order, the prosecution launched against the petitioner would test his guilt or prove him innocent. There is absolutely no basis to invoke the NSA and detain the petitioner without trial. It is next argued that the petitioner's right to represent against the detention order, which is not only a statutory right under the NSA, but a constitutional right guaranteed under Article 22 of the Constitution, has been infringed, inasmuch as the petitioner sent his representation through the Jail Superintendent, Muzaffar Nagar to the Secretary (Home), Government of U.P., Lucknow and the Uttar Pradesh Advisory Board, but the same remained pending, while his detention order was confirmed without considering the petitioner's representation, either by the State Government or the Advisory Board.

29. Mr. Deepak Mishra, learned A.G.A., has refuted the submissions advanced on behalf of the petitioner and submitted that the detention order has been made well within the requirements of the law. He has taken us through the various affidavits and the material, upon which the order of detention is founded.

30. So far as the submission that the impugned order is one made without application of mind is concerned, we do not think that, that is the case. A perusal of the grounds of detention show that there is a copious consideration not only of the crime disclosed in the FIR, giving rise to Crime No.99 of 2025, but the circumstances of the occurrence and its impact in the locale, where the offence was committed, vis-a-vis the issue of public order. This is not a case, where there is a mechanical recital of the fact alone that the offence constitutes a violation of public order, but shows due application of mind to the offence and its impact in the locale on the maintenance of public order. It is also not the case that the detaining Authority has proceeded to pass the detention order without application of mind to the requirements of the law, after describing the ramifications of the offence in the locale. The Authority has held it to be an act that vitiated public order. It is also remarked by the Authority on the basis of material before it that it was subjectively satisfied that the petitioner was attempting to secure his release on bail and that the petitioner has moved this Court for bail, which had been granted, but for the present, the petitioner was still incarcerated in jail. It is further remarked that in this manner his release from jail would soon take place. It is then said that looking to the petitioner's criminal propensities, it is evident that once released from jail, he is likely to indulge in the commission of such criminal offences, which would prejudicially affect public order within the local limits of P.S. Jhinhana and the local limits of the adjoining police stations, that look over the rural areas. All these features, which figure in the grounds of detention, make it evident that this is not a case, where it can be said that the order of detention has been passed without application of mind. The first point urged by the learned Counsel for the petitioner is, therefore, negatived.

31. The matter does not end here. What we notice is that the detaining Authority has done a careful consideration of all matters relevant to the question of passing a detention order under the NSA.

32. There is a detailed description of the events of the day beginning with discovery of remains of the cow and its progeny by the police party in the sugarcane field, located in the jungle of Village Lavvadaudpur. The events that unfolded thereafter are amply recorded with movement of police party, deployment of police force, protest by the public, blockade of the road and dislocation of life on the day in the locale, where it all happened. In the circumstances, to say that the grounds of detention are not proper and the detention based on speculation, is stated to be rejected.

33. The next point that arises for consideration is, if the act attributed to the petitioner or the offence committed by him is no more than violation of law and order or these go way beyond it to constitute a violation of public order. We must notice here that we have dealt with this point in our judgment of date, arising out of the same incident in **Sameer and another v. State of U.P. and others, 2026:AHC:83732-DB**. There we have held:

“27. This takes us to the next submission that the crime reported against the petitioner, on the foot of which the impugned order of detention has been passed, is no more than an instance of the violation of law and order; not an incident, which prejudicially affects public order, so as to entitle the respondents to detain the petitioner without trial, invoking the provisions of the NSA.

28. We must remark here that in the genesis of every event, that is an infraction of the public order or its vitiation, there is some crime punishable by law, which can always be termed as a violation of law and order. The violation of law and order is, of course, to be punished in accordance with law after prosecuting the offender, but this does not mean that every infraction of the law and order, that spins out of its trouble spot and widely affects the even tempo of life, is to be regarded as a violation of law and order alone. Whether a violation of the law and order would be just that and no more or have a cascading effect, unsettling the even tempo of life in the locale, or even far and wide, is dependent upon the circumstances, the time, the place and the situation, where the infraction is committed. The point is well elucidated in the celebrated decision of the Supreme Court in **Ram Manohar Lohia v. State of Bihar and another, AIR 1966 SC 740**, where their Lordships of the Constitution Bench held:

"54. We have here a case of detention under Rule 30 of the Defence of India Rules which permits apprehension and detention of a person likely to act in a manner prejudicial to the maintenance of public order. It follows that if such a person is not detained public disorder is the apprehended result. Disorder is no doubt prevented by the maintenance of law and order also but disorder is a broad spectrum which includes at one end small disturbances and at the other the most serious and cataclysmic happenings. Does the expression "public order" take in every kind of disorders or only some of them? The answer to this serves to distinguish "public order" from "law and order" because the latter undoubtedly takes in all of them. Public order if disturbed, must lead to public disorder. Every breach of the peace does not lead to public disorder. When two drunkards quarrel and fight there is disorder but not public disorder. They can be dealt with under the powers

to maintain law and order but cannot be detained on the ground that they were disturbing public order. Suppose that the two fighters were of rival communities and one of them tried to raise communal passions. The problem is still one of law and order but it raises the apprehension of public disorder. Other examples can be imagined. The contravention of law always affects order but before it can be said to affect public order, it must affect the community or the public at large. A mere disturbance of law and order leading to disorder is thus not necessarily sufficient for action under the Defence of India Act but disturbances which subvert the public order are. A District Magistrate is entitled to take action under Rule 30(1)(b) to prevent subversion of public order but not in aid of maintenance of law and order under ordinary circumstances.

55. It will thus appear that just as "public order" in the rulings of this Court (earlier cited) was said to comprehend disorders of less gravity than those affecting "security of State", "law and order" also comprehends disorders of less gravity than those affecting "public order". One has to imagine three concentric circles. Law and order represents the largest circle within which is the next circle representing public order and the smallest circle represents security of State. It is then easy to see that an act may affect law and order but not public order just as an act may affect public order but not security of the State. By using the expression "maintenance of law and order" the District Magistrate was widening his own field of action and was adding a clause to the Defence of India Rules."

29. The point is again considered in **Arun Ghosh v. State of W.B., (1970) 1 SCC 98**, where the concept of public order, as distinguished from law and order, has been eloquently explained by their Lordship thus:

"3. The submission of the counsel is that these are stray acts directed against individuals and are not subversive of public order and therefore the detention on the ostensible ground of preventing him from acting in a manner prejudicial to public order was not justified. In support of this submission reference is made to three cases of this Court: *Dr Ram Manohar Lohia v. State of Bihar* [(1966) 1 SCR 709]; *Pushkar Mukherjee v. State of W.B.* [WP No. 179 of 1968, decided on November 7, 1968: (1969) 1 SCC 10] and *Shyamal Chakraborty v. Commissioner of Police, Calcutta* [WP No. 102 of 1969, decided on August 4, 1969: (1969) 2 SCC 426]. In *Dr Ram Manohar Lohia* case [(1966) 1 SCR 709] this Court pointed out the difference between maintenance of law and order and its disturbance and the maintenance of public order and its disturbance. Public order was said to embrace more of the community than law and order. Public order is the even tempo of the life of the community taking the country as a whole or even a specified locality. Disturbance of public order is to be distinguished from acts directed against individuals which do not disturb the society to the extent of causing a general disturbance of public tranquillity. It is the degree of disturbance and its affect upon the life of the community in a locality which determines whether the disturbance amounts only to a breach of law and order. Take for instance, a man stabs another. People may be shocked and even disturbed, but the life of the community keeps moving at an even tempo, however much one may dislike the act. Take another case of a town where there is communal tension. A man stabs a member of the other community. This is an act of a very different sort. Its implications are deeper and it affects the even tempo of life and public order is jeopardized because the repercussions of the act embrace large sections of the community and incite them to make further breaches of the law and order and to subvert the

public order. An act by itself is not determinant of its own gravity. In its quality it may not differ from another but in its potentiality it may be very different. Take the case of assault on girls. A guest at a hotel may kiss or make advances to half a dozen chamber maids. He may annoy them and also the management but he does not cause disturbance of public order. He may even have a fracas with the friends of one of the girls but even then it would be a case of breach of law and order only. Take another case of a man who molests women in lonely places. As a result of his activities girls going to colleges and schools are in constant danger and fear. Women going for their ordinary business are afraid of being waylaid and assaulted. The activity of this man in its essential quality is not different from the act of the other man but in its potentiality and in its affect upon the public tranquillity there is a vast difference. The act of the man who molests the girls in lonely places causes a disturbance in the even tempo of living which is the first requirement of public order. He disturbs the society and the community. His act makes all the women apprehensive of their honour and he can be said to be causing disturbance of public order and not merely committing individual actions which may be taken note of by the criminal prosecution agencies. It means therefore that the question whether a man has only committed a breach of law and order or has acted in a manner likely to cause a disturbance of the public order is a question of degree and the extent of the reach of the act upon the society. The French distinguish law and order and public order by designating the latter as *ordre publique*. The latter expression has been recognised as meaning something more than ordinary maintenance of law and order. Justice Ramaswami in Writ Petition No. 179 of 1968 drew a line of demarcation between the serious and aggravated forms of breaches of public order which affect the community or endanger the public interest at large from minor breaches of peace which do not affect the public at large. He drew an analogy between public and private crimes. The analogy is useful but not to be pushed too far. A large number of acts directed against persons or individuals may total up into a breach of public order. In *Dr Ram Manohar Lohia* case examples were given by Sarkar and Hidayatullah, JJ. They show how similar acts in different contexts affect differently law and order on the one hand and public order on the other. It is always a question of degree of the harm and its affect upon the community. The question to ask is: Does it lead to disturbance of the current of life of the community so as to amount a disturbance of the public order or does it affect merely an individual leaving the tranquillity of the society undisturbed? This question has to be faced in every case on facts. There is no formula by which one case can be distinguished from another.”

30. There are some issues, where the community is sensitive to the extent that if these surface, there is an inherent potentiality of creating widespread ripples in society that would affect the even tempo of life. One of them is cow slaughter. The slaughtering of a cow, whenever reported or detected, spontaneously evokes strong emotions and violent reactions for obvious injury to religious beliefs of a large section of the society. History is replete with instances of profusion of emotions and violence that an incident of this kind entails. And, it is not that these are matters of historical record to be read in books or fancied about in contemporary world. Violent reactions at the happening of cow slaughter are so well reputed that no one can feign ignorance of the fact, violation of the law apart. Public order is after all not about what the intention of the individual was, or what law he has violated. It is about the impact that his act generates. If the act in question is such that it is not confined to one, two or a few individuals, but disturbs the even tempo of life in the locale or may be beyond, in larger areas, prejudice to public order, is certainly there. The particular act of slaughtering a cow, as already remarked, has immediate and widespread

ramifications in society, almost always leading to widespread violence that takes toll on a tranquil society and throws life out of gear.

31. There are a series of decisions of this Court, which acknowledge the fact that cow slaughter foments communal tension, brings disharmony and results in a situation, that leads to disturbance of public order. The point is elucidated in a few words in the Bench decision of this Court in **Shaukat Ali v. Union of India and others, 2002 SCC OnLine All 1435**. In **Shaukat Ali** (supra), it was held:

“1. A perusal of the grounds of detention copy of which is Annexure 2, shows that the allegations against the petitioner are that the petitioner had slaughtered a cow and the knife and rods were recovered from him. This incident caused communal tension and hence the impugned detention order was passed.

2. Communal amity and harmony are absolutely essential for the progress of the nation. We cannot afford to have another Gujarat in U.P. Slaughter of cow hurts the sentiments of the Hindus and hence should not be committed. In our opinion cow slaughter affects public order because it is likely to incite communal tension.

3. Hence it is not merely a case of law and order.”

32. Again in **Tauqeer v. State of U.P. and others, 2002 SCC OnLine All 230**, it was held:

“4. We have carefully perused the detention order and find that the matter certainly pertains to public order and not to law and order. Under our Constitution freedom of religion has been guaranteed as a fundamental right. However the U.P. Prevention of Cow Slaughter Act bans the slaughter of cows and calves. The petitioner has no right to break the law and violate the above Act. It may be mentioned that nobody has right to do any thing which may lead to communal tension in the country. In case we permit such activities a situation like in Gujarat may recur again Hindus, rightly or wrongly venerate cows. The Muslims should also respect the sentiments of the Hindus and noticing should be done Which may provoke communal riots. The last thing which country can afford today is inflammation of communal feelings in the Society. The petitioner with his associate could slaughter any other animal but certainly not slaughter cows against the provisions of the Prevention of Cow Slaughter Act as that may create communal tension.”

33. In **Guddu Panchhi v. District Magistrate, Kanpur Nagar and others, 2004 SCC OnLine All 1847**, the following remarks of the Division Bench are relevant:

“3. Slaughtered cow and she-calf were found lying at the spot. The news of the incident spread in the area like wild fire. Members of the two communities of the society, i.e. Hindus and Muslims collected at the spot in agitated mood and started raising slogans against one another. Communal harmony was disturbed and the atmosphere became tense. The shopkeepers started downing their shutters. People ran helter-skelter. The public order was completely disturbed. S.O. informed the higher authorities on telephone and requisitioned additional force to control the

situation. Case Crime No. 217 of 2003 under Sections 3/5/8 of U.P. Cow Slaughter Act was registered against the petitioner and others.

6. Obviously, it is the reaction or fall out of an incident in the society which is determinative as to whether it was only disturbance of law and order or that of public order. In the present case, there was a live link between the alleged criminal activity of the petitioner of cow slaughtering and the purpose of detention. The act was clearly prejudicial to public order as is borne out from the grounds of detention reiterated by respondent No. 1 District Magistrate, Kanpur Nagar in his counter-affidavit. The act of the petitioner offended the religious feelings of a sect of society venerating cow and its progeny, besides being in contravention of U.P. Prevention of Cow Slaughter Act. The incident disturbed the even tempo of the life of the society. Members of two communities thronged the spot, shouting slogans against one another. The shops were closed and public tranquility was disturbed in the area with tempers of the two communities of the society running high. Additional force had to be deployed in the area to restore the confidence of the people and for the return of normalcy. The incident adversely affected the social harmony, created communal tension and disturbed public order of the area. The matter certainly pertains to public order and not to law and order. We, therefore, reject the sole argument advanced by the learned counsel for the petitioner in support of the petition that it was a matter of law and order only...”

34. Much later in Wasi through **Mohd. Rafi v. State of U.P. and others, 2017 SCC OnLine All 1880** in the context of an offence of cow slaughter and its bearing on the disturbance of public order, it was held by a Division Bench of this Court:

“30. Learned counsel for the petitioner has emphatically argued that the place of incident where cow was slaughtered is not a public place, as such, it cannot be treated as an issue of public order. It is the reaction or fall out of an incident in the society which is determinative, as to whether, it was only disturbance of law and order or that of public order. Admittedly, the cow slaughter in an open place may have offended the religious feeling of a society, it is, therefore, important to see the proportionality of the response to the act complained of and in view of this, the gravity of the act may be given a thought where the body parts of cow were lying open in public view. Where cattle has been slaughtered in public view, which may definitely lead to disturbance of the current life of the community, so as to amount to a disturbance of a public order, communal amity and harmony. Slaughter of cow hurts the sentiments of the Hindus which affects public order because it is likely to incite communal tension, hence, it is not merely a case of law and order but that of public order.”

35. We have already noticed the kind of impact that the incident had not only in the village, where it happened, but in the adjoining villages of Naya Gaon, Dathaida, Gangarampur Khedki, Lavvadaudpur, Shamli-Shamla, Panthupura, Jijaula, Ballamajra, Toda, Khodsama and Laxmipura. The aftermath of the slaughter and its discovery by the Police led to the local populace and volunteers of organizations heading to the place of occurrence. They were workers of Hindu organizations as also others, like Pashchimi Uttar Pradesh Sanyukt Udyog Vyapar Mandal and the Akhil Bharatiya Pradhan Sangthan, who participated with the public in staging a blockade on the Thana Bhawan □ Jhinhana Road. It led to a complete traffic jam with passersby and travellers, badly stuck and unable to move. The even tempo of life was thrown out of gear, necessitating the

summoning of additional forces from adjoining police stations. In fact, it was after very sensitive and trained persuasions by officers of the Police that public order could be restored. The locals of the village and adjoining villages had to be assured about their safety and security as well as that of their animals.

36. These facts amply show that it was no isolated incident of a violation of the law and order, but one which threw the even tempo of life out of gear. It is the disturbing effect of an incident on serene and tranquil life that determines if it is indeed a violation of public order or a mere breach of law and order. It is not necessary that there should be actual violence, loss of human life and property before an incident can be termed as disturbance of public order. It is disturbance of the daily and ordinary movements of life in the locale, which are the index of vitiation of public order.

37. In the totality of circumstances, we hold that this is decidedly a case where public order was prejudicially affected in consequence of the offence committed by the petitioner. And, it is not a mere case of infraction of law and order.”

34. Here, is a case where the petitioner was found indulging in a particular kind of an offence that spontaneously arouses religious passions amongst a large section of the community, inciting them to indulge in violence with the imminent likelihood of vitiation of public order in the locale. They have slaughtered a cow, which, like always, led to frayed tempers and violent emotions displayed by members of the public, agitating and blockading the road, and throwing life out of gear in the locale. It is not a case, where for a simple violation of law and order or an irrelevant consideration, like past instances of violations of law and order were taken into consideration by the detaining Authority to infer that the detainee, if released on bail, would indulge in similar acts, that would lead to public order being prejudicially affected.

35. For the very same reason, in the present case also, our conclusions are also the same. We, therefore, reject the petitioner's submission that it was not a case of violation of public order, but merely an infraction of law and order.

36. The last point that has been argued is that the petitioner's right guaranteed under Section 8(1) of the NSA and Article 22 of the Constitution has been infringed, inasmuch as he had submitted representations to the Secretary (Home), Government of U.P., Lucknow and to the Uttar Pradesh Advisory Board addressed to their Registrar, both through the Jail Superintendent, Muzaffar Nagar, but neither the State Government have considered the petitioner's representation while confirming the detention order nor the Advisory Board. Rather, both the State Government and the Advisory Board have proceeded on the assumption that there was no representation submitted by the petitioner.

37. We have carefully considered this point urged on behalf of the petitioner. In answer to the assertion carried in paragraph no.11 of the writ petition that representations were addressed to the State Government and the Advisory Board through the Jail

Superintendent, which are pending, but not considered, it is stated in paragraph no. 5 of the counter affidavit filed on behalf of the State Government thus:

“5. It is not out of place to submit here that no representation has been moved by the petitioner till date.”

38. There is no rejoinder affidavit in answer to the State's counter affidavit with the result that paragraph no. 5 of the counter affidavit filed on behalf of the State Government remains un rebutted. Moreover, there is no mention of the date when the representation was addressed to the State Government and the Advisory Board, much less a copy of the representation annexed to a rejoinder, that could have been filed, if it was not annexed to the writ petition on account of any disadvantage that the petition might have had, owing to his detention. We also do notice that the Jail Superintendent in paragraph no. 8 of his counter affidavit has averred:

“8. That it is further humbly submitted that the petitioner has not submitted any representation at District Jail, Muzaffarnagar.”

39. There is no rejoinder on behalf of the petitioner rebutting the assertion in paragraph no. 8 of the counter affidavit filed on behalf of the Superintendent, District Jail Muzaffar Nagar. There is, thus, no basis on the existing material to infer that there was indeed a representation of any kind submitted by the petitioner, either to the State Government or the Advisory Board.

40. It must also be remarked that the District Magistrate in his counter affidavit as well as the Central Government have also asserted that they did not receive any representation from the petitioner in exercise of his right under the NSA, though representations to the detaining Authority, that is to say, the District Magistrate, and the Central Government, is not the point under consideration. But, this fact lends credence to the assertion both by the State Government and the Jail Superintendent that the petitioner never addressed any representation to the State Government or the Advisory Board.

41. In the totality of circumstances, we hold that there was no representation made by the petitioner against his detention, either to the State Government or the Advisory Board, which might have been considered and decided by these two Authorities under the NSA before confirming the petitioner's detention. We also note that it is not disputed by the petitioner that the Advisory Board heard him in person before they advised the State Government to confirm the detention order.

42. No other point was pressed at the hearing.

43. In the circumstances, we are of opinion that there is no infirmity in the order impugned, ordering the petitioner's detention under the NSA.

44. This habeas corpus writ petition fails and is **dismissed**.

(2026) 4 ILRA 1751
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 16.04.2026

BEFORE

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

Habeas Corpus Writ Petition No. 919 of 2025

Jane Alam (Corpus)	...Petitioner
	Versus
State of U.P. & Ors.	...Respondents

Issue for Consideration

Whether the Detaining Authority has not applied his mind, making the detention order mechanically and arbitrarily on the recommendation of the Sponsoring Authority and the grounds of detention are not proper and the detention is based on speculation; not reality and whether offences attributed to the petitioner are such that these would constitute no more than violation of the law and order

Head Notes

The Constitution of India, 1950-Article 226 (Habeas Corpus); The National Security Act, 1980-Section 3(3)- Petitioner was found indulging in a particular kind of offence that spontaneously arouses religious passions amongst a large section of the community, inciting them to indulge in violence, with the imminent likelihood of vitiation of public order in the locale. They have slaughtered a cow, which, like always, led to frayed tempers and violent emotions displayed by members of the public, agitating and blockading the road, and throwing life out of gear in the locale. It is not a case, where for a simple violation of law and order, an irrelevant consideration, like past instances of violations of law and order were taken into consideration by the Detaining Authority to infer that the detainee, if released on bail, would indulge in similar acts, that would lead to public order being prejudicially affected.

In case of preventive detention, while irrelevant material cannot be taken into consideration, such as mere criminal history of the detainee, indulging in acts of violation of law and order in the past, the law of evidence to connect the offender to the crime, would not be attracted- Correctness of the allegations in a preventive detention matter is not up for a scrutiny before the Court, doing a judicial review of the Administrator's decision to preventively detain.

Held- No infirmity in the order impugned, ordering the petitioner's detention under the NSA.
Petition dismissed. (E-15)

(Para 38, 41, 42 & 52)

Case Law Cited

Annu @ Aniket v. Union of India and others, 2025 (4) GLT 39; Sameer and another v. State of U.P. and others, 2026:AHC:83732-DB

List of Acts

The Constitution of India, 1950; The National Security Act, 1980

List of Keywords

Habeas Corpus; Section 3(3); NSA; Correctness of the allegations in a preventive detention; Not up for a scrutiny before the Court, doing a judicial review; Mere criminal history of the detainee, Indulging in acts of violation of law and order in the past; Irrelevant in case of preventive detention

Case Arising From

Petition for a writ of habeas corpus has been instituted by Jane Alam, seeking the issue of a rule nisi, ordering the respondents to produce him before the Court and set him at liberty, confirming the rule. The petitioner has been detained under Section 3(3) of the National Security Act, 1980, by the District Magistrate, Shamli, vide order dated 26.05.2025, which has been confirmed by the State Government on 04.06.2025 and the Uttar Pradesh Advisory Board, Lucknow on 09.07.2025. After receipt of the Advisory Board's report, State Government has enlarged the duration of the detention to twelve months vide order dated 29.07.2025

Appearances for Parties

Counsel for Petitioner : Mohd. Naushad, Noor Ahmed

Counsel for Respondents : A.S.G.I., G.A., Manish Pandey

(Delivered by Hon'ble J.J. Munir, J.)

1. This petition for a writ of habeas corpus has been instituted by Jane Alam, seeking the issue of a rule nisi, ordering the respondents to produce him before the Court and set him at liberty, confirming the rule. The petitioner has been detained under Section 3(3) of the National Security Act, 1980, by the District Magistrate, Shamli, vide order dated 26.05.2025, which has been confirmed by the State Government on 04.06.2025 and the Uttar Pradesh Advisory Board, Lucknow on 09.07.2025. After receipt of the Advisory Board's report, State Government has enlarged the duration of the detention to twelve months vide order dated 29.07.2025.

2. The facts, giving rise to this petition, would show that it all began with a police party, headed by Sub-Inspector Gyanendra Singh on routine duty to maintain law and order and effective service of processes etc. while passing through the jungle in Village Lavvadaudpur, Police Station Jhinhana, District Shamli, coming across the remains of cows' progeny, lying in the field of one Sandeep son of Aval Singh on 15.03.2025, soon after 10.10 a.m. The police party, who came across the remains of cows' progeny, found 11 dismembered feet, four tails, parts of the head, besides parts of skin and a wooden block. The police team called Veterinary Medical Officer, Dr. Imran Ansari over his mobile phone to identify the remains. The Veterinary Medical Officer reached the spot and identified the remains as ones of the cows' progeny, regarding which he said he would make a separate report. The police team in the FIR, that they got registered with P.S. Jhinhana, said that the remains were found at the specified location, and that some unknown men had slaughtered the cows progeny, on the basis of which Crime No. 99 of 2025, under Section 3/8 of the Uttar Pradesh Prevention of Cow Slaughter Act, 1955 (for short, 'the Act of 1955'), P.S. Jhinhana, District Shamli, was registered. It was also recorded in the FIR that the remains were secured by the Police and upon directions of the Veterinary Medical Officer, in order to prevent foul stench, besides disease from spreading, interred the same, after digging up earth. The wooden block was marked and taken into custody.

3. It is next said in the FIR that Holi was around and the incident had led to unrest amongst the Hindu population, necessitating detailing of force to maintain peace. It was also said in the FIR that a memo of recovery was prepared on the spot and signed by members of the police party. In

fact, it is the aforesaid memo, relating to recovery of remains of the cows' progeny, that was registered as the check FIR, giving rise to the crime.

4. The grounds, upon which the impugned detention is founded, are indeed detailed and recount all happenings and circumstances, leading to the petitioner's incarceration. Since other men were involved in the crime, that led to the petitioner's detention, and they too were similarly detained, the grounds carry reference to those others as well. Therefore, it may not be relevant for us to refer to the entire gamut of facts that the grounds carry. We propose to refer to only so much of whatever is said in the grounds as is relevant to the petitioner's detention under the National Security Act, 1980 (for short, 'the NSA'). After a copious reference to the discovery of the offence by the police team and whatever is said in the FIR, it is mentioned in the grounds that post registration of the crime, the Investigating Officer left for the place of occurrence, and upon reaching there, saw that at the field of Sandeep Kumar located in the jungle of Village Lavvadaudpur, a big crowd of people had congregated. Amongst them, members of the Hindu populace had frayed tempers, who were reasoned with and pacified.

5. The Investigating Officer then set about the task of finding out the identity and location of the offenders. The police informers were summoned for the purpose and necessary instructions issued to them. The Station House Officer, P.S. Jhinhana, upon learning of this happening, reached the spot, accompanied by members of his companion force. The S.H.O. again found a big crowd gathered at the place of occurrence and they were livid about the incident of cow slaughter. The crowd, that had now gathered, had representatives of various associations present, including Hindu organizations, such as the Rashtriya Bajrang Dal, the Pashchimi Uttar Pradesh Sanyukt Udyog Vyapar Mandal, the Shiv Sena Mandal Saharanpur Unit, the Akhil Bharatiya Pradhan Sangthan. Members of these organizations were shouting slogans and demanding the immediate arrest of the offenders responsible for the crime. This crowd blockaded the Jhinhana Thana Bhawan Road, leading to a long queue of vehicles on both sides of the blockade. The passersby and the travellers were much troubled. This jamming of the road on account of the blockade lasted for long hours, in consequence of which public order in the area was torn asunder.

6. Upon receiving information, the Circle Officer, Kairana, also reached the spot/ place of occurrence, along with members of his companion force and attempted to pacify the enraged members of the crowd. In the meanwhile, information of this incident was relayed to the nearby police stations and additional forces from those stations, such as Thana Bhawan, Garhi Pukhta, Thana Babri, arrived. They were detailed around the place of occurrence and the enangered villagers were assured about their own safety and that of their cattle. Police force had to camp at villages Naya Gaon, Dathaida, Gangarampur Khedki, Lavvadaudpur, Shamli-Shamla, Panthupura, Jijaula, Ballamajra, Toda, Khodsama and Laxmipura. The Police maintained surveillance in these villages, in order to ensure that the disturbed public order resulting from this incident could be restored.

7. The Investigating Officer on the 16th of March, 2025 learnt through a police informer that five men were involved in this incident of cow slaughter. They were Iqbal son of Rashid, Jaane Alam son of Sagir (the petitioner), Javed son of Islam, Wasim alias Gullu son of Salim, and Sameer son of Shamshad. All of them had together, according to the informer, committed the offence. By

and by, the investigation proceeded and raids were made by the Police to interrogate men, whose names had surfaced in connection with the crime.

8. For a first, the Police went to the homes of Iqbal and Jaane Alam, one after the other, looking out for them, but they were not there. The relatives did not give any clue as to their whereabouts. Next, the Police went to Javed's house, but he too was not found at home. His relatives did not give any information as to his whereabouts. On 16.03.2025, upon an the informer's tip off that the offenders, responsible for the incident of cow slaughter, would be proceeding from Chausana to Mundet Khadar, carrying illicit weapons on them, and that they could be caught if a checking exercise was strictly undertaken, the Police went to the place of their reported movement. To shorten the narration of events, three of the men, said to be involved in the incident, were seen riding a motorcycle, and upon being challenged to stop, attempted to escape, accelerating the vehicle. They then turned aggressive, when it was apparent that they were surrounded by the police party, and opened fire. The policemen barely escaped unhurt and in the return fire, some of the offenders were injured. They were overpowered and apprehended. The apprehended men disclosed their names as Javed son of Islam, Iqbal son of Rasheed and the third, who was caught after a chase, revealed his name as Raees son of Mumtaz. All of them had firearms on them, besides mobile phones, the details of which are not very relevant to the controversy involved here. All the three were arrested.

9. On 16.03.2025 at 23:12 hours, the arrested men were interrogated, who disclosed that in the night intervening 12/ 13.03.2025, the three of them, along with Waseem @ Gullu son of Saleem and Sameer son of Shamshad, had slaughtered a cow and two calves, that were roaming free, doing this act in the jungle of Village Lavvadaudpur, precisely a sugarcane field. The flesh of the slaughtered progeny of the cow was sold, fetching them a sum of Rs.20,000/- in proceeds. A sum of Rs.5,999/- was utilized to buy a mobile handset, which was recovered from Iqbal and the residue was equally shared by all the offenders. It was also revealed that today when apprehended, they were planning to slaughter cows, roaming free in the jungle. The arrest of the three offenders and whatever they revealed was recorded on a mobile phone by Sub-Inspector Gyanendra Singh, the mobile carrying SID No. 2724984928831148. On the basis of these facts, a separate Crime No.104 of 2025, under Sections 109(1) B.N.S. and 3/25/27 of the Arms Act was registered vide G.D. No. 4 at 2:20 a.m. on 17.03.2025 at P.S. Jhinhana, District Shamli.

10. On the 17th of March, 2025, co-accused Sameer was apprehended by a police party during their beat on the basis of suspicion from Village Laxmipura Turn, near the Yamuna Barrage Road. The search of his person led to the recovery of an illicit knife, regarding which Sameer said he had the knife on him for the purpose of security, that is, if during a cow slaughter, someone confronted him, he could scare him away. It is said in the grounds that the co-accused Sameer was arrested under Section 4/25 of the Arms Act on account of recovery of the illicit knife and after communicating to him the grounds of his arrest, he was taken into police custody. During interrogation, Sameer revealed that he along with his brother-in-law (sister's husband Javed) and the latter's companion, Iqbal, Jane Alam (the petitioner) and Gullu, had together slaughtered a cow in the night intervening 12/ 13.03.2025 in the jungle located in Village Lavvadaudpur. Sameer said that he was trying to escape as the others were apprehended and waiting for the arrival of a friend, when the Police caught him. Sameer was made aware about his complicity in Crime No.99 of 2025,

under Section 3/8 of the Act of 1955 and the fact that he was wanted there. The recovered knife was taken into custody and sealed, drawing up a recovery memo, which no member of the public signed, citing uncalled for enmity.

11. It is next said in the grounds of detention that the petitioner's co-accused Javed and Iqbal, upon their discharge from hospital, and co-accused Sameer, who is in the Police Lockup (Male), were all interrogated by Gyanendra Singh, Chowki In-charge, Chausana, whereupon Javed, Iqbal and Sameer confessed to their guilt in one voice and said that in the night intervening 12/13.03.2025, they along with their co-accused Jane Alam son of Saghir (the petitioner), besides Waseem @ Gullu, had slaughtered two calves and a cow, that were roaming free in the jungle. The accused took away the flesh of the animals and sold it in the adjoining villages. It fetch them Rs.20,000/-, out of which Rs.5,999/- were spent on purchasing a mobile phone of POCO Make. The mobile was purchased from Chausana in the name of Iqbal. The balance of the proceeds were distributed equally amongst the accused. The grounds of detention further say that Iqbal and Javed, together with their associate Raees, were on the lookout of catching hold of stray cattle in order to slaughter them, when the Police caught all three of them.

12. It is also said in the grounds that co-accused Sameer had revealed that he knew that his brother-in-law and co-accused Iqbal and Javed, besides Raees, were all arrested, on account of which he was on the lookout of an opportunity to flee the place, when he was apprehended by the Police. The grounds further say that co-accused Waseem @ Gullu son of Salim, a habitual offender, carrying a reward of Rs.25,000/- on his head, was apprehended on 27.03.2025 from Village Kachchi Garhi (Garhi Abdulla), P.S. Garhi Pukhta, District Shamli. The manner of his arrest has been described, involving exchange of fire with the Police, in which Waseem sustained a gunshot injury in his lower limb. He was given necessary medical aid and his injuries examined. The place of encounter was examined by the Field Unit, where empties etc. were recovered. In case of Waseem, he was arrested in Case Crime No.130 of 2025, under Section 109 (1), 317(5) B.N.S. and Section 3/25/27 of the Arms Act vide G.D. Entry No.48 at 16:55 hours on 27.03.2025. He too was challaned, apart from the aforesaid cases, in connection with Crime No.99 of 2025, under Section 3/8 of the Act of 1955. The co-accused Waseem too, on being interrogated in the Police Lockup, confessed to the offence under the Act of 1955. An arrest memo was separately drawn up for him. The arrest was communicated to his relatives. The entire proceedings of arrest were video-graphed by Sub-Inspector Raghvendra Singh on his mobile phone and saved to the e-evidence application. The aforesaid Waseem, during interrogation, revealed that he along with his co-accused, would slaughter the cow and its progeny, and his associates, Javed, Iqbal and Sameer, would sell meat in the adjoining villages and the border areas of Haryana State. For the said reason, he was challaned under Section 3/5A/8 of the Act of 1955. In his statement recorded pursuant to the said crime under the Act of 1955, Waseem confessed it.

13. The grounds of detention then go on to say that on 09.04.2025, the petitioner surrendered in Court and he was sent to the District Jail, Muzaffar Nagar by a warrant issued under Section 187 B.N.S.S. On 21.04.2025, the Investigating Officer Pramod Kumar along with Constable Lalit Mohan, pursuant to orders of the Court, went to the Jail to record the petitioner's statement. The petitioner is attributed with having said to the Investigating Officer that he had indulged in cow slaughter because of greed overtaking him. In the night intervening 12/13.03.2025,

the petitioner acknowledged that he along with Javed, Iqbal, Waseem @ Gullu, Sameer, had slaughtered two calves and a cow that were roaming unclaimed in the jungle of Village Lavvadaudpur, doing so in the sugarcane field. They had sold off the meat for a sum of Rs.20,000/- , out of which Iqbal bought a mobile worth Rs.5,999/- from some shop in town Chausana and the balance of the proceeds were equally distributed amongst the accused.

14. It is also said in the grounds of detention that when the other co-accused were arrested, the petitioner was fleeing his house. He also told the Investigating Officer that earlier too, he had slaughtered the cow and its progeny in the jungle of Village Lavvadaudpur, roaming free and unclaimed. Since there is no Muslim settlement, close to Lavvadaudpur, there is no suspicion leading to ease in commission of the offence. The remains were hidden in the sugarcane fields.

15. It is next said in the grounds of detention that news of the cow slaughter in Village Lavvadaudpur spread like wildfire in that village and the adjoining villages of Naya Gaon, Dathaida, Gangarampur, Khedki, Panthupura, Jijaula, Laxmipura, Ballamajra, Toda and Khodsama, leading natives of the said village and workers of various organizations/ Hindu organizations to rush to the spot. Upon seeing the remains of the cow progeny, they were enraged. This event coincided with the festival of Holi, which led to religious feelings of the villagers being hurt. They let out their anger by resorting to slogan shouting and blockading the Thana Bhawan-Jhinhana Road completely. This cause a formidable road jam and on both sides of the blockade, a long queue of vehicles, all standstill was there. The passersby and travellers, caught in this traffic jam, were severely distressed and the public order was completely disturbed. Upon receipt of information, the S.H.O., P.S. Jhinhana along with police force posted at the Chowki and higher officials of the police reached the spot in order to attempt pacifying the crowd that had gathered there. Police summoned from the adjoining police stations was detailed to duty in maintaining public order and the villagers were assured about the safety and security of their animals, all towards an endeavour to restore public order.

16. The prevalent conditions on the spot are evident from copies of reports registered at Police Chowki Chausana, P.S. Jhinhana, memoranda handed over to the Police/ Administration by the various Hindu organizations, the material collected in the cases registered, including statements recorded and documentary evidence, besides intelligence collected from the adjoining villages by speaking to the locals there and that secured through informers. It is also said in the grounds that the incident was widely reported in various newspapers, which are annexed to the grounds.

17. The grounds of detention next say that on 09.05.2025, Head Constable 607 Raja Beniwal and Constable 1107 Jitendra Kumar, upon returning from their beat, got G.D. No.15 registered at 4.30 p.m., saying that the petitioner had got information conveyed through his close relatives from Jail that he would soon be released on bail by this Court, and upon being released from jail, would again commit cow slaughter because his source of livelihood was cow slaughter. The aforesaid beat information was investigated by Sub-Inspector Manoj Kumar, who found that the information carried correct facts, regarding which G.D. Entry No. 17 was made at 7.30 p.m. on 10.05.2025. In addition, the report submitted by the Local Intelligence Unit dated 29.04.2025 also verified the same facts as carried in the beat report.

18. It is then said in the grounds that the petitioner was in jail in connection with Case Crime No. 99 of 2025, under Section 3/5A/8 of the Act of 1955 and Section 4/25 of the Arms Act, incarcerated in the District Jail, Muzaffar Nagar, but he was regularly endeavouring to secure his release on bail. It is noted that a bail application was filed before the Lower Court, which was rejected, and then the Sessions Judge was moved, seeking bail. The Sessions Judge too rejected the petitioner's bail plea. Now, the petitioner had moved this Court and there are strong chances that the petitioner would be enlarged on bail.

19. It is said that the petitioner was consistently endeavouring to secure his release on bail. The fact that the petitioner was so endeavouring is also verified by the report of P.S. Jhinhana. The beat information and its verification, besides the Local Intelligence Unit report dated 29.04.2025, also verify the fact. It is next recorded in the grounds that it is, thus, evident that the petitioner's release is nigh. His criminal propensity makes it evident that once released from jail, there is likelihood of commission of such offences that public order in the local limits of P.S. Jhinhana and the adjoining areas would again be vitiated. The Detaining Authority then says that on the basis of the aforesaid facts and grounds, he was subjectively satisfied that the petitioner's release from jail could happen soon, and that upon release from jail, there was likelihood of his committing such offences, which are prejudicial to the maintenance of public order. In order to prevent him from acting in a manner prejudicial to the maintenance of public order, it was necessary to detain him.

20. The grounds then go on to inform the petitioner of his right to represent to the District Magistrate and the State Government under Section 8 of the NSA. It was also clearly informed that in the event the petitioner wished to exercise his right to represent to the Detaining Authority, he could do so through the Superintendent of Jail, where he was detained promptly. Such a representation, if moved within 12 days or before the approval of the detention by the State Government, whichever was earlier, would be considered by the Detaining Authority. The right to represent to the State Government could be exercised by the petitioner by moving the Secretary, Home Department, Government of U.P., Lucknow, through the Superintendent of the Jail, wherever the petitioner was detained.

21. The grounds further informs the petitioner that under Sections 9 and 10 of the NSA, if he wished to represent his case before the Uttar Pradesh Advisory Board, Lucknow, he could do so through the Registrar, U.P. Advisory Board, Lucknow, addressing him. The representation could be moved through the Superintendent of the Jail, where he was detained. The petitioner was further informed that the matter would be referred to the Advisory Board under Section 10 within three weeks of the petitioner's detention and his representation, if received with delay, would not be considered by the Board. The petitioner was also informed that under Section 11(1) of the NSA, if the Advisory Board thought it fit or the petitioner desires so, he could be heard in person. If the petitioner wanted a personal hearing before the Board, he must specifically mention it in his representation, which would have to make through the Superintendent of the Jail, where he was detained and presented to the State Government. The petitioner was informed that under Section 14 of the NSA, he had a right to represent his case against the detention to the Central Government. If the petitioner desired to invoke this remedy, he could do so by making a representation, addressed to the Secretary, Home Ministry, Government of India through the Deputy Secretary (Security),

Security Department, Sector 11 Building, Jaisingh Road, near Wriggle Park, Jantar-Mantar, New Delhi, moving the said representation through the Jail Superintendent.

22. On the basis of these grounds, the District Magistrate, Shamli, passed a detention order under Section 3(3) read with Section 3(2) of the NSA, directing the petitioner to be detained in District Jail, Muzaffar Nagar. Since the petitioner's representation against his detention to the Advisory Board was rejected, the State Government, in exercise of their powers under Section 12(1), confirmed the detention order, directing the petitioner to be detained for a period of 12 months w.e.f. 26.05.2025.

23. Aggrieved, this habeas corpus writ petition has been preferred.

24. The writ petition was presented before the Registry on 16.09.2025 and all defects were removed on 06.10.2025. It came up before a Division Bench for admission on 09.10.2025, when rule nisi was granted. On 30.10.2025, when the writ petition again came up, a counter affidavit was filed on behalf of the District Magistrate, Shamli and another on behalf of the Jail Superintendent, Central Jail, Prayagraj, in Court. No counter affidavit was filed by then on behalf of the Union of India. A week's further time was granted to the Union to file their return. The matter adjourned to 07.11.2025. On 07.11.2025, a counter affidavit was filed on behalf of the Union of India also. A counter affidavit was further filed on behalf of the State of U.P. by the learned A.G.A., both of which were taken on record.

25. The learned Counsel for the petitioner was granted three days' time to file rejoinder affidavits to all the unanswered affidavits. On 13.11.2025, three days' further time was granted to the petitioner for rejoinders.

26. On 18.11.2025, four rejoinder affidavits were filed by the petitioner answering the counter affidavits. On the said day, noticing a prima facie discrepant stand in the counter affidavit filed on behalf of the District Magistrate and the ground of detention on a particular point, we passed the following order (relevant part)

“In the grounds of detention at page no. 75 of the paper book, it is said, in the opening lines of paragraph no. 12 that the detenue surrendered on 09.04.2025 and was remanded to judicial custody.

By contrast, in the counter affidavit on behalf of the District Magistrate, in paragraph no. 2 of the affidavit, it is averred :

2. That the petitioner was arrested on 09.04.2025, in Case Crime No. 99 of 2025 under section 3, 5-A, 8 of Cow Slaughter Act and section 4/25 of the Arms Act, Police Station, Jhijnjhana District Shamli. In pursuance of the said case, an order of remand dated 09.04.2025 was passed by A.C.J.M Shamli and in pursuance of the said remand order, the petitioner was sent to Jail.

The grounds of detention, the detention order dated 26.05.2025 as well as the counter affidavit filed by the District Magistrate are both signed and sworn, respectively by the same Officer, to wit, Arvind Kumar Chauhan, who is the incumbent District Magistrate, Shamli.

Let Arvind Kumar Chauhan file his personal affidavit, explaining this discrepancy in the grounds of detention and the counter affidavit filed by him. The said personal affidavit shall be filed by the District Magistrate, on or before 25.11.2025.

Adjourned to 25.11.2025.

To be taken up in the cause list of the day.”

27. In compliance with the order last mentioned, the District Magistrate filed his personal affidavit dated 24.11.2025, where he explained the inaccuracy attributing it to a clerical error in drafting the counter affidavit dated 09.04.2025 in the following words:

“3. That it is humbly submitted that deponent is tendering his unconditional, unfettered and unqualified apology for the inconvenience caused to this Hon'ble Court.

4. That it is humbly submitted that due to inadvertent mistake, in para-2 of counter affidavit of the deponent, "the petitioner was arrested on 09.04.2025" has been wrongly typed in place of "the petitioner had surrendered on 09.04.2025."

5. That the deponent is again tendering his unconditional apology for the inconvenience caused to this Hon'ble Court and in para-2 of the counter affidavit of the deponent, "the petitioner had surrendered on 09.04.2025 may kindly be incorporated in place of "the petitioner was arrested on 09.04.2025."

28. Heard Mr. Noor Ahmed, learned Counsel for the petitioner in support of this petition, Mr. Ghanshyam Kumar, learned Additional Government Advocate-I on behalf of the State and Mr. Manish Pandey, learned Central Government Counsel appearing for the Union of India.

29. Mr. Noor Ahmed, learned Counsel for the petitioner has urged that the Detaining Authority has not applied his mind, making the detention order mechanically and arbitrarily on the recommendation of the Sponsoring Authority, that is to say, the Police. It is next argued that the grounds of detention are not proper and the detention is based on speculation; not reality. The next submission is that the offence attributed to the petitioner is a petty offence, triable by Magistrate, which even if established to have been committed by him, would constitute no more than violation of law and order. There is no material to show that the petty offence, of which the petitioner was a part, could or did lead to vitiation of public order. Since, there is no case more than that of a violation of the law and order, the prosecution launched against the petitioner would test the petitioner's guilt or otherwise. There is absolutely no basis to invoke the NSA and detain the petitioner without trial, it being evident that there was no violation of public order.

30. It is next argued that the detenue is not at all involved in the case and his name has come to light on the confession of a co-accused. As such, it was not admissible in law. It is emphasized that the petitioner, not being named in Case Crime No.99 of 2025 and his name connected to the crime on the basis of information given by a police informer, when the petitioner came to know about the fact that he was wanted in Crime No.99 of 2025, under Section 3/8 of the Act of 1955, immediately surrendered before the Court. As such, there is no apprehension of disturbance to the public order from him. The opinion that his release on bail would disturb public order is based on speculation, surmises and conjectures. The grounds of detention are founded on incorrect information supplied by the Sponsoring Authority. It is also emphasized that the petitioner has no criminal history. It is next argued that there was no material to show that the petitioner, if enlarged on bail, would again indulge in commission of the offence of cow slaughter, endangering the maintenance of public order in future. There being no objective material in this regard, the subjective satisfaction of the Detaining Authority is clearly vitiated on account of being based on no material. It is specifically argued that the facts mentioned in paragraph No.15 of the grounds of detention are wrong and false.

31. Learned Counsel for the petitioner has placed reliance upon **Annu @ Aniket v. Union of India and others, 2025 (4) GLT 39.**

32. Mr. Ghanshyam Kumar, learned A.G.A.-I, has refuted the submissions advanced on behalf of the petitioner and submitted that the detention order has been made well within the requirements of the law. He has taken us through the various affidavits and the material, upon which the order of detention is founded.

33. So far as the submission that the impugned order is one made without application of mind is concerned, we do not think that, that is the case. A perusal of the grounds of detention show that there is a copious consideration not only of the crime disclosed in the FIR, giving rise to Crime No.99 of 2025, but the circumstances of the occurrence and its impact in the locale, where the offence was committed, vis-a-vis the issue of public order. This is not a case, where there is a mechanical recital of the fact alone that the offence constitutes a violation of public order, but shows due application of mind to the offence and its impact in the locale on the maintenance of public order. It is also not the case that the Detaining Authority has proceeded to pass the detention order without application of mind to the requirements of the law, after describing the ramifications of the offence in the locale. The Authority has held it to be an act that vitiated public order. It is also remarked by the Authority on the basis of material before it that it was subjectively satisfied that the petitioner was attempting to secure his release on bail and there was likelihood of his being released on bail. It is then said that the material further showed that the petitioner intended to repeat the offence by capturing stray cows, which if done, would again lead to the public order being prejudicially affected. All these features, which figure in the grounds of detention, make it evident that this is not a case, where it can be said that the order of detention has been passed without application of mind. The first point urged by the learned Counsel for the petitioner is, therefore, negatived.

34. It is submitted by learned Counsel for the petitioner that the grounds of detention are speculative and take into account irrelevant material. There is a detailed description of the events of

the day beginning with discovery of remains of the cow and its progeny discovered by the police party in the sugarcane field, located in the jungle of Village Lavvadaudpur. The events that folded thereafter are amply recorded with movement of police parties, deployment of police force, protest by the public, blockade of the road and dislocation of life on the day in the locale, where it all happened. In the circumstances, to say that the grounds of detention are not proper and the detention based on speculation, is stated to be rejected.

35. The next point that arises for consideration is, if the act attributed to the petitioner or the offence committed by him are no more than violation of law and order, or these go way beyond it, to constitute a violation of public order. We must notice here that we have dealt with this point in our judgment of date, arising out of the same incident in **Sameer and another v. State of U.P. and others, 2026:AHC:83732-DB**. There, we have held:

“27. This takes us to the next submission that the crime reported against the petitioner, on the foot of which the impugned order of detention has been passed, is no more than an instance of the violation of law and order; not an incident, which prejudicially affects public order, so as to entitle the respondents to detain the petitioner without trial, invoking the provisions of the NSA.

28. We must remark here that in the genesis of every event, that is an infraction of the public order or its vitiation, there is some crime punishable by law, which can always be termed as a violation of law and order. The violation of law and order is, of course, to be punished in accordance with law after prosecuting the offender, but this does not mean that every infraction of the law and order, that spins out of its trouble spot and widely affects the even tempo of life, is to be regarded as a violation of law and order alone. Whether a violation of the law and order would be just that and no more or have a cascading effect, unsettling the even tempo of life in the locale, or even far and wide, is dependent upon the circumstances, the time, the place and the situation, where the infraction is committed. The point is well elucidated in the celebrated decision of the Supreme Court in **Ram Manohar Lohia v. State of Bihar and another, AIR 1966 SC 740**, where their Lordships of the Constitution Bench held:

"54. We have here a case of detention under Rule 30 of the Defence of India Rules which permits apprehension and detention of a person likely to act in a manner prejudicial to the maintenance of public order. It follows that if such a person is not detained public disorder is the apprehended result. Disorder is no doubt prevented by the maintenance of law and order also but disorder is a broad spectrum which includes at one end small disturbances and at the other the most serious and cataclysmic happenings. Does the expression "public order" take in every kind of disorders or only some of them? The answer to this serves to distinguish "public order" from "law and order" because the latter undoubtedly takes in all of them. Public order if disturbed, must lead to public disorder. Every breach of the peace does not lead to public disorder. When two drunkards quarrel and fight there is disorder but not public disorder. They can be dealt with under the powers to maintain law and order but cannot be detained on the ground that they were disturbing public order. Suppose that the two fighters were of rival communities and one of them tried to raise communal passions. The problem is still one of law and order but it raises the apprehension of public disorder. Other examples can be imagined. The contravention of law always affects order but before it can be said to affect public order, it must affect the community or the public at large.

A mere disturbance of law and order leading to disorder is thus not necessarily sufficient for action under the Defence of India Act but disturbances which subvert the public order are. A District Magistrate is entitled to take action under Rule 30(1)(b) to prevent subversion of public order but not in aid of maintenance of law and order under ordinary circumstances.

55. It will thus appear that just as "public order" in the rulings of this Court (earlier cited) was said to comprehend disorders of less gravity than those affecting "security of State", "law and order" also comprehends disorders of less gravity than those affecting "public order". One has to imagine three concentric circles. Law and order represents the largest circle within which is the next circle representing public order and the smallest circle represents security of State. It is then easy to see that an act may affect law and order but not public order just as an act may affect public order but not security of the State. By using the expression "maintenance of law and order" the District Magistrate was widening his own field of action and was adding a clause to the Defence of India Rules."

29. The point is again considered in **Arun Ghosh v. State of W.B., (1970) 1 SCC 98**, where the concept of public order, as distinguished from law and order, has been eloquently explained by their Lordship thus:

"3. The submission of the counsel is that these are stray acts directed against individuals and are not subversive of public order and therefore the detention on the ostensible ground of preventing him from acting in a manner prejudicial to public order was not justified. In support of this submission reference is made to three cases of this Court: *Dr Ram Manohar Lohia v. State of Bihar* [(1966) 1 SCR 709]; *Pushkar Mukherjee v. State of W.B.* [WP No. 179 of 1968, decided on November 7, 1968: (1969) 1 SCC 10] and *Shyamal Chakraborty v. Commissioner of Police, Calcutta* [WP No. 102 of 1969, decided on August 4, 1969: (1969) 2 SCC 426]. In *Dr Ram Manohar Lohia* case [(1966) 1 SCR 709] this Court pointed out the difference between maintenance of law and order and its disturbance and the maintenance of public order and its disturbance. Public order was said to embrace more of the community than law and order. Public order is the even tempo of the life of the community taking the country as a whole or even a specified locality. Disturbance of public order is to be distinguished from acts directed against individuals which do not disturb the society to the extent of causing a general disturbance of public tranquillity. It is the degree of disturbance and its affect upon the life of the community in a locality which determines whether the disturbance amounts only to a breach of law and order. Take for instance, a man stabs another. People may be shocked and even disturbed, but the life of the community keeps moving at an even tempo, however much one may dislike the act. Take another case of a town where there is communal tension. A man stabs a member of the other community. This is an act of a very different sort. Its implications are deeper and it affects the even tempo of life and public order is jeopardized because the repercussions of the act embrace large sections of the community and incite them to make further breaches of the law and order and to subvert the public order. An act by itself is not determinant of its own gravity. In its quality it may not differ from another but in its potentiality it may be very different. Take the case of assault on girls. A guest at a hotel may kiss or make advances to half a dozen chamber maids. He may annoy them and also the management but he does not cause disturbance of public order. He may even have a fracas with the friends of one of the girls but even then it would be a case of breach of law and

order only. Take another case of a man who molests women in lonely places. As a result of his activities girls going to colleges and schools are in constant danger and fear. Women going for their ordinary business are afraid of being waylaid and assaulted. The activity of this man in its essential quality is not different from the act of the other man but in its potentiality and in its affect upon the public tranquillity there is a vast difference. The act of the man who molests the girls in lonely places causes a disturbance in the even tempo of living which is the first requirement of public order. He disturbs the society and the community. His act makes all the women apprehensive of their honour and he can be said to be causing disturbance of public order and not merely committing individual actions which may be taken note of by the criminal prosecution agencies. It means therefore that the question whether a man has only committed a breach of law and order or has acted in a manner likely to cause a disturbance of the public order is a question of degree and the extent of the reach of the act upon the society. The French distinguish law and order and public order by designating the latter as *ordre publique*. The latter expression has been recognised as meaning something more than ordinary maintenance of law and order. Justice Ramaswami in Writ Petition No. 179 of 1968 drew a line of demarcation between the serious and aggravated forms of breaches of public order which affect the community or endanger the public interest at large from minor breaches of peace which do not affect the public at large. He drew an analogy between public and private crimes. The analogy is useful but not to be pushed too far. A large number of acts directed against persons or individuals may total up into a breach of public order. In *Dr Ram Manohar Lohia* case examples were given by Sarkar and Hidayatullah, JJ. They show how similar acts in different contexts affect differently law and order on the one hand and public order on the other. It is always a question of degree of the harm and its affect upon the community. The question to ask is: Does it lead to disturbance of the current of life of the community so as to amount a disturbance of the public order or does it affect merely an individual leaving the tranquillity of the society undisturbed? This question has to be faced in every case on facts. There is no formula by which one case can be distinguished from another.”

30. There are some issues, where the community is sensitive to the extent that if these surface, there is an inherent potentiality of creating widespread ripples in society that would affect the even tempo of life. One of them is cow slaughter. The slaughtering of a cow, whenever reported or detected, spontaneously evokes strong emotions and violent reactions for obvious injury to religious beliefs of a large section of the society. History is replete with instances of profusion of emotions and violence that an incident of this kind entails. And, it is not that these are matters of historical record to be read in books or fancied about in contemporary world. Violent reactions at the happening of cow slaughter are so well reputed that no one can feign ignorance of the fact, violation of the law apart. Public order is after all not about what the intention of the individual was, or what law he has violated. It is about the impact that his act generates. If the act in question is such that it is not confined to one, two or a few individuals, but disturbs the even tempo of life in the locale or may be beyond, in larger areas, prejudice to public order, is certainly there. The particular act of slaughtering a cow, as already remarked, has immediate and widespread ramifications in society, almost always leading to widespread violence that takes toll on a tranquil society and throws life out of gear.

31. There are a series of decisions of this Court, which acknowledge the fact that cow slaughter foments communal tension, brings disharmony and results in a situation, that leads to

disturbance of public order. The point is elucidated in a few words in the Bench decision of this Court in **Shaukat Ali v. Union of India and others, 2002 SCC OnLine All 1435**. In *Shaukat Ali (supra)*, it was held:

“1. A perusal of the grounds of detention copy of which is Annexure 2, shows that the allegations against the petitioner are that the petitioner had slaughtered a cow and the knife and rods were recovered from him. This incident caused communal tension and hence the impugned detention order was passed.

2. Communal amity and harmony are absolutely essential for the progress of the nation. We cannot afford to have another Gujarat in U.P. Slaughter of cow hurts the sentiments of the Hindus and hence should not be committed. In our opinion cow slaughter affects public order because it is likely to incite communal tension.

3. Hence it is not merely a case of law and order.”

32. Again in **Tauqeer v. State of U.P. and others, 2002 SCC OnLine All 230**, it was held:

“4. We have carefully perused the detention order and find that the matter certainly pertains to public order and not to law and order. Under our Constitution freedom of religion has been guaranteed as a fundamental right. However the U.P. Prevention of Cow Slaughter Act bans the slaughter of cows and calves. The petitioner has no right to break the law and violate the above Act. It may be mentioned that nobody has right to do any thing which may lead to communal tension in the country. In case we permit such activities a situation like in Gujarat may recur again Hindus, rightly or wrongly venerate cows. The Muslims should also respect the sentiments of the Hindus and noticing should be done Which may provoke communal riots. The last thing which country can afford today is inflammation of communal feelings in the Society. The petitioner with his associate could slaughter any other animal but certainly not slaughter cows against the provisions of the Prevention of Cow Slaughter Act as that may create communal tension.”

33. In **Guddu Panchhi v. District Magistrate, Kanpur Nagar and others, 2004 SCC OnLine All 1847**, the following remarks of the Division Bench are relevant:

“3. Slaughtered cow and she-calf were found lying at the spot. The news of the incident spread in the area like wild fire. Members of the two communities of the society, i.e. Hindus and Muslims collected at the spot in agitated mood and started raising slogans against one another. Communal harmony was disturbed and the atmosphere became tense. The shopkeepers started downing their shutters. People ran helter-skelter. The public order was completely disturbed. S.O. informed the higher authorities on telephone and requisitioned additional force to control the situation. Case Crime No. 217 of 2003 under Sections 3/5/8 of U.P. Cow Slaughter Act was registered against the petitioner and others.

6. Obviously, it is the reaction or fall out of an incident in the society which is determinative as to whether it was only disturbance of law and order or that of public order. In the

present case, there was a live link between the alleged criminal activity of the petitioner of cow slaughtering and the purpose of detention. The act was clearly prejudicial to public order as is borne out from the grounds of detention reiterated by respondent No. 1 District Magistrate, Kanpur Nagar in his counter-affidavit. The act of the petitioner offended the religious feelings of a sect of society venerating cow and its progeny, besides being in contravention of U.P. Prevention of Cow Slaughter Act. The incident disturbed the even tempo of the life of the society. Members of two communities thronged the spot, shouting slogans against one another. The shops were closed and public tranquility was disturbed in the area with tempers of the two communities of the society running high. Additional force had to be deployed in the area to restore the confidence of the people and for the return of normalcy. The incident adversely affected the social harmony, created communal tension and disturbed public order of the area. The matter certainly pertains to public order and not to law and order. We, therefore, reject the sole argument advanced by the learned counsel for the petitioner in support of the petition that it was a matter of law and order only□□..”

34. Much later in Wasi through **Mohd. Rafi v. State of U.P. and others, 2017 SCC OnLine All 1880** in the context of an offence of cow slaughter and its bearing on the disturbance of public order, it was held by a Division Bench of this Court:

“30. Learned counsel for the petitioner has emphatically argued that the place of incident where cow was slaughtered is not a public place, as such, it cannot be treated as an issue of public order. It is the reaction or fall out of an incident in the society which is determinative, as to whether, it was only disturbance of law and order or that of public order. Admittedly, the cow slaughter in an open place may have offended the religious feeling of a society, it is, therefore, important to see the proportionality of the response to the act complained of and in view of this, the gravity of the act may be given a thought where the body parts of cow were lying open in public view. Where cattle has been slaughtered in public view, which may definitely lead to disturbance of the current life of the community, so as to amount to a disturbance of a public order, communal amity and harmony. Slaughter of cow hurts the sentiments of the Hindus which affects public order because it is likely to incite communal tension, hence, it is not merely a case of law and order but that of public order.”

35. We have already noticed the kind of impact that the incident had not only in the village, where it happened, but in the adjoining villages of Naya Gaon, Dathaida, Gangarampur Khedki, Lavvadaudpur, Shamli-Shamla, Panthupura, Jijaula, Ballamajra, Toda, Khodsama and Laxmipura. The aftermath of the slaughter and its discovery by the Police led to the local populace and volunteers of organizations heading to the place of occurrence. They were workers of Hindu organizations as also others, like Pashchimi Uttar Pradesh Sanyukt Udyog Vyapar Mandal and the Akhil Bharatiya Pradhan Sangthan, who participated with the public in staging a blockade on the Thana Bhawan □ Jhinhana Road. It led to a complete traffic jam with passersby and travellers, badly stuck and unable to move. The even tempo of life was thrown out of gear, necessitating the summoning of additional forces from adjoining police stations. In fact, it was after very sensitive and trained persuasions by officers of the Police that public order could be restored. The locals of the village and adjoining villages had to be assured about their safety and security as well as that of their animals.

36. These facts amply show that it was no isolated incident of a violation of the law and order, but one which threw the even tempo of life out of gear. It is the disturbing effect of an incident on serene and tranquil life that determines if it is indeed a violation of public order or a mere breach of law and order. It is not necessary that there should be actual violence, loss of human life and property before an incident can be termed as disturbance of public order. It is disturbance of the daily and ordinary movements of life in the locale, which are the index of vitiation of public order.

37. In the totality of circumstances, we hold that this is decidedly a case where public order was prejudicially affected in consequence of the offence committed by the petitioner. And, it is not a mere case of infraction of law and order.”

36. In **Annu @ Aniket**, the order of preventive detention was held to have been passed mechanically, without application of mind, and based upon extraneous considerations, as it was based in that case solely upon the criminal antecedents of the detainee. It was in **Annu @ Aniket**:

“37. In **Nenavath Bujji** (supra), this Court summed up the relevant considerations to be taken into account by the detaining authority to arrive at a subjective satisfaction of the need for an order of preventive detention and the scope of judicial review. This Court held thus:

43. We summarize our conclusions as under: -

(i) The detaining authority should take into consideration only relevant and vital material to arrive at the requisite subjective satisfaction,

(ii) It is an unwritten law, constitutional and administrative, that wherever a decision-making function is entrusted to the subjective satisfaction of the statutory functionary, there is an implicit duty to apply his mind to the pertinent and proximate matters and eschew those which are irrelevant & remote,

(iii) There can be no dispute about the settled proposition that the detention order requires subjective satisfaction of the detaining authority which, ordinarily, cannot be questioned by the court for insufficiency of material. Nonetheless, if the detaining authority does not consider relevant circumstances or considers wholly unnecessary, immaterial and irrelevant circumstances, then such subjective satisfaction would be vitiated,

(iv) In quashing the order of detention, the Court does not sit in judgment over the correctness of the subjective satisfaction. The anxiety of the Court should be to ascertain as to whether the decision-making process for reaching the subjective satisfaction is based on objective facts or influenced by any caprice, malice or irrelevant considerations or non-application of mind,

(v) While making a detention order, the authority should arrive at a proper satisfaction which should be reflected clearly, and in categorical terms, in the order of detention,

(vi) The satisfaction cannot be inferred by mere statement in the order that □ it was necessary to prevent the detenu from acting in a manner prejudicial to the maintenance of public order□. Rather the detaining authority will have to justify the detention order from the material that existed before him and the process of considering the said material should be reflected in the order of detention while expressing its satisfaction,

(vii) Inability on the part of the state□s police machinery to tackle the law and order situation should not be an excuse to invoke the jurisdiction of preventive detention,

(viii) Justification for such an order should exist in the ground(s) furnished to the detenu to reinforce the order of detention. It cannot be explained by reason(s) / grounds(s) not furnished to the detenu. The decision of the authority must be the natural culmination of the application of mind to the relevant and material facts available on the record, and

(ix) To arrive at a proper satisfaction warranting an order of preventive detention, the detaining authority must, first examine the material adduced against the prospective detenu to satisfy itself whether his conduct or antecedent(s) reflect that he has been acting in a manner prejudicial to the maintenance of public order and, second, if the aforesaid satisfaction is arrived at, it must further consider whether it is likely that the said person would act in a manner prejudicial to the public order in near future unless he is prevented from doing so by passing an order of detention. For passing a detention order based on subjective satisfaction, the answer of the aforesaid aspects and points must be against the prospective detenu. The absence of application of mind to the pertinent and proximate material and vital matters would show lack of statutory satisfaction on the part of the detaining authority.

37.1. Thus, in *Nenavath Bujji* (supra), this Court highlighted that inability on the part of the police machinery to tackle a law and order situation should not be an excuse to invoke the jurisdiction of preventive detention.

38. At this stage, we may also usefully refer to another recent decision of a coordinate Bench of this Court in *Ameena Begum Vs. State of Telangana*, (2023) 9 SCC 587. In that case also the Bench observed that a detenu□s criminal antecedents or his habituality of committing offences cannot, in isolation, be the sole basis of an order of preventive detention. Merely because a detenu was charged for committing multiple offences, it cannot be said that he was in the habit of committing such offence.

39. On the touchstone of the proposition of law laid down by this Court through the above decisions, when we examine the order of preventive detention in the instant case as well as the order rejecting the representation of the appellant against the preventive detention, it is evident that the detaining authority was solely guided by the criminal antecedents of the appellant and thereafter formed the satisfaction that the appellant was in the habit of committing such offences. Consequently, the power of preventive detention was invoked. We have already noted above that as against nine criminal proceedings against the appellant, including the present one, he has been acquitted in five cases. Two proceeding are still pending but in those proceedings, appellant is on bail. Only in one proceeding, appellant was convicted but the sentence was only imposition of fine.

In so far the present criminal case (being Crime No.236/2024) is concerned, appellant was granted bail on 28.01.2025.

40. Viewed in the above conspectus of facts and law, it is clear that there was non-application of mind by respondent No.3 as to the requirement of preventive detention qua the appellant. The entire intent appears to continue the detention of the appellant since he was likely to get bail in the criminal case, which, in fact, he got. Such nonapplication of mind to the material facts and taking of extraneous factors into consideration has completely vitiated the order of preventive detention as well as the order rejecting the representation. □

37. Learned Counsel for the petitioner has called in aid the authority of the Supreme Court in **Annu @ Aniket** (supra) on the point that non-application of mind vitiates an order of detention. **Annu @ Aniket** was a case, where a student was detained under the NSA for assaulting a College Professor during working hours inside the premises of an educational institution. It was said that it disrupted academic activity and caused widespread panic. Largely the order was passed bearing in mind that there was likelihood of the detainee coming out on bail, and disturbing public peace and law and order. The order was passed largely on the basis of the detainee's criminal antecedents, that is to say, the number of cases pending against him. It was noticed by the Supreme Court that while rejecting the detainee's representation, the District Magistrate, who passed the detention order, invoked Section 3(2) of the NSA in order to maintain peace and law and order in the area, and to create a fear free environment amongst the public. After referring to consistent authorities on the point in **Annu @ Aniket**, it was observed:

“36. Thus, it is now clear that public order has a narrower ambit and could be affected by only such contravention which affects the community or the public at large. Public order is the even tempo of life of the community taking the country as a whole or even a specified locality. It is the potentiality of the act to disturb the even tempo of life of the community which makes it prejudicial to the maintenance of public order. If a contravention in its effect is confined only to a few individuals directly involved as distinct from a wide spectrum of public, it would be an issue of law and order only. □

38. The present case is not one of the kind that was under consideration before their Lordships of the Supreme Court in **Annu @ Aniket**. Here, is a case where the petitioner was found indulging in a particular kind of offence that spontaneously arouses religious passions amongst a large section of the community, inciting them to indulge in violence, with the imminent likelihood of vitiation of public order in the locale. They have slaughtered a cow, which, like always, led to frayed tempers and violent emotions displayed by members of the public, agitating and blockading the road, and throwing life out of gear in the locale. It is not a case, where for a simple violation of law and order, an irrelevant consideration, like past instances of violations of law and order were taken into consideration by the Detaining Authority to infer that the detainee, if released on bail, would indulge in similar acts, that would lead to public order being prejudicially affected. Reliance, therefore, placed by the learned Counsel for the petitioner on **Annu @ Aniket**, so far as this point goes, is completely misplaced in our opinion.

39. For the very same reason as those in **Sameer** (*supra*), our conclusions are also the same. We, therefore, reject the petitioner's submission that it was not a case of violation of public order, but merely an infraction of law and order.

40. The next submission advanced on behalf of the petitioner is that the petitioner's name in the crime, that has led to the detention, has come through the confession of a co-accused, and, therefore, not admissible in law. It is urged that not being named in the case crime, he has been connected on the basis of information given by a police informer. It is also emphasized that upon coming to know of the fact that he was wanted in the crime, the petitioner surrendered in Court immediately, which shows no apprehension of disturbance to the public order.

41. So far as the petitioner's case goes, it must be remarked that in case of preventive detention, while irrelevant material cannot be taken into consideration, such as mere criminal history of the detainee, indulging in acts of violation of law and order in the past, the law of evidence to connect the offender to the crime, would not be attracted. Quite apart, the rule against reliance on accomplice testimony alone, without being corroborated in material particulars, belongs to the law of evidence applicable in a trial, and it is a rule of prudence; not law. It is not that accomplice evidence is absolutely irrelevant, unless corroborated in material particulars by evidence aliunde. It can, with caution, be acted upon during trial as well. It has to be borne in mind that these proceedings, where preventive detention is ordered, do not partake of the character of a trial.

42. It is true that being a serious inroad into an individual's liberty to be detained without trial, the harsh law of preventive detention must always be construed strictly in favour of the citizen. But, this does not mean that material, which shows that a person, who was involved in the commission of a particular act, disturbing public order, is to be ignored on the ground that the material available to the Detaining Authority, would not be dependable evidence in a trial of the man on a criminal charge, if otherwise his complicity is well established. Moreover, correctness of the allegations in a preventive detention matter is not up for a scrutiny before the Court, doing a judicial review of the Administrator's decision to preventively detain.

43. The veracity of the material is not to be tested for its truth or falsehood, but its relevance to the exercise of power to preventively detain alone is what matters. Therefore, what the petitioner wants us to do is virtually to say that he was not involved in the crime, which led to the breach of public order. We cannot sit in judgment on that material and hold him not involved, in these proceedings.

44. There is another facet to the ground that the learned Counsel for the petitioner has raised here. He has come up with a novel submission. He says that upon coming to know of his involvement in the crime, he immediately surrendered before the Court. This shows his release on bail would not give rise to any apprehension of disturbance to the public order, as far as he is concerned. We are afraid, we cannot agree. The mere fact that a man, upon hearing of his involvement in a crime, that has led to vitiation of the public order, decides to surrender in Court and go to jail because he knows that he would be arrested, like others, is not at all relevant to a decision on the point that if released on bail, would he indulge in a similar act, again leading to the

public order being prejudicially affected. The propensity of a man to escape the inconvenience of arrest by the Police and secure a safe passage to judicial custody through the Court, is no index about his later behaviour, once released on bail as far as acts go, that may lead to the violation of public order. The submission is, therefore, rejected.

45. So far as the contention that the grounds of detention are founded on incorrect information supplied by the Sponsoring Authority, is based on vague assertion. Generally, the material, that is before the Detaining Authority, coming from the Sponsoring Authority, is not to be judged for its truth or falsehood by this Court in judicial review, unless it can be shown that the report of the Sponsoring Authority is patently false to the extent of being based on non-existent material. In this case, the grounds of detention would show that the petitioner's name figured in the statements of co-accused Javed, Iqbal and Raesh, who were arrested on the first tip off from the police informer and overpowered after a shootout. They have disclosed the petitioner's name, as one amongst them, who had slaughtered the cow's progeny in the jungle of Village Lavvadaudpur in the night intervening 12/ 13.03.2025. The statements of these men were video-graphed by Sub-Inspector Gyanendra Singh on his mobile and saved in the e-evidence application with SID No. 2724984928831148. The petitioner's name was again revealed by Sameer, who was separately apprehended on 17.03.2025 by the police team, headed by Sub-Inspector Pramod Kumar. The recovery and arrest of Sameer too was video-graphed and saved to the e-evidence application. A material of this kind cannot be said to be one that is false on its face, or one which is based on non-existing facts reported by the Police to the Detaining Authority. The petitioner's contention on this count cannot, therefore, be accepted.

46. It is next argued that there is no material to show that the petitioner, if enlarged on bail, would again indulge in commission of the offence of cow slaughter, endangering the maintenance of public order in future. It is pointed out that there is no objective material in this regard, on the foot of which the Detaining Authority could have been subjectively satisfied that the petitioner, indeed, would indulge in acts involving cow slaughter in future, upon being released on bail. The opinion of the Detaining Authority on this score is based on no material, according to the learned Counsel for the petitioner.

47. There are three definitive items of material, on the basis of which the Detaining Authority has concluded that if released on bail, the petitioner would again indulge in acts of cow slaughter, which would in all likelihood prejudicially affect the public order. The first is an information sent back home from jail by the petitioner that he would be released on bail pursuant to orders of this Court, and once released, he would carry on with slaughtering cows because it was his livelihood. This material figured in a Beat Constables' report, jointly submitted by two members of the police force, a Head Constable and a Constable, who heard about it in their beat on 09.05.2025 and made an entry of it upon return to the police station vide G.D. Entry No. 15 at 16.30 hours.

48. The second item of material is the report of Sub-Inspector Manoj Kumar, who inquired into the truth of this Beat Constables' report and found that the contents of G.D. Entry No. 15 dated 09.05.2025 were correct and he made his report that was entered vide G.D. Entry No. 17 dated 10.05.2025 at 7.30 p.m.

49. In addition, the third item of material, that was taken into consideration, is a report of the Local Intelligence Unit dated 29.04.2025, affirming the fact of the petitioner having conveyed such intentions of his to his associates upon being released from prison.

50. As already remarked, in the present petition, we cannot inquire into the truth or sufficiency of the material, upon which the Detaining Authority has acted. All that we can see is, if there was relevant and existing material for the Detaining Authority to subjectively form opinion, and here, on point that upon release from prison, would the petitioner continue to indulge in acts of cow slaughter that have the innate tendency of immediately working up religious passions amongst a large section of the community with resultant violence, that would lead to widespread disturbance of the kind that is the hallmark of violation of public order as distinguished from a mere violation of law and order. Therefore, in our opinion, it is not a case where there was no objective material for the Detaining Authority to be subjectively satisfied that the petitioner, if enlarged on bail, would again indulge in commission of the offence of cow slaughter, endangering the maintenance of public order in future. The petitioner's contention on this count too is, therefore, rejected.

51. No other point was pressed at the hearing.

52. In the circumstances, we are of opinion that there is no infirmity in the order impugned, ordering the petitioner's detention under the NSA.

53. This habeas corpus writ petition fails and is **dismissed**.

(2026) 4 ILRA 1771
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 30.04.2026

BEFORE

THE HON'BLE SANDEEP JAIN, J.

Habeas Corpus Writ Petition No. 931 of 2025

Smt. Rinku Ram @ Rinku Devi & Anr. ...Petitioners
Versus
State of U.P. & Ors. ...Respondents

Issue for Consideration

Whether the petitioner is entitled to the custody of the minor corpus on the ground that the minor, being only 21 months old, is wholly dependent on the petitioner for his nutritional and other essential needs and in terms of Section 6 of the Hindu Minority and Guardianship Act, 1956, up to the age of five years, the mother is considered the best guardian of the minor.

Head Notes

The Constitution of India, 1950-Article 226 (Habeas Corpus)- The Hindu Minority and Guardianship Act, 1956- Section 6- The Hindu Minority and Guardianship Act- It is well-established that, ordinarily, the custody of a minor who has not attained the age of five years is

entrusted to the mother. This principle has been recognized and codified by the legislature through the above relevant statutory provision. The legislative intent underlying this enactment reflects recognition of the unique nutritional, emotional, and developmental needs of the minor, which, in the formative years, can best be met by the mother. While the father plays an essential role in the child's upbringing, it is the mother who, by reason of biological and nurturing considerations, is ordinarily best positioned to secure the physical and emotional welfare of the minor.

Held- Keeping in view the tender age of the corpus t is in the best interest that his custody is handed to the petitioner because for the nutritional needs, he is fully dependent on the petitioner. It will be an injustice to deprive the corpus from the custody of his mother. (E-15)

Case Law Cited

Manju Tiwari vs. Rajendra Tiwari 1990 LawSuit(SC)24; Gohar Begum vs. Suggi 1959 LawSuit(SC)144. :Arvinder Kaur vs. State of Punjab and Others CRWP-5617 of 2020; Master Atharva(Minor) and Another vs. State of UP and 7 Others Neutral Citation No.2020:AHC:92812; Mohd. Irfan vs. State of UP and 2 Others Neutral Citation No.2014:AHC:221825- DB; xxxxxxx vs. State of Kerala and Others 2024 SCC OnLine Ker 6166; Prabha Rani Das vs. State of Tripura and Others 2026 SCC OnLine Tri 97. ; Kanchan Akshay Shinde vs. The State of Maharashtra 2026 NCBHC-AS 11768. ; Master Samarjeet Singh (Minor Detenue) And Another vs. State of UP and 4 others Neutral Citation No.2019:AHC:180361-DB; Dr. Dinesh Kumar Agarwal and Others vs. State of UP and Others 2026(2) ADJ 400(DB)(LB); Tejaswini Gaud and Others vs. Shekhar Jagdish Prasad Tewari and Others (2019) 7 SCC 42. ; Nirmala vs. Kulwant Singh and Others (2024) 10 SCC 595. ; Smt. Deeksha and Another vs. State of UP and Others Neutral Citation No.2026:AHC:89038.

List of Acts

The Constitution of India, 1950; The Hindu Minority and Guardianship Act, 1956

List of Keywords

Habeas Corpus; Tender age of corpus; Nutritional needs; Best interest.

Case Arising From

Instant dispute concerns the custody of the minor corpus, who is approximately 21 months old and is presently in the custody of his father, respondent no.6, a constable in the U.P. Police posted in District Jaunpur.

Appearances for Parties

Counsel for Petitioner(s) : Ajay Singh Sengar, Kamal Dev Singh Chanchal, Kamla Kant Mishra, Varun Mishra
Counsel for Respondent(s) : G.A., Mariya Khatoon, Ram Kesh

(Delivered by Hon'ble Sandeep Jain, J.)

1. The supplementary rejoinder affidavit has been filed in Court today and is taken on record.
2. Heard Shri K.K. Mishra, learned counsel for the petitioners, and Shri Rakesh Pande, learned Senior Advocate, assisted by Shri Ram Kesh, learned counsel for respondent no.6.
3. The instant dispute concerns the custody of the minor corpus, Vishwajeet, who is approximately 21 months old and is presently in the custody of his father, respondent no.6, Dharmendra Ram, a constable in the U.P. Police posted in District Jaunpur.

4. Earlier, by order dated 06.11.2025, a Coordinate Bench of this Court had dismissed the instant writ petition on the ground that the parties could seek custody of the minor under the Guardian and Wards Act, 1890. That order was challenged by the petitioner by filing Special Appeal No.1205 of 2025 (Smt. Rinku Ram @ Rinku Devi & Anr. v. State of U.P. & Ors.), which was allowed by a Division Bench of this Court vide order dated 03.04.2026, and the matter has been restored to its original number for adjudication on merits.

5. The Division Bench after considering the various precedents of the Apex Court has concluded that in a habeas corpus petition for the custody of the minor only the welfare of the child is paramount and the Court has to examine this aspect. It was held that on the ground of alternative remedy, the habeas corpus petition cannot be dismissed.

6. Another factor, which influenced the decision of the Division Bench was an ex parte order dated 10.09.2025 passed by the Child Welfare Committee, whereby the custody of the minor was handed to the petitioner, but during the pendency of this appeal that order has been set aside in Criminal Appeal No.47 of 2026 (Dharmendra Ram vs. State of U.P. and others), passed by the Children Court/Special Judge (POCSO Act), Court No.8, Ballia dated 21.04.2026. In view of this, at present there is no judicial order in favour of the petitioner, whereby, the legal custody of the minor has been handed to the petitioner.

7. Learned counsel for the petitioner submitted that the petitioner Smt. Rinku Ram @ Rinku Devi's marriage with respondent no.6 was solemnized on 04.12.2023; however, due to illegal demands for dowry, the petitioner was subjected to mental and physical harassment, and acts of cruelty were committed against her. It was further submitted that on 31.08.2024, the petitioner gave birth to the corpus Vishwajeet, who is now about 21 months old, who is in the illegal custody of respondent no.6. It was further submitted that the corpus has been illegally taken away by the respondent on 19.08.2025 regarding which, an FIR has been registered on 07.03.2026, under Section 75 of the Juvenile Justice (Care and Protection of Children) Act, 2015 at Police Station Haldi, District Ballia against respondent, Dharmendra Ram. It was submitted that the respondent has been suspended by the S.S.P., Jaunpur by order dated 12.03.2026 for his illegal act and acting in defiance of the orders of the Child Welfare Committee dated 10.09.2025, whereby he was directed to handover the custody of the minor to the petitioner.

8. Learned counsel submitted that the minor, being only 21 months old, is wholly dependent on the petitioner, Smt. Rinku Ram @ Rinku Devi, for his nutritional and other essential needs. Further, in terms of Section 6 of the Hindu Minority and Guardianship Act, 1956, up to the age of five years, the mother is considered the best guardian of the minor. In view of the paramount welfare of the minor, the petitioner is, therefore, entitled to the custody of the minor corpus. He further submitted that the respondent is having an affair with another woman, which is evident from the WhatsApp chats submitted by the petitioner; as such, this fact alone disentitles the respondent from claiming custody of the minor corpus.

9. In support of his contention, learned counsel for the petitioner has relied upon the following judgments:

1. *Manju Tiwari vs. Rajendra Tiwari* 1990 LawSuit(SC)24.
2. *Gohar Begum vs. Suggi* 1959 LawSuit(SC)144.
3. *Arvinder Kaur vs. State of Punjab and Others* CRWP-5617 of 2020.
4. *Master Atharva(Minor) and Another vs. State of UP and 7 Others* Neutral Citation No.2020:AHC:92812.
5. *Mohd. Irfan vs. State of UP and 2 Others* Neutral Citation No.2014:AHC:221825-DB.
6. xxxxxxx vs. *State of Kerala and Others* 2024 SCC OnLine Ker 6166.
7. *Prabha Rani Das vs. State of Tripura and Others* 2026 SCC OnLine Tri 97.
8. *Kanchan Akshay Shinde vs. The State of Maharashtra* 2026 NCBHC-AS 11768.
9. *Master Samarjeet Singh (Minor Detenue) And Another vs. State of UP and 4 others* Neutral Citation No.2019:AHC:180361-DB.
10. *Dr. Dinesh Kumar Agarwal and Others vs. State of UP and Others* 2026(2) ADJ 400(DB)(LB).

10. Per contra, Shri Rakesh Pande, learned Senior Counsel, submitted that earlier the custody of the minor corpus had been handed to the petitioner by the Child Welfare Committee by order dated 10.09.2025; however, the same was set aside in appeal preferred under Section 101 of the Juvenile Justice (Care and Protection of Children) Act, 2015 by the respondent. The said appeal was allowed by the Children Court/Special Judge (POCSO Act), Court No. 8, Ballia, on 21.04.2026. Accordingly, there is no judicial order presently in existence whereby custody of the minor corpus has been granted to the petitioner.

11. It was further submitted that the petitioner has education only up to the intermediate level, is unemployed, has no independent income, and is wholly dependent on her parents for assistance; as such, she is not capable of looking after the interests of the minor.

12. He further submitted that as per medical prescriptions of the petitioner filed by the respondent, it is apparent that she is addicted to Gul, is alcoholic and is further having psychiatric problems, who is not in stable mental condition, which disentitles her to claim the custody of the corpus. It was further submitted that the respondent, who is in a government job is having a stable income, who is the father of the corpus and who is fully capable of ensuring the welfare of the corpus, as such, the custody of the corpus be remained with his father. It was further submitted that complicated questions are involved, as such the parties be relegated to pursue their remedy in accordance with the Guardian and Wards Act, 1890 for claiming the custody of the minor, which cannot be adjudicated in this writ petition.

13. In support of his contention, learned counsel has relied upon the following case law:

1. *Tejaswini Gaud and Others vs. Shekhar Jagdish Prasad Tewari and Others* (2019) 7 SCC 42.

2. *Nirmala vs. Kulwant Singh and Others* (2024) 10 SCC 595.

3. *Smt. Deeksha and Another vs. State of UP and Others* Neutral Citation No.2026:AHC:89038.

14. I have heard the learned counsel for the parties and perused the record and the documents submitted by them through affidavit.

15. It is evident that earlier the habeas corpus petition was dismissed on the ground of availing alternative remedy under the Guardian and Wards Act, 1890 on 06.11.2025, but that order was challenged by the petitioner by filing Special Appeal No.1205 of 2025 (Smt. Rinku Ram @ Rinku Devi & Anr. v. State of U.P. & Ors.), which was allowed by the Division Bench of this Court vide order dated 03.04.2026, wherein the matter has been restored on its original number and as such, this Court has to decide the habeas corpus petition on merits.

16. It is also apparent that since the earlier order of the Child Welfare Committee dated 10.09.2025 in favour of the petitioner has been set aside by the Appellate Court on 21.04.2026, as such, the custody of the minor has not been assigned to any party by judicial order.

17. In view of this, this Court is tasked with determining what serves the best interests of the minor corpus and, accordingly, who is entitled to his custody. The authorities cited by both parties emphasize that the paramount consideration in matters of child custody is the welfare of the minor child. It is incumbent upon the Court to identify the individual best suited to safeguard the minor's well-being and interests. Guided by this principle, the Court proceeds to adjudicate the issue of custody in the instant case.

18. Section 6 of the Hindu Minority and Guardianship Act, 1956, reads as under:

“6.Natural guardians of a Hindu minor.- The natural guardian of a Hindu minor, in respect of the minor's person as well as in respect of the minor's property (excluding his or her undivided interest in joint family property), are-

(a) in the case of a boy or an unmarried girl-the father, and after him, the mother; provided that the custody of a minor who has not completed the age of five years shall ordinarily be with the mother;

(b) in the case of an illegitimate boy or an illegitimate unmarried girl-the mother, and after her, the father;

(c) in the case of a married girl-the husband;

Provided that no person shall be entitled to act as the natural guardian of a minor under the provisions of this section-

(a) if he has ceased to be a Hindu, or

(b) if he has completely and finally renounced the world by becoming a hermit (vanaprastha) or an ascetic (yati or sanyasi).”

19. It is well-established that, ordinarily, the custody of a minor who has not attained the age of five years is entrusted to the mother. This principle has been recognized and codified by the legislature through the above relevant statutory provision. The legislative intent underlying this enactment reflects a recognition of the unique nutritional, emotional, and developmental needs of the minor, which, in the formative years, can best be met by the mother. While the father plays an essential role in the child's upbringing, it is the mother who, by reason of biological and nurturing considerations, is ordinarily best positioned to secure the physical and emotional welfare of the minor. Accordingly, in adjudicating the present habeas corpus petition, the Court must be guided by the paramount consideration of the minor's welfare.

20. In the instant case, keeping in view the allegations levelled by the parties against each other, in the opinion of the Court, at this stage, there is no possibility of reconciliation between the parties. It is apparent that the husband is not paying any maintenance to the wife, to which he is legally obliged and, as such, the petitioner is dependent on her parents. The petitioner has filed an affidavit, in which, she has stated that her mother Lalita Devi is in government service working in Vikas Khand Revati, District Ballia under District Panchayat Raj Adhikari, Ballia and was getting a salary of Rs.47,000/- per month, whereas her father was retired government employee getting a pension of Rs.30,000/- per month. The petitioner has filed the relevant documents to establish that her mother is a government employee and her father is a retired government servant.

21. The respondent has levelled certain allegations against the petitioner that she is an addict, alcoholic and is not in a fit mental condition to have the custody of the minor corpus and to substantiate these allegations some prescriptions issued by District Hospital, Varanasi dated 04.06.2025 and 02.07.2025 have been filed, which only mention that the petitioner was suffering from abdominal pain, as such, she approached the doctor for treatment alongwith her husband.

22. Keeping in view, the abdominal pain, the doctor advised her to refrain from taking spicy food. No such definite opinion has been expressed in any prescriptions that the mental condition of the petitioner is unsound or she is alcoholic. On the basis of the above prescriptions, it cannot be said that the petitioner is not in a fit physical and mental condition to look after the welfare of the minor corpus.

23. The petitioner has also brought to the Court's notice a WhatsApp chat of the respondent, in which he disclosed that he has solemnized marriage with another woman and is residing with her. The WhatsApp chat also contains photographs of the respondent and the said woman. The respondent is present in Court today, and upon perusal of the photographs in the WhatsApp chat, this Court is of the opinion that the respondent was in the company of another

woman. However, this Court is not expressing any opinion regarding the nature of their relationship.

24. Certain documents are available on record, which reflect the conduct of the respondent, who forcibly snatched the corpus from the custody of the petitioner regarding which a complaint was made to the Superintendent of Police, District Ballia. The Child Welfare Committee had directed by order dated 10.09.2025 to handover the custody of the minor corpus to the petitioner, but that order was not deliberately complied with by the respondent and this fact was noticed by the Division Bench while allowing the special appeal of the petitioner.

25. It is further apparent that when the Division Bench directed the State to intimate the steps taken to comply with the order dated 10.09.2025, then action was taken only after much hesitation, deliberation, and reluctance. The respondent was suspended by the S.S.P., Jaunpur, on 12.03.2026, which reflects the respondent's conduct. This attitude and behavior demonstrate that he is not at all concerned with the orders of this Court, which is particularly distressing given that he is a member of the disciplined force as a police constable, who has shown open defiance of the Court's orders.

26. It is apparent that as of now, keeping in view the tender age of the corpus, it is in the best interest that his custody is handed to the petitioner Smt. Rinku Ram @ Rinku Devi because for the nutritional needs, he is fully dependent on the petitioner. It will be an injustice to deprive the corpus from the custody of his mother.

27. Accordingly, the instant habeas corpus petition has merit and is liable to be allowed.

28. Respondent No. 6, Dharmendra Ram, is directed to hand over the custody of the minor, Vishwajeet, to the petitioner, Rinku Ram @ Rinku Devi, within three days.

29. However, to preserve the emotional bond between the minor and his father, the respondent is entitled to have visitation rights.

30. The Court interacted with the respondent and inquired about the specific dates on which he would like to visit. The respondent replied that he could not specify exact dates or days, but prayed that he be allowed to visit the minor twice a month.

31. In view of this, the respondent is permitted to exercise visitation rights and may visit the minor twice a month after informing the petitioner in advance. The visits shall take place at the nearest police station.

32. Learned counsel for the petitioner submits that the petitioner will not create any obstruction and will fully cooperate, making all efforts to ensure that the respondent is able to meet his minor son.

33. Accordingly, the instant habeas corpus petition is **allowed**.

(2026) 4 ILRA 1778
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 21.04.2026

BEFORE

THE HON'BLE MRS. MANJU RANI CHAUHAN, J.

Writ A No. 511 of 2026

Mukesh Kumar Sharma

...Petitioner

Versus

State of U.P. & Ors.

...Respondents

Issue(s) for consideration

- (a) Does the simultaneous acquisition of two educational credentials during the same academic session automatically invalidate a government appointment, in the absence of an explicit statutory embargo or rule prohibiting it?
- (b) Can a long-standing public service appointment (spanning nearly 29 years) be dismantled on technical, structural timeline discrepancies when there is no explicit finding of fraud, deceit, or forged documentation?
- (c) Is a summary termination order issued purely on the basis of show-cause notices legally sustainable when statutory rules explicitly mandate a formal departmental inquiry?

Headnotes

A. Service Law – The petitioner, Mukesh Kumar Sharma, completed his High School in 1991, pursued Class XI in 1992–93, obtained a Certificate in Physical Education from Maharashtra during the 1993–94 academic session, and passed his Intermediate Examination in 1995. Following a GO and a subsequent judicial directive in a 1997 writ petition, he was appointed as an untrained Assistant Teacher on 24.04.1997. He successfully completed the mandatory in-service trained Basic Teachers course in 1999, was granted a regular trained teacher pay scale in 2000, and eventually rose to the position of Headmaster at a Composite School in District Gautam Buddha Nagar. He rendered nearly 29 years of continuous, unblemished service.

Based on complaints regarding his credentials, the department conducted formal inquiries in 2020 and 2024. Both independent inquiry committees found the complaints to be completely unsubstantiated, and his salary, which had been briefly stopped, was restored. In 2025, another complaint was filed with the District Magistrate, prompting a fresh inquiry. Despite an interim order from the High Court on 16.10.2025, instructing the department to pay his current salary and conclude the inquiry through due legal process, the Basic Shiksha Adhikari (BSA) issued an order on 11.12.2025, terminating his services without a formal departmental inquiry.

B. In the absence of any statutory embargo, simultaneous pursuit of courses cannot constitute a valid ground for disqualification. Simultaneous acquisition of qualifications at the relevant point of time was permissible and cannot, by itself, render an appointment illegal. (Para 44)

The fulcrum of the impugned action rests upon the allegation of simultaneous acquisition of two qualifications. However, neither in the impugned order nor in the course of arguments has any statutory provision, rule, or regulation been brought to the notice of this Court which proscribes a candidate from pursuing or obtaining two qualifications in the same academic session. (Para 43)

If the acquisition of two degrees in the same academic session may appear improbable, such improbability, in the absence of cogent material and due process culminating in annulment of such degrees by a competent authority, cannot furnish a lawful basis for invalidating an

appointment. In the present case, it is an admitted position that none of the petitioner's educational qualifications have been set aside or invalidated. (Para 45)

C. Long continuance in service, coupled with the absence of fraud or deceit, operates as a significant equitable consideration against annulment of appointment. Long standing appointment should not be disturbed in absence of any fraud. The impugned order is conspicuously bereft of any categorical finding of fraud, misrepresentation, or submission of forged documents on the part of the petitioner. In the absence of such a foundational finding, the drastic consequence of termination, particularly after the petitioner has rendered nearly three decades of continuous and unblemished service, is wholly disproportionate and legally unsustainable. (Para 46, 47)

D. The course of action is in flagrant violation of the principles of natural justice. There is significant procedural infirmity vitiating the impugned order. No regular departmental inquiry, as mandated under the Service Rules, 1973 r/w the Rules, 1999, has been conducted. The termination has been effected merely on the basis of notices, without formulation of charges, without adducing evidence, and without affording the petitioner a meaningful and effective opportunity of hearing. (Para 48)

Petitioner's educational credentials, namely, the High School Certificate (1991), Certificate of Physical Education (1993-94), and Intermediate Certificate (1995), continue to hold the field, having never been annulled or invalidated by any competent authority. In such circumstances, impugned order dated 11.12.2025 cannot be sustained. (Para 49)

Writ petition allowed. (E-4)

Case Law Cited

1. Anita Rani Vs. State of Uttar Pradesh, Special Appeal No. 646 of 2026, decided on 27.01.2026 (Para 27)
2. Board of Management, Chandra Shekhar Azad University of Agriculture and Technology, Kanpur Vs. Dr. Samir Kumar Biswas and another, Special Appeal No. 91 of 2026 (Para 27)
3. Kuldeep Kumar Pathak Vs. State of U.P. and others, (2016) 3 SCC 521 (Para 31)
4. Basic Education Board, U.P., Prayagraj and another Vs. Lakshmi Shankar Yadav, Special Appeal No. 37 of 2022 (Para 32)
5. Board of Basic Education and another Vs. Arvind Prakash Dwivedi and others, Special Appeal Defective No. 898 of 2020 (Para 44)
6. State of Maharashtra Vs. Milind, (2001) 1 SCC 4 (Para 47)
7. State of U.P. Vs. Saroj Kumar Sinha, (2010) 2 SCC 772 (Para 48)

List of Acts

U.P. Basic Education (Staff) Service Rules, 1973; U.P. Government Servant (Discipline and Appeal) Rules, 1999.

List of Keywords

service, long continuance, acquisition, two degrees, misrepresentation, fraud, statutory, embargo, disqualification.

Appearances for Parties

For Petitioner(s): Siddharth Khare, Sr. Advocate

For Respondent(s): C.S.C., Shashi Prakash Rai

(Delivered by Hon'ble Mrs. Manju Rani Chauhan, J.)

1. Heard Mr. Ashok Khare, learned Senior Counsel assisted by Mr. Aditendra, learned counsel for the petitioner, Mr. Shashi Prakash Rai, learned counsel for respondent-BSA and learned Standing Counsel for the State.

2. The writ petition has been instituted, inter alia, seeking issuance of a writ of certiorari for quashing the order dated 11.12.2025 passed by the Basic Shiksha Adhikari, Gautam Buddha Nagar, whereby the services of the petitioner have been terminated.

3. A further prayer has been made for issuance of a writ of mandamus commanding the respondents not to interfere in the functioning of the petitioner as Headmaster of Composite Vidyalaya, Jewar, Development Block Jewar, District Gautam Buddha Nagar.

4. The petitioner has also prayed for a direction to the respondents to ensure payment of his regular monthly salary, along with arrears of salary w.e.f. June, 2025 till date, within a stipulated period.

5. Placing the aforesaid facts on record, learned counsel for the petitioner submits that the petitioner possesses the following educational qualifications:-

“(i) The petitioner appeared in the High School Certificate Examination in the year 1991 from the Board of High School and Intermediate Education, Uttar Pradesh, as a student of Krishna Sahai Gokul Chandra Inter College, Dhanauri Khurd, District Bulandshahr.

(ii) The petitioner pursued his studies in Class XI during the academic session 1992-93 from Adarsh Inter College, Ranhera.

(iii) The petitioner obtained a Certificate in Physical Education during the academic session 1993-94 from Bharati Sharirik Shikshan Mahavidyalaya, Hanuman Vyayam Nagar, Amravati, Maharashtra.

(iv) Thereafter, the petitioner appeared as a regular student in the Intermediate Certificate Examination for the academic session 1994-95 from the Board of High School and Intermediate Education, Uttar Pradesh, being a student of Adarsh Inter College, Ranhera.”

6. Pursuant to the Government Order dated 23.03.1995, which provided for the appointment of candidates possessing a Certificate in Physical Education as untrained teachers with a stipulation for imparting in-service training post-appointment, the State authorities issued an advertisement dated 27.12.1996 inviting applications from eligible candidates for such appointments. The petitioner, being duly eligible, submitted his application in response thereto.

7. However, as no interview call letter was issued to him, the petitioner was constrained to file Writ Petition No. 11804 of 1997 (Rajesh Singh and two others vs. BSA, Bulandshahr and others), wherein this Hon^{ble} Court, vide interim order dated 04.04.1997, directed consideration of his candidature. In compliance thereof, the petitioner’s case was considered by the Basic Shiksha Adhikari, Bulandshahr.

8. The petitioner was issued an appointment letter dated 24.04.1997, whereby he was appointed as an untrained Assistant Teacher and posted at Prathmik Vidyalaya, Jewar, District Bulandshahr. Pursuant thereto, the petitioner duly joined his duties on 25.04.1997.

9. The appointment so granted to the petitioner was as an untrained Assistant Teacher on payment of a consolidated honorarium of Rs. 850/- per month. Subsequently, the petitioner was directed to undergo an in-service training course for Basic Teachers at the District Institute of Education and Training, Bulandshahr, which he successfully completed in the year 1999.

10. On the basis of the aforesaid training qualification, the petitioner was granted the regular pay scale applicable to a trained teacher with effect from 08.03.2000.

11. The petitioner has been working continuously and regularly since 08.03.2000 as a trained Assistant Teacher and has been drawing the pay scale applicable to regularly appointed trained teachers. Initially, the petitioner was serving in District Bulandshahr; however, upon the creation of District Gautam Budhh Nagar as a separate district, the Development Block Jewar came to be included within its territorial limit. Consequently, the services of the petitioner stood allocated to District Gautam Budhh Nagar, where he has been continuing in service thereafter.

12. On the basis of certain complaints, the Basic Shiksha Adhikari, Gautam Budhh Nagar, vide order dated 22.07.2020, constituted a two-member inquiry committee to conduct an inquiry into the educational certificates of the petitioner and, simultaneously, directed stoppage of payment of his salary.

13. Notices were issued to the petitioner, to which he submitted his reply along with relevant documents. Upon due consideration of the same, the inquiry committee submitted its report dated 03.03.2021, recording a finding that the complaints against the petitioner were unsubstantiated.

14. Accordingly, the Basic Shiksha Adhikari, Gautam Budhh Nagar, vide order dated 16.03.2021, restored the payment of salary to the petitioner.

15. The Basic Shiksha Adhikari again issued a notice dated 24.05.2024 requiring the petitioner to submit his reply on or before 27.05.2024 with regard to the complaints concerning his educational qualifications. Thereafter, vide order dated 11.06.2024, the Basic Shiksha Adhikari constituted an inquiry committee comprising the Khand Shiksha Adhikari, Jewar, and the Khand Shiksha Adhikari, Bisrakh to conduct an inquiry and submit its report.

16. The said committee submitted its report dated 27.07.2024, recording a finding that the complaints against the petitioner were unsubstantiated, and further noting that the earlier inquiry had also returned the same conclusion.

17. Subsequently, a complaint was again made before the District Magistrate, Gautam Budhh Nagar, in the year 2025, pursuant to which the Vice Principal, District Institute of Education and Training, Dankaur, District Gautam Budhh Nagar, was appointed as the Inquiry Officer. The

Inquiry Officer fixed 07.02.2025 as the date of hearing. The petitioner duly participated in the proceedings; however, the complainant remained absent.

18. Thereafter, the Inquiry Officer submitted his report dated 04.04.2025, recording that the petitioner had obtained the Certificate of Physical Education from Maharashtra during the academic session 1993-94, which stood duly verified from the available records and documents. The report, however, also noted that the petitioner had passed the Intermediate Certificate Examination in the year 1994.

19. The aforesaid inquiry report was forwarded by the District Magistrate, Gautam Budhh Nagar, to the Basic Shiksha Adhikari, Gautam Budhh Nagar, for further action. In pursuance thereof, the Basic Shiksha Adhikari issued a notice dated 14.07.2025 to the petitioner, to which submitted his reply on 28.07.2025 along with relevant documents.

20. Simultaneously, another notice dated 14.07.2025 was issued directing stoppage of payment of the petitioner's salary. Thereafter, a further notice dated 08.08.2025 was issued by the Basic Shiksha Adhikari requiring the petitioner to submit his response within a period of three days.

21. In compliance, the petitioner submitted a detailed representation dated 11.08.2025 in response to the notice dated 08.08.2025, enclosing his educational certificates and mark sheets. He also submitted a further representation dated 19.08.2025 in response to the notice dated 14.07.2025 concerning stoppage of his salary.

22. The petitioner has not been paid any salary since June, 2025. Despite the fact that the petitioner duly responded to each notice issued by the Basic Shiksha Adhikari, his salary continued to be withheld and no final order was passed in the matter. Thereafter, another notice dated 17.09.2025 was issued, to which the petitioner submitted his reply on 25.09.2025.

23. Aggrieved by the continued non-payment of salary and the notices dated 14.07.2025 and 17.09.2025, the petitioner filed Writ-A No. 15556 of 2025 (Mukesh Kumar Sharma vs. State of U.P. and others), wherein this Hon'ble Court granted an interim order dated 16.10.2025. By the said order, the District Basic Education Officer was directed to complete the inquiry in accordance with law and to take a final decision within a period of two months after affording an opportunity of hearing to the petitioner. The Court further directed that the petitioner be paid his salary for the current month and continue to be paid salary thereafter until a final decision in the inquiry is taken.

24. Despite the order passed by this Hon'ble Court, the salary of the petitioner was not paid. Instead, the Basic Shiksha Adhikari proceeded to pass an order dated 11.12.2025 terminating the services of the petitioner on the ground that his initial appointment was invalid.

25. The impugned termination order dated 11.12.2025 is founded on two principal grounds. Firstly, it records that the petitioner passed the Intermediate Certificate Examination in the year 1995, whereas, according to the record, he had already passed the said examination in the year 1994. Secondly, it alleges that the petitioner pursued and completed two regular courses

simultaneously during the same academic session 1993-94, namely, the Certificate of Physical Education and the Intermediate Certificate Examination in the year 1994.

26. Learned counsel for the petitioner submits that the impugned order has been passed in gross violation of the principles of natural justice. It is contended that repeated complaints were made against the petitioner, which were duly inquired into on earlier occasions, and each time the allegations were found to be unsubstantiated. However, in complete disregard of the findings recorded in the earlier inquiry reports, the impugned order has been passed, rendering the same arbitrary and unsustainable in the eyes of law.

27. The petitioner has rendered unblemished service for the past 29 years, during the said period there has neither been any complaint against his conduct, nor any allegation that the educational certificates on the basis of which he was appointed are forged. In such circumstances, the impugned order is wholly unsustainable in law and is in clear violation of the principles laid down by this Hon'ble Court in **Anita Rani vs. State of Uttar Pradesh (Special Appeal No. 646 of 2026, decided on 27.01.2026)**, as well as in **Board of Management, Chandra Shekhar Azad University of Agriculture and Technology, Kanpur vs. Dr. Samir Kumar Biswas and another (Special Appeal No. 91 of 2026)**.

28. In **Anita Rani (supra)**, the Division Bench of this Hon'ble Court observed that where the petitioner therein had rendered service for a considerable period of seven years, and there was no finding of fraud or manipulation on her part in securing the appointment, the same could not be cancelled.

29. While deciding the matter in **Board of Management, Chandra Shekhar Azad University of Agriculture and Technology, Kanpur vs. Dr. Samir Kumar Biswas and another (Special Appeal No. 91 of 2026)**, the Division Bench of this Hon'ble Court took note of the allegation that the petitioners therein were not entitled to appointment on the post in question as they had availed the benefit of belonging to a Scheduled Caste in their home State, which was not recognized in the State of Uttar Pradesh. However, in the absence of any finding of fraud or misrepresentation on the part of the petitioners in securing their appointment, the Court upheld their appointments.

30. Learned counsel for the petitioner further contends that there exists no statutory prohibition against obtaining two certificates in the same academic year. Therefore, the ground taken in the impugned order to the contrary is wholly misconceived, illegal, and unsustainable in the eyes of law.

31. Learned counsel for the petitioner, placing reliance upon the judgment of the Hon'ble Supreme Court in **Kuldeep Kumar Pathak vs. State of U.P. and others, reported in (2016) 3 SCC 521**, submits that the respondents have failed to place on record any statutory provision or regulation prohibiting simultaneous appearance in two examinations. Consequently, the appointment of the petitioner could not have been cancelled on this ground, and the impugned order is liable to be set aside.

32. Learned counsel for the petitioner has further placed reliance upon the judgment of the Division Bench of this Hon'ble Court in **Basic Education Board, U.P., Prayagraj and another vs. Lakshmi Shankar Yadav (Special Appeal No. 37 of 2022)**, wherein it has been observed that although it may appear improbable as to how a person could obtain two degrees simultaneously, such improbability by itself cannot constitute a valid ground to annul both the degrees. The Court held that there must exist cogent material and due process, including affording an opportunity of hearing to the holder of such degrees, before annulling either one or both of them.

33. In the said case, since one of the degrees relied upon by the petitioner for selection to the post in question had admittedly not been cancelled, the Division Bench upheld the validity of the appointment and held that the same could not be annulled merely on the ground that two degrees had been obtained simultaneously.

34. Learned counsel for the petitioner further submits that the impugned order has been passed without conducting a regular departmental inquiry as mandated under the U.P. Basic Education (Staff) Service Rules, 1973, read with the U.P. Government Servant (Discipline and Appeal) Rules, 1999. The termination of the petitioner's services has been effected merely on the basis of issuance of notices, which do not satisfy the procedural requirements prescribed under law.

35. It is contended that in the absence of a duly conducted disciplinary inquiry, affording full opportunity of hearing and adherence to the prescribed procedure, the impugned order is in clear violation of the principles of natural justice and is, therefore, liable to be set aside.

36. Learned counsel for the petitioner further submits that there is no dispute with respect to the authenticity of the petitioner's educational qualifications, namely, the High School Certificate obtained in the year 1991, the Certificate of Physical Education obtained during the academic session 1993-94, and the Intermediate Certificate obtained in the year 1995. The said certificates have neither been cancelled nor declared invalid by any competent authority and continue to hold the field.

37. In such circumstances, it is contended that there was no occasion or justification for initiating or taking any adverse action against the petitioner, particularly when the very qualifications on the basis of which the petitioner was appointed remain undisputed and valid.

38. Learned counsel for the respondents, on the other hand, submits that there is no illegality or infirmity in the impugned order. It is contended that in the course of inquiry, it has been found that the petitioner had pursued and completed two regular courses during the same academic session 1993-94, namely, the Certificate of Physical Education and the Intermediate Examination (1994), which fact was not disclosed by him at the time of seeking appointment.

39. Learned counsel for the respondents further submits that the petitioner had initially submitted a Transfer Certificate issued from Kisan Sahai Gokulchand, Inter College, Dhanauri Khurd, for the purpose of seeking admission in Kisan Inter College, Barsol, from where he is stated to have passed Class XI during the academic session 1991-92. However, in response to the notice,

the petitioner took a different stand by asserting that he had passed Class XI during the academic session 1992-93 from Adarsh Inter College, Ranhera, District Gautam Budhh Nagar.

40. It is further contended that, as per the report dated 24.01.2025 received from Adarsh Inter College, Ranhera, the petitioner had neither taken admission in the said institution nor was he enrolled there during the period 1988 to 1993.

41. On the basis of the aforesaid material, it is submitted that the petitioner had appeared in two examinations as a regular candidate in the same year, namely, the Certificate of Physical Education and the Intermediate Examination in the year 1994, and thereafter again appeared in the Intermediate Examination in the year 1995. It is thus contended that by concealing these facts and by simultaneously pursuing two courses, the petitioner secured his initial appointment. It is further urged that for the purpose of subsequent benefits as a trained teacher, the petitioner relied upon his Intermediate mark sheet of the year 1995.

42. In view of the aforesaid, it is contended that the petitioner secured his initial appointment by concealing material facts, particularly the fact of having appeared in and passed two examinations in the same year. Accordingly, the petitioner is not entitled to any relief from this Hon^{ble} Court.

43. Having bestowed anxious consideration to the rival submissions and upon a careful scrutiny of the record, this Court finds that the fulcrum of the impugned action rests upon the allegation of simultaneous acquisition of two qualifications. However, neither in the impugned order nor in the course of arguments has any statutory provision, rule, or regulation been brought to the notice of this Court which proscribes a candidate from pursuing or obtaining two qualifications in the same academic session.

44. The legal position in this regard stands authoritatively settled by the Hon^{ble} Supreme Court in **Kuldeep Kumar Pathak (supra)**, wherein it has been unequivocally held that in the absence of any statutory embargo, simultaneous pursuit of courses cannot constitute a valid ground for disqualification. The said principle has been echoed by the Division Bench of this Court in **Board of Basic Education and another vs. Arvind Prakash Dwivedi and others (Special Appeal Defective No. 898 of 2020)**, holding that simultaneous acquisition of qualifications at the relevant point of time was permissible and cannot, by itself, render an appointment illegal.

45. Further, in **Basic Education Board, U.P., Prayagraj and another vs. Lakshmi Shankar Yadav (Special Appeal No. 37 of 2022)**, the Division Bench has lucidly observed that even if the acquisition of two degrees in the same academic session may appear improbable, such improbability, in the absence of cogent material and due process culminating in annulment of such degrees by a competent authority, cannot furnish a lawful basis for invalidating an appointment. In the present case, it is an admitted position that none of the petitioner's educational qualifications have been set aside or invalidated.

46. This Court also finds that the impugned order is conspicuously bereft of any categorical finding of fraud, misrepresentation, or submission of forged documents on the part of the petitioner. In the absence of such a foundational finding, the drastic consequence of termination, particularly after the petitioner has rendered nearly three decades of continuous and unblemished service, is wholly disproportionate and legally

unsustainable. The Division Bench of this Court in **Anita Rani (supra)** has held that long continuance in service, coupled with the absence of fraud or deceit, operates as a significant equitable consideration against annulment of appointment.

47. This Court finds that long standing appointment should not be disturbed in absence of any fraud. The aforesaid has been held by Apex Court in the case of **State of Maharashtra vs. Milind, (2001) 1 SCC 4**, wherein the caste certificate of the petitioner was questioned, however, on the aforesaid principle, the appointment of the petitioner was not disturbed as the certificate of the petitioner therein was accepted with open eyes by the respondents.

48. Equally significant is the procedural infirmity vitiating the impugned order. It is evident that no regular departmental inquiry, as mandated under the U.P. Basic Education (Staff) Service Rules, 1973 read with the U.P. Government Servant (Discipline and Appeal) Rules, 1999, has been conducted. The termination has been effected merely on the basis of notices, without formulation of charges, without adducing evidence, and without affording the petitioner a meaningful and effective opportunity of hearing. Such a course of action is in flagrant violation of the principles of natural justice, as expounded by the Hon'ble Supreme Court in **State of U.P. vs. Saroj Kumar Sinha, (2010) 2 SCC 772**.

49. It is also not in dispute that the petitioner's educational credentials, namely, the High School Certificate (1991), Certificate of Physical Education (1993-94), and Intermediate Certificate (1995), continue to hold the field, having never been annulled or invalidated by any competent authority. In such circumstances, the substratum of the impugned action is rendered wholly untenable.

50. In light of the foregoing discussion, this Court is constrained to hold that the impugned order dated 11.12.2025 is vitiated by arbitrariness, non-application of mind, procedural impropriety, and violation of settled principles of law. The same, therefore, cannot be sustained.

51. The impugned order dated 11.12.2025 passed by the Basic Shiksha Adhikari, District- Gautam Budhh Nagar, is hereby **quashed**.

52. The writ petition succeeds and is accordingly **allowed**.

(2026) 4 ILRA 1786
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 20.04.2026

BEFORE

THE HON'BLE ANISH KUMAR GUPTA, J.

Writ A No. 4116 of 2019

Kunwar Pal Singh
State of U.P. & Ors.

...Petitioner
Versus
...Respondents

Issue(s) for consideration

- (a) Whether recommendation of punishment by the Inquiry Officer in the inquiry report itself, vitiates the inquiry proceedings and the inquiry report?
- (b) Whether the departmental proceedings as well as the criminal trial can proceed simultaneously?
- (c) Whether a subsequent criminal acquittal based on the "benefit of doubt" automatically invalidates a prior termination order passed in a regular departmental inquiry involving identical facts?

Headnotes**A. Service Law - UP Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules**

1991: Rule 14(1) - The petitioner was a Constable in the U.P. Police Department. On 14.12.2011, while assigned to present an accused person at the Sadar Lockup in District Firozabad, the petitioner allegedly consumed alcohol. Due to his severe intoxication, his service rifle accidentally discharged. The gunshot injured two private citizens, Buddhpal and Chunnilal. Following the incident, a criminal case was registered against the petitioner (Case Crime No. 318 of 2011). Concurrently, a preliminary inquiry was conducted, leading to the initiation of formal departmental disciplinary proceedings u/Rule 14(1) of the Rules, 1991.

A charge sheet was issued and served upon the petitioner via his daughter on 17.09.2012. Despite multiple notices detailing the time and place of the inquiry hearings, the petitioner entirely boycotted the proceedings. The Inquiry Officer subsequently conducted the inquiry ex-parte. In his report dated 29.06.2013, the Inquiry Officer found the petitioner guilty and explicitly recommended his removal from service. A show-cause notice along with the inquiry report was served on the petitioner on 10.07.2013. He failed to file an explanation within the stipulated 15 days. On 19.08.2013, the Disciplinary Authority ordered his removal from service. His statutory appeal was dismissed on 21.12.2013, and his revision petition was later dismissed as time-barred. The petitioner subsequently approached the High Court. (Para 12)

B. Provisions of Rule 14(1) along with Appendix 1 of 1991 Rules - The proviso to the Appendix specifically empowers the Disciplinary Authority to make the recommendation w.r.t. the punishment after conclusion of the guilt recorded by the Inquiry Officer. However, it is expected that such recommendation ought to have been made separately. The purpose being that the aforesaid recommendations are in between the Inquiry Officer and the Disciplinary Authority and the same ought not to have been communicated to the delinquent officer before any punishment order is passed. Thus, **the aforesaid requirement is just a requirement of convenience and caution, however, the same would not vitiate the inquiry report itself**, which has been otherwise based upon the cogent evidence recorded by the Inquiry Officer, during the inquiry proceedings. (Para 13)

C. The criminal trial as well as the disciplinary proceedings for identical allegations are two different things and operate in different spheres. The purpose of a criminal trial is to punish the offender for the offense committed by him and for such purpose, the allegations are required to be proved beyond reasonable doubt. So far as the disciplinary proceedings are concerned, the purpose thereof is to ascertain the misconduct, indiscipline committed by the delinquent officer while on service and with regard to the finding of guilt for misconduct, negligence, etc. by one's service, **the degree of proof is preponderance of probabilities and not the strict proof as in the criminal trial.** (Para 14)

The departmental proceedings as well as the criminal trial can proceed simultaneously as there is no bar to their being conducted simultaneously. However, it provides that where the charges in the departmental proceedings as well as criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature, which involves complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case. However, **due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed and wherever the disposal of criminal case is delayed, the disciplinary proceedings cannot be delayed.** (Para 16)

D. The criminal trial and the disciplinary proceedings for the identical allegations operate in different spheres and both are not dependent on each other. Merely because an employee is acquitted in a criminal trial, he cannot be ipso facto reinstated in service due to such acquittal in criminal trial. Wherever charges and allegations were identical and the criminal court has acquitted then it is the duty of the Court to examine **whether it was an honorable acquittal or benefit of doubt has been given to such employee.** Even if there is an honorable acquittal the Court is required to examine whether the witnesses produced before the Disciplinary Authority and the criminal trial were the same. The dismissal stands if inquiry witnesses supported the charges but did not support (turned hostile) the criminal trial, or if the inquiry proved additional facts not covered in the trial. (Para 27)

In present case, most of the witnesses who were injured were turned hostile and did not support the prosecution case and the petitioner has been acquitted on the basis of his own statement, which is similar to the explanation allegedly submitted by him to the show-cause notice before the Disciplinary Authority, where he has also not been cross-examined by the prosecution. (Para 28)

The petitioner was found to be guilty of misconduct. It was not a clean acquittal. Writ petition dismissed. (Para 29, 30)

Case Law Cited:

1. Constable No.118 Awadh Kumar Pandey Vs. State of U.P. and 3 Others, Judgment and order dated 26.09.2024, passed by the Division Bench of this Court, Special Appeal No. 601 of 2024 (Para 8)
2. State of Rajasthan and Ors. Vs. Phool Singh, Civil Appeal No. 5930 of 2022 (Para 11)
3. Maharana Pratap Singh Vs. State of Bihar and Others, 2025 SCC Online SC 890 (Para 11)
4. Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. & Anr., (1999) 3 SCC 679 (Para 15)
5. Karnataka Power Transmission Corporation Limited Vs. C. Nagaraju, 2019 10 SCC 367 (Para 17)
6. Union of India Vs. Sitaram Mishra, (2019) 20 SCC 588 (Para 18)
7. Ajit Kumar Negi Vs. General Manager Indian Oil Corporation Limited, (2005) 7 SCC 764 (Para 19)
8. State of Rajasthan Vs. Heem Singh, (2020) SCC OnLine SC 886 (Para 20)
9. Ram Lal Vs. State of Rajasthan & Ors., Civil Appeal no. 7935 of 2023, dated 04.12.2023 (Para 22)
10. Maharana Pratap Singh Vs. State of Bihar and Others, 2025 SCC OnLine SC 890 (Para 23)
11. Commissioner of Police, New Delhi and Another Vs. Mehar Singh, 2013 (7) SCC 685 (Para 24)
12. Anand Kumar Vs. Union of India and Another, 2025 0 AHC 188636; 2025 0 Supreme (All) 3430 (Para 26)

List of Acts

UP Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules 1991.

List of Keywords

domestic inquiry, criminal, acquittal, punishment, service, department, termination, benefit of doubt, honourable.

Appearances for Parties

For Petitioner(s): Pawan Kumar Tripathi, Vijay Gautam, Vijay Gautam (Senior Adv.), Vinod Kumar Mishra

For Respondent(s): C.S.C.

(Delivered by Hon'ble Anish Kumar Gupta, J.)

1. Heard Sri Pawan Kumar Tripathi, learned counsel assisted by Sri Deepanshu Sharma, learned counsel for the petitioner and Sri Gaurav Singh, learned Standing Counsel for the State respondents.

2. The briefly stated facts of the case are that the petitioner was posted as Constable on 15.05.1982 in the U.P. Police Department. At the relevant time in the year 2011, the petitioner was posted as Constable at Police Line, District- Firozabad. On 14.12.2011, the petitioner was assigned duty to present an accused at Sadar Lockup. While on such duty, allegedly the petitioner got intoxicated and due to such intoxication consumed by the petitioner, a gunshot fire from his service rifle took place, due to which private persons got injured. With regard to the aforesaid incident, an F.I.R. was lodged against the petitioner being Case Crime No. 318 of 2011 at Police Station-Mathsena, District- Firozabad. Thereafter, a preliminary inquiry was conducted with regard to the misconduct of the petitioner herein by an Inquiry Officer appointed by the Department, who held the petitioner herein guilty of the misconduct. Thereafter, on the basis of the report of the preliminary inquiry, the departmental disciplinary proceedings were initiated against the petitioner under Rule 14 (1) of the UP Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules 1991 (hereinafter referred to as '1991 Rules').

3. In the disciplinary proceedings, the Inquiry Officer was appointed to conduct the inquiry against the petitioner with regard to the aforesaid misconduct, due to which bullet was fired from his service rifle causing injury to private persons during intoxication while on duty. Initially, the disciplinary inquiry was handed over to Shri Asharam Yadav, the then Circle Officer. On 30.07.2012, the charge-sheet was issued by him with the approval of the Disciplinary Authority to the petitioner, which was served through the daughter of the petitioner as the petitioner was not found at his given address on 17.09.2012.

4. Thereafter, the inquiry was handed over to Shishpal Singh, Circle Officer, Firozabad, who noted that the charge-sheet had been duly served, acknowledgement of the daughter of the petitioner is available on record. Thereafter, he proceeded with the inquiry and called for the witnesses and intimation with regard to the date, time, and place of the disciplinary proceedings to be conducted was sent to the petitioner calling upon the petitioner to cross-examine the witnesses, if he so desires but petitioner did not appear before the Inquiry Officer in the entire inquiry proceedings. Thus, the Inquiry Officer had no other option but to proceed with recording the statements of witnesses in accordance with rules ex-parte. The witnesses have categorically stated that after the incident medical examination of the petitioner was conducted, wherein it was proved that the petitioner had consumed alcohol. Thus, from the evidence available on record, the Inquiry Officer concluded that the petitioner herein was guilty of intoxication while on duty and due to his negligence a bullet was fired from his service rifle, due to which two public persons namely, Buddhpal and Chunnilal had sustained injuries and for the aforesaid incident, an F.I.R. was lodged by one Rajkumar, being Case Crime No. 318 of 2011 under section 307 I.P.C.

5. In the medical examination of the petitioner, intoxication was found, therefore, the Inquiry Officer held him guilty of the aforesaid charges and also recommended the punishment of removal from services in his inquiry report dated 29.06.2013. Therefore, on 03.07.2013, a show-cause notice was issued by Superintendent of Police, Firozabad to the petitioner herein along with the copy of the inquiry report. The petitioner had submitted his explanation to the aforesaid show-cause notice, stating therein that while performing his duties to escort the accused in the Court of ACJM-II, Firozabad and looking at sensitivity and crowd he kept the loaded rifle with him to ensure that the accused cannot escape or assaulted by the opposite parties. The opposite parties to

the accused had crowded him in the verandah of the ACJM-II Court and had tried to snatch the rifle from him. Thereafter, the petitioner consciously kept the point of rifle towards the roof, however, due to the crowd, someone had pressed the trigger, thus the fire was caused, the bullet first touched to the roof and thereafter came back on the floor and due to some stones from the floor hit the injured persons. Thus, he submitted that he has not committed any misconduct deliberately and he has not been negligent in his duties. Had he been negligent then there would have been some mishappening. The petitioner was immediately arrested and was sent to jail without giving any opportunity to explain his conduct. The matter was investigated by the Investigation Officer and in the said offense, only offense under Sections 286 and 338 I.P.C. was found to have been committed and thereafter the petitioner was released on bail and the trial is pending. However, with regard to the aforesaid reply/explanation submitted by the petitioner, neither the date has been given on which date the said explanation/reply was submitted by petitioner nor there is any acknowledgment that the said reply/explanation was actually submitted by him.

6. The Superintendent of Police being the Disciplinary Authority has categorically noted that initial show-cause notice was sent to petitioner on 03.07.2013 calling upon him to submit his explanation. Thereafter, it was submitted by the Police Line- Hathras that the petitioner is absent from his duties from 28.06.2013. Thereafter, a copy of show-cause notice was sent through Special Messenger to his permanent address at Village- Khoobkhabar, P.S.- Lodha, District- Aligarh, wherein it was informed by various persons, resident of the said village, that he is not residing in the village and has sold his house and land and shifted to Aligarh. Thereafter, again, the Special Messenger was sent to his address at Aligarh, wherein the notice was duly served on the petitioner on 30.07.2013. He was expected to submit his reply/explanation within 15 days. Since, the petitioner has failed to submit any explanation or reply to the show-cause notice, thereafter, the Disciplinary Authority has proceeded ex-parte and has passed the punishment order of removal from service on 19.08.2013. Being aggrieved by the same, the petitioner herein has filed a statutory appeal before the Deputy Inspector General of Police, Agra Zone, Agra, which was dismissed by the Appellate Authority on 21.12.2013. Thereafter, the petitioner has submitted a revision petition on 21.05.2015, though the copy of the order of the Appellate Authority was duly served to the petitioner on 17.01.2014. Thereafter, the Revisional Authority having found that the revision is time-barred, the same was dismissed. Being aggrieved by the aforesaid three orders passed by the Disciplinary Authority, Appellate Authority, as well as the Revisional Authority, the instant petition has been filed by the petitioner herein.

7. Learned counsel for the petitioner has submitted that the petitioner herein has already been acquitted in the criminal case, lodged for the identical allegations against the petitioner herein. Initially, the Case Crime No. 318 of 2011 was registered under Section 307 I.P.C, however, the charge-sheet was filed under Sections 286 and 338 I.P.C., for which the petitioner was tried and after trial, giving benefit of doubt to the petitioner he was acquitted.

8. In support of this submission, learned counsel for the petitioner has relied upon the judgment and order dated 26.09.2024 passed by the Division Bench of this Court in ***Special Appeal No. 601 of 2024 (Constable No.118 Awadhesh Kumar Pandey vs. State of U.P. and 3 Others)***.

"37. We have also carefully perused the judgment of trial court, which is on record, and it can be safely said that the petitioner-appellant was honorably acquitted. We find that the disciplinary proceeding and the orders passed thereon cannot be allowed to stand. The charges were not just the same but identical and the evidence, witnesses and circumstances were all the same. Merely on the basis of two days absence, that so due to ailment, no such major penalty can be inflicted. Accordingly, question no.2 is answered. "

9. Learned counsel for the petitioner submitted that since the petitioner has been acquitted for the identical charges in a judicial trial, therefore, the punishment order on the basis of the identical charges cannot be sustained in law. Thus, the petitioner is entitled for reinstatement with all consequential benefits. It is further submitted by learned counsel for the petitioner that the Inquiry Officer has recommended the punishment in the inquiry report itself, which is impermissible for the Inquiry Officer. Though, the Appendix 1 of 1991 Rules permits the Inquiry Officer to make the recommendation regarding the punishment to be imposed on the charged police officer, however, such recommendations ought to have been made separately, but not in the inquiry report and the Disciplinary Authority, without application of his mind, has simply agreed with the recommendation made by the Inquiry Officer and has passed the punishment order. The appeal filed by the petitioner against the order of removal from service was rejected and the revision has been dismissed as time-barred. Thus, learned counsel for the petitioner submits that since the Inquiry Officer has made the recommendations in inquiry report itself, then the entire inquiry proceedings gets vitiated. Thus, he seeks quashing of the inquiry proceedings as well as the termination order passed by the Disciplinary Authority and consequently the orders passed by the Appellate Authority and Revisional Authority. 10. Per contra, learned Standing Counsel for the State submits that on perusal of the inquiry, it is apparent that sufficient opportunity to defend himself was granted by the Inquiry Officer to the petitioner. The charge-sheet was duly served. Date, time, and place for examination of witnesses was duly intimated to the petitioner time and again, and despite that, the petitioner has failed to cooperate with the disciplinary proceedings. Thus, the Inquiry Officer had no other option but to proceed ex-parte against the petitioner, and has after examination of witnesses in accordance with law, has found petitioner guilty of the charges leveled against the petitioner. As per Appendix 1 attached to 1991 Rules, read with Rule 14 (1) empowers the Inquiry Officer, after conclusion of inquiry proceedings, to make the recommendation with regard to punishment. Thus, the aforesaid recommendation made by the Inquiry Officer were well within its powers. It is further submitted by learned Standing Counsel for the State that merely because the petitioner has been acquitted in a criminal trial, it would not amount to reversal of the findings of misconduct which were arrived in a fairly concluded disciplinary proceeding.

11. In support of the submission, learned Standing Counsel for the State has relied upon the judgment and order dated 02.09.2022 passed by the Apex Court in ***Civil Appeal No. 5930 of 2022, State of Rajasthan and Ors. vs. Phool Singh***, and also in ***Maharana Pratap Singh vs. State of Bihar and Others, 2025 SCC Online SC 890***. Thus, Standing Counsel for the State seeks dismissal of the instant case.

12. Having heard the rival submissions so made by learned counsel for the parties, this Court has carefully gone through the records of the Case. The facts of the case have already been

noted herein above. From the perusal of the inquiry report, it is apparent that the charge-sheet was served to the petitioner through her daughter and despite service of the charge-sheet the petitioner has failed to file any response to the said charge-sheet. Thereafter, under intimation to the petitioner and by calling upon him to join the inquiry proceedings and cross-examine the witnesses on the given date, time and place, since the petitioner failed to cooperate in the inquiry proceedings, the Inquiry Officer having no other option, had proceeded ex-parte against the petitioner in accordance with the law and he had examined the witnesses and thereupon has concluded the inquiry against the petitioner and found him guilty of the alleged charges against the petitioner. Thus, in the considered opinion of this Court, there is no illegality so far as the inquiry proceedings are concerned and the petitioner was found guilty by the Inquiry Officer.

13. So far as the argument raised by counsel for the petitioner that the Inquiry Officer had recommended the punishment in the inquiry report itself, which vitiates the inquiry proceedings and the inquiry report, this Court has gone through the provisions of Rule 14(1) along with Appendix 1 of 1991 Rules. The proviso to the Appendix specifically empowers the Disciplinary Authority to make the recommendation with regard to the punishment after conclusion of the guilt recorded by the Inquiry Officer. However, it is expected that such recommendation ought to have been made separately. The purpose of such recommendation being made separately appears to be that the aforesaid recommendations are in between the Inquiry Officer and the Disciplinary Authority and the same ought not to have been communicated to the delinquent officer that is why it is expected that such recommendations ought to have been made separately by the inquiry officer before any punishment order is passed. Thus, the aforesaid requirement is just a requirement of convenience and caution, however, the same would not vitiate the inquiry report itself, which has been otherwise based upon the cogent evidence recorded by the Inquiry Officer, during the inquiry proceedings. Thus, in the considered opinion of this Court, the aforesaid argument advanced by learned counsel for the petitioner is not sustainable in law.

14. So far as the arguments advanced by the learned counsel for the petitioner that since the petitioner had been acquitted in the criminal trial for the identical allegation against the petitioner, thus, the petitioner is automatically entitled for reinstatement. In this regard, it is a settled position of law that the criminal trial as well as the disciplinary proceedings for identical allegations are two different things and operate in different spheres. The purpose of a criminal trial is to punish the offender for the offense committed by him and for such purpose, the allegations are required to be proved beyond reasonable doubt. So far as the disciplinary proceedings are concerned, the purpose thereof is to ascertain the misconduct, indiscipline committed by the delinquent officer while on service and with regard to the finding of guilt for misconduct, negligence, etc. by one's service, the degree of proof is preponderance of probabilities and not the strict proof as in the criminal trial.

15. Before proceeding further, it would be relevant to take note of some of the judgments of the Apex Court, which throw light on the aforesaid issue. In ***Capt. M. Paul Anthony vs. Bharat Gold Mines Ltd. & Anr : (1999) 3 SCC 679***, the Apex Court has drawn the following conclusion:-

“22. The conclusions which are deducible from various decisions of this Court referred to above are:

(i) *Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately.*

(ii) *If the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case.*

(iii) *Whether the nature of a charge in a criminal case is grave and whether complicated questions of fact and law are involved in that case, will depend upon the nature of offence, the nature of the case launched against the employee on the basis of evidence and material collected against him during investigation or as reflected in the charge-sheet.*

(iv) *The factors mentioned at (ii) and (iii) above cannot be considered in isolation to stay the departmental proceedings but due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed.*

(v) *If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found not guilty his honour may be vindicated and in case he is found guilty, the administration may get rid of him at the earliest.”*

16. According to the aforesaid judgment, the departmental proceedings as well as the criminal trial can proceed simultaneously as there is no bar to their being conducted simultaneously. However, it provides that where the charges in the departmental proceedings as well as criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature, which involves complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case. Whether the criminal case involves the grave charges or whether it involves the complicated questions of fact and law, will depend upon the nature of the offense, nature of the case lodged against the employee on the basis of the evidence and material collected during investigation. However, it has further been provided in the said judgment that the Stay of departmental proceedings cannot operate in isolation on the aforesaid principles but due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed and wherever the disposal of criminal case is delayed, the disciplinary proceedings cannot be delayed.

17. In ***Karnataka Power Transmission Corporation Limited vs. C. Nagaraju : 2019 10 SCC 367***, the Apex Court has held as under:

“10. As the High Court set aside the order of dismissal on the basis of the judgments of this Court in M. Paul Anthony [M. Paul Anthony v. Bharat Gold Mines Ltd., (1999) 3 SCC 679 : 1999 SCC (L&S) 810] and G.M. Tank [G.M. Tank v. State of Gujarat, (2006) 5 SCC 446 : 2006 SCC (L&S) 1121] , it is necessary to examine whether the said judgments are applicable to the facts of this case. Simultaneous continuance of departmental proceedings and proceedings in a

*criminal case on the same set of facts was the point considered by this Court in M. Paul Anthony case [M. Paul Anthony v. Bharat Gold Mines Ltd., (1999) 3 SCC 679 : 1999 SCC (L&S) 810] . **This Court was of the opinion that departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar.** However, it is desirable to stay departmental inquiry till conclusion of the criminal case if the departmental proceedings and criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and fact. On the facts of the said case, it was found that the criminal case and the departmental proceedings were based on identical set of facts and the evidence before the criminal court and the departmental inquiry was the same. Further, in the said case the departmental inquiry was conducted ex parte. In such circumstances, this Court held that the ex parte departmental proceedings cannot be permitted to stand in view of the acquittal of the delinquent by the criminal court on the same set of facts and evidence. The said judgment is not applicable to the facts of this case. **In the present case, the prosecution witnesses turned hostile in the criminal trial against Respondent 1. He was acquitted by the criminal court on the ground that the prosecution could not produce any credible evidence to prove the charge. On the other hand, the complainant and the other witnesses appeared before the inquiry officer and deposed against Respondent 1. The evidence available in the departmental inquiry is completely different from that led by the prosecution in criminal trial.***

11. Reliance was placed by the High Court on a judgment of this Court in G.M. Tank [G.M. Tank v. State of Gujarat, (2006) 5 SCC 446 : 2006 SCC (L&S) 1121] whereby the writ petition filed by Respondent 1 was allowed. In the said case, the delinquent officer was charged for an offence punishable under Section 5(1)(e) read with Section 5(2) of the PC Act, 1988. **He was honourably acquitted by the criminal court as the prosecution failed to prove the charge. Thereafter, a departmental inquiry was conducted and he was dismissed from service.** The order of dismissal was upheld [G.M. Tank v. State of Gujarat, 2003 SCC OnLine Guj 487] by the High Court. In the appeal filed by the delinquent officer, this Court was of **the opinion that the departmental proceedings and criminal case were based on identical and similar set of facts. The evidence before the criminal court and the departmental proceedings being exactly the same, this Court held that the acquittal of the employee by a criminal court has to be given due weight by the disciplinary authority. On the basis that the evidence in both the criminal trial and departmental inquiry is the same, the order of dismissal of the appellant therein was set aside. As stated earlier, the facts of this case are entirely different. The acquittal of Respondent 1 was due to non-availability of any evidence before the criminal court. The order of dismissal was on the basis of a report of the inquiry officer before whom there was ample evidence against Respondent 1.**

12. In Krishnakali Tea Estate v. Akhil Bharatiya Chah Mazdoor Sangh [Krishnakali Tea Estate v. Akhil Bharatiya Chah Mazdoor Sangh, (2004) 8 SCC 200 : 2004 SCC (L&S) 1067] this Court was concerned with the validity of the termination of the services of workmen after acquittal by the criminal court. Dealing with a situation similar to the one in this case, **where the acquittal was due to lack of evidence before the criminal court and sufficient evidence was available before the Labour Court, this Court was of the opinion that the judgment in M. Paul Anthony case [M. Paul Anthony v. Bharat Gold Mines Ltd., (1999) 3 SCC 679 : 1999 SCC (L&S) 810] cannot come to the rescue of the workmen.**

13. Having considered the submissions made on behalf of the appellant and Respondent 1, we are of the view that interference with the order of dismissal by the High Court was unwarranted. It is settled law that the acquittal by a criminal court does not preclude a departmental inquiry against the delinquent officer. The disciplinary authority is not bound by the judgment of the criminal court if the evidence that is produced in the departmental inquiry is different from that produced during the criminal trial. The object of a departmental inquiry is to find out whether the delinquent is guilty of misconduct under the conduct rules for the purpose of determining whether he should be continued in service. The standard of proof in a departmental inquiry is not strictly based on the rules of evidence. The order of dismissal which is based on the evidence before the inquiry officer in the disciplinary proceedings, which is different from the evidence available to the criminal court, is justified and needed no interference by the High Court.”

18. In *Union of India vs. Sitaram Mishra : (2019) 20 SCC 588*, the Apex Court has observed as under:

“14. The fact that the first respondent was acquitted in the course of the criminal trial cannot operate ipso facto as a ground for vitiating the finding of misconduct which has been arrived at during the course of the disciplinary proceedings. The High Court, in our view, has drawn an erroneous inference from the decision of this Court in M. Paul Anthony v. Bharat Gold Mines Ltd. [M. Paul Anthony v. Bharat Gold Mines Ltd., (1999) 3 SCC 679: 1999 SCC (L&S) 810]. The High Court adverted to the following principle of law laid down in the above judgment: (SCC p. 687, para 13)

“13. While in the departmental proceedings the standard of proof is one of preponderance of the probabilities, in a criminal case, the charge has to be proved by the prosecution beyond reasonable doubt. The little exception may be where the departmental proceedings and the criminal case are based on the same set of facts and the evidence in both the proceedings is common without there being a variance.”

15. It is undoubtedly correct that the charge in the criminal trial arose from the death of a co-employee in the course of the incident resulting from the firing of a bullet which took place from the weapon which was assigned to the first respondent as a member of the Force. But the charge of misconduct is on the ground of the negligence of the first respondent in handling his weapon and his failure to comply with the departmental instructions in regard to the manner in which the weapon should be handled. Consequently, the acquittal in the criminal case was not a ground for setting aside the penalty which was imposed in the course of the disciplinary enquiry. Hence, having regard to the parameters that govern the exercise of judicial review in disciplinary matters, we are of the view that the judgment [Sitaram Mishra v. Union of India, 2007 SCC OnLine Cal 718 : (2008) 1 Cal LJ 863] of the Division Bench of the High Court is unsustainable.”

19. In *Ajit Kumar Negi vs. General Manager Indian Oil Corporation Limited : (2005) 7 SCC 764*, the Apex Court has observed as under:

“11. In our judgment, the law is fairly well settled. Acquittal by a criminal court would not debar an employer from exercising power in accordance with Rules and Regulations in force. The two proceedings criminal and departmental - are entirely different. They operate in different fields and have different objectives. Whereas the object of criminal trial is to inflict appropriate punishment on offender, the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with service Rules. In a criminal trial, incriminating statement made by the accused in certain circumstances or before certain officers is totally inadmissible in evidence. Such strict rules of evidence and procedure would not apply to departmental proceedings. The degree of proof which is necessary to order a conviction is different from the degree of proof necessary to record the commission of delinquency. The rule relating to appreciation of evidence in the two proceedings is also not similar. In criminal law, burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused 'beyond reasonable doubt?', he cannot be convicted by a court of law. In departmental enquiry, on the other hand, penalty can be imposed on the delinquent officer on a finding recorded on the basis of 'preponderance of probability'.....”

20. In *State of Rajasthan vs. Heem Singh : (2020) SCC OnLine SC 886*, the Apex Court has observed as under:

“39. In exercising judicial review in disciplinary matters, there are two ends of the spectrum. The first embodies a rule of restraint. The second defines when interference is permissible. The rule of restraint constricts the ambit of judicial review. This is for a valid reason. The determination of whether a misconduct has been committed lies primarily within the domain of the disciplinary authority. The judge does not assume the mantle of the disciplinary authority. Nor does the judge wear the hat of an employer. Deference to a finding of fact by the disciplinary authority is a recognition of the idea that it is the employer who is responsible for the efficient conduct of their service. Disciplinary enquiries have to abide by the rules of natural justice. But they are not governed by strict rules of evidence which apply to judicial proceedings. The standard of proof is hence not the strict standard which governs a criminal trial, of proof beyond reasonable doubt, but a civil standard governed by a preponderance of probabilities. Within the rule of preponderance, there are varying approaches based on context and subject. The first end of the spectrum is founded on deference and autonomy ? deference to the position of the disciplinary authority as a fact finding authority and autonomy of the employer in maintaining discipline and efficiency of the service. At the other end of the spectrum is the principle that the court has the jurisdiction to interfere when the findings in the enquiry are based on no evidence or when they suffer from perversity. A failure to consider vital evidence is an incident of what the law regards as a perverse determination of fact. Proportionality is an entrenched feature of our jurisprudence. Service jurisprudence has recognized it for long years in allowing for the authority of the court to interfere when the finding or the penalty are disproportionate to the weight of the evidence or misconduct. Judicial craft lies in maintaining a steady sail between the banks of these two shores which have been termed as the two ends of the spectrum. Judges do not rest with a mere recitation of the hands-off mantra when they exercise judicial review. To determine whether the finding in a disciplinary enquiry is based on some evidence an initial or threshold level of scrutiny is undertaken. That is to satisfy the conscience of the court that there is some evidence to support the charge of misconduct and to guard against perversity. But this does not allow the court to

reappreciate evidentiary findings in a disciplinary enquiry or to substitute a view which appears to the judge to be more appropriate. To do so would offend the first principle which has been outlined above. The ultimate guide is the exercise of robust common sense without which the judges' craft is in vain."

21. In ***Phool Singh (Supra)***, the Apex Court has categorically observed as under:

"7. The question before this Court is therefore only to see whether the respondent can be reinstated in service for the reason that now on the same set of charges he has been acquitted by a criminal court"

8. There should be no ambiguity in law on this subject. A departmental proceeding is different from a criminal proceeding. The fundamental difference between the two is that whereas in a departmental proceeding a delinquent employee can be held guilty on the basis of ?preponderance of probabilities?, in a criminal court the prosecution has to prove its case ?beyond reasonable doubt?. In short, the difference between the two proceedings would lie in the nature of evidence and the degree of its scrutiny. The two forums therefore run at different levels. For this reason, this Court has consistently held that merely because a person has been acquitted in a criminal trial, he cannot be ipso facto reinstated in service.

11. In the above case a distinction has also been drawn by this Court between a "criminal offence" and "Misconduct". One has to be proved in a criminal court, the other in a departmental proceedings, and though both may arise from the same set of facts, yet there is a clear distinction between the two and merely because one has been acquitted in a criminal trial, it would not amount to a reversal of the findings of "misconduct", which were arrived in a departmental proceedings....."

22. In ***Ram Lal vs. State of Rajasthan & Ors. (Civil Appeal no. 7935 of 2023 dated 04.12.2023)***, the Apex Court has observed as under:

"25. Expressions like ?benefit of doubt? and ?honorably acquitted?, used in judgments are not to be understood as magic incantations. A court of law will not be carried away by the mere use of such terminology. In the present case, the Appellate Judge has recorded that Exh. P-3, the original marksheet carries the date of birth as 21.04.1972 and the same has also been proved by the witnesses examined on behalf of the prosecution. The conclusion that the acquittal in the criminal proceeding was after full consideration of the prosecution evidence and that the prosecution miserably failed to prove the charge can only be arrived at after a reading of the judgment in its entirety. The court in judicial review is obliged to examine the substance of the judgment and not go by the form of expression used."

23. In ***Maharana Pratap Singh vs. State of Bihar and Others : 2025 SCC OnLine SC 890***, the Apex Court has observed as under:

"47. While an acquittal in a criminal case does not automatically entitle the accused to have an order of setting aside of his dismissal from public service following disciplinary

proceedings, it is well-established that when the charges, evidence, witnesses, and circumstances in both the departmental inquiry and the criminal proceedings are identical or substantially similar, the situation assumes a different context. In such cases, upholding the findings in the disciplinary proceedings would be unjust, unfair, and oppressive. This is a position settled by the decision in G. M. Tank (supra), since reinforced by a decision of recent origin in Ram Lal v. State of Rajasthan.

48. To assess the degree of similarity between the charges, evidence, witnesses, and circumstances in the disciplinary and criminal proceedings, it is indeed crucial to review the materials placed before the Court where such an issue arises....."

24. In **Commissioner of Police, New Delhi and Another vs. Mehar Singh : 2013 (7) SCC 685**, the Apex Court has observed as under:

"25. The expression 'honourable acquittal' was considered by this Court in S. Samuthiram. In that case this Court was concerned with a situation where disciplinary proceedings were initiated against a police officer. Criminal case was pending against him under Section 509 of the IPC and under Section 4 of the Evetearing Act. He was acquitted in that case because of the non-examination of key witnesses. There was a serious flaw in the conduct of the criminal case. Two material witnesses turned hostile. Referring to the judgment of this Court in Management of Reserve Bank of India, New Delhi v. Bhopal Singh Panchal[12], where in somewhat similar fact situation, this Court upheld a bank's action of refusing to reinstate an employee in service on the ground that in the criminal case he was acquitted by giving him benefit of doubt and, therefore, it was not an honourable acquittal, this Court held that the High Court was not justified in setting aside the punishment imposed in departmental proceedings. This Court observed that the expressions 'honourable acquittal?', 'acquitted of blame?' and 'fully exonerated?' are unknown to the Criminal Procedure Code or the Penal Code. They are coined by judicial pronouncements. It is difficult to define what is meant by the expression 'honourably acquitted?'. This Court expressed that when the accused is acquitted after full consideration of prosecution case and the prosecution miserably fails to prove the charges leveled against the accused, it can possibly be said that the accused was honourably acquitted."

25. In **Constable No.118 Awadhes Kumar Pandey (Supra)** the Division Bench having examined the judgement passed by the trial court concluded that the appellant herein was acquitted and in the disciplinary proceedings he was punished only on the basis of two days' absence that due to ailment, thus found the penalty of punishment to be disproportionate, accordingly set-aside the same and directed the reinstatement of the appellant with 25% back wages along with all other consequential benefits.

26. The Coordinate Bench of this Court in **Anand Kumar vs. Union of India and Another : 2025 0 AHC 188636: 2025 0 Supreme (All) 3430**, having found various cases of the Apex Court in this regard, observed as under:-

"39. A comparative study of the purpose, scope, procedure and standards of evidence in departmental enquiries and criminal trials is crucial for determining the feasibility or advisability of continuing the two proceedings simultaneously in the facts of this case.

46. In case departmental proceedings are held up for prolonged periods and delinquent officials are permitted to discharge their duties in the face of grave charges of misconduct as if it was business as usual, the consequences will be very grave for departmental efficiency, image and discipline."

27. In the aforesaid judgments, the legal position is crystal clear that the criminal trial and the disciplinary proceedings for the identical allegations operate in different spheres and both are not dependent on each other. Merely because an employee is acquitted in a criminal trial, he cannot be ipso facto reinstated in service due to such acquittal in criminal trial. In the recent judgments, after considering the previous judgments of the Apex Court, the Apex Court has categorically observed that merely the facts of acquittal in a criminal trial would not amount to reversal of findings of misconduct which were arrived at in the past proceedings. From the aforesaid judgments of the Apex Court it can be safely concluded that wherever charges and allegations were identical and the criminal court has acquitted then it is the duty of the Court to examine whether it was an honorable acquittal or benefit of doubt has been given to such employee. Even if there is an honorable acquittal the Court is required to examine whether the witnesses produced before the Disciplinary Authority and the criminal trial were the same. If there were the same set of witnesses then on the basis of the evidence led in the criminal court has acquitted then in such cases the reinstatement can be granted by the Court. However, if the court on scrutiny finds that the witnesses examined during the disciplinary proceedings have supported the allegations, however the same set of witnesses did not support the criminal trial or that there are some additional facts which have been proved in the disciplinary proceedings and which were not the subject matter of trial then the court should not interfere in such concluded disciplinary proceedings.

28. In the light of the aforesaid judgments, it would be relevant to take note of the fact, from the perusal of the judgment of acquittal passed by the trial court it is apparent that most of the witnesses who were injured were turned hostile and did not support the prosecution case and the petitioner has been acquitted on the basis of his own statement, which is similar to the explanation allegedly submitted by the petitioner to the show-cause notice before the Disciplinary Authority and the petitioner has been acquitted as the petitioner, who was examined as DW1 has not been cross-examined by the prosecution.

29. From perusal of the inquiry report, there is ample evidence with regard to intoxication of the petitioner while on duty, as immediately after incident, the medical examination of the petitioner was conducted which has been duly supported by the witness examined during the inquiry proceedings and the petitioner was found intoxicated. Thus, the petitioner was found to be guilty of misconduct and due to the negligence the bullet fired from the service rifle of the petitioner. Having regard to the facts and record of the criminal trial as well as disciplinary proceedings, this Court finds that the evidence led in the disciplinary proceedings was comprehensive one and in the criminal trial, the petitioner has been acquitted on the basis of key witnesses turned hostile. 30. Thus, in considered opinion of this Court, it was not a clean acquittal of the petitioner. Therefore, this Court do not find any good reason to interfere with the impugned orders passed by Disciplinary Authority, Appellate Authority as well as the Revisional Authority and accordingly, the instant petition fails and is hereby ***dismissed***.

(2026) 4 ILRA 1800
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 21.04.2026

BEFORE

THE HON'BLE ARINDAM SINHA, J.
THE HON'BLE SATYA VEER SINGH, J.

Writ A No. 4768 of 2026

Ramesh Chandra Upadhyay

...Petitioner

Versus

State of U.P. & Ors.

...Respondents

Issue(s) for consideration

Whether the alleged unauthorized steps of which, there are no adverse consequences and which were taken to deal the difficult situation arising out of the pandemic, should be scrutinized?

Headnotes

A. Service Law — On perusal of materials on record, nothing adverse has been found against petitioner but a clear picture emerges of administrative necessities having been met by him on exigencies arising. There is no adverse consequence of alleged unauthorized steps taken by petitioner at all reverted to in the inquiry report. The difficult situation arising out of the pandemic was dealt with by the administration on petitioner having contributed his bit. He then came to be under scrutiny and has been punished. In the inquiry there was no reference to the District Magistrate, but clear implication in the inquiry report that even though there may have been oral direction, post facto approval ought to have been obtained. The pressure of work dealt with cannot in hindsight be under scrutiny on pedantic approach of having violated a rule, when the emergent situation of the pandemic was well met by the administration. (Para 9)

Impugned punishment order and judgment are set aside and quashed, with consequent restoration of the increments denied. The Departmental Promotion Committee's (DPC) report on the petitioner, which has been kept in sealed cover, be opened and evaluated as a consequence of this judgment and in event the report so recommends, petitioner be given the promotion retrospectively. (Para 10)

Writ petition allowed and disposed of. (E-4)

List of Keywords

Punishment, inquiry report, departmental, promotion, committee, increment.

Appearances for Parties

For Petitioner(s): Bhim Sen Pandey, Kartikey Pandey

For Respondent(s):

C.S.C., Mahendra Narain Singh

(Delivered by Hon'ble Arindam Sinha, J.)

1. Petitioner has challenged punishment order dated 9th August, 2024 and order dated 10th February, 2026 passed by the Tribunal. Mr. B.S. Pandey, learned advocate appearing on his behalf

submits, there were six charges brought against his client. Only charges 2 and 3 were found to be proved. Yet, punishment awarded by impugned order, confirmed by the Tribunal was on charge no.1. A further point is that the punishment order was not passed by the appointing authority. He had filed supplementary affidavit dated 5th April, 2026 on copy circulated to bring on record that his client has not received any increment after year 2022. He seeks interference.

2. Paragraph 3 from our earlier order dated 6th April, 2026 is reproduced below.

"3. Petitioner to provide us with English translation of the memorandum of charges, inquiry report, impugned punishment order and order dated 10th February, 2026 of the Tribunal. Respondents are free to also provide English translation of any document in Hindi, they would want to rely upon."

Mr. Pandey, hands up a brief containing the translations with copy to Dr. Tripathi, learned advocate, Additional Chief Standing Counsel appearing on behalf of State. Mr. R.N. Mishra, learned advocate holding the brief appears for respondent no. 5 (the Commission).

3. Charge no. 1 given in the charge-sheet disclosed by letter dated 11th July, 2023 of the Deputy Director, is reproduced below.

"Charge No. 1

That during your tenure in District Ghazipur, as per the Transfer Policy, 2021 issued by the Government regarding transfer of Government officers/employees, it has been provided that in accordance with the provisions prescribed under Government Order No. 3/2018/1/3/96/Ka-4-2018 dated 29.03.2018, transfers could be effected up to 15 July, 2021, and thereafter, for transfer of Group 'C' and 'D' employees, prior approval of an authority one level higher than the prescribed level was mandatory. However, after the last date of the transfer session i.e., 15 July, 2021, you effected transfers of a total of 1027 sanitation workers posted in Gram Panchayats under the Panchayati Raj Department between July, 2021 and October, 2021 at your own level without obtaining approval from the higher authority. Further, as per the transfer policy, the number of transferred employees could not exceed 20% of the total strength, which was also violated by you. Additionally, out of the said transferred sanitation workers, transfer orders of 351 sanitation workers were cancelled by you without obtaining approval from the higher authority, whereas such cancellation should have been carried out only after obtaining approval from an authority one level higher. Thus, you are found guilty of acting in contravention of Government Orders. The following evidence shall be relied upon in support of this charge: 1. Inquiry report of the District Magistrate, Ghazipur dated 26.04.2022."

We find from inquiry report dated 5th January, 2024, charge no. 1 was not proved against petitioner.

4. Charge no. 2 is reproduced below.

"Charge No. 2

That after the transfer session 2020-21 (last date 15.07.2021), you, on the dates 24.07.2021, 28.07.2021, 04.08.2021, 09.08.2021 and 12.08.2021, effected transfers of a total of 11 Gram Panchayat Officers, namely-Shri Kamalkant Singh, Shri Sanjay Singh Kushwaha, Shri Jitendra Kumar, Shri Avneesh Kumar, Shri Jai Prakash Yadav, Smt. Jyoti Singh, Shri Anil Kumar Yadav, Shri Suryaman Kumar Rai, Shri Shyamji Saini, Shri Sikandar Kumar Rajbhar and Shri Anil Kumar Dubey, to other development blocks at your own level without obtaining approval from the competent authority, which constitutes a serious irregularity. Thus, by exhibiting negligence towards your official duties, you have disobeyed the orders of the Government and higher authorities, for which you are liable. The following evidence shall be relied upon in support of this charge: 1. Inquiry report of the District Magistrate, Ghazipur dated 26.04.2022."

It is sufficient for us to reproduce a paragraph from aforesaid inquiry report, in respect of charge no. 2.

"From the above, it is evident that the delinquent officer, during his tenure, effected transfer of Secretaries without obtaining approval from the competent authority. Even if, for any reason, the District Magistrate had orally directed such transfers, post-facto approval ought to have been obtained. Accordingly, the aforesaid charge stands proved against the delinquent officer."

5. Charge no. 3 is reproduced below.

"Charge No. 3

That in relation to the deployment of Secretaries cluster-wise in Development Block Sadat of District Ghazipur, upon the proposal dated 30.01.2021 submitted by the Block Development Officer, Sadat, approval was obtained from the District Magistrate, Ghazipur on 10.02.2021, and accordingly, you issued deployment orders of Gram Panchayat Secretaries vide Office Order No. 9085 dated 11.02.2021. Subsequently, upon receipt of a fresh proposal dated 26.09.2021 from the Block Development Officer, Sadat regarding deployment of Gram Panchayat Secretaries, you, without obtaining approval from the District Magistrate, Ghazipur, issued Office Order No. 4858 dated 04.10.2021 at your own level, thereby altering the clusters and issuing deployment orders. Further, in Development Block Mardah, without receiving any proposal from the Block Development Officer, Mardah, you, by including Gram Panchayat Bahtura (earlier part of Cluster Gariha) into Cluster Gai, issued Office Order No. 4007 dated 13.09.2021 and deployed Shri Anjani Kumar Sonkar, Gram Vikas Adhikari, without obtaining approval from the District Magistrate, Ghazipur, which is in contravention of Government instructions, for which you are liable. The following evidence shall be relied upon in support of this charge: 1. Inquiry report of the District Magistrate, Ghazipur dated 26.04.2022."

6. We find from the inquiry report that petitioner as the Charged Officer (CO) had issued orders dated 4th October, 2021 for cluster-wise deployment of Secretaries, strictly in accordance with the proposal submitted by the Block Development Officer (BDO) without making any

modification and, subject to approval of the District Magistrate. Similarly, the (CO) had issued order dated 13th September, 2021 clearly stating that the named two persons were being attached as Secretary of Gram Panchayat, Bahtura until approval of the District Magistrate was obtained. However, no such approval was obtained. Hence, the charge was found proved against the CO.

7. Petitioner's claim petition was disposed of on impugned judgment dated 10th February, 2026 of the Tribunal. Paragraph 9 from the judgment is reproduced below.

"9. We have heard the learned counsel for both parties and have also perused the records available on file, which clearly indicate that the transfer of 1027 personnel was carried out without obtaining approval from the competent authority. The defence put forth by the applicant is not acceptable, as in the event that oral approval had indeed been granted by the District Magistrate, the applicant had sufficient opportunity to place such oral directions on record and obtain ex-post facto approval. However, upon examination of the entire record, no such document is found on file. The transfer policy is issued by the State Government from time to time and is a binding policy guideline, which clearly prescribes the level of approval required, the procedure for proposal and approval of transfers, and the provisions governing any permissible deviation. From the perusal of records, it is evident that neither approval from the competent authority was obtained for the transfers nor was approval obtained for exceeding the permissible limit of transfers (20 percent). The plea taken by the applicant regarding pressure from employee unions cannot, in any circumstance, constitute a valid ground for deviation from statutory rules."

8. Dr. Tripathi, submits, there should not be interference. The Tribunal's judgment was passed upon hearing petitioner. There is no illegality. The writ petition be dismissed. Mr. B.S. Pandey in reply submits, decisions taken by his client were necessary for the purpose of administration as it was during Covid time. On query he submits, there is no allegation of corruption against his client. The persons transferred and attached discharged their duties.

9. Under challenge are the punishment order and the judgment. The punishment order clearly relied upon the inquiry report. While charge no. 1 could not be proved against petitioner, in respect of charge no. 2 there is implication that the District Magistrate may have orally directed the transfers but post facto approval ought to have been obtained. So far as charge no. 3 is concerned, the inquiry report says that petitioner had passed the transfer and attachment orders on expressly indicating them to be subject to approval of the District Magistrate. On query we have ascertained from Dr. Tripathi that the District Magistrate was not examined in the inquiry. In the circumstances petitioner appears to have discharged his duty regarding the administration on meeting exigencies and, it can be presumed, upon obtaining oral directions/approval from the District Magistrate. The Tribunal in confirming the punishment order has referred to 1027 personnel having been transferred by petitioner, without approval. It is clear reference to charge no. 1, found not to be proved. On perusal of materials on record, we do not find anything adverse against petitioner but a clear picture emerges of administrative necessities having been met by him on exigencies arising. We reiterate, there is no adverse consequence of alleged unauthorized steps taken by petitioner, at all reverted to in the inquiry report. The difficult situation arising out of the pandemic was dealt with by the administration on petitioner having contributed his bit. He then came to be under scrutiny and has been punished. In the inquiry there was no reference to the District Magistrate, but

clear implication in the inquiry report that even though there may have been oral direction, post facto approval ought to have been obtained. The pressure of work dealt with cannot in hindsight be under scrutiny on pedantic approach of having violated a rule, when the emergent situation of the pandemic was well met by the administration.

10. Impugned punishment order and judgment are set aside and quashed, with consequent restoration of the increments denied. Mr. Pandey submits, the Departmental Promotion Committee's (DPC) report on his client has been kept in sealed cover. It be opened and evaluated as a consequence of this judgment and in event the report so recommends, petitioner be given the promotion retrospectively.

11. The writ petition is allowed and disposed of.

(2026) 4 ILRA 1804
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 23.04.2026

BEFORE

THE HON'BLE IRSHAD ALI, J.

Writ A No. 5237 of 2008

Anil Kumar Singh & Ors.

...Petitioners

Versus

State of U.P. & Ors.

...Respondents

Issue(s) for consideration

- (a) Whether the State can avoid paying salary to an employee who was recruited through an open, non-backdoor process by relying indefinitely on its own bureaucratic delay in formalizing a post-sanction?
- (b) Whether State can refuse to sanction posts indefinitely where the work is perennial in nature and employees have been working for long years?
- (c) Whether non-payment of salary for work taken is violative of Articles 14 and 21 of the Constitution of India and amounts to exploitation?

Headnotes

A. Service Law – Petitioner No. 1 had been granted a promotion and Petitioner No. 3 had received a fresh appointment. Consequently, the ongoing petition explicitly agitated the grievances of Petitioner No. 2 alone. Kamla Nehru Institute of Physical and Social Sciences, Sultanpur, is a recognized higher education institution affiliated with Dr. Ram Manohar Lohia Avadh University, Faizabad, and governed by the university's Statute of 1978.

Facing an acute shortage of administrative staff, the Committee of Management issued a recruitment notice in The Times of India (11.08.2004) and a local daily (17.08.2004) inviting applications for Class III posts. Following evaluation by a duly constituted selection committee, Petitioner No. 2 secured the highest rank and was issued an appointment order on 08.11.2004, under anticipation of post-sanction. The institution had submitted a formal proposal for the creation and sanction of clerical posts to the Director of Higher Education as early as 31.08.1998. Despite reminders in 2002 and 2004, the State authorities sat on the proposal indefinitely.

Since joining on 08.11.2004, Petitioner No. 2 continuously discharged his clerical duties without a single blemish or break. However, the State exchequer refused to disburse his regular salary or outstanding arrears, prompting him to seek a writ of mandamus for payment, post-sanctioning, and non-interference.

B. Distinction between "irregular" and "illegal" appointments - irregular appointments, made after due process, deserve protection. Continuous service coupled with a selection process akin to regular recruitment cannot be ignored on the ground of initial procedural irregularity. (Para 22)

In present case, the appointment falls within the category of at best an "irregular" appointment and not an "illegal" one. It is not in dispute that petitioner No.2 was appointed after issuance of public advertisement and due selection process by a duly constituted Selection Committee. The procedure adopted by the Committee of Management satisfies the requirement of transparency and fairness and cannot be said to be a back-door entry. (Para 17)

C. Long and continuous service gives rise to legitimate expectation and the State cannot act arbitrarily in denying benefits. (Para 21)

The only ground for denial of salary is absence of sanctioned post and formal approval. The petitioner No.2 has been continuously discharging duties on the post of Clerk since 08.11.2004 and the respondents have not disputed the factum of work being taken from him. The ground of absence of sanctioned post and formal approval, cannot be accepted inasmuch as the institution itself had moved proposal for sanction of posts as far back as in the year 1998, followed by repeated reminders, but the competent authority failed to take any decision. (Para 18)

The State, being a model employer, cannot take advantage of its own inaction and deny legitimate dues to an employee who has been continuously serving the institution. The inaction on the part of the respondents in not taking a decision on the proposal for sanction of posts for decades, despite continuous requirement of clerical staff, clearly reflects arbitrariness. (Para 19)

D. Statute 18.03(4) - The approval is deemed to have been granted in absence of any decision within the prescribed time. Once the papers relating to appointment were forwarded and no decision was taken within time, the consequence of deemed approval would follow, entitling the petitioner to salary. (Para 20)

E. State cannot refuse to sanction posts indefinitely where the work is perennial in nature and employees have been working for long years. It has been held that such refusal amounts to arbitrariness and sanction of posts has been directed. (Para 23)

F. Non-payment of salary for work taken is violative of Articles 14 and 21 of the Constitution of India and amounts to exploitation. Where the employer has taken work from an employee for long years, the State cannot deny salary on hyper-technical grounds. (Para 25)

Writ petition allowed. (E-4)

Case Law Cited

1. Bhola Nath Vs. State of Jharkhand, (2026) SCC Online SC 129 (Para 13)
2. Shripal and another Vs. Nagar Nigam, Ghazaibad, 2025 SCC Online SC 221 (Para 13)
3. Jaggo Vs. Union of India, 2024 SCC Online SC 3826 (Para 13)
4. Vinod Kumar and others Vs. Union of India, (2024) 9 SCC 327 (Para 13)
5. Virendra Kumar Chaubey Vs. State of U.P. and others, (2025) 4 UPLBEC 2893 (Para 13)
6. State of U.P. through Secretary, Secondary Education and others Vs. C/M Sri Sukhpal Intermediate College, Tirhut, Sultanpur and others, Special Appeal Defective No.673 of 2014, decided on 12.05.2015 (Para 14)

List of Keywords

salary, payment, post, appointment, exploitation, sanction, delay, irregular, selection, service, constitution, article 14.

Appearances for Parties

For Petitioner(s): Vivek Srivastava

For Respondent(s): C.S.C.

(Delivered by Hon'ble Irshad Ali, J.)

1. Ms. Radhika Singh, Advocate along with Ms. Richa Mishra, filed Vakalatnama on behalf of petitioner No.2 today in Court. The same may be taken on record.

2. Heard Ms. Radhika Singh, Advocate along with Sri Vivek Kumar Srivastava and Ms. Richa Mishra, learned counsel for petitioner No.2 and Sri Devesh Mishra, learned Additional CSC for the respondent - State.

3. Ms. Radhika Singh, learned counsel for the petitioner submitted that petitioner No.1 has been granted promotion to the higher post and petitioner No.3 has been granted fresh appointment, therefore, she is representing petitioner No.2 only.

4. The present writ petition has been filed on following prayer:

"i. Issue a writ of Mandamus or a writ, order or direction in the nature of Mandamus commanding the opposite parties to make payment of salary to the petitioners regularly each and every month including the arrear of salary with effect from 8.11.2004.

ii. Issue a writ of Mandamus or a writ, order or direction in the nature of Mandamus commanding the opposite parties not to interfere in the functioning of the petitioners on the post of clerk in any manner whatsoever.

iii. Issue a writ of Mandamus or a writ, order or direction in the nature of Mandamus commanding the opposite parties nos.1 to 4 to formally sanction the post of clerk for payment of salary to the petitioners.

iv. Any other order which this Hon'ble Court may deem fit and proper in the circumstances of the case may also be passed.

v. Allow the writ petition with costs."

5. Factual matrix of the case is that the petitioner No.2 was granted appointment on 08.11.2004 under anticipation of sanction of post submitted by the committee of management. The committee of management issued advertisement in widely circulated Times of India newspaper on 11.08.2004 and in local news paper on 17.08.2004 inviting applications from eligible and qualified candidates for appointment on Class III post.

6. The petitioner along with other candidates submitted application for selection and appointment on the post of Clerk. A selection committee was constituted who selected petitioner No.2 by placing him at Sr. No.1 in the select list and in pursuance thereof, an appointment letter was issued to him on 08.11.2004 and in pursuance thereof, the petitioner is continuously discharging duties but no salary was paid to him from the State Exchequer.

7. Kamla Nehru Institute of Physical and Social Sciences, Sultanpur is a recognized institution and affiliated from Dr. Ram Manohar Lohia Avadh University, Faizabad. The Statute of 1978 as amended upto date is applicable to the said institution. The institution submitted a proposal on 31.08.1998 before the Director of Higher Education for creation and sanction of necessary posts including clerical staff, however, no decision was taken by the competent authority and a reminder letter on 16.11.2002 was sent followed by correspondence dated 07.02.2004 but the matter remain pending without any final decision.

8. Due to necessity arose to maintain proper functioning of the institution and in consonance with requirement of Statute 18.03, the management of the institution proceeded to initiate recruitment process by issuing an advertisement in the news papers in the year 2004 and thereafter, a selection committee constituted selected petitioner including petitioner No.2 and he was duly selected and appointed on the post of Clerk. The appointments were made strictly in accordance with Statute 18.03(1) which mandates recruitment through advertisement and selection.

9. Papers in regard to selection and appointment of petitioner No.2 were duly submitted before the Director, Higher Education for grant of approval and to release salary. Within prescribed period as per provisions contained under Statute 18.03(4), the appointment of the petitioner was deemed approved, therefore, he became entitled to get salary from State Exchequer.

10. Despite continuous service rendered by petitioner No.2 since 08.11.2004, respondents have failed to ensure payment of salary on regular basis. The petitioner No.2 has also not been paid arrears of salary w.e.f. 08.11.2004.

11. Submission of learned counsel for the petitioner is that under anticipation to sanction of posts appointment of the petitioner was made and no order whatsoever has been passed to sanction the post. The committee of management proceeded to make appointment under anticipation that the post will be sanctioned and the petitioner was appointed on Class III post, therefore, there is no justification in not paying salary to the petitioner No.2 from the State Exchequer.

12. She submitted that the institution in question was suffering a lot due to non availability of sufficient number of employees, therefore, the committee of management made appointment after following due procedure of law. The papers in regard to appointment of petitioner were duly submitted before the Director, Higher Education, who also has not passed any order for grant of approval as required under Statute 18.03(4), therefore, it is deemed approved in view of said provision, therefore, the petitioner is entitled for grant of payment of salary from the State Exchequer.

13. Her next submission is that action of the respondents in not paying salary to the petitioner is arbitrary, illegal and not justifiable in law. In support of her submissions, she placed reliance upon following judgments:

a) **Bhola Nath Vs. State of Jharkhand; (2026) SCC Online SC 129.**

b) **Shripal and another Vs. Nagar Nigam, Ghazaibad; 2025 SCC Online SC 221.**

c) **Jaggo Vs. Union of India; 2024 SCC Online SC 3826.**

d) **Vinod Kumar and others Vs. Union of India; (2024) 9 SCC 327.**

e) **Virendra Kumar Chaubey Vs. State of U.P. and others; (2025) 4 UPLBEC 2893.**

14. On the other hand, learned Additional CSC invited attention of this Court on paragraph 7 of the counter affidavit pointing out that there is no sanction post against which the petitioner has claimed appointment and no approval was granted to the appointment of the petitioner. In support of his submission, he placed reliance upon a judgment in the case of **State of U.P. through Secretary, Secondary Education and others Vs. C/M Sri Sukhpal Intermediate College, Tirhut, Sultanpur and others; Special Appeal Defective No.673 of 2014** decided on **12.05.2015**, wherein the Full Bench of this Court has held that in absence of sanctioned post, direction cannot be issued to ensure payment of salary to the employee.

15. I have considered the submissions advanced by learned counsel for the parties and perused the material on record as well as judgments relied upon by learned counsel for the parties.

16. To resolve the controversy involved in the matter, relevant portion of the judgments relied upon by learned counsel for the petitioner are being quoted below:

a) **Bhola Nath Vs. State of Jharkhand (Supra):**

"6.7. that the appellants? long and uninterrupted service has given rise to a legitimate expectation of consideration for regularization. It is contended that having diligently served for over a decade pursuant to a due process of selection, the appellants justifiably believed that their services would be regularized and that discontinuation at this stage would result in grave hardship.

On the aforesaid grounds, the learned senior counsel urged this Court to set aside the impugned judgments passed by the High Court, allow the present appeals, and issue appropriate directions to the respondent-State for regularization of the services of the appellants.

9.3. In the present case, the respondent-State has engaged the services of the appellants for a period exceeding 10 years. Upon completion of this long tenure, the respondents, as apprehended by the appellants, declined to grant any further extension on the ground that the engagement was contractual in nature. Such a decision necessarily warrants examination on the touchstone of the equality principles enshrined in the Constitution, which obligate the State to act

as a model employer and to take decisions free from arbitrariness. In our consideration of the second issue, we shall examine whether non-interference with the impugned judgments would result in substantial and grave injustice to the appellants.

12.2. At this juncture, the analogy of apples and oranges serves as a useful reminder that certain relationships are inherently incapable of being assessed on an equal plane. A contract between the State and an employee stands on a similar footing. The State, in such a relationship, assumes the role of a metaphorical lion, endowed with overwhelming authority, resources and bargaining strength, whereas the employee, who is yet an aspirant, is reduced to the position of a metaphorical lamb, possessing little real negotiating power. To suggest parity between the two, i.e. the lion and the lamb, would be to ignore the stark imbalance that defines the relationship.

12.3. Therefore, where a lion contracts with a lamb, the inequality is not incidental but structural, and it is precisely this disproportion that calls for judicial sensitivity. In such situations, the conscience of Constitutional Courts must inevitably tilt in favour of protecting the lamb. We have no hesitation in holding that Constitutional Courts are duty-bound to act to safeguard those who are vulnerable to exploitation, so that employees are not compelled to meekly submit to the demands of a vastly dominant contracting party like the State, but are instead assured that constitutional protections will intervene to prevent such exploitation.

13.6. This Court has, on several occasions, deprecated the practice adopted by States of engaging employees under the nominal labels of 'part-time', 'contractual' or 'temporary' in perpetuity and thereby exploiting them by not regularizing their positions. In Jaggo v. Union of India¹⁰, this Court underscored that government-departments must lead by example in ensuring fair and stable employment, and evolved the test of examining whether the duties performed by such temporary employees are integral to the day-to-day functioning of the organization. 13.9. The State must remain conscious that part-time employees, such as the appellants, constitute an integral part of the edifice upon which the machinery of the State continues to function. They are not merely ancillary to the system, but form essential components thereof. The equality mandate of our Constitution, therefore, requires that their service be reciprocated in a manner free from arbitrariness, ensuring that decisions of the State affecting the careers and livelihood of such part-time and contractual employees are guided by fairness and reason.

13.9. The State must remain conscious that part-time employees, such as the appellants, constitute an integral part of the edifice upon which the machinery of the State continues to function. They are not merely ancillary to the system, but form essential components thereof. The equality mandate of our Constitution, therefore, requires that their service be reciprocated in a manner free from arbitrariness, ensuring that decisions of the State affecting the careers and livelihood of such part-time and contractual employees are guided by fairness and reason."

b) Shripal and another Vs. Nagar Nigam, Ghazaibad (Supra):

"15. It is manifest that the Appellant Workmen continuously rendered their services over several years, sometimes spanning more than a decade. Even if certain muster rolls were not produced in full, the Employer's failure to furnish such records?despite directions to do so?allows

an adverse inference under well-established labour jurisprudence. Indian labour law strongly disfavors perpetual daily-wage or contractual engagements in circumstances where the work is permanent in nature. Morally and legally, workers who fulfil ongoing municipal requirements year after year cannot be dismissed summarily as dispensable, particularly in the absence of a genuine contractor agreement. At this juncture, it would be appropriate to recall the broader critique of indefinite ?temporary? employment practices as done by a recent judgment of this court in Jaggo v. Union of India³ in the following paragraphs:

“22. The pervasive misuse of temporary employment contracts, as exemplified in this case, reflects a broader systemic issue that adversely affects workers' rights and job security. In the private sector, the rise of the gig economy has led to an increase in precarious employment arrangements, often characterized by lack of benefits, job security, and fair treatment. Such practices have been criticized for exploiting workers and undermining labour standards. Government institutions, entrusted with upholding the principles of fairness and justice, bear an even greater responsibility to avoid such exploitative employment practices. When public sector entities engage in misuse of temporary contracts, it not only mirrors the detrimental trends observed in the gig economy but also sets a concerning precedent that can erode public trust in governmental operations.

.....

25. It is a disconcerting reality that temporary employees, particularly in government institutions, often face multifaceted forms of exploitation. While the foundational purpose of temporary contracts may have been to address short-term or seasonal needs, they have increasingly become a mechanism to evade long-term obligations owed to employees. These practices manifest in several ways:

** Misuse of ?Temporary? Labels : Employees engaged for work that is essential, recurring, and integral to the functioning of an institution are often labelled as ?temporary? or ?contractual,? even when their roles mirror those of regular employees. Such misclassification deprives workers of the dignity, security, and benefits that regular employees are entitled to, despite performing identical tasks.*

** Arbitrary Termination : Temporary employees are frequently dismissed without cause or notice, as seen in the present case. This practice undermines the principles of natural justice and subjects workers to a state of constant insecurity, regardless of the quality or duration of their service.*

** Lack of Career Progression : Temporary employees often find themselves excluded from opportunities for skill development, promotions, or incremental pay raises. They remain stagnant in their roles, creating a systemic disparity between them and their regular counterparts, despite their contributions being equally significant.*

** Using Outsourcing as a Shield : Institutions increasingly resort to outsourcing roles performed by temporary employees, effectively replacing one set of exploited workers with another.*

This practice not only perpetuates exploitation but also demonstrates a deliberate effort to bypass the obligation to offer regular employment.

** Denial of Basic Rights and Benefits : Temporary employees are often denied fundamental benefits such as pension, provident fund, health insurance, and paid leave, even when their tenure spans decades. This lack of social security subjects them and their families to undue hardship, especially in cases of illness, retirement, or unforeseen circumstances."*

16. The High Court did acknowledge the Employer's inability to justify these abrupt terminations. Consequently, it ordered re-engagement on daily wages with some measure of parity in minimum pay. Regrettably, this only perpetuated precariousness : the Appellant Workmen were left in a marginally improved yet still uncertain status. While the High Court recognized the importance of their work and hinted at eventual regularization, it failed to afford them continuity of service or meaningful back wages commensurate with the degree of statutory violation evident on record."

c) Jaggo Vs. Union of India (Supra):

" 7. They urged the High Court to recognize their long and continuous service, the nature of their work, and the lack of any backdoor or illegal entry. They highlighted that they had functioned without any break, performed tasks equivalent to regular employees, and had been assigned duties essential to the regular upkeep, cleanliness, and maintenance of the respondent's offices. The High Court, after examining the Tribunal's decision and the submissions advanced, concluded that the petitioners before it were part-time workers who had not been appointed against sanctioned posts, nor had they performed a sufficient duration of full-time service to satisfy the criteria for regularization. It relied on the principle laid down in Secretary, State of Karnataka v. Uma Devi³ holding that the petitioners could not claim a vested right to be absorbed or regularized without fulfilling the requisite conditions. The High Court further observed that the petitioners did not possess the minimum educational qualifications ordinarily required for regular appointments, and additionally noted that the employer had subsequently outsourced the relevant housekeeping and maintenance activities. Concluding that there was no legal basis to grant the reliefs sought, the High Court dismissed the writ petition. Aggrieved by this rejection, the appellants have approached this Court by way of these appeals.

8. On behalf of the appellants, the following arguments have been advanced before us:

(i). Continuous and Substantive Engagement: The appellants emphasize their long, uninterrupted service spanning well over a decade?and in some instances, exceeding two decades. They argue that their duties were neither sporadic nor project-based but permanent and integral to the daily functioning of the respondent's offices.

(ii). Nature of Duties: Their responsibilities? such as cleaning, dusting, gardening, and other maintenance tasks?were not casual or peripheral. Instead, they were central to ensuring a clean, orderly, and functional work environment, effectively aligning with roles typically associated with regular posts.

(iii). *Absence of Performance Issues:* Throughout their tenure, the appellants were never issued any warning or adverse remarks. They highlight that their work was consistently satisfactory, and there was no indication from the respondents that their performance was not satisfactory or required improvement.

(iv). *Compliance with ?Uma Devi? Guidelines:* The appellants assert that their appointments were not ?illegal? but at most ?irregular.? Drawing on the principles laid down in *Secretary, State of Karnataka v. Uma Devi*⁴, they submit that long-serving employees in irregular appointments?who fulfil essential, sanctioned functions?are entitled to consideration for regularization.

(v). *Discrimination in Regularization:* The appellants point out that individuals with fewer years of service or similar engagements have been regularized. They contend that denying them the same benefit, despite their longer service and crucial role, constitutes arbitrary and discriminatory treatment.

(vi). *Irrelevance of Educational Qualifications:* The appellants reject the respondents' reliance on formal educational requirements, noting that such criteria were never enforced earlier and that the nature of their work does not inherently demand formal schooling. They argue that retrospectively imposing such qualifications is unjustified given their proven capability over many years.

(vii). *Equity and Fairness:* Ultimately, the appellants submit that the High Court erred by focusing too rigidly on their initial terms of engagement and ignoring the substantive reality of their long, integral service. They maintain that fairness, equity, and established judicial principles call for their regularization rather than abrupt termination.

9. On the other hand, the following primary arguments have been advanced before us on behalf of the Respondents:

(i). *Nature of Engagement:* The respondents maintain that the appellants were engaged purely on a part-time, contractual basis, limited to a few hours a day, and that their work was never intended to be permanent or full-time.

(ii). *Absence of Sanctioned Posts:* They assert that the appellants were not appointed against any sanctioned posts. According to the respondents, without sanctioned vacancies, there can be no question of regularization or absorption into the permanent workforce.

(iii). *Non-Compliance with ?Uma Devi? Criteria:* Relying heavily on *Secretary, State of Karnataka v. Uma Devi* (supra), the respondents argue that the appellants do not meet the conditions necessary for regularization. They emphasize that merely serving a long period on a part-time or ad-hoc basis does not create a right to be regularized.

(iv). *Educational Qualifications:* The respondents contend that even if the appellants were to be considered for regular appointments, they do not possess the minimum educational

qualifications mandated for regular recruitment. This, in their view, disqualifies the appellants from being absorbed into regular service.

(v). Outsourcing as a Legitimate Policy Decision: The respondents point out that they have chosen to outsource the relevant housekeeping and maintenance work to a private agency. This, they argue, is a legitimate administrative policy decision aimed at improving efficiency and cannot be interfered with by the courts.

(vi). No Fundamental Right to Regularization: Finally, the respondents underscore that no employee, merely by virtue of long-standing temporary or part-time engagement, acquires a vested right to be regularized. They maintain that the appellants' claims are devoid of any legal entitlement and that the High Court was correct in dismissing their petition.

10. Having given careful consideration to the submissions advanced and the material on record, we find that the appellants' long and uninterrupted service, for periods extending well beyond ten years, cannot be brushed aside merely by labelling their initial appointments as part-time or contractual. The essence of their employment must be considered in the light of their sustained contribution, the integral nature of their work, and the fact that no evidence suggests their entry was through any illegal or surreptitious route.

11. The appellants, throughout their tenure, were engaged in performing essential duties that were indispensable to the day-to-day functioning of the offices of the Central Water Commission (CWC). Applicant Nos. 1, 2, and 3, as Safaiwalis, were responsible for maintaining hygiene, cleanliness, and a conducive working environment within the office premises. Their duties involved sweeping, dusting, and cleaning of floors, workstations, and common areas? a set of responsibilities that directly contributed to the basic operational functionality of the CWC. Applicant No. 5, in the role of a Khallasi (with additional functions akin to those of a Mali), was entrusted with critical maintenance tasks, including gardening, upkeep of outdoor premises, and ensuring orderly surroundings.

12. Despite being labelled as ?part-time workers,? the appellants performed these essential tasks on a daily and continuous basis over extensive periods, ranging from over a decade to nearly two decades. Their engagement was not sporadic or temporary in nature; instead, it was recurrent, regular, and akin to the responsibilities typically associated with sanctioned posts. Moreover, the respondents did not engage any other personnel for these tasks during the appellants' tenure, underscoring the indispensable nature of their work.

20. It is well established that the decision in Uma Devi (supra) does not intend to penalize employees who have rendered long years of service fulfilling ongoing and necessary functions of the State or its instrumentalities. The said judgment sought to prevent backdoor entries and illegal appointments that circumvent constitutional requirements. However, where appointments were not illegal but possibly ?irregular,? and where employees had served continuously against the backdrop of sanctioned functions for a considerable period, the need for a fair and humane resolution becomes paramount. Prolonged, continuous, and unblemished service performing tasks inherently required on a regular basis can, over the time, transform what was

initially ad-hoc or temporary into a scenario demanding fair regularization. In a recent judgment of this Court in Vinod Kumar v. Union of India⁵, it was held that procedural formalities cannot be used to deny regularization of service to an employee whose appointment was termed ?temporary? but has performed the same duties as performed by the regular employee over a considerable period in the capacity of the regular employee. The relevant paras of this judgment have been reproduced below:

“6. The application of the judgment in Uma Devi (supra) by the High Court does not fit squarely with the facts at hand, given the specific circumstances under which the appellants were employed and have continued their service. The reliance on procedural formalities at the outset cannot be used to perpetually deny substantive rights that have accrued over a considerable period through continuous service. Their promotion was based on a specific notification for vacancies and a subsequent circular, followed by a selection process involving written tests and interviews, which distinguishes their case from the appointments through back door entry as discussed in the case of Uma Devi (supra).

7. The judgment in the case Uma Devi (supra) also distinguished between ?irregular? and ?illegal? appointments underscoring the importance of considering certain appointments even if were not made strictly in accordance with the prescribed Rules and Procedure, cannot be said to have been made illegally if they had followed the procedures of regular appointments such as conduct of written examinations or interviews as in the present case??

21. The High Court placed undue emphasis on the initial label of the appellants' engagements and the outsourcing decision taken after their dismissal. Courts must look beyond the surface labels and consider the realities of employment : continuous, long-term service, indispensable duties, and absence of any mala fide or illegalities in their appointments. In that light, refusing regularization simply because their original terms did not explicitly state so, or because an outsourcing policy was belatedly introduced, would be contrary to principles of fairness and equity.

25. It is a disconcerting reality that temporary employees, particularly in government institutions, often face multifaceted forms of exploitation. While the foundational purpose of temporary contracts may have been to address short-term or seasonal needs, they have increasingly become a mechanism to evade long-term obligations owed to employees. These practices manifest in several ways:

“ Misuse of ?Temporary? Labels: Employees engaged for work that is essential, recurring, and integral to the functioning of an institution are often labeled as ?temporary? or ?contractual,? even when their roles mirror those of regular employees. Such misclassification deprives workers of the dignity, security, and benefits that regular employees are entitled to, despite performing identical tasks.

“ Arbitrary Termination: Temporary employees are frequently dismissed without cause or notice, as seen in the present case. This practice undermines the principles of natural justice and

subjects workers to a state of constant insecurity, regardless of the quality or duration of their service.

“ Lack of Career Progression: Temporary employees often find themselves excluded from opportunities for skill development, promotions, or incremental pay raises. They remain stagnant in their roles, creating a systemic disparity between them and their regular counterparts, despite their contributions being equally significant.

“ Using Outsourcing as a Shield: Institutions increasingly resort to outsourcing roles performed by temporary employees, effectively replacing one set of exploited workers with another. This practice not only perpetuates exploitation but also demonstrates a deliberate effort to bypass the obligation to offer regular employment.

“ Denial of Basic Rights and Benefits: Temporary employees are often denied fundamental benefits such as pension, provident fund, health insurance, and paid leave, even when their tenure spans decades. This lack of social security subjects them and their families to undue hardship, especially in cases of illness, retirement, or unforeseen circumstances.

27. In light of these considerations, in our opinion, it is imperative for government departments to lead by example in providing fair and stable employment. Engaging workers on a temporary basis for extended periods, especially when their roles are integral to the organization's functioning, not only contravenes international labour standards but also exposes the organization to legal challenges and undermines employee morale. By ensuring fair employment practices, government institutions can reduce the burden of unnecessary litigation, promote job security, and uphold the principles of justice and fairness that they are meant to embody. This approach aligns with international standards and sets a positive precedent for the private sector to follow, thereby contributing to the overall betterment of labour practices in the country."

d) Vinod Kumar and others Vs. Union of India (Supra):

"5. Having heard the arguments of both the sides, this Court believes that the essence of employment and the rights thereof cannot be merely determined by the initial terms of appointment when the actual course of employment has evolved significantly over time. The continuous service of the appellants in the capacities of regular employees, performing duties indistinguishable from those in permanent posts, and their selection through a process that mirrors that of regular recruitment, constitute a substantive departure from the temporary and scheme-specific nature of their initial engagement. Moreover, the appellants' promotion process was conducted and overseen by a Departmental Promotional Committee and their sustained service for more than 25 years without any indication of the temporary nature of their roles being reaffirmed or the duration of such temporary engagement being specified, merits a reconsideration of their employment status.

6. The application of the judgment in Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] by the High Court does not fit squarely with the facts at hand, given the specific circumstances under which the appellants were employed and have continued their service. The reliance on procedural formalities at the outset cannot be used to

perpetually deny substantive rights that have accrued over a considerable period through continuous service. Their promotion was based on a specific notification for vacancies and a subsequent circular, followed by a selection process involving written tests and interviews, which distinguishes their case from the appointments through back door entry as discussed in Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] .

7. 7. The judgment in Umadevi (3) [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] also distinguished between ?irregular? and ?illegal? appointments underscoring the importance of considering certain appointments even if were not made strictly in accordance with the prescribed Rules and Procedure, cannot be said to have been made illegally if they had followed the procedures of regular appointments such as conduct of written examinations or interviews as in the present case. Para 53 of Umadevi (3) case [State of Karnataka v. Umadevi (3), (2006) 4 SCC 1 : 2006 SCC (L&S) 753] is reproduced hereunder : (SCC p. 42)

“53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in S.V. Narayanappa [State of Mysore v. S.V. Narayanappa, 1966 SCC OnLine SC 23] , R.N. Nanjundappa [R.N. Nanjundappa v. T. Thimmiah, (1972) 1 SCC 409] and B.N. Nagarajan [B.N. Nagarajan v. State of Karnataka, (1979) 4 SCC 507 : 1980 SCC (L&S) 4] and referred to in para 15 above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the courts or of tribunals. The question of regularisation of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases abovereferred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularise as a one-time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularisation, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularising or making permanent, those not duly appointed as per the constitutional scheme.”

8. In light of the reasons recorded above, this Court finds merit in the appellants' arguments and holds that their service conditions, as evolved over time, warrant a reclassification from temporary to regular status. The failure to recognise the substantive nature of their roles and their continuous service akin to permanent employees runs counter to the principles of equity, fairness, and the intent behind employment regulations.

9. Accordingly, the appeals are allowed. The judgment [Vinod Kumar v. Central Administrative Tribunal, 2016 SCC OnLine All 4489] of the High Court is set aside, and the appellants are entitled to be considered for regularisation in their respective posts. The respondents are directed to complete the process of regularisation within 3 months from the date of service of this judgment."

e) Virendra Kumar Chaubey Vs. State of U.P. and others (Supra):

" 23. The point involved in this petition, in our opinion, has already received attention of the Supreme Court in Jaggo v. Union of India⁶. The relevant facts in Jaggo (supra) may be noticed from the report of their Lordships' judgment, which reads:

4. The appellants before this Court, being Applicant Nos. 1, 2, 3, and 5 before the Tribunal, were originally engaged by the Central Water Commission on part-time, ad-hoc terms. Applicant No. 1 was appointed as a Safaiwali in 1993, Applicant No. 2 as a Safaiwali in 1998, and Applicant No. 3 as a Safaiwali in 1999. All three were primarily responsible for cleaning and maintaining the office premises under the CWC. Applicant No. 5, appointed in 2004 as a Khallasi (also discharging duties akin to a Mali/Khallasi), was entrusted with tasks such as gardening, dusting, and other ancillary maintenance work. Throughout their engagement, these individuals performed essential housekeeping and support functions at CWC establishments, including its offices at Faridabad, ensuring daily upkeep and contributing to the smooth functioning of the Commission's administrative operations.

5. Initially, the appellants sought regularization of their services by filing Original Application No. 2211/2015 before the Tribunal. They contended that over the years, their roles and responsibilities had evolved beyond the nominal labels of 'part-time' or 'contractual' and that they were performing ongoing and core functions integral to the CWC's operations. They relied on applicable government instructions and the principle that long-serving employees, engaged against work of a perennial nature, deserve fair consideration for regularization, provided their appointments were not illegal or clandestine. The Tribunal, by its order dated 17.04.2018, dismissed the appellants' plea. It concluded that the appellants were not engaged on what it considered 'regular vacancies,' that they had not completed what it termed as sufficient 'full-time' service (such as meeting a 240-days per year criterion), and that their case did not attract the principles enabling regularization. Within ten days after the dismissal of the original application, on 17.04.2018, the services of all these individuals were abruptly terminated on 27.10.2018 by the respondent authorities without issuance of any show-cause notice.

....

7. They urged the High Court to recognize their long and continuous service, the nature of their work, and the lack of any backdoor or illegal entry. They highlighted that they had functioned without any break, performed tasks equivalent to regular employees, and had been assigned duties essential to the regular upkeep, cleanliness, and maintenance of the respondent's offices. The High Court, after examining the Tribunal's decision and the submissions advanced, concluded that the petitioners before it were part-time workers who had not been appointed against sanctioned posts, nor had they performed a sufficient duration of full-time service to satisfy the criteria for regularization. It relied on the principle laid down in Secretary, State of Karnataka v. Uma Devi holding that the petitioners could not claim a vested right to be absorbed or regularized without fulfilling the requisite conditions. The High Court further observed that the petitioners did not possess the minimum educational qualifications ordinarily required for regular appointments, and additionally noted that the employer had subsequently outsourced the relevant housekeeping

and maintenance activities. Concluding that there was no legal basis to grant the reliefs sought, the High Court dismissed the writ petition..."

24. *On these facts, it was held in Jago:*

10. Having given careful consideration to the submissions advanced and the material on record, we find that the appellants' long and uninterrupted service, for periods extending well beyond ten years, cannot be brushed aside merely by labelling their initial appointments as parttime or contractual. The essence of their employment must be considered in the light of their sustained contribution, the integral nature of their work, and the fact that no evidence suggests their entry was through any illegal or surreptitious route.

11. The appellants, throughout their tenure, were engaged in performing essential duties that were indispensable to the day-to-day functioning of the offices of the Central Water Commission (CWC). Applicant Nos. 1, 2, and 3, as Safaiwalis, were responsible for maintaining hygiene, cleanliness, and a conducive working environment within the office premises. Their duties involved sweeping, dusting, and cleaning of floors, workstations, and common areas?a set of responsibilities that directly contributed to the basic operational functionality of the CWC. Applicant No. 5, in the role of a Khallasi (with additional functions akin to those of a Mali), was entrusted with critical maintenance tasks, including gardening, upkeep of outdoor premises, and ensuring orderly surroundings.

12. Despite being labelled as ?part-time workers,? the appellants performed these essential tasks on a daily and continuous basis over extensive periods, ranging from over a decade to nearly two decades. Their engagement was not sporadic or temporary in nature; instead, it was recurrent, regular, and akin to the responsibilities typically associated with sanctioned posts. Moreover, the respondents did not engage any other personnel for these tasks during the appellants' tenure, underscoring the indispensable nature of their work.

13. The claim by the respondents that these were not regular posts lacks merit, as the nature of the work performed by the appellants was perennial and fundamental to the functioning of the offices. The recurring nature of these duties necessitates their classification as regular posts, irrespective of how their initial engagements were labelled. It is also noteworthy that subsequent outsourcing of these same tasks to private agencies after the appellants' termination demonstrates the inherent need for these services. This act of outsourcing, which effectively replaced one set of workers with another, further underscores that the work in question was neither temporary nor occasional.

....

20. It is well established that the decision in Uma Devi (supra) does not intend to penalize employees who have rendered long years of service fulfilling ongoing and necessary functions of the State or its instrumentalities. The said judgment sought to prevent backdoor entries and illegal appointments that circumvent constitutional requirements. However, where appointments were not illegal but possibly ?irregular,? and where employees had served

continuously against the backdrop of sanctioned functions for a considerable period, the need for a fair and humane resolution becomes paramount. Prolonged, continuous, and unblemished service performing tasks inherently required on a regular basis can, over the time, transform what was initially ad-hoc or temporary into a scenario demanding fair regularization. In a recent judgment of this Court in Vinod Kumar v. Union of India, it was held that procedural formalities cannot be used to deny regularization of service to an employee whose appointment was termed ?temporary? but has performed the same duties as performed by the regular employee over a considerable period in the capacity of the regular employee. The relevant paras of this judgment have been reproduced below:

“6. The application of the judgment in Uma Devi (supra) by the High Court does not fit squarely with the facts at hand, given the specific circumstances under which the appellants were employed and have continued their service. The reliance on procedural formalities at the outset cannot be used to perpetually deny substantive rights that have accrued over a considerable period through continuous service. Their promotion was based on a specific notification for vacancies and a subsequent circular, followed by a selection process involving written tests and interviews, which distinguishes their case from the appointments through back door entry as discussed in the case of Uma Devi (supra).

7. The judgment in the case Uma Devi (supra) also distinguished between ?irregular? and ?illegal? appointments underscoring the importance of considering certain appointments even if were not made strictly in accordance with the prescribed Rules and Procedure, cannot be said to have been made illegally if they had followed the procedures of regular appointments such as conduct of written examinations or interviews as in the present case...

“

22. The pervasive misuse of temporary employment contracts, as exemplified in this case, reflects a broader systemic issue that adversely affects workers' rights and job security. In the private sector, the rise of the gig economy has led to an increase in precarious employment arrangements, often characterized by lack of benefits, job security, and fair treatment. Such practices have been criticized for exploiting workers and undermining labour standards. Government institutions, entrusted with upholding the principles of fairness and justice, bear an even greater responsibility to avoid such exploitative employment practices. When public sector entities engage in misuse of temporary contracts, it not only mirrors the detrimental trends observed in the gig economy but also sets a concerning precedent that can erode public trust in governmental operations.

....

26. While the judgment in Uma Devi (supra) sought to curtail the practice of backdoor entries and ensure appointments adhered to constitutional principles, it is regrettable that its principles are often misinterpreted or misapplied to deny legitimate claims of long-serving employees. This judgment aimed to distinguish between ?illegal? and ?irregular? appointments. It categorically held that employees in irregular appointments, who were engaged in duly sanctioned posts and had served continuously for more than ten years, should be considered for regularization

as a one-time measure. However, the laudable intent of the judgment is being subverted when institutions rely on its dicta to indiscriminately reject the claims of employees, even in cases where their appointments are not illegal, but merely lack adherence to procedural formalities. Government departments often cite the judgment in Uma Devi (supra) to argue that no vested right to regularization exists for temporary employees, overlooking the judgment's explicit acknowledgment of cases where regularization is appropriate. This selective application distorts the judgment's spirit and purpose, effectively weaponizing it against employees who have rendered indispensable services over decades.

27. In light of these considerations, in our opinion, it is imperative for government departments to lead by example in providing fair and stable employment. Engaging workers on a temporary basis for extended periods, especially when their roles are integral to the organization's functioning, not only contravenes international labour standards but also exposes the organization to legal challenges and undermines employee morale. By ensuring fair employment practices, government institutions can reduce the burden of unnecessary litigation, promote job security, and uphold the principles of justice and fairness that they are meant to embody. This approach aligns with international standards and sets a positive precedent for the private sector to follow, thereby contributing to the overall betterment of labour practices in the country. "

25. In Jaggo, the Supreme Court quashed the orders of termination, that were in issue and directed reinstatement of the employees, together with regularisation in service.

26. In Shripal v. Nagar Nigam, Ghaziabad⁷, the facts leading to the appeal before their Lordships of the Supreme Court can best be noticed the way these have been described in the report of the judgment. It reads:

3. The factual matrix leading up to the appeal before us is as follows:

3.1. The Appellant Workmen claim to have been engaged as Gardeners (Malis) in the Horticulture Department of the Respondent Employer, Ghaziabad Nagar Nigam, since the year 1998 (in some instances, since 1999). According to them, they continuously discharged horticultural and maintenance duties? such as planting trees, maintaining parks, and beautifying public spaces?under the direct supervision of the Respondent Employer. They further allege that no formal appointment letters were ever issued to them, and that they were persistently denied minimum wages, weekly offs, national holidays, and other statutory benefits.

3.2. In 2004, the Appellant Workmen, along with many other similarly situated employees, raised an industrial dispute (C.B. Case No. 6 of 2004) before the Conciliation Officer at Ghaziabad, seeking regularization of their services and the requisite statutory benefits. They contend that, upon learning of this demand, the Respondent Employer began delaying their salaries and subjected them to adverse working conditions. Eventually, around mid-July 2005, the services of numerous workmen were allegedly terminated orally, without any notice, written orders, or retrenchment compensation.

3.3. *Since the above termination took place during the pendency of the conciliation proceedings, the Appellant Workmen argue it violated Section 6E of the U.P. Industrial Disputes Act, 1947. Consequently, the State Government referred the disputes concerning both (i) regularization and (ii) legality of the alleged termination, to the Labour Court, Ghaziabad for adjudication.*

3.4. *The Labour Court proceeded to decide the references vide two orders:*

(i) Order dated 03.06.2011: In numerous adjudication cases (e.g., Adjudication Case Nos. 448, 451, 467 of 2006, etc.), the Labour Court passed awards holding the terminations illegal for want of compliance with Section 6N of the U.P. Industrial Disputes Act, 1947, and directed reinstatement with 30% back wages.

(ii) Order dated 11.10.2011: However, in about 41 other adjudication cases (e.g., Adjudication Case Nos. 269, 270, 272, etc.), the Labour Court arrived at a contrary conclusion, dismissing the claims on the finding that the concerned workmen had not been engaged directly by the Nagar Nigam but rather through a contractor, and hence had no enforceable right to reinstatement or regularization against the Respondent Employer.

3.5. *Aggrieved by the adverse portion of the awards (i.e., those granting reinstatement), the Respondent Employer, Ghaziabad Nagar Nigam, filed several writ petitions before the High Court of Judicature at Allahabad, challenging the Labour Court's findings. On the other hand, the workmen whose claims were dismissed by the other set of awards also approached the High Court by filing their own writ petitions. All these writ petitions were heard together, culminating in the common judgment dated 01.03.2019, which partly modified the Labour Court's conclusions.*

3.6. *Through the impugned judgment, the High Court held that while the Labour Court was correct in exercising jurisdiction under the U.P. Industrial Disputes Act (since municipalities could be treated as ?industry?), there remained factual complexities as to whether the workmen were genuinely on the rolls of the Nagar Nigam or were provided by contractors. The High Court also noted that the State Government had, by notifications/orders, placed a ban on fresh recruitments in Municipal Corporations, thereby restricting direct appointments to any post. Ultimately, the High Court partially modified the relief granted, directing re-engagement of the workmen on daily wages, with pay equivalent to the minimum in the regular pay scale of Gardeners, while allowing future consideration of their regularization if permissible by law.*

4. *Both the Appellant Workmen and the Respondent Employer have now approached this Court by way of Special Leave Petitions. The workmen primarily seek full reinstatement with back wages and a direction to secure their regularization, whereas the Respondent Employer seeks to quash the modifications ordered by the High Court on the ground that the High Court exceeded its jurisdiction by granting partial relief akin to regular employees, contrary to constitutional provisions and the State's ban on recruitment.*

28. *Of particular relevance to the issue here is the recent decision of the Supreme Court in Dharam Singh v. State of U.P.*⁸. The facts in *Dharam Singh (supra)* are set forth in the report of their Lordships' judgment, which reads:

4. *The factual backdrop to the present appeal is as follows:*

4.1. *The appellants were engaged by the Commission between 1989 and 1992. Appellant Nos. 1 to 5 served as Class-IV employees (Peon/attendant duties), and Appellant No. 6 served as Driver (Class-III). They were paid as daily wagers and, with effect from 08.04.1997, received consolidated monthly amounts (Rs. 1,500 for Class-IV; Rs. 2,000 for Driver), while discharging ministerial and support functions during regular office hours. The Commission, established under the U.P. Higher Education Services Commission Act, 1980, processes large recruitment cycles for teachers and principals and requires ministerial support for scrutiny of applications, dispatch, and connected administrative work.*

4.2. *On 24.10.1991, the Commission resolved to create fourteen posts in Class-III and Class-IV and sought sanction from the State Government. On 27.12.1997, the State sought particulars of daily-wage hands and their service details. On 11.02.1998, the Commission furnished a list of fourteen daily wagers which included the present appellants.*

4.3. *On 16.10.1999, the Commission reiterated its request, seeking sanction of two posts of Driver and ten posts for Peon/Mali/Chowkidar, adverted to administrative exigencies, and referred to earlier correspondence. By letter dated 11.11.1999, the State rejected the proposal citing financial constraints.*

4.4. *Aggrieved, the appellants instituted Writ Petition No. 3162 of 2000 before the High Court praying for*

(i) Quashing of the State's order dated 11.11.1999;

(ii) A mandamus to the State to sanction/create fourteen posts in Class-III/IV for the Commission in terms of the Commission's resolution and proposals and, thereafter, to regularise the appellants against those posts with regular pay; and

(iii) Consequential non-interference and salary directions.

4.5. *On 24.04.2002, the High Court directed the Commission to send a fresh recommendation for sanction of appropriate Group-C/Group-D posts and directed the State to take a fresh decision thereon. In the meantime, having regard to the appellants' long engagement, the Commission was directed to pay them the minimum of the applicable pay scale.*

4.6. *Pursuant thereto, a fresh recommendation was sent and by communication dated 25.11.2003, the State declined sanction, again citing financial grounds and a ban on creation of new posts.*

4.7. By judgment dated 19.05.2009, the learned Single Judge of the High Court dismissed the writ petition, holding that no rules for regularisation in the Commission had been shown and that even assuming the 1998 Regularisation Rules applied, there were no vacancies for the appellants. Moreover, the Single Judge held that regularisation was impermissible in view of the law declared in *Secretary, State of Karnataka v. Umadevi* and allied precedents. It was also observed that the petitioners (appellants herein) had not specifically assailed the subsequent decision dated 25.11.2003.

4.8. The appellants preferred Special Appeal No. 1245 of 2009. By the impugned judgment, the Division Bench of the High Court affirmed the dismissal, observing that the appellants were daily wagers, that there were no rules for regularisation in the Commission and that no vacancy existed for considering them.

29. In *Dharam Singh*, it was held:

7. Having heard the learned counsel for the parties and perused the record, we are unable to endorse the approach adopted by the High Court. The original writ petition before the High Court expressly assailed the State's refusal dated 11.11.1999 to sanction posts for the Commission and sought a mandamus for creation of posts with consequential consideration for the appellants. The Single Judge of the High Court, and the Division Bench of the High Court in appeal, treated the matter as a bare plea for regularisation, answered it only on the touchstone of absence of rules and vacancy, and rested principally on *Umadevi* (Supra). In doing so, the Courts below failed to adjudicate the principal challenge to the State's refusal and the legality of its reasons. In our opinion, such non-consideration amounts to a misdirection and, in effect, a failure to exercise jurisdiction.

8. The State's refusal of 11.11.1999 cites 'financial constraints' and the subsequent decision of 25.11.2003 (taken after the High Court's direction to reconsider) adverts to financial crisis and a ban on creation of posts. Neither decision engages with relevant considerations placed on record, namely, the Commission's 1991 resolution and repeated proposals, the acknowledged administrative exigencies of a recruiting body handling large cycles, the continuous deployment of these very hands for years, and the existence of attendant work that is primarily perennial rather than sporadic. While creation of posts is primarily an executive function, the refusal to sanction posts cannot be immune from judicial scrutiny for arbitrariness. We believe that a nonspeaking rejection on a generic plea of 'financial constraints', ignoring functional necessity and the employer's own longstanding reliance on daily wagers to discharge regular duties, does not meet the standard of reasonableness expected of a model public institution.

9. Moreover, it is undisputed that the nature of work performed by the appellants, i.e. sorting and scrutiny of applications, dispatch and office support, and driving, has been continuous and integral to the Commission's functioning since their engagement between 1989 and 1992. The Commission itself moved for sanction of fourteen posts and furnished a list of fourteen daily wagers including the appellants. That consistent internal demand, coupled with uninterrupted utilisation of the appellants' labour on regular office hours, fortifies the conclusion that the duties

are perennial. To continue extracting such work for decades while pleading want of sanctioned strength is a position that cannot be sustained.

....

11. Furthermore, it must be clarified that the reliance placed by the High Court on Umadevi (Supra) to non-suit the appellants is misplaced. Unlike Umadevi (Supra), the challenge before us is not an invitation to bypass the constitutional scheme of public employment. It is a challenge to the State's arbitrary refusals to sanction posts despite the employer's own acknowledgement of need and decades of continuous reliance on the very workforce. On the other hand, Umadevi (Supra) draws a distinction between illegal appointments and irregular engagements and does not endorse the perpetuation of precarious employment where the work itself is permanent and the State has failed, for years, to put its house in order. Recent decisions of this Court in Jaggo v. Union of India and in Shripal v. Nagar Nigam, Ghaziabad have emphatically cautioned that Umadevi (Supra) cannot be deployed as a shield to justify exploitation through long-term ?ad hocism?, the use of outsourcing as a proxy, or the denial of basic parity where identical duties are exacted over extended periods. The principles articulated therein apply with full force to the present case. The relevant paras from Shripal (supra) have been reproduced hereunder:

"14. The Respondent Employer places reliance on Umadevi (supra) to contend that daily-wage or temporary employees cannot claim permanent absorption in the absence of statutory rules providing such absorption. However, as frequently reiterated, Uma Devi itself distinguishes between appointments that are ?illegal? and those that are ?irregular,? the latter being eligible for regularization if they meet certain conditions. More importantly, Uma Devi cannot serve as a shield to justify exploitative engagements persisting for years without the Employer undertaking legitimate recruitment. Given the record which shows no true contractor-based arrangement and a consistent need for permanent horticultural staff the alleged asserted ban on fresh recruitment, though real, cannot justify indefinite daily-wage status or continued unfair practices.

15. It is manifest that the Appellant Workmen continuously rendered their services over several years, sometimes spanning more than a decade. Even if certain muster rolls were not produced in full, the Employer's failure to furnish such records-despite directions to do so-allows an adverse inference under well-established labour jurisprudence. Indian labour law strongly disfavors perpetual daily-wage or contractual engagements in circumstances where the work is permanent in nature. Morally and legally, workers who fulfil ongoing municipal requirements year after year cannot be dismissed summarily as dispensable, particularly in the absence of a genuine contractor agreement. At this juncture, it would be appropriate to recall the broader critique of indefinite ?temporary? employment practices as done by a recent judgment of this court in Jaggo v. Union of India in the following paragraphs:

"22. The pervasive misuse of temporary employment contracts, as exemplified in this case, reflects a broader systemic issue that adversely affects workers' rights and job security. In the private sector, the rise of the gig economy has led to an increase in precarious employment arrangements, often characterized by lack of benefits, job security, and fair treatment. Such

practices have been criticized for exploiting workers and undermining labour standards. Government institutions, entrusted with upholding the principles of fairness and justice, bear an even greater responsibility to avoid such exploitative employment practices. When public sector entities engage in misuse of temporary contracts, it not only mirrors the detrimental trends observed in the gig economy but also sets a concerning precedent that can erode public trust in governmental operations.

....

...25. It is a disconcerting reality that temporary employees, particularly in government institutions, often face multifaceted forms of exploitation. While the foundational purpose of temporary contracts may have been to address short-term or seasonal needs, they have increasingly become a mechanism to evade long-term obligations owed to employees. These practices manifest in several ways:

** Misuse of 'Temporary' Labels: Employees engaged for work that is essential, recurring, and integral to the functioning of an institution are often labelled as 'temporary' or 'contractual,' even when their roles mirror those of regular employees. Such misclassification deprives workers of the dignity, security, and benefits that regular employees are entitled to, despite performing identical tasks.*

** Arbitrary Termination: Temporary employees are frequently dismissed without cause or notice, as seen in the present case. This practice undermines the principles of natural justice and subjects workers to a state of constant insecurity, regardless of the quality or duration of their service.*

** Lack of Career Progression: Temporary employees often find themselves excluded from opportunities for skill development, promotions, or incremental pay raises. They remain stagnant in their roles, creating a systemic disparity between them and their regular counterparts, despite their contributions being equally significant.*

** Using Outsourcing as a Shield: Institutions increasingly resort to outsourcing roles performed by temporary employees, effectively replacing one set of exploited workers with another. This practice not only perpetuates exploitation but also demonstrates a deliberate effort to bypass the obligation to offer regular employment.*

** Denial of Basic Rights and Benefits: Temporary employees are often denied fundamental benefits such as pension, provident fund, health insurance, and paid leave, even when their tenure spans decades. This lack of social security subjects them and their families to undue hardship, especially in cases of illness, retirement, or unforeseen circumstances.?*

....

13. As we have observed in both Jaggo (Supra) and Shripal (Supra), outsourcing cannot become a convenient shield to perpetuate precariousness and to sidestep fair engagement practices where the work is inherently perennial. The Commission's further contention that the appellants

are not ?full-time? employees but continue only by virtue of interim orders also does not advance their case. That interim protection was granted precisely because of the long history of engagement and the pendency of the challenge to the State's refusals. It neither creates rights that did not exist nor erases entitlements that may arise upon a proper adjudication of the legality of those refusals.

14. The learned Single Judge of the High Court also declined relief on the footing that the petitioners had not specifically assailed the subsequent decision dated 25.11.2003. However, that view overlooks that the writ petition squarely challenged the 11.11.1999 refusal as the High Court itself directed a fresh decision during pendency, and the later rejection was placed on record by the respondents. In such circumstances, we believe that the High Court was obliged to examine the legality of the State's stance in refusing sanction, whether in 1999 or upon reconsideration in 2003, rather than dispose of the matter on a mere technicality. The Division Bench of the High Court compounded the error by affirming the dismissal without engaging with the principal challenge or the intervening material. The approach of both the Courts, in reducing the dispute to a mechanical enquiry about ?rules? and ?vacancy? while ignoring the core question of arbitrariness in the State's refusal to sanction posts despite perennial need and long service, cannot be sustained.

17. Before concluding, we think it necessary to recall that the State (here referring to both the Union and the State governments) is not a mere market participant but a constitutional employer. It cannot balance budgets on the backs of those who perform the most basic and recurring public functions. Where work recurs day after day and year after year, the establishment must reflect that reality in its sanctioned strength and engagement practices. The long-term extraction of regular labour under temporary labels corrodes confidence in public administration and offends the promise of equal protection. Financial stringency certainly has a place in public policy, but it is not a talisman that overrides fairness, reason and the duty to organise work on lawful lines.

30. Tested on the touchstone of these far-reaching principles, here we have a case where the petitioners have to their credit 35 years of long service, and, at least, 28 years on the day when the writ petition was instituted. Realistically speaking, it should be regarded as 35 years, because, they are continuing in service without the aid of interim orders. The semblance of a clog that the Development Authority earlier pointed out was the absence of sanctioned posts, which the State Government did a tango to by saying that the Rules of 2016 had not been adopted by the Development Authority's Board. Now, pending the present writ petition, blissfully, the Development Authority's Board vide resolution dated 16.04.2025 have adopted the Rules of 2016. The State Government must now, therefore, sanction the necessary supernumerary posts to regularise the petitioners. We would think that given the fact that the number of supernumerary posts far exceed the sanctioned posts in this case, the State Government must spare a thought, bearing in mind the perennial nature of work, to sanction commensurate and adequate number of posts to bring about regularity in the cadres of its staff.

31. In the result, this writ petition succeeds and stands allowed. A mandamus is issued to the State Government (respondent nos. 1 and 2) to sanction the requisite number of

supernumerary posts for the purpose of regularising the petitioners' services, which they must do within eight weeks from the date of receipt of a copy of this judgment. Immediately upon sanction of the posts, which the State Government shall intimate to the Development Authority, both to the Vice Chairman and the Secretary within a week of that decision being taken, the Secretary and the Vice Chairman of the Development Authority shall proceed to consider the petitioners' case for regularisation, bearing in mind the remarks in this judgment and the petitioners' case within a period of four weeks from the date of receipt of the State Government's decision to sanction supernumerary posts."

17. From the record, it is not in dispute that petitioner No.2 was appointed after issuance of public advertisement and due selection process by a duly constituted Selection Committee. The procedure adopted by the Committee of Management satisfies the requirement of transparency and fairness and cannot be said to be a back-door entry. The appointment, therefore, falls within the category of at best an 'irregular' appointment and not an 'illegal' one.

18. It is further evident that the petitioner No.2 has been continuously discharging duties on the post of Clerk since 08.11.2004 and the respondents have not disputed the factum of work being taken from him. The only ground for denial of salary is absence of sanctioned post and formal approval. Such a stand, in the facts of the present case, cannot be accepted inasmuch as the institution itself had moved proposal for sanction of posts as far back as in the year 1998, followed by repeated reminders, but the competent authority failed to take any decision.

19. The inaction on the part of the respondents in not taking a decision on the proposal for sanction of posts for decades, despite continuous requirement of clerical staff, clearly reflects arbitrariness. The State, being a model employer, cannot take advantage of its own inaction and deny legitimate dues to an employee who has been continuously serving the institution.

20. The submission of the learned counsel for the petitioner that under Statute 18.03(4), the approval is deemed to have been granted in absence of any decision within the prescribed time also deserves consideration. Once the papers relating to appointment were forwarded and no decision was taken within time, the consequence of deemed approval would follow, entitling the petitioner to salary.

21. The judgments relied upon by learned counsel for the petitioner fortify the aforesaid view. **In Bhola Nath Vs. State of Jharkhand (Supra)**, the Hon'ble Supreme Court has emphasized that long and continuous service gives rise to legitimate expectation and the State cannot act arbitrarily in denying benefits. Similarly, in **Shripal Vs. Nagar Nigam, Ghaziabad (Supra)** and **Jaggo Vs. Union of India (Supra)**, the Apex Court has deprecated the practice of engaging employees on temporary basis for long periods while denying them legitimate service benefits.

22. In **Vinod Kumar Vs. Union of India (Supra)**, it has been held that continuous service coupled with a selection process akin to regular recruitment cannot be ignored on the ground of initial procedural irregularity. The distinction between 'irregular' and 'illegal' appointments has been reiterated, holding that irregular appointments, made after due process, deserve protection.

23. Further, in **Virendra Kumar Chaubey Vs. State of U.P. (Supra)**, it has been categorically held that the State cannot refuse to sanction posts indefinitely where the work is perennial in nature and employees have been working for long years. The Court has held that such refusal amounts to arbitrariness and directed sanction of posts.

24. The reliance placed by learned Additional Chief Standing Counsel upon the judgment in **State of U.P. Vs. C/M Sri Sukhpal Intermediate College (Supra)** is distinguishable on facts. In the present case, the appointment of the petitioner was made after due advertisement and selection process and the necessity of the post is evident from long continued service and prior proposal for sanction. Moreover, the issue herein also involves arbitrary inaction of the State in not taking decision on sanction of posts, which was not the factual situation in the case relied upon by the respondents.

25. This Court is of the considered view that where the employer has taken work from an employee for long years, the State cannot deny salary on hyper-technical grounds. Non-payment of salary for work taken is violative of Articles 14 and 21 of the Constitution of India and amounts to exploitation.

26. In view of reasons recorded above, the writ petition deserves to be allowed and is hereby **allowed**.

27. A writ of mandamus is issued commanding the respondents:

(i) to ensure payment of regular salary to petitioner No.2 on the post of Clerk from the State Exchequer;

(ii) to release arrears of salary to petitioner No.2 with effect from 08.11.2004 within a period of three months from the date of production of a certified copy of this order;

(iii) to take a reasoned decision with regard to sanction of the post of Clerk, if not already sanctioned, within a period of three months;

(iv) not to interfere in the functioning of petitioner No.2 as Clerk, provided he continues to discharge duties.

28. It is made clear that the respondents shall not deny the aforesaid benefits on the ground of non-sanction of post when the petitioner has continuously worked for long years and the requirement of the post is evident.

29. No order as to costs.

(2026) 4 ILRA 1829
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 15.04.2026

BEFORE

THE HON'BLE IRSHAD ALI, J.

Writ A No. 6504 of 2014

Kamla Devi

...Petitioner

Versus

State of U.P. & Ors.

...Respondents

Issue(s) for consideration

Whether petitioner's engagement as Mukhya Sewika/Anganwadi worker disentitles the family members of the deceased employees from compassionate appointment?

Headnotes

A. Service Law – Uttar Pradesh Recruitment of the Dependents of Government Servant Dying-in-Harness Rules, 1974: Rule 5 – Compassionate appointment - Engagement as Mukhya Sewika/Anganwadi worker does not disentitle the family members of the deceased employees from compassionate appointment and the respondent nos. 2 and 3 have failed to consider the financial hardships of the family. (Para 19)

Rule 5 bars compassionate appointment where the spouse is already employed under the Central/State Government or a Government-controlled corporation. But the petitioner was working on the post of Mukhya Sewika, Unnao and superannuated on the said post on 30.06.2013 and **it is now well settled that engagement as Anganwadi worker or Mukhya Sewika is not a regular government service. Such engagement is contractual in nature, and remuneration is in the form of honorarium, not salary.** In these circumstances, act and action of the respondents for denying the benefits provided under provisions of Dying-in-Harness Rules to the family members of the deceased employee is per se illegal and is not sustainable in the eyes of law. (Para 16)

B. The object of compassionate appointment is to provide immediate relief to the family of the deceased employee to tide over the financial crisis. In the present case the deceased was the sole breadwinner; the petitioner is a housewife with small agricultural land and the family consists of dependent children. It is pertinent to note that there is no finding by the authority comparing the income of the deceased at the time of death and income of the family after his death. The authority has failed to undertake this crucial exercise, rendering the decision arbitrary. (Para 17, 18)

Writ petition allowed. (E-4)

Case Law Cited

Aman Pathak Vs. State of U.P. and 2 others, Neutral Citation No. 2024:AHC:97182 (Para 9)

List of Acts

Uttar Pradesh Recruitment of the Dependents of Government Servant Dying-in-Harness Rules, 1974.

List of Keywords

service, compassionate appointment, dying-in-harness, recruitment, financial crisis, contractual, engagement.

Appearances for Parties

For Petitioner(s): Panna Lal Gupta

For Respondent(s): C.S.C.

(Delivered by Hon'ble Irshad Ali, J.)

1. Heard Shri P.L. Gupta, learned counsel for the petitioner and learned Standing Counsel for the respondents-State.

2. By means of the present writ petition, the petitioner has prayed for the following reliefs:

"(I) To issue a writ, order or direction in the nature of Certiorari, quashing the order dated 21.9.2013 contained as Annexure No.1 to this writ petition.

(II) To issue a writ, order and direction in the nature of Mandamus, commanding the opposite parties to consider the case of the petitioner and appoint the son of the petitioner under Dying-in-Harness Rules.

(III) To issue a writ, order or direction in the nature of Mandamus, commanding the opposite parties not to give effect of letter pursuance of her letter dated 12.7.2013 which is duly received in his office dated 16.7.2013 by accommodating his son on compassionate grounds according to law laid down under Dying-in-Harness Rules.

(IV) To issue any other order or direction which this Hon'ble Court deems just and proper in the facts and circumstances of the case."

3. Factual matrix of the case is that the husband of petitioner Ram Kumar was initially appointed in the Irrigation Department on daily wages basis and seen the work and conduct of Late Ram Kumar, he was appointed on the post of Beldar as work-charge employee in the Department.

The work and conduct of Late Ram Kumar was much satisfactory and his work and conduct of Late Ram Kumar was always appreciated by their higher officers and there is no as such complaint against the Late Ram Kumar from any corner.

The husband of the petitioner died during service period on 26.12.2010, leaving behind his wife Kamla Devi, one son Sanjay Kumar Yadav and daughter Manju Yadav. On 23.5.2013, after death of her husband, the petitioner moved an application with affidavit for providing appointment under Dying-in-Harness Rules to her son Sanjay Kumar Yadav with relevant documents and papers as required.

On 21.9.2013, in pursuance to application dated 23.5.2013, the opposite party no.3 by way of arbitrary manner, declined the claim of the petitioner. On 12.07.2013, the petitioner

submitted an application with all relevant document which have always been received by the Officer Clerk of opposite party no.3.

Due to sudden death of the husband of the petitioner, the entire family of the deceased employee is facing hardship and on the verge of starvation, but the opposite party are not providing employment to her son Sanjay Yadav on compassionate ground under Dying-in-Harness Rules .

4. Learned counsel for the petitioner submitted that Ram Kumar in the year 2010 fell seriously ill and at last he died on 26.12.2010 during his service period leaving behind him, his wife Kamla Devi, one son Sanjay Kumar and daughter Manju Yadav. Thereafter, his wife, Kamla Devi being a House-lady and small agriculturist is anyhow bearing the liability of the marriage of her daughter Manju Yadav and one son.

5. Learned counsel for the petitioner next submitted that the petitioner on 23.5.2013 moved an application with affidavit to the opposite party No. 3 for appointment of her son Sanjay Kumar Yadav under Dying-in-Harness Rules with relevant documents and paper as required by the opposite party No. 3. He also submitted that her son is Post Graduate and Handicapped and having good academic career and can be accommodated in the Department for all class III posts.

6. Learned counsel for the petitioner next submitted that the opposite party no. 3 declined the claim of the petitioner in an arbitrary manner vide order dated 21.9.2013 on the ground that according to the Govt. Order/Ordinance dated 20.01.1999 the appointment of Sanjay Kumar Yadav is not possible because the petitioner is working in District Bal Vikas Pustahar Deptt.

7. Learned counsel for the petitioner next submitted that according to the ordinance dated 20.1.1999, the Rule 5 has been amended, and column (1) has been replaced by column (2) and petitioner already by her letter dated 12.7.2013 has declared which has duly received in the office of the opposite party No. 3 that she is not in service in any department and she is not taking service benefit from any department.

8. Learned counsel for the petitioner lastly submitted that the family of Late Ram Kumar is now running from pillar to post for appointment under Dying-in-Harness Rules and his family is facing the starvation problem and his poor widow(petitioner) is unable to collect two time bread for her only son due to having few agricultural land. Moreover, the action of opposite party no. 2 and 3 is totally arbitrary, malafide, discriminatory and is bad in the eyes of law and is liable to be quashed.

9. In support of his submissions, learned counsel for the petitioner placed reliance upon the judgment rendered in the case of **Aman Pathak v. State of U.P. and 2 others** reported in **Neutral Citation No.-2024:AHC:97182**.

10. Per contra, learned Standing Counsel for the respondents-State submitted that in the impugned order dated 21/09/2013 the opposite party no. 3 has clearly mentioned that due to notification dated 20/01/1999 issued by the State Government son of the petitioner could not be appointed under the Dying-in-Harness Rules, 1974, because at the time of death of husband the

petitioner was working in the Office of District Child Development Pushtahar. By impugned Order dated 21/09/2013 the opposite party no. 3 had directed the petitioner to produce certificate with regard to employment and submit certificate issued by the Office of District Child Development Pushtahar. In pursuance thereof the petitioner submitted reply on 26/11/2013 in the Office of the opposite party no. 3 and stated that the petitioner had completed age of superannuation on 30/06/2013 and was working on the post of Mukhya Sewika, Unnao. The Husband of the petitioner was died on 26/12/2010 and was working on the post of Beldar and according to Rule-5 of the Uttar Pradesh Recruitment of the Dependents of Government Servant Dying-in-Harness Rules, 1974, the petitioner is not entitled to get appointment under the Rules

11. Learned Standing Counsel lastly submitted that grounds as taken by petitioner are not tenable and therefore, the writ petition has no merit and is liable to be dismissed.

12. Having heard the rival submissions of learned counsel for the parties, I perused the material on record as well as case-law cited by learned counsel for the petitioner.

13. To resolve the controversy involved in the present writ petition, Rule 5 Uttar Pradesh Recruitment of the Dependents of Government Servant Dying-in-Harness Rules, 1974 is extracted hereinbelow:

"In case, a government servant dies in harness after the commencement of these rules and the spouse of the deceased government servant is not already employed under the Central Government or State Government or a Corporation owned or Controlled by the Central Government or a State Government, one member of his family who is not already employed under the Central Government or a State Government or a Corporation owned and controlled by the Central Government or a State Government or a Corporation owned and controlled by the Central Government or a State Government shall, on making an application for the purposes, be given a suitable employment in government service on a post except the post which is within the purview of the Uttar Pradesh Public Service Commission, in relaxation of the normal recruitment rules if the such person-

(i) Fulfills the educational qualifications prescribed for the post

(ii) Is otherwise qualified for the government service; and

(iii) Makes application for employment within 5 five years from the date of the death of the Government Servant:

Provided that where the State Government is satisfied for the times limit fixed for making the application for employment causes undue hardship in any particular case may dispense such or relax the requirement as it may consider necessary for dealing with the case in a just and equitable manner.

As far as possible, such an employment should be given in the same department in which the deceased Government Servant was employed prior to his death".

14. Perusal of the above-extracted shows that Rule 5 bars compassionate appointment where the spouse is already employed under the Central/State Government or a Government-controlled corporation.

15. The judgment relied upon by the petitioner **Aman Pathak vs State of UP and Ors. (Writ A No. - 15485 of 2023)** clearly lays down that such honorarium-based engagement cannot be treated as a sufficient source of livelihood nor equivalent to government employment, relevant paragraph is mentioned hereinafter;

"10. The position of the law that then appears is that what has to be compared is the income of the deceased at the time of his death and the family's income after his demise from various sources. This would be a safe index to assess, if indeed the family have been plunged into a crisis or they still have a reasonably normal life to lead, which is not ridden by financial crisis. It must be remarked that the State Authority and their Committee have singularly omitted to consider this very relevant material as to what was the deceased's income, when he passed away and the family's income when the District Cane Officer appraised their circumstances.

11. The deceased's widow is no doubt employed as an Anganwadi Karyakatri, but that does not mean that the family are not financially struggling. An Anganwadi Karyakatri is not a government employment. It is pleaded in paragraph No.6 of the supplementary affidavit that the engagement as an Anganwadi Karyakatri is a contractual job, for which no salary is paid. The petitioner's mother receives an honourarium in the sum of Rs.3250/- - 6500/- per month. It must be remarked that a contractual employment that offers the sum of money that the petitioner alleges is hardly any reckonable financial resource to guarantee a subsistence level of income for the family. The fact that the petitioner's mother receives an honourarium for her engagement as an Anganwadi Karyakatri in the sum of Rs.3250/- 6500/- per month, has not been denied in any of the two counter affidavits filed on behalf of the respondents. Therefore, the fact asserted in paragraph No.6 of the supplementary affidavit has to be accepted as correct. In fact, in the supplementary counter affidavit, contents of paragraph No.6 about the fact of what the nature of engagement of an Anganwadi Karyakatri is and what remuneration is received, has not at all been denied or pleaded to by the respondents."

16. In the case in hands, the petitioner was working on the post of Mukhya Sewika, Unnao and superannuated on the said post on 30.06.2013. However, it is now well settled that engagement as Anganwadi worker or Mukhya Sewika is not a regular government service. Such engagement is contractual in nature, and remuneration is in the form of honorarium, not salary. In these circumstances, act and action of the respondents for denying the benefits provided under provisions of Dying-in-Harness Rules to the family members of the deceased employee is per se illegal and is not sustainable in the eyes of law. The judgment relied upon by learned counsel for the petitioner in the case of Aman Pathak (supra), is fully applicable to the facts and circumstances of the present case.

17. The object of compassionate appointment is to provide immediate relief to the family of the deceased employee to tide over the financial crisis. In the present case the deceased was the sole breadwinner; the petitioner is a housewife with small agricultural land and the family consists

of dependent children. It is pertinent to note that there is no finding by the authority comparing the income of the deceased at the time of death and income of the family after his death. The authority has failed to undertake this crucial exercise, rendering the decision arbitrary.

18. Appointment on compassionate grounds is not a source of recruitment. The reason for making such a benevolent scheme by the State or the public sector undertaking is to see that the dependents of the deceased are not deprived of the means of livelihood . It only enables the family of the deceased to get over the sudden financial crisis.

19. Considering in totalities of facts and circumstances of the case, this Court is of the considered opinion that engagement as Mukhya Sewika/Anganwadi worker does not disentitle the family members of the deceased employees from compassionate appointment and the respondent nos. 2 and 3 have failed to consider the financial hardships of the family.

20. Accordingly, this writ petition succeeds and is **allowed**. Order dated 21.09.2013 contained as Annexure no.1 to this writ petition is quashed.

20. A direction is issued to the petitioner to make a fresh representation before the respondents annexing therewith all the necessary documents annexed with this petition along with certified copy of this order within a period of three weeks from the date of production of a certified copy of this order and in case such a representation is filed within the period prescribed by this Court, the same shall be considered and decided by the respondents in favour of the petitioner in accordance with the observations made above and in accordance with law within a further period of two months□ thereafter.

(2026) 4 ILRA 1834
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 16.04.2026

BEFORE

THE HON'BLE IRSHAD ALI, J.

Writ A No. 6757 of 2014

Smt. Rekha Devi & Ors.

...Petitioners

Versus

State of U.P. & Ors.

...Respondents

Issue(s) for consideration

Whether the appointments of the petitioners as Assistant Teachers were legally valid and 'deemed approved' by operation of law, despite the District Basic Education Officer's subsequent rejection?

Headnotes

A. Service Law – Uttar Pradesh Junior High Schools (Payment of Salaries of Teachers and other Employees) Act, 1978: Section 12; Uttar Pradesh Recognised Basic Schools (Junior High Schools) (Recruitment and Conditions of Service of Teachers) Rules, 1978: Rule 9, 10 - The three petitioners

were selected and appointed as Assistant Teachers following proper local newspaper advertisements and interviews conducted in the presence of an official nominee from the District Basic Education Officer (DIOS/BSA). Despite working continuously, the petitioners were not paid salaries from the State exchequer after the school received grant-in-aid status on 01.12.2006. They approached the High Court in 2013, which directed the District Basic Education Officer to decide on their approval. On 26.04.2014, the District Basic Education Officer rejected the approval of their appointments, asserting that:

- No prior approval was taken before issuing appointment letters.
- The selection process violated Section 12 of the U.P. Basic Education Act, 1972, and Rule 9 of the 1978 Rules.

B. In the present case, the provision of Section 12 of the Act of 1972 is not applicable to the selection and appointment of the petitioners. Rule 9 prescribes for selection on the post of Assistant Teacher. The provision contained u/Rule 9 was duly followed by the Committee of Management while making selection and appointment. As per Rule 9, nominee of District Basic Education Officer was also appointed, who participated in the selection proceeding initiated by the Committee of Management and papers in this regard to the selection were submitted before the District Basic Education Officer for grant of approval, which has not been accorded since long and ultimately, in pursuance to the order passed by this Court, claim setup by the petitioners has been rejected on total misconceived and erroneous grounds. (Para 19)

C. In case selection has not been disapproved on the ground of non appearance of nominee of the District Basic Education Officer, therefore, the impugned order appears to be not justified. The selection of the petitioners is held not to be vitiated in law. Appointment made under Rules, 1978. Papers in this regard were submitted before the District Basic Education Officer and almost and till the passing of the impugned order, no order was passed and reminder was also sent on the matter submitted by the Committee of Management, thus, **in view of Rule 10, due to non passing of the order within a period of one month, selection of the petitioners was deemed to have been approved.** (Para 20)

D. Under the Regulation 101 to 109, there is a deeming provision in case of non passing of order within a week. The Court in the case of *Pramod Kumar Pandey (infra)* has held that **in case no order has been passed within a week from the date of receipt of papers, the appointment is deemed to be approved and direction was issued for the payment of salary from the date it was deemed to be approved.** (Para 22)

The claim setup by the petitioners is just and valid and under deeming clause u/Rule 10 of Rules, 1978, the appointment of the petitioners is deemed to be approved from the date of approval, thus, the petitioners are entitled to get salary from the State Exchequer. (Para 24)

The impugned order dated 26.4.2014 quashed. The respondents are directed to ensure payment of salary to the petitioners w.e.f. the date of deemed approval from the date the institution is brought within the purview of payment of Salaries Act. (Para 25, 26)

Writ petition allowed.

Case Law Cited:

Sanjay Kumar Singh Vs. State of U.P., 2019 (5) ADJ 1583 (Para 12)

Pramod Kumar Pandey Vs. District Inspector of Schools, 2019 (11) ADJ 127 (DB) (Para 12)

List of Acts

Uttar Pradesh Recognised Basic Schools (Junior High Schools) (Recruitment and Conditions of Service of Teachers) Rules, 1978; Uttar Pradesh Junior High Schools (Payment of Salaries of Teachers and other Employees) Act, 1978.

List of Keywords

service, teachers, appointment, rules, regulation, deemed, approval, salary, payment, management, selection, basic education.

Appearances for Parties

For Petitioner(s): Shashank Shekhar Parihar, Meenakshi Singh

For Respondent(s): C.S.C., Abhinav Singh, Ankit Srivastava, Jyoti Sikka, Nagendra Bahadur Singh, Rajive Singh Chauhan

(Delivered by Hon'ble Irshad Ali, J.)

1. Heard Sri Prashant Singh, learned counsel for the petitioners, Sri Divesh Mishra, learned Standing Counsel for State-respondent and Sri Ankit Srivastava, learned counsel for respondent No.7.

2. By means of the present writ petition, the petitioner is challenging the order dated 26.4.2014, passed by the respondent No.4 (Annexure-1 to the writ petition), whereby approval to the appointment of the petitioner has been rejected on the ground that no prior approval was taken before issuing the appointment letter as well as there is another objection that provisions of Section 12 and Rule 9 were not followed while making selection on the post of Assistant Teacher.

3. Factual matrix of the case is that Janta Junior High School, Patari, Post Patari, District Unnao is a recognized institution by the U.P. Basic Education Act, 1972. The institution was earlier unaided. With effect from 1.12.2006, vide government order dated 6.12.2006, the institution was brought within the purview of Payment of Salaries Act by the State Government. The provision under Uttar Pradesh Recognised Basic Schools (Junior High Schools) (Recruitment and Conditions of Service of Teachers) Rules, 1978 and Uttar Pradesh Junior High Schools (Payment of Salaries of Teachers and other Employees) Act, 1978 are applicable to the said institution.

4. In the said institution, there were nine posts of Assistant Teachers duly sanctioned and at the time of appointment of the petitioner, three posts were lying vacant. To fill up three vacancies, an advertisement was issued in the daily newspaper Unnao Times and Dainik Vratant on 3.7.1997. On a letter of the Committee of Management, the District Basic Education Officer passed an order nominating Sri Mahadeo Prasad Pandey, Lecturer, D.I.E.T., Unnao to participate as a Nominee in the selection proceeding.

5. The petitioner No.1 applied and she was interviewed by the selection committee in which Nominee of the District Basic Education Officer also participated. On 26.7.1997 itself, an appointment order was issued to the petitioner No.1 appointing her on the post of Assistant Teacher in response to the appointment order dated 26.7.1997. The petitioner No.1 joined the post of Assistant Teacher on 1.8.1997 and since then, she is continuously working on her post. On 7.8.1997, a letter was sent by the Manager to the District Basic Education Officer, seeking approval to the appointment of the petitioner No.1 and vide order dated 30.9.1998, the service of the petitioner No.1 was confirmed.

6. The petitioner No.2 has been appointed on the basis of an advertisement issued in newspapers Unnao Times and Dainik Vratant dated 5.7.2002 and the District Basic Education Officer passed an order nominating Sri Daya Ram Dwivedi, Principal, D.I.E.T., Unnao to participate in the selection proceeding. The petitioner No.2 applied and he was interviewed on 26.7.2002 by the selection committee, in which, the nominee of the District Basic Education Officer had participated. On 26.7.2002, the appointment order was issued to the petitioner No.2, appointing him on the post of Assistant Teacher and in response to the appointment order dated 26.7.2002, the petitioner No.2 joined the post on 1.8.2002 on the post and since then, he is continuously working on the post and the service of the petitioner No.2 was confirmed vide order dated 20.8.2003.

7. Similarly, the petitioner No.3 has been appointed on the basis of an advertisement issued in newspapers Unnao Times and Dainik Vratant and the District Basic Education Officer appointed Sri Daya Ram Dwivedi, Principal, D.I.E.T., Unnao as nominee to participate in the selection. The petitioner No.3 has been selected in the presence of nominee appointed by the District Basic Education Officer. Thereafter, appointment letter was issued to petitioner No.3 appointing her on the post of Assistant Teacher and in response to the appointment letter, she joined on the post of Assistant Teacher on 13.7.2006 and since then, she is continuously discharging her duties. Vide order dated 28.9.2007, passed by the Manager of the School, the service of petitioner No.3 was confirmed.

8. In spite of the fact that the petitioners are continuously discharging their duties on the respective posts, no salary was paid to them, therefore, they filed Writ Petition Nos.1423 (S/S) of 2013, 1424 (S/S) of 2013 and 1425 (S/S) of 2013 for issuance of direction to the respondents to make payment of salary to the petitioners on the post of Assistant Teacher w.e.f. 2.12.2006 and not to interfere in the peaceful working of the petitioners and further commanding respondent Nos.2 and 3 to accord approval to the appointment of the petitioners on the post of Assistant Teachers.

9. Prior to taking the institution in grant in aid list, salary of the petitioners was made from the own sources of the Committee of Management and the institution was taken on the grant in aid list w.e.f. 1.12.2006 and thereafter, they were entitled to get salary from the State Exchequer, which has not been disbursed till date. The writ petition was finally disposed of vide order dated 30.5.2013, directing the District Basic Education Officer to take decision in regard to the grant of approval on the appointment of the petitioners.

10. In pursuance to the order passed by this Court, an order was passed by the District Basic Education Officer dated 26.4.2014, whereby the claim setup by the petitioners vide representation to accord approval to the appointment of the petitioners was rejected, which is impugned in the writ petition. The impugned order has been passed on the ground that without approval of the District Basic Education Officer, no appointment can be made on the post of Assistant Teacher as well as provisions of Section 12 and Rule 9 were not followed in making selection on the post of Assistant Teacher.

11. Submission of learned counsel for the petitioners is that Section 12 has no application to the selection and appointment on the post of Assistant Teacher in the Junior Basic School,

therefore, objection in this regard is wholly misconceived and erroneous in nature. He submits that papers in regard to the appointment of the petitioners were submitted on 18.6.1997, 15.6.2002 and 20.5.2006 on the papers submitted, the District Basic Education Officer did not pass any order as per the provision contained under Rule 9 of Uttar Pradesh Recognised Basic Schools (Junior High Schools) (Recruitment and Conditions of Service of Teachers) Rules, 1978, therefore, the appointment of the petitioners have been deemed approved in view of provision contained under Rule 10 (3) (iii), wherein it has been provided that in case after submission of papers, no approval is granted to the selection and appointment of the petitioners it will be deemed to be approved by operation of law, therefore, the petitioners are claiming salary w.e.f. the date of deemed approval in view of provision contained under Rule 10 (3) (iii) of the Rules of 1978.

12. Learned counsel for the petitioners next submitted that the District Basic Education Officer without considering the relevant records produced before him appointing nominee by the District Basic Education Officer, advertisements were issued in two daily newspapers inasmuch as following the procedure prescribed under law, appointment of the petitioners has been made and without considering the same, the impugned order dated 26.4.2014 has been passed. Next submission is that the provision of Rule 10 (3) (iii) has also not been taken notice while passing the impugned order, therefore, the impugned order suffers from apparent illegality and is not sustainable in the eyes of law. In support of the submissions advanced, he placed reliance upon the following judgments :-

(i) Sanjay Kumar Singh Vs. State of U.P. [2019 (5) ADJ 1583]

(ii) Pramod Kumar Pandey Vs. District Inspector of Schools [2019 (11) ADJ 127 (DB)]

13. On the other hand, learned Standing Counsel submits that the advertisement was issued in local newspapers published in District Unnao, therefore, no candidates from the other districts could know in regard to the advertisement and could not apply for the same. Next submission is that the provisions of Section 12 and Rule 9 were not followed while making appointment on the post of Assistant Teacher in the institution in question. Last submission is that the order dated 26.4.2014 does not suffer from any infirmity or illegality and is a just and valid order.

14. Learned counsel for the respondent No.7 submits that advertisement in the two local newspapers was made and in pursuance thereof, candidates applied for and were considered by the selection committee and recommendation for making appointment by the selection committee was made of the petitioners. It is submitted that prior to make selection, request was made to the District Basic Education Officer to appoint nominee in the selection proceeding and in pursuance thereof, nominee was appointed who was present at the time of selection, therefore, the selection does not vitiate in law and is a just and valid selection. Next submission is that in view of provision contained under Rule 10 of the 1978 Rules, the appointment of the petitioners has been deemed approved, therefore, they are entitled to get salary from the State Exchequer.

15. Next submission of counsel for respondent No.7 is that the procedure prescribed under Rule 9 was duly followed in making selection and appointment on the post of Assistant Teacher and there is no infirmity or illegality in the selection.

16. After having heard the submissions advanced by learned counsel for the parties, I perused perused the material on record.

17. For deciding controversy involved, Section 12 of the U.P. Basic Education Act, 1972 is being quoted below :-

*"12. Control over Basic Schools. - (1) The Director may, from time to time, inspect or cause to be inspected any basic school [* * *] and also the records and proceedings of the local body concerning or connected with discharge of the functions of the local body in respect of basic education.*

[(2) The Director may direct the management of a basic school to remove any defect or deficiency found on inspection or otherwise.

(3) If the management of a basic school fails to comply with any direction made under sub-section (2), the Director may, after considering the explanation or representation, if any, given or made by the management, refer the case to the Board for withdrawal of recognition of such school.

(4) On receipt of a recommendation under sub-section (3) in respect of any basic school, the Board may withdraw the recognition of that school.]"

18. It is also relevant to take notice of the Rule 9 of Uttar Pradesh Recognised Basic Schools (Junior High Schools) (Recruitment and Conditions of Service of Teachers) Rules, 1978, which is being quoted below :-

"9. Selection Committee ? The Management of minority Institutions and unaided Junior High Schools shall constitute a selection committee:

(i) For the post of headmaster :

(1) Manager;

(2) Two nominee of the Management;

(ii) For the post of Assistant Teacher;

(1) Manager;

(2) Headmaster of the recognised school in which the appointment is to be made;

(3) a nominee of the Management"

19. On perusal of the aforesaid Rules and Section, it is apparent that in the present case, the provision of Section 12 of the Act of 1972 is not applicable to the selection and appointment of the petitioners. Rule 9 prescribes for selection on the post of Assistant Teacher. The provision contained under Rule 9 was duly followed by the Committee of Management while making selection and appointment. Advertisement in two daily newspapers was issued inviting applications from the eligible and qualified candidates and it is not disputed that the advertisement was not made in two daily newspapers, inviting applications. As per Rule 9, nominee of District Basic Education Officer was also appointed, who participated in the selection proceeding initiated by the Committee of Management and papers in this regard to the selection were submitted before the District Basic Education Officer for grant of approval, which has not been accorded since long and ultimately, in pursuance to the order passed by this Court, claim setup by the petitioners has been rejected on total misconceived and erroneous grounds.

20. In regard to the submission advanced by learned counsel for the petitioners that appointment made under Uttar Pradesh Recognised Basic Schools (Junior High Schools) (Recruitment and Conditions of Service of Teachers) Rules, 1978, papers in this regard were submitted before the District Basic Education Officer and almost and till the passing of the impugned order, no order was passed and reminder was also sent on the matter submitted by the Committee of Management, thus, in view of Rule 10, due to non passing of the order within a period of one month, selection of the petitioners was deemed to have been approved. In case selection has not been disapproved on the ground of non appearance of nominee of the District Basic Education Officer, therefore, the impugned order appears to be not justified. The selection of the petitioners is held not to be vitiated in law.

21. Relevant paragraphs 17 to 36 in the case of **Sanjay Kumar Singh** (Supra) are being quoted as under :-

"(17) Having heard the rival contentions advanced by learned counsel for the parties, I perused the material on record as well as the law report relied upon by learned Senior Counsel for the petitioners.

(18) In regard to first submission of learned Senior Counsel for the petitioners that due to non passing of the order on papers submitted for grant of approval to the selection of the Principal, Assistant Teachers and Clerk within a period of one month, it is deemed that the approval has been accorded. In this regard, on the basis of material, it is well established that after making selection, the papers were submitted before the District Basic Education Officer vide letter dated 24.06.2015 for grant of approval, however, the District Basic Education Officer did not pass any order for a long spell of time. In this regard, Rule 10 of U.P. Recognized Basic Schools (Junior High Schools) (Recruitment and Conditions of Service of Teachers) Rules, 1978 is quoted below:

"10. Procedure for selection. - (1) The Selection Committee shall, after interviewing such candidates as appear before it on a date to be fixed by it in this behalf, of which due intimation

shall be given to all the candidates, prepare a list containing as far as possible the names, in order of preference, of three candidates found to be suitable for appointment.

(2) The list prepared under clause (1) shall also contain particulars regarding the date of birth, academic qualifications and teaching experience of the candidates and shall be signed by all the members of the Selection Committee.

(3) The Selection Committee shall, as soon as possible, forward such list, together with the minutes of the proceedings of the Committee to the management.

(4) The Manager shall within one week from the date of receipt of the papers under clause (3) send a copy of the list to the District Basic Education Officer.

(5) (i) If the District Basic Education Officer is satisfied that –

(a) the candidates recommended by the Selection Committee possess the minimum qualifications prescribed for the post;

(b) the procedure laid down in these rules for the selection of Headmaster or Assistant Teacher, as the case may be, has been followed he shall accord approval to the recommendations made by the Selection Committee and shall communicate his decision to the Management within two weeks from the date of receipt of the papers under clause (4).

(ii) If the District Basic Education Officer is not satisfied as aforesaid, he shall return the papers to the Management with the direction that the matter shall be reconsidered by the Selection Committee.

(iii) If the District Basic Education Officer does not communicate his decision within one month from the date of receipt of the papers under clause (4), he shall be deemed to have accorded approval to the recommendations made by the Selection Committee."

(19) On perusal of the aforesaid rule, it is evident on the face of it that in case the order of approval or refusal to grant approval is not passed within the period of one month from the date of submission of papers of selection proceeding, then it is deemed to be approved on expiry of one month.

(20) In the present case, the papers were submitted on 24.06.2015 and for almost six months, the District Basic Education Officer kept mum. Therefore, in view of the provisions contained under Rule 10 of the 1978 Rules, due to non passing of the order within a period of one month, the selection of the petitioners were deemed to have been approved. In view of the above, due to non consideration of the aforesaid aspect of the matter, the impugned orders vitiate in law and are liable to be set aside.

(21) In regard to second submission of learned Senior Advocate, this Court found that the order impugned is not very specific. It does not record detailed reason that which of the provisions

of the Act and Rules governing the selection proceeding on the post of Assistant Teacher up to the level of Junior High School has been vitiated in making the selection of the petitioners.

(22) On perusal of the impugned order, the only reason has been assigned that in regard to appointment on the post of Clerk, one Saurabh Singh was recommended for appointment on the post of Clerk under Dying in Harness Rules, 1974. The Committee of Management while making selection has not been considered that the candidate who belongs under Dying in Harness Rules against the post of Clerk, is entitled to get appointment. In this regard, on perusal of the record, it is found that the recommendation of Saurabh Singh on the post of Clerk was met prior to initiation of the selection proceeding or after the submission of papers regarding approval of selection. In absence of clear cut finding in this regard, the impugned order renders unsustainable in law.

(23) The District Basic Education Officer, while rejecting to grant approval, had not recorded finding that which provisions of the Act and Rules have been violated while making selection on the post of Headmaster, Assistant Teacher and on clerk, thus the reason being not specific suffers from illegality.

(24) On overall consideration of the respective arguments advanced by the learned counsel for the parties, it is crystal clear that the main issue in rejecting the approval is that the nominee of the District Basic Education Officer was not present in the Selection Committee and in his absence, the Selection Committee was permitted to conclude the selection proceeding. It is recorded that in case one Member of the Selection Committee is absent and the decision has been taken by majority of Members including the Chairman of the Selection Committee in making selection, the same does not vitiate the selection made in absence of nominee of the District Basic Education Officer. Upon bare perusal of the judgment relied upon and after examination of the law laid down by the Division Bench of this Court in the case of District Basic Shiksha Adhikari, Ambedkar Nagar (supra) and Fateh Bahadur Singh (Supra), this Court holds that issue involved in the aforesaid judgments was in regard to the appointment on the post of Clerk, wherein in the selection proceedings nominee of the District Basic Education Officer did not participate. The learned Single Judge on the basis of material placed on record found that the District Basic Education Officer to send the nominee on the letter submitted by the Manager/ Principal of the Institution, did not respond and in consequence thereto, the Selection Committee comprising of Manager and Headmaster met and made recommendation for the appointment and thereafter, the selection was made in absence of nominee of the District Basic Education Officer. Thus, in the present case, in case the same has been disapproved on the ground of non-appearance of nominee of the District Basic Education Officer, the impugned order appears to be not justifiable in law.

(25) The counter affidavit filed by the opposite parties denying the allegations made in the writ petitions and specifically stating therein that since the rules governing the service conditions of the petitioners prescribes that representative of the District Basic Education Officer shall participate in the selection, who was not present, therefore, the entire selection vitiates in law.

(26) In the rejoinder affidavit filed by learned counsel for the petitioners, the allegations made in the counter affidavit have been denied.

(27) The learned Single Judge held that it is the District Basic Education Officer, who himself failed to send the nominee to participate in the selection proceeding. Therefore, the selection cannot be faulted on the alleged ground. The judgment of the learned Single Judge was assailed in the Special Appeal (D) No.92 of 2016 (Supra), wherein the Division Bench of this Court declined to interfere by holding as under:

"We do not see any reason to interfere with the impugned judgment particularly for the reason that the District Basic Education Officer had himself failed to send the nominee who otherwise would have participated in the selection proceedings. In our considered opinion, the selection can not be faulted on the alleged ground that the selection committee comprising of two members could not hold the selection, as such, the impugned judgment does not call for any interference."

(28) In the another judgment relied upon by learned Senior Counsel for the petitioners in the case of Fateh Bahadur Singh (Supra), the proceeding was initiated to make selection on the post of Clerk under the first statute of Kanpur University, Statute No.21-03(6)(b). On submission of papers, the proposal of the Selection Committee was disapproved on the ground that neither the District Inspector of Schools nor the District Employment Officer participated in the selection. Relevant paragraphs of the said judgment are quoted below:

"9. It transpires from the record that the selection had been disapproved only on the ground that the DIOS himself had not participated and the District Employment Officer nor his representative had participated in the selection. The said ground is not available to the Regional Higher Education Officer for disapproving the selection for the reason that the DIOS had written by means of letter dated 11.6.1991 that whenever he is out of Head Quarter his functions are to be discharged by the Finance and Accounts Officer. So as a practice, since on the date of selection the DIOS was out of Head Quarter, therefore, he authorized the Finance and Accounts officer to participate in the selection. The non-participation of the DIOS under some compelling circumstances or under some misconception will not vitiate the selection when there was representation, in the capacity of DIOS, of District Finance and Accounts Officer, in his absence in the Head Quarter as practice prevalent in the DIOS office. The District Employment Officer was firmly of the view that since the intimation of the vacancy was not made 15 days prior to the selection to him, therefore, he will not participate in the selection. This reasoning of the District Employment Officer does not appeal to reason and the District Employment Officer could have participated in the selection putting his dissent in the selection, but instead of doing so, he opted to remain away from the selection with the understanding that he was only member of the Selection Committee.

10. The validity of the selection proceedings, if at all were vitiated for want of quorum, although not provided by the rules, regulations or by the Statutes would be valid or not, has not been considered by the Hon'ble Supreme Court and it has been held that if no quorum has been provided then merely because one of the representatives of the members has not participated in the selection, could not vitiate the selection proceedings.

11. *The learned counsel for the petitioner has relied upon a decision of Hon'ble the Supreme Court reported in AIR 1972 SC page 1812, Ishwar Chandra v. Stayanarain Sinha and others, in which it has been held that if majority of the members are present in the selection and any quorum has not been provided then the selection would be valid and cannot be vitiated on this count. The relevant paragraph of the said judgment is being quoted below:*

"If for one reason or the other one of them could not attend, that does not make the meeting of others illegal. In such circumstances, where there is no rule or regulation or any other provision for fixing the quorum, the presence of the majority of the members would constitute it a valid meeting and matters considered thereat cannot be held to be invalid."

12. *In the wake of the observation made in the case of Ishwar Chandra (supra), the disapproval order cannot be sustained. The reasoning given by the Regional Higher Education Officer is not valid in the eye of law, as the selection cannot be vitiated on account of the fact that the District Employment Officer refused to participate in the selection. The petitioner is already in employment and is also working and once the appointment was being made on the basis of open advertisement, the reasoning of the District Employment Officer was not valid for intimating the vacancy. The intimation of vacancy is not contemplated under the Kanpur University Statutes and as such the requirement of giving intimation to the District Employment Officer was not valid and legal in the eye of law. The petitioner is already in employment and is working and she shall continue to work."*

(29) *In view of the law report relied upon by learned Senior Counsel for the petitioners, there is no hesitation to hold that the decision taken by the majority in the Selection Committee, the selections of the petitioners do not vitiate in law.*

(30) *In view of the above legal position, this Court is of the opinion that impugned orders dated 02.02.2016 and 24.02.2016, contained as Annexure No.1 to the writ petition are illegal and are liable to be set aside.*

(31) *In the result, the writ petitions succeed and are allowed.*

(32) *Accordingly, a writ in the nature of certiorari is issued quashing the impugned orders dated 02.02.2016 and 24.02.2016 contained as Annexure No.1 to the writ petition.*

(33) *The respondents are directed to pass a fresh order in the light of observations made above and law reports relied upon within a period of six weeks from the date of production of a certified copy of this order.*

(34) *The similar orders have been challenged in the connected writ petitions i.e. Writ Petition No.9201 (SS) of 2016 titled 'Ravi Kiran Singh v. State of U.P. and others' and Writ Petition No.29282 (SS) of 2016 titled 'Shiv Prakash v. State of U.P. and others and the same grounds and facts have been mentioned in the writ petitions pertaining to the selection of Assistant Teacher in the same Institution, thus the impugned order dated 02.02.2016 and 24.02.2016 as contained in*

Annexure no.1 is set aside and the writ petitions are allowed in the same terms with the same direction.

(35) In Writ Petition No.7832 (SS) of 2016 titled 'Jaideep Kumar Singh v. State of U.P. and others', the matter pertains to the selection on the post of Headmaster, wherein the same date orders have been challenged by the petitioner on same facts and on same grounds.

(36) In view of the above, the order in regard to the post of Headmaster passed on the same date i.e. 2.2.2016 is not sustainable in law and the same is set aside. The writ petition succeeds and is allowed in the same terms with the same directions."

22. Similarly, under the Regulation 101 to 109, there is a deeming provision in case of non passing of order within a week. The Court entertained the writ petition in the case of **Pramod Kumar Pandey** (Supra) has considered the provision of deeming clause and came to the conclusion that in case no order has been passed within a week from the date of receipt of papers, the appointment is deemed to be approved and direction was issued for the payment of salary from the date it was deemed to be approved. Relevant paragraph 17 is being quoted as under :-

"17. In the present case, it is admitted fact that the papers relating to selection and appointments of the appellant-petitioners were sent to DIOS by the Management on 17.10.1997 for his grant of approval after having issued letters of appointment to the appellant-petitioners. It is also not in dispute that the DIOS did not bestow his consideration on these papers within statutory specified period of seven days. As such the appointment of appellant-petitioners stood approved by deemed fiction of law and in view of the law settled by this court in above authoritative pronouncements (Lalit Mohan Misra and Another (supra), and Abhay Pal Singh (supra)]."

23. In view of the reasons assigned above, the argument advanced by learned Standing Counsel appears to be not justifiable in law, therefore, it is rejected.

24. The claim setup by the petitioners is just and valid and under deeming clause under Rule 10 of Uttar Pradesh Recognised Basic Schools (Junior High Schools) (Recruitment and Conditions of Service of Teachers) Rules, 1978, the appointment of the petitioners is deemed to be approved from the date of approval, thus, the petitioners are entitled to get salary from the State Exchequer.

25. In view of the reasons recorded above, the impugned order dated 26.4.2014 is hereby quashed. The writ petition succeeds and is allowed.

26. The respondents are directed to ensure payment of salary to the petitioners w.e.f. the date of deemed approval from the date the institution is brought within the purview of payment of Salaries Act within a period of two months from the date of production of a certified copy of this order.

(2026) 4 ILRA 1846
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 17.04.2026

BEFORE

THE HON'BLE SHEKHAR B. SARAF, J.
THE HON'BLE ABDHESH KUMAR CHAUDHARY, J.

Writ A No. 6861 of 2024

Sameer Agarwal

...Petitioner

Versus

State of U.P. & Ors.

...Respondents

Issue(s) for consideration

Whether a private bus owner, who has a transport agreement with a third party (the factory/guardians) rather than directly with the school authorities, is legally entitled to a school transport carriage permit u/Rule 222-B of the U.P. Motor Vehicles Rules, 1998?

Headnotes

A. Motor Vehicles Law – Motor Vehicles Act, 1988: Section 74; U.P. Motor Vehicles Rules, 1998: Rule 222-A, 222-B and 222-L - The petitioner, Sameer Agarwal, owns a bus operating under an "All U.P. Contract Carriage Permit." He entered into a private agreement with a factory, Avadh Sugar and Energy Ltd., to transport the children of the factory's employees to the ONGC Community School in District Sitapur. The petitioner approached the Court aggrieved by the inaction of the Regional Transport Authority (RTA) in refusing to grant him a specific contract carriage permit for carrying school children u/s 74 of the Motor Vehicles Act, 1988.

The Court rejected the argument that the rules were silently ambiguous. A literal reading of Rule 222-B(2) explicitly mandates that a private bus owner must have a 'written agreement with the school authority' to apply for the permit.

Section 74 of Act, 1988 that allows for the grant of contract carriage permit, specifically states that the Regional Transport Authority shall grant a contract carriage permit subject to any Rules that may be made under the Act. Rules are unambiguous and a facial reading brings us to fore that these Rules allow such permits only to private buses having an agreement with the school authorities as per Rule 222-B (2) of the Rule, 1998. (Para 9, 10)

B. Rule 222-B (2) has to be read along with Rule 222- B (4), which prescribes certain condition precedent for the school authorities before they could enter into an agreement with an owner of a private bus. (Para 10)

The submission of the petitioner that it makes no difference as to whether the agreement is with the school or with the guardian as eventually it is related to transportation of the children to school only, is fallacious. The said prescriptions enjoins upon the school-authorities with certain responsibilities as mentioned and enumerated in Rule 222-B (4) (a) to Rule 222-B (4) (c), which prima facie appears to this Court to be in the nature of ensuring the safety and mandatory prior compliance of the school buses, its owner and driver before they can be put to service of carrying school children. This Rule also ensures that the school buses' service is not disrupted abruptly during the mid-sessions, which may cause inconvenience to the children. (Para 10)

C. There appears to be a rationale nexus as to why agreement with guardians have not been allowed under the Rules, inasmuch as, it is the school authorities, who is and are made responsible for the safety of school children as per the Rules. The individual guardian or their employers cannot be bestowed with such collective responsibility of these school children. In any case, the safety of the school going children cannot be tweaked by expanding the zone of consideration for such school buses, who do not have any agreement with the school-authorities as mandated u/Rule 222 (2) of the Rules, 1998. (Para 11)

There is no such mechanism of following strict safety norms as mentioned herein-above as a condition precedent in the case of an agreement with the parents or their employers. (Para 11)

D. Condition precedent and condition subsequent - The petitioner shows his willingness to comply with Rule 222-L (General conditions for school vehicle permit), but the said Rule is condition subsequent for Rule 222-B. Once it is found that the petitioner is not in compliance of the Rule 222-B, this Court finds no substance in the said submission of the learned counsel for the petitioner. (Para 12)

The conditions as mentioned in the Rules are mandatory and are ought to be strictly followed for the safety and welfare of the school going children. (Para 13)

E. The vires of the Rules are not under challenge and the challenge is simply w.r.t. the absence of a provision for providing permits to the school buses that have an agreement with the guardians of children, who are attending schools. (Para 8)

The High Court found no fault in the statutory authorities' refusal to grant the contract carriage permit. Writ petition dismissed. (E-4)

List of Acts

Motor Vehicles Act, 1988; U.P. Motor Vehicles Rules, 1998.

List of Keywords

condition, precedent, subsequent, motor, vehicles, school, safety, contract, carriage, guardian, permit.

Appearances for Parties

For Petitioner(s): Alok Saxena

For Respondent(s): C.S.C

(Delivered by Hon'ble Shekhar B. Saraf, J.

&

Hon'ble Abdhesh Kumar Chaudhary, J.)

1. Heard Sri Alok Saxena, learned counsel for the petitioner and Sri Ratnesh Singh Tomar, learned counsel for the State- respondents. Rejoinder affidavit filed today by the learned counsel for the petitioner is taken on record. Exchange of the pleading between the parties are complete. With the consent of learned counsel for the parties, the matter is taken for final disposal.

2. This is a writ petition under Article 226 of the Constitution of India wherein the writ petitioner is aggrieved by the inaction on the part of the respondent-authorities in not granting him a contract carriage permit under Section 74 of the Motor Vehicles Act, 1988 (hereinafter referred to

as "the Act, 1988") for carrying school children of Factory's Employees of Avadh Sugar and Energy Ltd. to the ONGC Community School, Village Paintala, District- Sitapur.

3. The case of the petitioner is that the petitioner has a bus with an All U.P. Contract Carriage Permit and he has entered an agreement with the Factory, namely, Avadh Sugar and Energy Ltd. (hereinafter referred to as the "Factory") by virtue of which the petitioner has got permission to carry the children of the Factory's Employees to the ONGC Community School.

4. In support of his submission, Sri Alok Saxena, learned counsel for the petitioner has relied on Section 2 (7) and Section 74 of the Act, 1988 . He further relied on Rule 222-A, 222-B and 222-L of the U.P. Motor Vehicles Rules, 1998 (hereinafter referred to as "the Rules, 1998") to submit that the Regional Transport Authority is required to grant a contract carriage permit to him for carrying school children as provided in Section 74 of the Act, 1988 read with Rules 222-B of the Rules, 1998.

5. Sri Saxena has further articulated that sub rule -1 of Rule 222-B of the Rules, 1998 allows for educational institutions to run buses and permits to be issued by the competent authority to such buses. He submits that sub-rule-2 allows for a owner of a private bus, who has written agreement with school authorities to apply for such permit. He further relied on sub rule-3 of Rule 222-B of the Rules, 1998 to indicate that owner of the school vans, who are having an agreement with guardian or a group of guardians for transporting school children are also permitted to get the carriage permit for plying school children.

6. Learned counsel for the petitioner fairly submitted that with regard to an owner of a private bus the Rules are silent on the aspect as to whether such owner may get a permit or not, if he has an agreement with the guardians for transporting school children. According to the learned counsel, this gap would not act as a bar for issuing permit to the private buses, who are having agreement with the guardians and/or their employers, which is the present case.

7. Per contra, Sri Ratnesh Singh Tomar, learned counsel appearing for the State submits that Chapter IX-A of the Rules, 1998 was added in the Rules specifically in the year, 2018 and came into effect from 17th of December of 2018 with respect to special provisions for school vehicles. The insertion of the entire Chapter IX-A also contains Rules 222-B and 222-L to ensure the safety and security of the children, who are going to school. He further submits that the petitioner has not challenged the vires of the said Rules and accordingly, the Rules as it is today are required to be followed for all intents and purposes. On the aspect of permission granted to school vans, who are having permission with the guardians, he submits that the rationale therein is different from that granting a permit to an owner of a private bus.

8. Upon hearing learned counsel for both the parties, it is to be firstly noted by us that the vires of the Rules are not under challenge and the challenge is simply with regard to the absence of a provision for providing permits to the school buses that have an agreement with the guardians of children, who are attending schools. Learned counsel for the petitioner

has argued that there is no real logic and/or difference with regard to permitting the owner of a private bus, who has an agreement with the school authorities, juxtaposed to permitting the owner of a private school bus, who has an agreement with the guardians of the children instead of the school-authorities. According to him, the purpose and objective being one and the same, that is carrying school children by bus, the petitioner bus should also be granted permit for carrying school children.

9. In our view, Section 74 of Act, 1988 that allows for the grant of contract carriage permit, specifically states that the Regional Transport Authority shall grant a contract carriage permit subject to any Rules that may be made under the Act. As far as grant of permit for carrying school children are concerned, Rule 222-B of the Rules, 1998 as amended and inserted with effect from 22.05.2019 to U.P. Motor Vehicle Rules 1998, provides for the following:-

“222 B. Grant of permit for carrying school children- (1) An Educational institution bus shall have to obtain permit of private service vehicle under section 76 of the Act. The owner shall apply in Form SR-23A before Competent Authority and the authority may grant permit in accordance with application or with such modification as it deems fit or refuse to grant such permit. The permit shall be issued in Form SR-29A .

(2) An owner of a private bus, who has a written agreement with school authority shall apply before the Competent Authority under section 73 of the Act in Form SR21A and the authority may grant permit in accordance with application or with such modifications as it deems fit or refuse to grant such permit. The permit shall be issued in Form SR-27A.

(3) The owner of school van having an agreement with guardians or group of guardians for transporting the school children shall apply under section 73 before the Competent Authority in Form SR-21B along with copy of agreement duly forwarded by the school. The authority may grant permit in accordance with application or with such modifications as it deems fit or refuse to grant such permit. The permit shall be issued in Form SR-27B.

(4) Every school, before going to an agreement with a private operator, shall ensure: that;

(a) the vehicle complies all the norms prescribed in these rules and directions of the State Government from time to time.

(b) the character certificate of vehicle owner and driver is obtained.

(c) the agreement shall not be terminated before one year except in unavoidable circumstances.”

10. In the present case, the aforesaid Rules are unambiguous and a facial reading brings us to fore that these Rules allow such permits only to private buses having an agreement with the

school authorities as per Rule 222-B (2) of the Rule, 1998. Learned counsel for the petitioner has argued that it makes no difference as to whether the agreement is with the school or with the guardian as eventually it is related to transportation of the children to school only. However, on a closer scrutiny of the Rules, we find that the said submission of the petitioner to be fallacious and an outcome of an erroneous reading of the Rules for a simple reason that Rule 222-B (2) has to be read along with Rule 222-B (4), which prescribes certain condition precedent for the school authorities before they could enter into an agreement with an owner of a private bus. The said prescriptions enjoins upon the school-authorities with certain responsibilities as mentioned and enumerated in Rule 222-B (4) (a) to Rule 222-B (4) (c), which prima facie appears to this Court to be in the nature of ensuring the safety and mandatory prior compliance of the school buses, its owner and driver before they can be put to service of carrying school children. This Rule also ensures that the school buses' service is not disrupted abruptly during the mid-sessions, which may cause inconvenience to the children.

11. Unfortunately, we are not able to find any such mechanism of following strict safety norms as mentioned herein-above as a condition precedent in the case of an agreement with the parents or their employers. Neither the learned counsel was able to point out any such similar provision under the Rules nor has relied on any document which could come to the rescue of the petitioner. According to this Court, there appears to be a rationale nexus as to why agreement with guardians have not been allowed under the Rules, inasmuch as, it is the school-authorities, who is and are made responsible for the safety of school children as per the Rules. The individual guardian or their employers cannot be bestowed with such collective responsibility of these school children. In any case, the safety of the school going children cannot be tweaked by expanding the zone of consideration for such school buses, who do not have any agreement with the school-authorities as mandated under Rule 222 (2) of the Rules, 1998.

12. As far as the second contention of learned counsel for the petitioner that the petitioner is ready and willing to comply with Rule 222-L (General conditions for school vehicle permit), we find that the said Rule is condition subsequent for Rule 222-B. Once it is found that the petitioner is not in compliance of the Rule 222-B, this Court finds no substance in the said submission of the learned counsel for the petitioner and as such the same has been noted to be rejected.

13. Having said so, this Court is of the view that the safety of school children ought to be of paramount significance, which should be the driving force for not only the guardians or the school management but also for the statutory authorities under the Motor Vehicles Act and the Rules made therein for plying the school buses. According to this Court, the conditions as mentioned in the Rules are mandatory and ought to be strictly followed for the safety and welfare of the school going children.

14. In light of the same, we cannot find any fault on the part of the authorities in not granting a carriage permit for school children to the petitioner.

15. Accordingly, the writ petition is *dismissed*.

(2026) 4 ILRA 1851
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 15.04.2026

BEFORE

THE HON'BLE IRSHAD ALI, J.

Writ A No. 8315 of 2022

Jai Prakash Awasthi

...Petitioner

Versus

State of U.P. & Ors.

...Respondents

Issue(s) for consideration

Whether in the absence of an explicit rule or regulation permitting the continuation, a disciplinary proceedings can continue after retirement?

Headnotes

A. Service Law – In absence of any provision under the Regulation and Rules, no disciplinary proceeding can continue after the retirement. (Para 11)

The petitioner was working as a Godown Man / Centre In Charge / In Charge District Manager. On 02.06.2011, he was placed under suspension due to certain allegations, and an inquiry officer was appointed. Because the inquiry was not completed in time, the petitioner's suspension was revoked on 18.06.2012, though he remained attached to the office. The petitioner subsequently reached the age of superannuation and retired on 30.06.2014. The respondents refused to release his retiral dues, citing the pendency of the disciplinary proceeding. Nearly seven years after his retirement, on 22.03.2021, the General Manager concluded the disciplinary proceeding and passed a punishment order directing a recovery of Rs. 8,80,230/- from the petitioner.

In the case of *Bhagirathi Jena (infra)*, the Hon'ble Supreme Court has precisely considered this aspect of the matter and recorded finding that in absence of any Rule, Regulation or Act, no disciplinary proceeding can go on after the retirement, therefore, **due to continuation of disciplinary proceeding in absence of provision of Rules or Regulation, the order is per se illegal and is liable to be set aside by this Court.** (Para 13)

In the present case, the disciplinary proceeding continued after the retirement of the petitioner i.e. 30.6.2014 and impugned order of recovery was passed on 22.03.2021, therefore, the order is per se illegal and is not sustainable in law. (Para 12)

The order dated 22.03.2021, being contrary to the Rules, is quashed. The respondents are directed to ensure payment of retiral dues as well as arrears of salary, if any, to the petitioner with 8 % interest.

Writ petition allowed. (E-4)

Case Law Cited

1. Bhagirathi Jena Vs. Orissa State Financial Corporation, 1999 (3) SCC 666 (Para 7)
2. Dev Prakash Tewari Vs. Uttar Pradesh Cooperative Institutional Service Board Lucknow and others, 2014 (7) SCC 260 (Para 7)
3. U.P. State Sugar Corporation Ltd. and others Vs. Kamal Swaroop Tandon, 2008 (1) SCC 352 (Para 8)

List of Keywords

absence, provision, regulation, rule, continuation, disciplinary, proceeding, sustainable, suspension, retirement.

Appearances for Parties

For Petitioner(s): Som Kartik Shukla

For Respondent(s): C.S.C., Surya Prakash Singh

(Delivered by Hon'ble Irshad Ali, J.)

1. Heard Sri Som Kartik Shukla, learned counsel for the petitioner, learned Standing Counsel for respondent No.1/ State and Sri Rajiv Kumar Sinha, learned counsel for respondent Nos.2 and 3.

2. Facts in nutshell are that the petitioner was working on the post of Godown Man/ Centre In Charge, Manjhanpur/ In charge District Manager, Koshambi, Allahabad Division. Vide order dated 2.6.2011, the respondent No.4 placed the petitioner under suspension on certain allegation and the petitioner was attached with the Accounts Officer (Audit), office of the respondent No.4. To conduct the enquiry, Enquiry Officer was appointed with direction to conclude the enquiry within a month and submit report.

3. The enquiry was not completed, thus, the petitioner submitted his representation before the respondent No.4 on 22.12.2011 and 30.4.2012 for cancellation of the suspension order. In pursuance to the aforesaid representation of the petitioner, vide order dated 18.6.2012, the respondent No.4 revoked the order of suspension of the petitioner vide order dated 2.6.2011 and he was attached with the office of respondent No.4. On 4.4.2014, the respondent No.4 issued an order that the petitioner will retire from service on 30.6.2014. No dues certificate in respect of the petitioner to be issued by 30.4.2014, clearing all dues against him so that due amount may be recovered from the petitioner's due and rest may be paid to him within time. It was further directed that no dues certificate cannot be issued during the pendency of disciplinary proceeding. The petitioner retired from the post of Godown Man on 30.6.2014 after attaining the age of superannuation.

4. In spite of that, no retiral dues were paid to the petitioner. The detail of the payable dues has been referred in paragraph 11 of the writ petition. Due to non payment of retiral dues, the petitioner filed a representation on 26.9.2014 before the respondents through registered post with the request for payment of retiral dues but no action was taken. Due to non taking of action by the respondents in the representation filed by the petitioner, he again filed a representation on 5.11.2014 before the respondents through registered post. Due to non passing of the order, feeling aggrieved, the petitioner filed Writ Petition No.7042 (S/S) of 2014 and direction was issued to the respondents to ensure payment of retiral dues to the petitioner including retiral/ pensionary benefits alongwith the interest at the rate of 12 % and the writ petition was finally disposed of vide order dated 5.12.2014, directing the respondent No.3 to decide the representation of the petitioner for the payment of retiral benefits in accordance with law, within three months.

5. The respondent No.3 decided and rejected the representation of the petitioner vide order dated 13.2.2015 stating that till the departmental enquiry against the petitioner is finalized, no dues

could be paid to him. The order passed on 13.2.2015 was challenged in Writ-A No.2505 of 2015, wherein direction was issued to complete the pleadings and the writ petition is still pending consideration. The writ petition was dismissed for want of prosecution vide order dated 31.10.2022. An application for restoration/ recall of the order was filed which was allowed and the writ petition was restored. Thereafter, after the conclusion of disciplinary proceeding, an order of punishment was passed on 22.3.2021 by the General Manager, which is under challenge before this Court, whereby an order was passed for recovery of Rs.8,80,230/-.

6. Submission of learned counsel for the petitioner is that there is no provision under the Regulation that after the retirement, disciplinary proceeding can continue, therefore, his submission is that in absence of provision under the Regulation, disciplinary proceeding could not be continued after the retirement i.e. 30.6.2014. Next submission is that on the basis of conclusion of disciplinary proceeding, the order impugned dated 22.3.2021 has been passed, which is wholly illegal, arbitrary inasmuch as contrary to the settled proposition of law by the Hon'ble Supreme Court of India. Next submission is that the order impugned dated 22.3.2021 is per se illegal and is not sustainable in the eyes of law.

7. In support of the submission advanced on the point that in case there is no provision under the Regulation, Rules and Act to continue the disciplinary proceeding after the retirement, no proceeding can continue after the retirement, learned counsel for the petitioner placed reliance on the following judgments :-

(i) Bhagirathi Jena Vs. Orissa State Financial Corporation [1999 (3) SCC 666].

(ii) Dev Prakash Tewari Vs. Uttar Pradesh Cooperative Institutional Service Board Lucknow and others [2014 (7) Supreme Court Cases 260].

8. On the other hand, learned counsel for respondent Nos.2 and 3 could not place in the notice of this Court in regard to continuation of disciplinary proceeding after the retirement under any Rule applicable to the service condition of the petitioner. He submits that the impugned order is just and valid and there is no illegality or infirmity in the order. In support of his submission, he placed reliance upon a judgment in the case of **U.P. State Sugar Corporation Ltd. and others Vs. Kamal Swaroop Tandon [2008 (1) Supreme Court Cases 352].**

9. After having heard the rival submission of learned counsel for the parties, I perused the material on record as well as the law reports cited by the parties.

10. For deciding the controversy involved, paragraphs 5 to 10 of the judgment rendered in the case of **Dev Prakash Tewari** (Supra), wherein the judgment **Bhagirathi Jena** (Supra) has also been considered, are being quoted as under :-

"5. We have carefully considered the rival submissions. The facts are not in dispute. The High Court while quashing the earlier disciplinary proceedings on the ground of violation of principles of natural justice in its order dated 10.1.2006 granted liberty to initiate the fresh inquiry in accordance with the Regulations. The appellant who was reinstated in service on 26.4.2006 and

fresh disciplinary proceeding was initiated on 7.7.2006 and while that was pending, the appellant attained the age of superannuation and retired on 31.3.2009. There is no provision in the Uttar Pradesh Co-operative Employees Service Regulations, 1975, for initiation or continuation of disciplinary proceeding after retirement of the appellant nor there is any provision stating that in case misconduct is established a deduction could be made from his retiral benefits.

6. An occasion came before this Court to consider the continuance of disciplinary inquiry in similar circumstance in Bhagirathi Jena's case (supra) and it was laid down as follows:

" 5. Learned Senior Counsel for the respondents also relied upon Clause (3) (c) of Regulation-44 of the Orissa State Financial Corporation Staff Regulations, 1975. It reads thus :

"44. (3) (c) When the employee who has been dismissed, removed or suspended is reinstated, the Board shall consider and make a specific order :

(i) Regarding the pay and allowances to be paid to the employee for the period of his absence from duty, and

(ii) Whether or not the said period shall be treated as a period on duty."

6. It will be noticed from the abovesaid regulations that no specific provision was made for deducting any amount from the provident fund consequent to any misconduct determined in the departmental enquiry nor was any provision made for continuance of the departmental enquiry after superannuation.

7. In view of the absence of such a provision in the abovesaid regulations, it must be held that the Corporation had no legal authority to make any reduction in the retiral benefits of the appellant. There is also no provision for conducting a disciplinary enquiry after retirement of the appellant and nor any provision stating that in case misconduct is established, a deduction could be made from retiral benefits. Once the appellant had retired from service on 30.6.95 there was no authority vested in the Corporation for continuing the departmental enquiry even for the purpose of imposing any reduction in the retiral benefits payable to the appellant. In the absence of such an authority, it must be held that the enquiry had lapsed and the appellant was entitled to full retiral benefits on retirement."

7. In the subsequent decision of this Court in U.P. Coop. Federation case (supra) on facts, the disciplinary proceeding against employee was quashed by the High Court since no opportunity of hearing was given to him in the inquiry and the management in its appeal before this Court sought for grant of liberty to hold a fresh inquiry and this Court held that charges levelled against the employee were not minor in nature, and therefore, it would not be proper to foreclose the right of the employer to hold a fresh inquiry only on the ground that the employee has since retired from the service and accordingly granted the liberty sought for by the management. While dealing with the above case, the earlier decision in Bhagirathi Jena's case (supra) was not brought to the notice of this Court and no contention was raised pertaining to the provisions under

which the disciplinary proceeding was initiated and as such no ratio came to be laid down. In our view the said decision cannot help the respondents herein.

8. Once the appellant had retired from service on 31.3.2009, there was no authority vested with the respondents for continuing the disciplinary proceeding even for the purpose of imposing any reduction in the retiral benefits payable to the appellant. In the absence of such an authority it must be held that the enquiry had lapsed and the appellant was entitled to get full retiral benefits.

9. The question has also been raised in the appeal with regard to arrears of salary and allowances payable to the appellant during the period of his dismissal and upto the date of reinstatement. Inasmuch as the inquiry had lapsed, it is, in our opinion, obvious that the appellant would have to get the balance of the emoluments payable to him.

10. The appeals are, therefore, allowed and the judgment and order of the High Court are set aside and the respondents are directed to pay arrears of salary and allowances payable to the appellant and also to pay him his all the retiral benefits in accordance with the rules and regulations as if there had been no disciplinary proceeding or order passed therein. No costs."

11. On perusal of the extract of the judgments, it is crystal clear that in the case of **Bhagirathi Jena** (Supra) and **Dev Prakash Tewari** (Supra), the Hon'ble Supreme Court has held that in absence of any provision under the Regulation and Rules, no disciplinary proceeding can continue after the retirement.

12. In the present case, the disciplinary proceeding continued after the retirement of the petitioner i.e. 30.6.2014 and impugned order of recovery was passed on 22.3.2021, therefore, the order is per se illegal and is not sustainable in law. In absence of any provision to continue the disciplinary proceeding after the retirement, no disciplinary proceeding can continue after the retirement.

13. In the case of **Bhagirathi Jena** (Supra), the Hon'ble Supreme Court has precisely considered this aspect of the matter and recorded finding that in absence of any Rule, Regulation or Act, no disciplinary proceeding can go on after the retirement, therefore, due to continuation of disciplinary proceeding in absence of provision of Rules or Regulation, the order is per se illegal and is liable to be set aside by this Court.

14. Learned counsel for the respondent Nos.2 and 3 has relied upon a judgment in the case of **U.P. State Sugar Corporation Ltd.** (Supra). I have gone through the aforesaid judgment. In absence of any provision under the Act, Rules or Regulation in regard to continuation of disciplinary proceeding applicable to the petitioner, the ratio of the judgment is not applicable neither the case of **Bhagirathi Jena** (Supra) was taken into consideration while passing the judgment, therefore, it is distinguishable in nature and is not applicable to the case in hand.

15. In view of the reasons recorded above and the facts and circumstances of the case, I am of the considered opinion that the order dated 22.3.2021, being contrary to the Rules, is hereby quashed. The writ petition succeeds and is allowed.

16. The respondents are directed to ensure payment of retiral dues as well as arrears of salary, if any, to the petitioner with 8 % interest, within a period of three months from the date of production of a certified copy of this order.

(2026) 4 ILRA 1856
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 09.04.2026

BEFORE

THE HON'BLE IRSHAD ALI, J.

Writ A No. 8349 of 2011

Smt. Kavita Chaturvedi & Anr.

...Petitioners

Versus

State of U.P. & Ors.

...Respondents

Issue(s) for consideration

Whether the State could deny the benefit of promotion to the petitioners from the post of Telephone Operator to Lower Division Assistant (LDA) based on an omission in the statutory service rules, even though similarly situated employees had already been granted the same promotion under a 1988 Government Order?

Headnotes

A. Service Law – The petitioners were working as Telephone Operators in the Board of Revenue. They challenged an order dated 20.12.2000 that rejected their claims for promotion to the post of Lower Division Assistant (LDA). They argued that under a GO dated September 6, 1988, Telephone Operators were explicitly eligible for promotion to vacant LDA posts. Furthermore, three of their predecessors had already been promoted under this policy in 1990 and 1994. The State argued that the U.P. Board of Revenue Ministerial Service Rules, 1983 did not contain any statutory provision for promoting Telephone Operators to LDA posts. They contended that executive G.O.s cannot override statutory rules and that the promotional claim was legally invalid.

B. The 1983 Service Rules omitted "Telephone Operators" simply because the posts were created later, in 1986. The 1988 G.O. was specifically issued by the State to bridge this legislative gap and prevent employee stagnation. (Para 18, 22)

C. Violation of Article 14 - The State had already adopted the 1988 policy and promoted three similarly situated Telephone Operators. Denying the same benefit to the petitioners—while 22 LDA posts sat vacant—constituted unconstitutional discrimination u/Article 14. (Para 21)

D. Approbate and Reprobate - The Court emphasized that the State cannot accept a policy for one set of individuals and reject it for another under identical circumstances without a rational basis. (Para 23, 24)

The impugned rejection order dated 20.12.2000 was quashed. The State was directed to reconsider the petitioners' case for promotion to LDA under the guidelines of the 1988 Government Order. The promotion review process must be concluded within six months. Eligible petitioners must receive all consequential benefits, including notional seniority and back-arrears of pay.

Writ petition allowed. (E-4)

Case Law Cited

1. U.P. Board of Revenue Ministerial Officials Association, Lucknow - Allahabad Vs. State of U.P. and Others, dated 06.04.1988 (Para 12)
2. State of U.P. and others Vs. U.P. Board of Revenue Ministerial Officials Association, Civil Writ to Appeal No.1107 of 1988, Lucknow – Allahabad (Para 12)

List of Acts

U.P. Board of Revenue Ministerial Service Rules, 1983

List of Keywords

hostile discrimination, approbate, reprobate, promotion, government, order, post, legislative gap.

Appearances for Parties

For Petitioner(s): Devendra Mohan Shukla, Manish Jauhari

For Respondent(s): C.S.C.

(Delivered by Hon'ble Irshad Ali, J.)

1. Heard Sri Asit Kumar Chaturvedi, learned Senior Counsel assisted by Sri Ashwani Kumar Singh, learned counsel for the petitioners and Sri Rajiv Srivastava, learned Additional CSC for the respondent - State.

2. By means of present writ petition, the petitioners are challenging the order dated 20.12.2000 passed by respondent No.4 contained as annexure-4 to the writ petition with a further prayer to issue writ of mandamus commanding the respondents to reconsider the claim of the petitioners to be promoted on the post of Lower Division Assistant w.e.f. 20.12.2000 in the light of Government Order dated 06.09.1988.

3. Factual matrix of the case is that in the year 1983 service rules namely U.P. Board of Revenue Ministerial Service Rules, 1983 were framed for governing service conditions of the employees working in Revenue Board. The said rules do not mention about the post of Telephone Operators in the department, therefore, benefit extended under the rules to the other posts in the department were denied to the Telephone Operators.

4. The post of Telephone Operators in the department was initially not sanctioned but in the year 1986 when the PBS exchange was installed in the Board of Revenue, three posts of Telephone Operators were sanctioned by the State Government vide order dated 29.01.1986.

5. As the post of Telephone Operator in the department was sanctioned in the year 1986 and by the time, the service rules applicable in the department were already framed, the petitioners believes that the post of Telephone Operators was not mentioned in the service rules because the

creation of the post of Telephone Operators in the department was post dated. After creation of post of Telephone Operators, the appointment of three female candidates namely, Vijay Laxmi, Mala Bharti and Salma Bano were made by the respondents on 13.01.1987.

6. On 06.09.1988, State Government introduced a rotation policy which was communicated to the then Secretary, Board of Revenue for adopting the same by which it was provided that since there was no rules for promotion of Telephone Operators in the Civil Secretariat, the posts of Lower Division Assistants which were running vacant in the Secretariat and against which no selection had been made by the Public Service Commission, might be filled up by promoting the Telephone Operators according to their seniority.

7. The Government Order dated the 06.09.1988 was adopted by the then Secretary of Board of Revenue and accordingly the benefit of the said Government Order was extended to the Telephone Operators working at that time in the department. The first promotion of a Telephone Operator namely Km. Vijay Laxmi was made on the post of Lower Division Assistant on the 16.06.1990 on a vacancy occurred due to promotion of Mohd. Aslam on the post of a Reference Clerk. On the same line when another vacancies on the post of Lower Division Assistant occurred, the other two Telephone Operators were also promoted on the post of Lower Division Assistant by the opposite parties on 05.01.1994.

8. Since the post of Telephone Operators in the department became vacant due to promotion of Telephone Operators working therein, the petitioners and one other candidate namely Smt. Anjum Bano were selected and appointed on the aforesaid vacant posts of Telephone Operators. A dispute regarding parity between the employees working in Revenue Board and the Civil Secretariat had been resolved earlier also by way of the orders passed by this Hon'ble Court and implementation of the recommendations of Samta Samiti. However, the said resolutions were related to granting parity in pay scale of the employees working in both the departments but the reasons of granting such parity emanates from an undisputed fact that the State Government does not treat the employees working in Board of Revenue, Lokayukta Office, High court and State Law Office, different from the employees working in the Civil Secretariat.

9. In the department of the petitioners, there are 22 posts of LDA lying vacant for more than five years and no selection has been made by the Public Service Commission on the said posts in spite of the requisition sent by the Board to the Commission. On 31.05.1990 the proposal was sent by the department to the State Government for making a provision for promotion of Telephone Operators on the post of Lower Division Assistant but till date no decision has been taken by the State Government on this issue.

10. It was in the year 2010 when the petitioners sought the information regarding the decision taken over their on 21.09.2010 promotion, the department informed them that the request of the petitioners to promote them on the post of Lower Division Assistant was already rejected by means of the impugned order. Immediately after receiving the information by means of letter dated 21.09.2010, the petitioners again applied under Right to Information Act demanding the copy of the impugned order. In response to the application moved by the petitioners under Right to Information

Act, the department provided copy of the impugned order to the petitioners on 26.04.2011. Hence, the present writ petition has been preferred challenging the same.

11. Submission of learned Senior Counsel for the petitioners is that once three persons, namely, Vijay Laxmi, Mala Bharti and Salma Bano have been granted promotion on the post of Lower Division Assistant, denial for grant of benefits to the petitioners to grant promotion is discriminatory in nature and violative of Constitution of India.

12. He further submitted that this Court in the case of **U.P. Board of Revenue Ministerial Officials Association, Lucknow - Allahabad Vs. State of U.P. and Others dated 06.04.1988** annexed as Annexure-9 to the writ petition, granted benefit as admissible to U.P. Civil Secretariat and the said judgment was affirmed by Hon'ble Supreme Court in Civil Writ to Appeal No.1107 of 1988 in the case of **State of U.P. and others Vs. U.P. Board of Revenue Ministerial Officials Association, Lucknow - Allahabad**, therefore, his submission is that once it has been held that all the allowances are admissible to the employees of Board of Revenue, discrimination cannot be carve out in granting promotion in the Board of Revenue.

13. His next submission is that the petitioners are entitled for grant of promotion on the post of Lower Division Assistant as well as Revenue Officer and are entitled for payment of all allowances and arrears as admissible to the post. Due to non grant of promotion and other benefits, the petitioners are suffering a lot and the action of the respondents is discriminatory and not tenable in the eyes of law.

14. On the other hand, learned Additional CSC invited attention of this Court on the contents of counter affidavit, wherein there is no explanation about grant of promotion to three persons, namely, Vijay Laxmi, Mala Bharti and Salma Bano. He submitted that there is no provision in the rules in regard to grant of promotion to Telephone Operators on the post of Lower Division Assistant in Board of Revenue.

15. He next submitted that in case the Government Order issued for grant of promotion on the post of Lower Division Assistant is contrary to the provisions contained under statutory rules, the Government Order is liable to be ignored. He invited attention of this Court to paragraph 4 of the counter affidavit and submitted that in view of Rule 4, the provisions regarding appointments in temporary and officiating capacity, if any contained in rules relating to Public Services made by the Governor in exercise of the powers under the proviso of Article 309 of the Constitution prior to commencement of these Rules are hereby rescinded and on the said basis his submission is that on the basis of Government Order issued, the promotion cannot be made and the impugned orders does not suffer from any infirmity or illegality and is just and valid.

16. I have considered the submissions advanced by learned counsel for the parties and perused the material on record.

17. The controversy involved in the present writ petition centers around the entitlement of the petitioners, working as Telephone Operators, to be considered for promotion to the post of Lower Division Assistant in terms of Government Order dated 06.09.1988.

18. It is not disputed that the U.P. Board of Revenue Ministerial Service Rules, 1983 do not contain any provision for the post of Telephone Operator. However, the reason for such omission is apparent, inasmuch as the said post was created subsequently in the year 1986. Thus, non-inclusion of the post in the Rules cannot be construed to deny promotional avenues altogether.

19. The State Government, in order to remove stagnation and provide promotional opportunities to Telephone Operators, issued Government Order dated 06.09.1988, permitting their promotion to the post of Lower Division Assistant against vacant posts where no recruitment had been made through the Public Service Commission.

20. The record clearly indicates that the said Government Order was adopted by the Board of Revenue and implemented in its true spirit. In pursuance thereof, three similarly situated employees, namely, Vijay Laxmi, Mala Bharti and Salma Bano, were promoted to the post of Lower Division Assistant in the years 1990 and 1994.

21. Once the benefit of the aforesaid Government Order has been extended to similarly situated employees, denial of the same benefit to the petitioners, without any rational basis, amounts to hostile discrimination and is violative of Article 14 of the Constitution of India.

22. The plea taken by the respondents that there is no provision in the statutory rules for such promotion is not tenable in the facts of the present case. The Government Order dated 06.09.1988 was issued precisely to fill the gap in the Rules and has already been acted upon by the respondents themselves.

23. It is a settled principle of law that the State cannot approbate and reprobate. Having granted promotion to certain employees under the same policy, the respondents cannot deny similar treatment to the petitioners without assigning any justifiable reason.

24. The respondents have failed to explain as to why the petitioners have been treated differently from their predecessors, despite availability of vacant posts and absence of recruitment through the Public Service Commission. Such action is clearly arbitrary and unsustainable.

25. In view of the aforesaid, this Court is of the considered opinion that the impugned order dated 20.12.2000 cannot be sustained in the eyes of law and is liable to be quashed.

26. Accordingly, the writ petition succeeds and is **allowed**.

27. The impugned order dated 20.12.2000 passed by respondent No.4 is hereby quashed.

28. A writ of mandamus is issued directing the respondents to consider the case of the petitioners for promotion to the post of Lower Division Assistant in terms of Government Order dated 06.09.1988, in accordance with law.

29. The aforesaid exercise shall be completed within a period of six months from the date of production of a certified copy of this order.

30. It is further directed that in case the petitioners are found entitled, they shall be granted all consequential benefits, including notional seniority and arrears, as admissible under law.

(2026) 4 ILRA 1861
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 03.04.2026

BEFORE

THE HON'BLE KARUNESH SINGH PAWAR, J.

Writ A No. 9421 of 2023

Leelawati Gupta
State of U.P. & Ors.

...Petitioner
Versus
...Respondents

Issue(s) for consideration

- (a) Whether a departmental disciplinary inquiry can legally continue after the delinquent employee dies in harness?
- (b) Whether the state authorities could legally keep an inquiry pending for years without obtaining an official extension or prior leave from the Court, given that a binding judicial order had specifically mandated the inquiry to be completed within a strict four-month timeframe?
- (c) Whether a government department can legally withhold retiral and consequential service benefits from a deceased employee's legal heir on the pretext that the department itself lost or misplaced the employee's official service book and GPF passbook?

Headnotes

A. Service Law – The petitioner's late husband, Ram Nath Gupta, was appointed as a Compounder/Pharmacist (Homeopathy) in 1984. He was dismissed twice during his service (in 2001 and 2007) but was reinstated both times following orders by the High Court. Following his second reinstatement order, the Director (Homeopathy) officially brought him back into service on 20.12.2011. Per the Court's binding directives in a connected matter (Special Appeal No. 123 of 2010 r/w the order passed in WP No. 4633 of 2007), the department was strictly mandated to conclude any fresh disciplinary inquiry within a maximum period of four months from this reinstatement date.

An inquiry committee was formed, and an inquiry report was generated in 2013 alleging forged appointment papers. While being asked to appear for personal verification in late 2014, the employee informed the department that he was suffering from cancer and undergoing treatment at Tata Memorial Hospital, Mumbai. On 02.12.2016, Ram Nath Gupta passed away while the departmental inquiry was still pending. No final order or punishment was ever executed. The State refused to release his retiral and consequential service benefits to his widow, citing the pending inquiry and claiming his official service book and GPF passbook were 'not traceable.'

B. Disciplinary proceedings cannot be continued against a deceased employee. Where a delinquent employee dies during the pendency of disciplinary proceedings, such proceedings cannot be continued thereafter and are liable to be treated as having abated. **Upon the demise of the employee, the relationship between the employer and the employee ceases to exist, and consequently, no further action in the nature of disciplinary proceedings can be sustained in the eyes of law.** No

punitive order can be passed against a deceased employee, as the imposition of punishment under the applicable service rules presupposes the existence of a living employee. (Para 20 to 22)

C. Where a court directs that disciplinary proceedings be concluded within a fixed time frame, such direction is binding and must be strictly adhered to. If, for any reason, the proceedings cannot be concluded within the prescribed period, it is incumbent upon the authority concerned to seek extension of time by moving an appropriate application before the Court. Even in cases where the delinquent employee does not object to continuation of proceedings beyond the stipulated period, the disciplinary authority is nevertheless under a legal obligation to obtain prior leave of the Court before proceeding further or passing any final order. (Para 18)

It was incumbent upon the respondents to conclude the inquiry proceedings within the stipulated period of four months. Alternatively, they ought to have sought extension of time from the Court in accordance with law. The continuation of disciplinary proceedings beyond the prescribed time frame, without obtaining leave of the Court, is clearly impermissible. (Para 19)

D. Responsibility for proper maintenance, safe custody, and upkeep of service records lies squarely upon the concerned department and not upon the employee. In the event such records are found to be missing or misplaced, the burden lies upon the department to reconstruct or verify the service particulars of the employee from available sources. **The department cannot be permitted to derive advantage from its own lapse, nor can such deficiency be used as a ground to deny legitimate service benefits to an employee or his legal heirs.** (Para 23)

The petitioner is entitled to the release of all consequential service benefits of her late husband. Accordingly, the opposite parties are directed to ensure the payment of all retiral dues, including gratuity, GPF and family pension, along with simple interest at the rate of 7% per annum, calculated from the date on which the petitioner became entitled to such benefits, i.e., 21.12.2016, being the date on which the application for release of post-retiral dues was submitted. (Para 24)

Writ petition allowed. (E-4)

Case Law Cited

1. A.K.S. Rathore (Dead) through LRs Vs. Union of India, Civil Appeal No. 7028 of 2022 (Para 12)
2. Rajeshwari Devi Vs. State of U.P. and others, 2011 SCC OnLine All 42 (Para 12)
3. Pushpa Devi Vs. State of U.P. and another, Writ-A No. 15004 of 2022 (Para 12)
4. State of Uttar Pradesh Vs. Ram Prakash Singh, 2025 SCC OnLine SC 891 (Para 13)
5. Satya Prakash Srivastava Vs. State of U.P., Writ-A No. 5008 of 2024 (Para 14)
6. Abhishek Prabhakar Awasthy Vs. New India Assurance Company Ltd., 2013 SCC OnLine All 14267 (Para 19)
7. Rajeshwari Devi Vs. State of U.P. and others, 2011 SCC OnLine All 42 (Para 20)
8. Pushpa Devi Vs. State of U.P., 2023 SCC OnLine All 3264 (Para 21)

List of Keywords

retiral dues, pension, gratuity, service, dismiss, disciplinary proceedings, death, inquiry, maintenance, service records, prescribed period.

Appearances for Parties

For Petitioner(s): S M Singh Royekwar, Akhand Vikram Singh, Saksham Agarwal, Sumeet Tahilramani, Surya Bhan Singh

For Respondent(s): C.S.C.

(Delivered by Hon'ble Karunesh Singh Pawar, J.)

1. Heard Shri Sumeet Tahilramani learned counsel for the petitioner and Shri Ashwani Kumar Singh Rathore, learned Standing counsel for respondents.

Relief Sought

2. The petition has been filed seeking mandamus for releasing the salary dues of the late husband of the petitioner namely Ram Nath Gupta who died in harness on 02.12.2016 while working as Pharmacist (Homeopathy) in Government Homeopathic Hospital, Dhanaupur, Sultanpur.

Factual Background

3. The petitioner is the widow of late Ram Nath Gupta, who died in harness on 02.12.2016 while serving on the post of Pharmacist (Homeopathy) at the Government Homeopathic Hospital, Dhanaupur, Sultanpur.

4. The brief facts, as set forth in the petition, are that the petitioner's husband was initially appointed on 22.11.1984 to the post of Compounder in the Government Homeopathic Hospital. Subsequently, by order dated 11.09.2001, the Director (Homeopathy) dismissed him from service while he was working as a Pharmacist. The said dismissal order has been brought on record as Annexure No. 3. Aggrieved by the same, the order of dismissal was challenged before this Court. Pursuant to various orders passed by this Court, the State Government, vide order dated 30.01.2004, reinstated all similarly situated Pharmacists (Homeopathy) into service. Consequent thereto, the Director (Homeopathy), by order dated 13.02.2004, issued posting orders to the reinstated Pharmacists. Further, in continuation of the reinstatement, the Director (Homeopathy), vide communication dated 27.04.2004, issued necessary directions for payment of salary to such reinstated employees.

5. The petitioner's husband was once again dismissed from service on 03.07.2007. Challenging the said action, he preferred *Writ Petition No. 4633 (S/S) of 2007 titled Ram Nath Gupta vs. State of U.P. and others*. During the pendency of the said writ petition, certain other similarly situated employees, who had also been dismissed on identical grounds, approached this Court by filing Writ Petition No. 640 (S/S) of 2010 titled *Rajendra Pratap Srivastava vs. State of U.P. and others*, which came to be dismissed by order dated 04.02.2010. Against the said judgment, Special Appeal No. 123 of 2010 titled *Rajendra Pratap Srivastava vs. State of U.P. and others*, was preferred, which was allowed by a Division Bench of this Court vide judgment and order dated 12.08.2010. The Division Bench set aside the order under challenge and directed reinstatement of the appellant forthwith, along with payment of salary from the date of joining. It was further directed that the period of dismissal shall not be treated as a break in service. Additionally, liberty was granted to the authorities to conduct a fresh inquiry from the stage of submission of reply to the charge-sheet, to be concluded within a maximum period of four months from the date of service of the certified copy of the order.

6. Since the writ petition filed by the petitioner's husband, being *Writ Petition No. 4633 (S/S) of 2007*, involved identical questions of fact and law, a Coordinate Bench of this Court, vide

order dated 27.05.2011, allowed the said writ petition in terms of the judgment and order dated 12.08.2010 passed in *Special Appeal No. 123 of 2010*, insofar as it related to the petitioner's husband.

7. The respondents, vide office order dated 20.12.2011, acknowledged and acted upon the aforesaid order passed in Writ Petition No. 4633 (S/S) of 2007. In view of the directions issued in Special Appeal No. 123 of 2010, the respondents were under an obligation to conclude the disciplinary proceedings within a period of four months from the date of receipt of the certified copy of the said order. Since the respondents had acknowledged the order by issuing the office order dated 20.12.2011, it can reasonably be inferred that the time period for concluding the inquiry was to be reckoned from that date. In compliance with the judgment dated 27.05.2011, the Director (Homeopathy), by office memorandum dated 20.12.2011, reinstated the petitioner's husband in service at Government Hospital, Dhanaupur, Sultanpur. It is pertinent to note that the petitioner's husband was also a beneficiary of the judgment dated 12.08.2010 passed in *Special Appeal No. 123 of 2010*, and therefore, the inquiry against him was required to be concluded within the stipulated period of four months.

8. In furtherance thereof, an inquiry committee was constituted under the Chairmanship of Dr. Anand Kumar Chaturvedi, the then Principal of Government Shri Durgaji Homeopathy Medical College and Hospital, Azamgarh. The petitioner's husband appeared before the inquiry committee on 19.09.2012 and submitted his written statement. The Inquiry Officer, however, found him guilty of obtaining appointment on the basis of forged and fabricated documents. The inquiry report dated 08.07.2013 was forwarded to him through a letter dated 10.07.2014 issued by the Directorate, calling upon him to submit his reply along with supporting documents.

9. In response thereto, late Ram Nath Gupta submitted his reply on 22.08.2014, asserting his innocence and requesting re-investigation and a fresh inquiry. Thereafter, vide letter dated 19.09.2014, the Directorate forwarded copies of educational and technical qualification certificates along with other relevant records pertaining to his appointment, and directed him to appear before the authorities. In reply, the petitioner's husband, vide letter dated 13.11.2014, informed that he was suffering from cancer and undergoing treatment at Tata Memorial Hospital, Mumbai, and accordingly sought time on medical grounds. Subsequently, on 02.12.2016, he passed away while the departmental inquiry was still pending. Notably, no final order concluding the disciplinary proceedings or imposing any punishment was ever passed against him. The death certificate has been placed on record as Annexure No. 1. Thus, the departmental inquiry remained inconclusive at the time of his death.

Arguments of Learned Counsel for the Petitioner

10. Submission of the petitioner is that upon the death of the petitioner's husband during the pendency of the disciplinary proceedings, the said proceedings stood abated. It is further contended that in view of the specific direction issued in Special Appeal No. 123 of 2010 (supra), requiring the inquiry to be concluded within a period of four months from the date of receipt of the certified copy of the order, the respondents cannot be permitted to keep the inquiry pending indefinitely without seeking appropriate extension or leave from this Court. Since Writ Petition No. 4633 (S/S) of 2007 filed by the petitioner's husband had been allowed in terms of the aforesaid

Special Appeal, the inquiry in his case was also required to be concluded within the same stipulated period.

11. It is also submitted that, by virtue of the acknowledgment letter dated 20.12.2011 issued by the Director (Homeopathy), the petitioner's husband stood reinstated, and from that date onwards, the respondents were under a legal obligation to conclude the inquiry within four months. However, it remains undisputed that the inquiry proceedings were not concluded within the prescribed time and, in fact, continue to remain pending.

12. In support of the aforesaid submissions, learned counsel for the petitioner has placed reliance upon the following judgments rendered by this Court, wherein it has been categorically held that in cases where a disciplinary inquiry remains incomplete and the delinquent employee dies during its pendency, such proceedings cannot thereafter be continued or concluded:

(i) *A.K.S. Rathore (Dead) through LRs vs. Union of India, Civil Appeal No. 7028 of 2022 (with particular emphasis on paragraph 8);*

(ii) *Rajeshwari Devi vs. State of U.P. and others, 2011 SCC OnLine All 42 (with emphasis on paragraph 6);*

(iii) *Pushpa Devi vs. State of U.P. and another, Writ-A No. 15004 of 2022 (with emphasis on paragraph 11).*

13. It has further been contended on behalf of the petitioner that where a court directs that an inquiry be concluded within a specified period, the same is required to be strictly adhered to, and the proceedings cannot be permitted to continue beyond the stipulated time without obtaining leave of the Court. In support of this submission, reliance has been placed upon the judgment of the Hon'ble Supreme Court in ***State of Uttar Pradesh vs. Ram Prakash Singh, 2025 SCC OnLine SC 891***, particularly paragraphs 62 and 63 thereof.

14. Lastly, it has been urged on behalf of the petitioner that the respondents are illegally withholding the retiral and consequential service benefits of late Ram Nath Gupta, the petitioner's husband, on the pretext that his service book and GPF passbook are not traceable. In this regard, learned counsel for the petitioner has drawn the attention of this Court to the judgment rendered in *Satya Prakash Srivastava vs. State of U.P., Writ-A No. 5008 of 2024*, to contend that the department cannot take shelter under the plea of missing service records to deny an employee the benefits to which he is otherwise lawfully entitled.

Arguments of Learned Counsel for the Respondents

15. Per contra, learned Standing Counsel has opposed the submissions advanced on behalf of the petitioner, contending that disciplinary proceedings against the petitioner's husband, late Ram Nath Gupta, were still pending. It is further submitted that in the absence of the service book and GPF records, the petitioner is not entitled to claim any retiral or consequential benefits.

Consideration by the Court

16. The Court has considered the rival submissions and perused the record.

17. It is not in dispute between the parties that late Ram Nath Gupta died on 02.12.2016 while in service. It is further admitted that he had been reinstated in service on 20.12.2011 and had continuously discharged his duties from the date of reinstatement till his demise on 02.12.2016. It is also an admitted position that the disciplinary proceedings initiated against the petitioner's husband remained pending and were not brought to their logical conclusion. The State has failed to assign any plausible or justifiable reason as to the basis on which the disciplinary proceedings could be continued beyond the stipulated period of four months, particularly in the face of the categorical directions issued in Special Appeal No. 123 of 2010, read with the order passed in Writ Petition No. 4633 of 2007 (Ram Nath Gupta vs. State of U.P. and others).

18. The Hon'ble Supreme Court, in State of Uttar Pradesh vs. Ram Prakash Singh (supra), has clearly enunciated in paragraphs 62 and 63 of the judgment that where a court directs that disciplinary proceedings be concluded within a fixed time frame, such direction is binding and must be strictly adhered to. It has been held that if, for any reason, the proceedings cannot be concluded within the prescribed period, it is incumbent upon the authority concerned to seek extension of time by moving an appropriate application before the Court. The judgment further clarifies that even in cases where the delinquent employee does not object to continuation of proceedings beyond the stipulated period, the disciplinary authority is nevertheless under a legal obligation to obtain prior leave of the Court before proceeding further or passing any final order. The relevant paragraphs 62 and 63 are extracted hereunder:

"62. While affirming the aforesaid view of the Full Bench, we would like to provide clarification on certain points not touched by such bench. First, in view of unseen institutional hurdles that can slow down swift action, it may not always be possible for the disciplinary authority in each such case where a fixed time has been stipulated by a tribunal/court to conclude the proceedings to apply and seek extension of time before expiry of such time although there can be no gainsaying that applying and obtaining an extension before expiry is eminently desirable. In exceptional cases, even after expiry of the stipulated time, such an application can be moved; and, depending on the cause shown for inability or failure to conclude the proceedings within the time stipulated and also for not applying for extension before expiry, the tribunal/court may, in its discretion, allow or reject the prayer for extension. If the application is rejected, the proceedings cannot be carried forward unless a superior court, reversing the order of rejection, permits the disciplinary authority to so proceed. Secondly, if the delinquent employee objects to continuation of proceedings beyond the time stipulated, the disciplinary authority without proceeding further ought to apply for extension of time and may not go ahead till such time its prayer for extension is granted on such application. Proceeding despite objection and without there being an extension could give rise to apprehensions of bias. Therefore, applying for extension upon halting the proceedings awaiting order on the application would be an advisable course of action to balance the interests of both the employer and the employee. Thirdly, even if the delinquent employee has not objected to continuation of proceedings beyond the time stipulated by the tribunal/court but before the final order is passed in the proceedings, the disciplinary authority would be bound to

seek and obtain extension of time. This is for the simple reason that the sanctity of the orders of tribunals/courts cannot be disrespected by errant parties. The dignity of the judicial process would be seriously eroded and there would be nothing left of the rule of law if orders of tribunals/courts, validly made, are disobeyed and the disobedience is encouraged by being indulgent. Finally, we hasten to add that if a tribunal/court stipulates a fixed time by which an enquiry or proceedings for disciplinary action ought to be concluded coupled with a rider that, in default, the enquiry/proceedings will stand lapsed, the disciplinary authority in such a case would cease to have the jurisdiction to proceed further unless, of course, citing genuine grounds, a recall of such default clause is sought and obtained to proceed further in accordance with law.

63. We also hold that continuation of disciplinary proceedings beyond the time stipulated by a tribunal/court could invite interdiction if no bona fide attempt is shown to have been made to seek an extension of time. However, much would depend on the facts of each case and it may not be possible to lay down a common formula applicable to each case. In an exceptional case, the tribunal/court would have the discretion to overlook the laxity and make such direction as it deems fit in the circumstances."

19. In view of the aforesaid legal position, and considering that the judgment in *Special Appeal No. 123 of 2010, read with Writ Petition No. 4633 of 2007 (Ram Nath Gupta vs. State of U.P. and others)*, had admittedly come to the knowledge of the respondents, as is evident from the office memorandum dated 20.12.2011, it was incumbent upon the respondents to conclude the inquiry proceedings within the stipulated period of four months. Alternatively, they ought to have sought extension of time from the Court in accordance with law. The continuation of disciplinary proceedings beyond the prescribed time frame, without obtaining leave of the Court, is clearly impermissible. Furthermore, upon the death of the employee, the disciplinary proceedings automatically stand abated. In this regard, this Court in ***Abhishek Prabhakar Awasthy vs. New India Assurance Company Ltd., 2013 SCC OnLine All 14267***, has held as follows:

"18. These judgments of the Supreme Court consequently recognize that the delay in concluding a departmental enquiry would not ipso facto vitiate the proceedings or render it invalid or non est. The Court has to take into consideration and balance all the relevant factors. The Court must consider in that balance the need for preserving the sanctity of the administration. On the other hand, fairness towards the delinquent employee requires that disciplinary proceedings should be concluded expeditiously. Hence, the nature of the charge, its complexity and the reasons for that delay are all relevant considerations which have to be borne in mind. Where the court has stipulated a period of time within which an enquiry has to be concluded, the direction of the Court, particularly in the form of a mandamus, has to be duly observed. It would not be open to the employer to willfully disregard the fixation of a time limit as a matter of no consequence. However, the fixation of a period within which a disciplinary enquiry has to be concluded, in an order of the Court, does not deprive the court of its jurisdiction to extend time in an appropriate case having due regard to all the facts and circumstances which have been noted above. Whether the time should be extended on a consideration of the relevant circumstances is for the court to determine."

20. Similarly, in ***Rajeshwari Devi vs. State of U.P. and others, 2011 SCC OnLine All 42***, this Court, in paragraph 6, has categorically held that upon the death of an employee, all his ties

with worldly affairs, including the relationship of employment, come to an end. It has been observed that no punitive order can be passed against a deceased employee, as the imposition of punishment under the applicable service rules presupposes the existence of a living employee. Thus, the employer-employee relationship ceases immediately upon the death of the employee. The relevant paragraph 6 is extracted below:

"6. Holding of departmental enquiry and imposition of punishment contemplates a pre-requisite condition that the employee concerned, who is to be proceeded against and is to be punished, is continuing an employee, meaning thereby is alive. As soon as a person dies, he breaks all his connection with the worldly affairs. It cannot be said that the chain of employment would still continue to enable employer to pass an order, punitive in nature, against the dead employee. All the punishments contemplated under the rules are such which can be imposed on a person who is still continuing to be an employee. Sri Anil Tiwari, learned counsel appearing for respondent-Nagar Nigam, on repeated query did not controvert the fact that as soon as an employee dies, his relationship of employer and employee comes to an end. This would automatically result in cessation of proceedings including departmental proceedings pending against him."

21. In ***Pushpa Devi vs. State of U.P., 2023 SCC OnLine All 3264***, this Court has reiterated the settled legal position that disciplinary proceedings cannot be continued against a deceased employee. The relevant paragraph of the said judgment is extracted hereunder:

"25. So far as, present case is concerned, inquiry proceeding was initiated, charge sheet was issued, but before submission of reply of the charge sheet, husband of petitioner died. Inquiry officer came to the conclusion that, as husband of petitioner (employee) died during the pendency of inquiry proceeding, therefore, it is required on the part of disciplinary authority to drop the disciplinary proceeding. Thereafter, no further order has been passed upon the inquiry proceeding. Only after filing of writ petition by the petitioner, order was passed to decide the representation of petitioner dated 21.12.2021, upon which order of recovery dated 27.05.2022 has been passed for recovery of amount of Rs. 10,14,594/-. In fact, it is nothing, but re-initiation of earlier inquiry, which has not been completed in light of recommendation made by the inquiry committee."

22. Thus, in light of the aforesaid judicial pronouncements, the legal position stands crystallized that where a delinquent employee dies during the pendency of disciplinary proceedings, such proceedings cannot be continued thereafter and are liable to be treated as having abated. Upon the demise of the employee, the relationship between the employer and the employee ceases to exist, and consequently, no further action in the nature of disciplinary proceedings can be sustained in the eyes of law.

23. Insofar as the contention advanced by learned counsel for the State that in the absence of the service book and GPF passbook of the petitioner's late husband, the employer cannot be compelled to extend service benefits is concerned, the same is devoid of merit. In *Satya Prakash Srivastava vs. State of U.P. (supra)*, it has been categorically held that the responsibility for proper maintenance, safe custody, and upkeep of service records lies squarely upon the concerned department and not upon the employee. In the event such records are found to be missing or misplaced, the burden lies upon the department to reconstruct or verify the service particulars of the

employee from available sources. The department cannot be permitted to derive advantage from its own lapse, nor can such deficiency be used as a ground to deny legitimate service benefits to an employee or his legal heirs. The relevant extract from the said judgment is reproduced hereunder:-

"11. It is trite that the responsibility of safe keeping and upkeep of service records of an employee is upon the department itself and not the employee and in case such service records are missing or misplaced, onus is upon the department itself to complete such service details of an employee. In the absence of any such service records, the department cannot take benefit of such an omission nor such burden can be shifted upon the employee so as to deny him benefits to which he is justifiably expected."

Conclusion and Directions

24. In view of the aforesaid discussion and the undisputed factual matrix of the case, this Court is of the considered opinion that the petitioner is entitled to the release of all consequential service benefits of her late husband. Accordingly, the opposite parties are directed to ensure the payment of all retiral dues, including gratuity, General Provident Fund (GPF), and family pension, in respect of late Ram Nath Gupta, who died in harness on 02.12.2016 while serving as Pharmacist (Homeopathy) at Government Homeopathic Hospital, Dhanaupur, Sultanpur. The aforesaid amounts shall be released within a period of three months from the date of production of a certified copy of this order, along with simple interest at the rate of 7% per annum, calculated from the date on which the petitioner became entitled to such benefits, i.e., 21.12.2016, being the date on which the application for release of post-retiral dues was submitted.

25. The writ petition is, accordingly, *allowed*.

(2026) 4 ILRA 1869
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 13.04.2026

BEFORE

THE HON'BLE MRS. MANJU RANI CHAUHAN, J.

Writ A No. 10432 of 2019

Vijai Kumar Yadav

...Petitioner

Versus

State of U.P. & Ors.

...Respondents

Issue(s) for consideration

(a) Whether a termination based on alleged "suppression of facts" can stand if the non-disclosure did not result in an unfair eligibility advantage or prejudice to the employer?

(b) Whether a variance in the recorded DOB across different genuine certificates automatically amounts to fraud or actionable civil misconduct?

Headnotes

A. Service Law – The petitioner successfully passed his Purva Madhyama (2001) and Shastri (2009) degrees from Sampurnanand Sanskrit Vishwavidyalaya, Varanasi, and his Uttar Madhyama from the U.P. Secondary Sanskrit Education Board, Lucknow. Based on these foundational educational qualifications, he completed the Basic Training Certificate (BTC) course in 2010 and qualified the U.P. Teacher Eligibility Test (TET) in 2013. Pursuing a recruitment drive initiated in 2013, the petitioner was appointed to the post of Assistant Teacher in a Junior Basic School by the Basic Shiksha Adhikari (BSA), Mau, via an appointment order dated 08.08.2014. He joined and served without any complaints or adverse remarks.

Following a Right to Information (RTI) application filed by a third party, an inquiry was conducted into the petitioner's qualifications. The inquiry revealed that the petitioner's Class VIII scholar register (1994-95), his Class IX admission form at National Inter College, and an unsubmitted 1998 High School certificate recorded his DOB as 02.07.1984. However, the Purva Madhyama certificate (2001) used to secure his BTC admission and subsequent teacher appointment recorded his DOB as 07.07.1987. On 27.06.2019, the BSA, Mau, dismissed the petitioner from service on grounds of deliberate concealment of material facts and misconduct, directing the lodging of a FIR against him. The petitioner moved the High Court via this writ petition to quash the dismissal.

B. Unless it is shown that the alleged misrepresentation had a direct bearing on the selection process or conferred a tangible advantage upon the candidate, the extreme consequence of nullifying the appointment cannot be justified. (Para 66, 68)

The *sine qua non* for sustaining an allegation of fraud is not merely the existence of an irregularity, but the presence of a deliberate design to secure an advantage which materially impacts the selection. In absence thereof, the action of the authorities in branding the appointment as void would not withstand judicial scrutiny. (Para 67, 69)

The respondents have failed to establish any element of fraud, misrepresentation, or deliberate concealment on the part of the petitioner. The discrepancy in the DOB, in the factual conspectus of the present case, does not rise to the level of culpability so as to justify the extreme measure of cancellation of appointment. (Para 63)

C. In the absence of any foundational finding, the mere existence of variance in the DOB across different certificates pales into insignificance. No categorical or definitive finding has been recorded by the competent authority to the effect that the petitioner had deliberately relied upon the Madhyama certificate in substitution of the earlier High School certificate with a view to secure any undue benefit or to mislead or to gain an advantage in the matter of appointment. The controversy, therefore, remains largely academic and does not have a determinative bearing on the core issue involved in the present case. (Para 71, 72)

Courts do not adjudicate upon abstract or hypothetical questions which do not directly impact the *lis*. Since the respondents themselves have not returned any finding attributing motive or advantage to the petitioner on account of the alleged discrepancy, this Court finds no occasion to enter into an elaborate examination of the said issue. (Para 73)

There is no categorical or substantiated allegation to the effect that the educational documents furnished by the petitioner before the respondents were forged, fabricated, or otherwise false in nature. (Para 75)

The impugned order dated 27.06.2019 is quashed. Since no interim order was operating in favour of the petitioner during the pendency of the writ petition, and the **petitioner** has admittedly not discharged any duties for the intervening period, he **shall not be entitled to claim salary for the said period, in consonance with the well-settled principle of "no work, no pay."** (Para 76, 78, 80)

Writ petition allowed.

Case Law Cited

1. Kavita Kuril Vs. State of U.P. and others, 2023 (12) ADJ 571 (Para 24)
2. Sheoraj Singh Vs. State of U.P. and others, Writ-A No. 35397 of 2012, decided on 27.08.2012 (Para 27)
3. Kamla Kant Yadav Vs. State of U.P. and others, Writ-A No. 10431 of 2019, decided on 06.02.2023 (Para 27)
4. Ashok Kumar Singh Vs. State of U.P. and others, Writ-A No. 1064 of 2021, decided on 22.07.2024 (Para 64)

List of Keywords

misrepresentation, suppression, advantage, termination, void, irregularity, fraud, selection, date of birth, discrepancy.

Appearances for Parties

For Petitioner(s): Ashok Khare, Sr. Advocate, Siddharth Khare

For Respondent(s): Shashi Prakash Singh, C.S.C., Syed Nadeem Ahmad

(Delivered by Hon'ble Mrs. Manju Rani Chauhan, J.)

1. Heard Mr. Siddharth Khare, learned counsel for the petitioner, Mr. Shashi Prakash Singh, learned counsel for the respondent-BSA and Mr. Shailendra Singh, learned Standing Counsel for the State-respondents.

2. The writ petition has been filed with the following prayers:-

“(i) Issue a writ, order or direction in the nature of certiorari quashing the order dated 27.06.2019 passed by Basic Shiksha Adhikari, Mau.

(ii) Issue a writ, order or direction of suitable nature restraining the respondents from taking any action on the basis of the order impugned.

(iii) Issue a writ, order or direction of suitable nature commanding the respondents not to interfere in the working of the petitioner as Assistant Teacher under the respondents and to pay the petitioner his regular monthly salary on the said post regularly every month.

(iv) Issue any other suitable writ, order or direction which this Court may deem fit and proper under the facts and circumstances of the case.”

3. Learned counsel for the petitioner submits that the petitioner possesses the requisite academic and professional qualifications for appointment to the post in question. It is contended that the petitioner passed the Purva Madhyama examination from Sampurnanand Sanskrit Vishwavidyalaya, Varanasi in the year 2001, and thereafter qualified the Uttar Madhyama examination conducted by the U.P. Secondary Sanskrit Education Board, Lucknow. Subsequently, the petitioner is stated to have obtained the Shastri degree from Sampurnanand Sanskrit Vishwavidyalaya in the year 2009.

4. On the strength of the aforesaid qualifications, it is further submitted that the petitioner was granted admission to the Basic Training Certificate (BTC) course in the year 2010, which he successfully completed. A BTC Training Certificate for the said session was duly awarded to him by the Examination Regulatory Authority, Uttar Pradesh, Allahabad.

5. It is also urged that the petitioner has qualified the U.P. Teacher Eligibility Test (TET), 2013, for the Primary Level, and thus fulfills all essential eligibility criteria prescribed for appointment as an Assistant Teacher.

6. Learned counsel for the petitioner further submits that the petitioner, being duly qualified and fully eligible in terms of the prescribed criteria, applied for consideration for appointment to the post of Assistant Teacher pursuant to the selection process initiated in the year 2013. The said selection pertained to appointments in Junior Basic Schools established and administered by the Board of Basic Education across various districts of the State, including District Mau. It is contended that the petitioner's candidature was duly considered in accordance with the applicable rules and procedure governing the said recruitment exercise.

7. Learned counsel for the petitioner further submits that, pursuant to the aforesaid selection process, the petitioner was duly selected and appointed to the post of Assistant Teacher vide appointment order dated 08.08.2014 issued by the Basic Shiksha Adhikari, Mau. It is contended that the petitioner, in compliance with the said appointment order, joined his duties forthwith and has since been discharging his functions diligently and to the full satisfaction of the respondent authorities, without any complaint or adverse remark.

8. Learned counsel for the petitioner further submits that one Rajesh Yadav submitted an application dated 18.10.2018 before the Basic Shiksha Adhikari, Mau, purportedly under the Right to Information Act, 2005, seeking supply of copies of the petitioner's educational qualification certificates and mark sheets on the basis of which he had been granted appointment.

9. It is contended that, notwithstanding the fact that the said application was not maintainable in law, the Additional Director of Education (Basic), by means of communication dated 26.03.2019, directed the petitioner to furnish copies of his educational qualification certificates.

10. In response to the aforesaid communication, the petitioner duly furnished self-attested copies of all his educational certificates along with a covering letter dated 30.05.2019.

11. It is submitted on behalf of the petitioner that the Basic Shiksha Adhikari, Mau issued a notice dated 15.05.2019, calling upon the petitioner to appear for a personal hearing on 30.05.2019 in connection with the alleged discrepancies in the certificates and mark sheet submitted by the petitioner on 30.04.2019.

12. In compliance with the aforesaid notice, the petitioner duly furnished a detailed reply dated 03.06.2019, addressing the allegations levelled therein.

13. On 27.06.2019, a further order came to be passed by the Basic Shiksha Adhikari, Mau, whereby the petitioner was purportedly dismissed from service, coupled with a direction for lodging of a First Information Report against him.

14. It is submitted on behalf of the petitioner that his admission to the BTC Training Course, 2010 was granted on the basis of duly obtained academic qualifications, namely, Purva Madhyama from Sampurnanand Sanskrit Vishwavidyalaya (2001), Uttar Madhyama from the U.P. Secondary Sanskrit Education Board, Lucknow, and Shastri degree (2009) from Sampurnanand Sanskrit Vishwavidyalaya.

15. It is further contended that none of the aforesaid certificates or mark sheets have ever been alleged to be forged, fabricated, or otherwise tainted with any discrepancy. Even the impugned order is conspicuously silent in this regard and does not record any adverse finding qua the genuineness of these foundational qualifications.

16. In such circumstances, the very substratum of the petitioner's eligibility and induction into the BTC Training Course remains unimpeached, and in the absence of any finding discrediting the said qualifications, the impugned action stands vitiated in law and is liable to be set aside.

17. It is submitted on behalf of the petitioner that the impugned order proceeds on an erroneous and wholly misconceived premise by placing reliance upon an alleged discrepancy in the date of birth recorded in a High School Certificate of the year 1998, wherein the date of birth is mentioned as 02.07.1984, as against the date recorded in the Purva Madhyama certificate as 07.07.1987.

18. It is vehemently contended that the aforesaid High School Certificate has neither been relied upon nor ever produced by the petitioner at any stage. The same was not utilized for seeking admission to the BTC Training Course, 2010, nor was it furnished at the time of appointment. No benefit, whatsoever, has been derived by the petitioner on the basis of the said certificate at any point in time.

19. In such circumstances, the reliance placed upon a document which neither forms part of the petitioner's record nor has been used by him for any official purpose is wholly unjustified and legally unsustainable. The impugned order, to the extent it is founded upon such extraneous and irrelevant consideration, stands vitiated in law and is liable to be set aside.

20. It is submitted on behalf of the petitioner that there is no allegation, much less any finding, that his appointment was procured by fraud or on the basis of any forged or fabricated mark sheet.

21. It is further contended that the petitioner's appointment is founded upon his Purva Madhyama qualification (2001), wherein his date of birth is recorded as 07.07.1987. On the strength of the said qualification, the petitioner duly pursued and obtained Uttar Madhyama and Shastri qualifications, thereafter successfully completed the BTC training in the year 2012 and qualified the U.P. Teacher Eligibility Test (UP-TET) in 2013.

22. It is emphatically urged that all the aforesaid certificates and mark sheets are genuine and have never been questioned or discredited by the respondents. In the absence of any allegation

of fraud, misrepresentation, or fabrication, there existed no justifiable basis for passing the impugned order.

23. Accordingly, the impugned action, being arbitrary, unfounded, and contrary to settled principles of law, is liable to be set aside.

24. The petitioner has placed reliance upon the judgment rendered in **Kavita Kuril vs. State of U.P. and others, reported in 2023 (12) ADJ 571**, to contend that the date of birth recorded in the High School mark sheet is to be treated as final and determinative, and the same forms the basis for its entry in the service book.

25. Building upon the said proposition, it has been urged that the date of birth of the petitioner, as reflected in Purva Madhyama mark sheet of the year 2001, i.e., 07.07.1987, deserves to be accepted for all intents and purposes. It is, thus, submitted that once such date of birth has consistently formed the foundation of the petitioner's educational and service records, any discrepancy in other certificates cannot be made a ground to sustain the impugned order.

26. In essence, the argument advanced is that in the absence of any allegation of fraud or manipulation, and where the date of birth has been uniformly acted upon by the authorities themselves, the same attains finality and cannot be unsettled to the detriment of the petitioner. Consequently, the impugned action, being founded merely upon a variance in date of birth in different certificates, is liable to be held unsustainable in the eyes of law.

27. Placing reliance upon the judgments rendered in **Sheoraj Singh vs. State of U.P. and others (Writ-A No. 35397 of 2012, decided on 27.08.2012)** and **Kamla Kant Yadav vs. State of U.P. and others (Writ-A No. 10431 of 2019, decided on 06.02.2023)**, learned counsel for the petitioner has endeavoured to contend that even in cases where there exists a discrepancy in the date of birth recorded in two High School mark sheets, such discrepancy by itself would not vitiate the appointment, provided the certificate relied upon for securing appointment is genuine and not tainted by fraud or fabrication.

28. He submits that, where a candidate has appeared in the High School examination more than once and different mark sheets reflect different dates of birth, the mere non-disclosure of one such mark sheet would not ipso facto amount to fraud or misconduct, so long as the mark sheet relied upon for appointment is a valid and genuine document. The Hon^{ble} Court, in the said cases, has clearly held that unless it is established that the certificate in question is forged or fabricated, or that the discrepancy has conferred an undue advantage upon the candidate, such as rendering him eligible despite being otherwise ineligible, the appointment cannot be annulled merely on the ground of variance in the date of birth.

29. He further submits that, where, on both the dates of birth, the candidate would not fall within the category of being underage or otherwise ineligible, the element of deceit or prejudice to the employer is conspicuously absent. In such circumstances, the act cannot be construed as misconduct warranting termination.

30. Learned counsel for the petitioner has further contended that the impugned order has been passed in complete disregard of the procedure prescribed under the Rules, 1999, inasmuch as no proper or detailed inquiry, as mandatorily required, has been conducted prior to taking the impugned action. It is urged that the absence of such an inquiry vitiates the entire decision-making process, rendering the impugned order wholly arbitrary and in flagrant violation of the principles of natural justice.

31. It has been further submitted that the educational certificate of Purva Madhyama issued by Sampooranand Sanskrit Vishwavidyalaya in the year 2001 continues to hold the field and has neither been cancelled nor declared invalid by any competent authority. On the strength of the said certificate, the petitioner has admittedly acquired further qualifications, namely Uttar Madhyama, Shastri degree, and has also secured admission to the BTC training course, all of which have been accepted by the concerned authorities at the relevant point of time.

32. In such circumstances, it is contended that once the foundational certificate remains intact and has been consistently acted upon by the respondents themselves, no adverse inference of fraud or misrepresentation can be drawn against the petitioner. The allegation of fraud, in the absence of any cogent material or a duly conducted inquiry culminating in a definitive finding, cannot be sustained in law.

33. Thus, it is urged that the impugned orders, having been passed without adherence to the prescribed procedure and in violation of the principles of natural justice, coupled with the absence of any legally sustainable finding of fraud, are liable to be set aside.

34. Per contra, learned counsel appearing for the respondent□District Basic Education Officer has submitted that the impugned action is fully justified and has been taken upon due consideration of the material brought on record during the course of inquiry.

35. It is contended that pursuant to a complaint dated 10.04.2019, an inquiry was instituted, culminating in a report dated 18.06.2019 submitted by the Inquiry Officer. As per the said report, the scholar register pertaining to Class VIII, bearing Registration No. 2188 of the session 1994-95, records that the petitioner passed Class VIII in the year 1996, wherein the date of birth is entered as 02.07.1984. Further, the application form submitted by the petitioner for admission to Class IX in National Inter College also reflects the date of birth as 02.07.1984. It is further pointed out that the High School records, including the relevant gazette notification, similarly indicate the date of birth of the petitioner as 02.07.1984.

36. On the strength of the aforesaid material, it is argued that the petitioner was fully aware of the earlier recorded date of birth, yet deliberately withheld the said information and instead relied upon the Purva Madhyama certificate reflecting a different date of birth. Such non-disclosure, according to the respondents, is not a mere discrepancy but a conscious suppression of material facts, which goes to the root of the matter.

37. It is thus submitted that the act of the petitioner in seeking appointment on the basis of a certificate reflecting a different date of birth, without disclosing the existence of prior records to

the contrary, clearly amounts to misconduct. The element of deliberate concealment disentitles the petitioner from any equitable relief under writ jurisdiction.

38. In view thereof, it is urged that the impugned orders, having been passed on the basis of a duly conducted inquiry and supported by documentary evidence, do not suffer from any illegality or infirmity warranting interference by this Court.

39. Learned counsel for the respondent further contends that it is a settled proposition of law that in cases involving concealment of material facts or fraud, the requirement of conducting a detailed inquiry or affording an elaborate opportunity of hearing stands considerably diluted. It is urged that where the foundational facts are borne out from undisputed documentary evidence, the principles of natural justice cannot be stretched to an extent so as to defeat the ends of justice.

40. It has been further submitted that, notwithstanding the aforesaid legal position, the petitioner was, in fact, afforded adequate opportunities to explain his stand. As is evident from the impugned order itself, repeated notices were issued calling upon the petitioner to furnish an explanation with regard to the non-disclosure of earlier certificates reflecting a different date of birth. However, the petitioner failed to furnish any plausible or satisfactory explanation for such non-disclosure.

41. In such circumstances, it is contended that the plea of violation of principles of natural justice is wholly misconceived and untenable. The conduct of the petitioner, in deliberately withholding material information despite being afforded sufficient opportunity, clearly disentitles him from invoking the equitable jurisdiction of this Court.

42. Accordingly, it is urged that the impugned order, having been passed after due consideration of the available material and after affording reasonable opportunity to the petitioner, does not suffer from any procedural impropriety or legal infirmity warranting interference.

43. Heard learned counsel for the parties at considerable length and perused the entire material available on record.

44. At the outset, this Court is constrained to observe that the edifice of the respondents' case rests upon the solitary circumstance of a divergence in the dates of birth as reflected in different educational records of the petitioner. However, a mere discrepancy, bereft of any attendant element of deceit, cannot, by any judicially accepted standard, be elevated to the pedestal of fraud or wilful misrepresentation.

45. Fraud, it is trite, is not to be presumed; it must be pleaded with specificity and established by cogent and unimpeachable evidence. The record, in the present case, is conspicuously silent on any material which may evince a deliberate design on the part of the petitioner to secure an undue or unwarranted advantage by projecting a particular date of birth. The certificates relied upon by the petitioner are not alleged to be forged, fabricated, or spurious; rather, they are documents issued by competent authorities and continue to subsist in the eyes of law.

46. The gravamen of the allegation is non-disclosure of certain earlier certificates reflecting a different date of birth. Yet, non-disclosure, to assume the character of misconduct, must be shown to be purposeful, calculated, and actuated by a discernible intent to deceive. In the absence of such mens rea, the omission remains, at best, an irregularity and not a culpable act warranting the drastic consequence of annulment of appointment.

47. What further dislodges the respondents' case is the incontrovertible position that, even if the date of birth as recorded in the High School certificate is accepted, the petitioner would nonetheless remain within the bounds of eligibility for appointment to the post in question. Thus, the foundational requirement of gain or advantage an indispensable concomitant of fraud is wholly absent. The alleged discrepancy, therefore, does not translate into any prejudice either to the employer or to competing candidates.

48. This Court cannot remain oblivious to the well-settled judicial pronouncements in Sheoraj Singh (supra), wherein it has been unequivocally held that mere variance in dates of birth across certificates, in the absence of forgery or demonstrable advantage, does not ipso facto constitute misconduct. The ratio laid down therein lends authoritative support to the proposition that authenticity of the document and absence of undue benefit are determinative factors.

49. However, upon a careful consideration of the present factual matrix, this Court finds that the applicability of the aforesaid judgments is contingent upon certain foundational facts being satisfied. The protection extended in the said cases is predicated upon the existence of two genuine High School mark sheets issued by the same examining body, coupled with the absence of any allegation of fraud and absence of any consequential advantage gained by the candidate.

50. If, in the present case, the discrepancy pertains not merely to two High School certificates but extends to different classes of certificates, or where the foundational document forming the basis of appointment itself is under a cloud, the ratio of the aforesaid judgments may not be attracted in its full rigour.

51. Nevertheless, if it is demonstrated that the petitioner has relied upon a bona fide and genuine certificate, that no element of forgery or fabrication is involved, and that irrespective of the differing dates of birth the petitioner remained eligible for appointment, then the principle laid down in the aforesaid judgments would lend considerable support to the petitioner's case.

52. Thus, the issue is not merely of discrepancy in date of birth, but of the nature of the document relied upon, the existence or absence of fraudulent intent, and the question whether any undue advantage has been derived. The answer to these factors would ultimately determine the applicability of the law laid down in the aforesaid decisions.

53. However, the matter does not end merely upon noticing non-disclosure. The Court is equally bound to examine whether such omission has, in fact, resulted in any prejudice to the employer or conferred any undue advantage upon the petitioner. In the present case, it is not in dispute that both the certificates relied upon by the parties are genuine and issued by competent authorities, and there is no allegation of fabrication or manipulation. More importantly, the

difference in the dates of birth reflected therein has not been shown to have afforded any advantage to the petitioner, either in terms of eligibility, age relaxation, or otherwise.

54. It is well settled that while suppression of a material fact may, in given circumstances, vitiate an appointment, such principle cannot be applied in a mechanical or pedantic manner. The doctrine of proportionality and the requirement of absence of prejudice must guide the exercise of judicial review. Where the discrepancy is neither deliberate so as to secure an unfair benefit nor has it resulted in distortion of the selection process, the extreme consequence of cancellation of appointment would be wholly disproportionate.

55. In the considered opinion of this Court, the omission on the part of the petitioner to disclose the earlier certificate, though not to be appreciated, does not rise to the level of a culpable suppression so as to invalidate the appointment, particularly when no tangible advantage has accrued and the selection process remains unaffected. To visit the petitioner with the drastic consequence of termination in such circumstances would be unjust and inequitable.

56. Accordingly, this Court holds that the impugned action of the respondents in cancelling the appointment of the petitioner cannot be sustained in the eyes of law and is liable to be set aside. The writ petition, therefore, deserves to be allowed.

57. The ratio decidendi of the judgment rendered in **Kavita Kuril vs. State of U.P. and others, 2023 (12) ADJ 571**, is that the date of birth recorded in the High School certificate is to be treated as the primary and conclusive proof of age, particularly when the same has been consistently relied upon by the authorities for the purposes of service records. The Court, in the said case, held that once the date of birth has been duly entered in the service book on the basis of such foundational document and there is no allegation of fraud, misrepresentation, or fabrication, the same cannot be lightly altered or disregarded on the basis of discrepancies in other educational certificates.

58. Applying the aforesaid principle to the facts of the present case, this Court finds that the reliance placed by the petitioner upon the said judgment is of limited assistance. The distinguishing feature lies in the nature of the certificates in question. In the case at hand, the petitioner seeks to place primacy not on the High School certificate, but on the Madhyama and Purva Madhyama mark sheets of the year 2001, to assert the date of birth as 07.07.1987.

59. It is trite that the High School certificate, being the earliest public document issued by a recognized Board, ordinarily carries greater evidentiary value in determination of date of birth. The ratio in **Kavita Kuril (supra)** is premised upon this very principle. However, in the present factual matrix, the petitioner has not demonstrated that the said date of birth, as claimed, is borne out from the High School certificate or that the same formed the basis of initial entry in service records without dispute.

60. Moreover, where there exists a discrepancy in foundational documents themselves, the matter assumes a different complexion. In such a situation, the benefit of the principle laid down in

the aforesaid judgment cannot be extended in a mechanical manner, particularly when the authenticity and primacy of the document relied upon by the petitioner is itself in question.

61. Accordingly, this Court is of the considered opinion that the ratio of the judgment in **Kavita Kuril (supra)**, though well-settled, does not squarely apply to the facts of the present case, and the petitioner cannot derive any substantial benefit therefrom.

62. Tested on the anvil of the aforesaid principles, the impugned action of the respondents appears to be founded more on suspicion than on substantiated proof. The inference of fraud, which entails grave civil consequences, cannot be drawn on the basis of equivocal circumstances or mere inconsistencies in record, howsoever inconvenient they may appear.

63. In sum, this Court is of the considered and unequivocal opinion that the respondents have failed to establish any element of fraud, misrepresentation, or deliberate concealment on the part of the petitioner. The discrepancy in the date of birth, in the factual conspectus of the present case, does not rise to the level of culpability so as to justify the extreme measure of cancellation of appointment.

64. An analogous issue fell for consideration before this Court in **Ashok Kumar Singh vs. State of U.P. and others (Writ-A No. 1064 of 2021, decided on 22.07.2024)**, wherein the appointment of the petitioner therein came to be annulled on the premise that he had submitted a B.Ed. mark sheet, which, though not an essential qualification for the post of Assistant Teacher, was only of a preferential nature. The learned Single Judge, upon finding that the petitioner had failed to furnish any plausible explanation despite due opportunity, proceeded to hold that the submission of such mark sheet amounted to securing public employment on the basis of a false document, thereby rendering the initial appointment void ab initio.

65. However, the aforesaid judgment was carried in appeal, and the Division Bench, in Special Appeal No. 987 of 2024, decided on 25.02.2025, set aside the order of the learned Single Judge. While the Division Bench observed that the reasoning adopted by the learned Single Judge was, in abstraction, well-founded, it nonetheless proceeded to hold that the foundational element of fraud was not substantiated on the facts of the case.

66. The Division Bench, in a nuanced and legally calibrated exposition, held that mere submission of a higher or additional qualification, which is neither essential nor shown to have been relied upon by the selection committee in conferring appointment, would not ipso facto establish fraud. It was further observed that the records did not demonstrate that the petitioner had secured any undue advantage on account of the B.Ed. qualification, nor was there any material to indicate that such qualification was manipulated or fabricated.

67. The Court emphasized that fraud, being a serious imputation carrying grave civil consequences, must be predicated upon clear evidence of deception coupled with resultant gain. In absence of any such demonstrable nexus between the alleged misrepresentation and the conferment of appointment, the charge of fraud was held to be unsustainable.

68. The ratio which unmistakably emanates from the aforesaid Division Bench judgment is that unless it is shown that the alleged misrepresentation had a direct bearing on the selection process or conferred a tangible advantage upon the candidate, the extreme consequence of nullifying the appointment cannot be justified. Mere possession or disclosure of an additional qualification, particularly when it is neither essential nor acted upon, would not, in itself, vitiate the appointment.

69. The principle enunciated therein squarely fortifies the proposition that the sine qua non for sustaining an allegation of fraud is not merely the existence of an irregularity, but the presence of a deliberate design to secure an advantage which materially impacts the selection. In absence thereof, the action of the authorities in branding the appointment as void would not withstand judicial scrutiny.

70. So far as the issue pertaining to the discrepancy in the date of birth is concerned, and the question as to which certificate ought to be accorded primacy for the purposes of recording the date of birth, this Court finds that the same does not arise for substantive adjudication in the present lis.

71. A perusal of the impugned order reveals that no categorical or definitive finding has been recorded by the competent authority to the effect that the petitioner had deliberately relied upon the Madhyama certificate in substitution of the earlier High School certificate with a view to secure any undue benefit. There is a conspicuous absence of any conclusion that such reliance was actuated by a calculated intent to mislead or to gain an advantage in the matter of appointment.

72. In the absence of any such foundational finding, the mere existence of variance in the date of birth across different certificates pales into insignificance. The controversy, therefore, remains largely academic and does not have a determinative bearing on the core issue involved in the present case.

73. It is a settled principle that Courts do not adjudicate upon abstract or hypothetical questions which do not directly impact the lis. Since the respondents themselves have not returned any finding attributing motive or advantage to the petitioner on account of the alleged discrepancy, this Court finds no occasion to enter into an elaborate examination of the said issue.

74. Accordingly, no further observations are warranted on the aforesaid aspect.

75. In view of the aforesaid discussion, and upon an overall conspectus of the facts and the legal position governing the field, this Court finds that there is no categorical or substantiated allegation to the effect that the educational documents furnished by the petitioner before the respondents were forged, fabricated, or otherwise false in nature.

76. In absence of any such foundational infirmity, coupled with the consideration of the relevant statutory provisions and the authoritative pronouncements relied upon by learned counsel for the petitioner, the impugned action cannot be sustained in the eyes of law.

77. Accordingly, the writ petition deserves to be allowed, and is hereby, **allowed**.

78. The impugned order dated 27.06.2019, passed by the Basic Shiksha Adhikari, Mau, is hereby **quashed**.

79. The respondents are directed to permit the petitioner to resume/join his duties forthwith.

80. It is, however, made clear that since no interim order was operating in favour of the petitioner during the pendency of the writ petition, and the petitioner has admittedly not discharged any duties for the intervening period, he shall not be entitled to claim salary for the said period, in consonance with the well-settled principle of 'no work, no pay.'

81. It is further provided that in the event any of the documents, on the basis of which the petitioner has sought to sustain his claim, are subsequently found to be false, fabricated, or otherwise not genuine, it shall be open to the respondents to initiate appropriate proceedings against the petitioner, strictly in accordance with law.

(2026) 4 ILRA 1881
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 03.04.2026

BEFORE

THE HON'BLE MRS. MANJU RANI CHAUHAN, J.

Writ A No. 10958 of 2018

C/M St. Johns Girls Junior High School

...Petitioner

Versus

State of U.P. & Anr.

...Respondents

Issue(s) for consideration

- (a) Whether the passing of an administrative order within 30 days satisfies the statute, or must the order be communicated to the institution within that timeframe to avert "deemed approval"?
- (b) Whether the post-selection procedural timeline is to submit papers within one week mandatory or directory?
- (c) Whether an institution's fair selection process can be vitiated if a nominee sent by the authorities participates in the committee, but the department later claims a lack of formal internal authorization?

Headnotes

A. Service Law – U.P. Recognized Basic Schools (Junior High School) Recruitment and Conditions of Service of Ministerial Staff and Group 'D' Employees Rules, 1984: Rules 14, 15, and 16 - The petitioner is Committee of Management of St. John's Girls Junior High School, Gorakhpur, a recognized, state-aided, minority institution. Staffing and ministerial recruitments are governed by the Rules, 1984. Seeking to fill a vacant post of Clerk, the Manager obtained formal permission from the District Basic Shiksha Adhikari (BSA), Gorakhpur, on 23.06.2016. The vacancy was subsequently advertised in two newspapers (Swatantra Janmitra and Swatantra Bharat) on 26.07.2016.

On 09.05.2017, the Management requested the BSA to nominate an expert/representative for the selection committee scheduled for 25.05.2017, as mandated by Rule 14. In response, Shri Jitendra Kumar Pandey (Principal, Rajkiya High School, Barigaon) attended, participated, and signed the selection minutes as the nominee. The committee unanimously selected Vikas Alexander for the post of Clerk. The selection documents were not transmitted within the standard one-week timeframe and were ultimately submitted and officially received by the BSA's office on 04.09.2017 (internally marked to a clerk on 06.06.2017).

On 07.10.2017, the institution received an order dated 28.09.2017, passed by the BSA, disapproving Alexander's appointment. The envelope revealed that the order was sent via registered post on 05.10.2017, at 6:37 p.m. The Management challenged this order, asserting that the 30-day statutory window for approval had lapsed, triggering a "deemed approval." (Para 43 to 50)

B. Acts done in substance in compliance with statutory requirements ought not to be invalidated on mere technical or procedural irregularities, particularly when no prejudice is shown to have been caused. The participation of the said nominee lends due legitimacy and transparency to the selection process, fulfilling the very object for which such nomination is contemplated under the Rules. (Para 51)

It is equally well settled that the candidate cannot be made to suffer for any alleged procedural lapse on the part of the authorities, particularly when the selection has otherwise been conducted fairly and in accordance with the prescribed procedure. Thus, in the absence of any allegation of mala fide, bias, or prejudice, and there being substantial compliance with the requirement of inclusion of the nominee, the disapproval of selection on this ground alone is arbitrary, unsustainable, and liable to be set aside. (Para 53, 54, 75)

Assuming, that there was any irregularity in the manner of nomination, the same would, at best, constitute an irregularity and not an illegality. **The respondents cannot be allowed to approbate and reprobate** by accepting the participation of the nominee during the selection process and subsequently questioning the same to defeat the selection. (Para 52, 74)

Where a request has been duly made by the Management for nomination of a representative, but the BSA either fails to nominate a specific individual or does not communicate the name of such nominee, the selection process cannot be rendered invalid on that ground alone. (Para 68, 72)

The first ground taken for disapproving the appointment of the said Clerk is that no specific nominee was indicated in the communication issued from the office of the BSA. However, it is an admitted position that Principal, Rajkiya High School, Barigaon, participated in the selection proceedings and duly signed the proceedings of the Selection Committee. Further objection that the District Basic Education Officer was not empowered to nominate Principal of Rajkiya High School, and that there existed no justification or occasion for such nomination has no legs to stand. (Para 55, 56, 69, 73)

C. Substantial justice ought not to be defeated on account of technicalities, particularly when the delay stands reasonably explained. The selection process had already been duly completed in a fair and transparent manner, and the delay in forwarding papers is a post-selection procedural lapse, which does not go to the root of the selection. No prejudice has been shown to have been caused to any party on account of the said delay. (Para 60, 61)

The second ground is that, although the selection to the post of Clerk was finalized on 25.05.2017, the provisions contained in Rule 15(3) and 15(4) of the Rules, 1984 mandate that the entire record of the selection proceedings be forwarded to the office of the BSA within a period of one week. However, in the present case, the said papers were transmitted only on 04.09.2017, after a considerable delay. The delay is neither deliberate nor fatal to the selection process. It stands duly explained on account of extraordinary and unavoidable circumstances, namely the severe flood situation

prevailing in Gorakhpur during the relevant period, which disrupted normal administrative functioning. Such circumstances constitute a valid and sufficient cause, beyond the control of the institution. (Para 57, 58)

D. Procedural provisions relating to timelines are ordinarily directory in nature, unless the statute expressly provides consequences of non-compliance. Rule 15(3) and (4) of the Rules, 1984, though prescribing a time frame, do not stipulate that delay in submission of papers would automatically vitiate the entire selection process. Therefore, **the said provision cannot be construed as mandatory so as to nullify an otherwise valid selection.** (Para 59)

E. Provisions contained in Rule 15(5) of the Rules, 1984, clearly stipulate that if no communication regarding approval or disapproval is made within 30 days from the date of receipt of the selection papers, the selection shall be deemed to have been approved. The consequence that necessarily follows is that the selection in question stood deemed to have been approved upon expiry of the prescribed period. (Para 65)

Even if, the date of receipt is taken to be 06.09.2017, the statutory period of 30 days prescribed under the Rules would expire on 05.10.2017. In the present case, the impugned order was communicated to the petitioner only on 07.10.2017, i.e., beyond the stipulated period. Accordingly, the subsequent communication of the impugned order, having been made beyond the statutory period, is rendered inconsequential in the eyes of law, and the selection of the petitioner, must be held to have attained finality by virtue of deemed approval. (Para 64, 66)

F. It is a settled principle of law that once a candidate has participated in the selection process without demur, he/she is estopped from subsequently challenging the same on grounds which were available at an earlier point of time. (Para 77)

As far as the contention raised regarding non-publication of the advertisement in two newspapers is concerned, the same is wholly untenable and devoid of merit. The records placed before this Court unequivocally establish that the advertisement was, in fact, duly published in two widely circulated newspapers, thereby satisfying the prescribed requirement. (Para 76)

G. Objections relating to maintainability, particularly on the ground of *locus standi*, ought to be raised at the earliest possible opportunity. Permitting such an objection to be entertained belatedly would not only defeat the cause of substantive justice but would also result in unnecessary protraction of proceedings that have already attained considerable maturity before the Court. The belated plea of lack of *locus standi* is clearly an afterthought and is liable to be rejected. (Para 80, 81, 82)

Impugned order dated 28.09.2017 is quashed. Writ petition allowed. (E-4)

Case Law Cited

1. Sant Ram Vs. State of U.P. and others, 2021 Vol. ADJ 212 (LB) (Para 21)
2. Sanjay Kumar Singh Vs. State of U.P. and others, 2019 (Vol.5) ADJ 583 (LB) (Para 22)
3. Dhirendra Pratap Singh v. State of U.P. and others, 2019 (7) ADJ 250 (LB) (Para 25)
4. State of Uttar Pradesh & 2 Others Vs. Gunjan Singh & Another, Special Appeal No.10140 of 2024; Neutral Citation:2025:AHC:65115-DB (Para 67)
5. District Basic Shiksha Adhikari, Ambedkar Nagar & Another Vs. Chandraprakash Tripathi & Others, Special Appeal Defective No.92 of 2016, Order dated 02.03.2016; Neutral Citation:2016:AHCLKO:2515-DB (Para 72)

List of Acts

U.P. Recognized Basic School (Junior High School) (Recruitment and Conditions of Service of Teachers) Rules, 1978; U.P. Recognized Basic Schools (Junior High School) Recruitment and Conditions of Service of Ministerial Staff and Group 'D' Employees Rules, 1984.

List of Keywords

non-publication, advertisement, *locus standi*, teacher, approval, disapproval, procedural, technical, statutory, delay, stipulated period, nominee.

Appearances for Parties

For Petitioner(s): A.D. Saunders

For Respondent(s): Ashish Kumar (Nagvanshi), Ajay Kumar Mishra, C.S.C.

(Delivered by Hon'ble Mrs. Manju Rani Chauhan, J.)

1. Heard Mr. A. D. Saunders, learned counsel for the petitioner, Mr. Ashish Kumar (Nagvanshi), learned Additional Chief Standing Counsel and Mr. Shailendra Singh, learned Standing Counsel for the State-respondents as well as perused the records.

2. This writ petition has been filed challenging the order dated 28.09.2017 passed by the District Basic Shiksha Adhikari, Gorakhpur, disapproving the appointment on the post of Clerk and a further prayer to direct the District Basic Shiksha Adhikari to pass necessary orders for the payment of salary to the selected candidate.

3. Placing the brief facts of the case, learned counsel for the petitioner submits that the petitioner is the Committee of Management of St. John's Girls Junior High School, which is a recognized, aided, and minority institution (hereinafter referred to as 'the institution'). Several vacancies, including one for the post of Clerk, existed in the said institution. The selection for the post of Clerk in the institution is governed by the Uttar Pradesh Recognized Basic Schools (Junior High Schools) (Recruitment and Conditions of Service of Ministerial Staff and Group D Employees) Rules, 1984 (hereinafter referred to as 'the Rules of 1984').

4. In order to advertise the vacant posts, including that of Clerk, the Manager of the institution sought permission from the District Basic Shiksha Adhikari for advertising the posts. The District Basic Shiksha Adhikari, Gorakhpur, by letter dated 23.06.2016, granted permission to advertise all the posts, including the post of Clerk. Pursuant to this, the Manager of the institution advertised the posts, including the post of Clerk, in two newspapers: Swatantra Jantmitra and Swatantra Bharat, dated 26.07.2016.

5. Pursuant to the aforesaid advertisement, a large number of applications were received and accordingly, interview letters dated 09.05.2017 were issued to all eligible candidates, fixing 25.05.2017 as the date for the interview before the selection committee.

6. As per Rule 14 of the Rules of 1984, the selection committee was required to be constituted in such a manner that one member would be nominated by the District Basic Shiksha Adhikari, Gorakhpur. Accordingly, by letter dated 09.05.2017, the Manager requested the District Basic Shiksha Adhikari, Gorakhpur, to nominate one representative for constituting the selection committee, which was scheduled on 25.05.2017. In response, the District Basic Shiksha Adhikari nominated and sent Shri Jitendra Kumar Pandey, Principal of Rajkiya High School Barigaon, Belghat, Gorakhpur, as the expert for the selection committee.

7. On 25.05.2017, the selection committee convened and selected Vikas Alexander for the post of Clerk. The Manager of the institution submitted all the relevant documents related to the selection process to the office of the Basic Shiksha Adhikari, Gorakhpur, on 04.09.2017, and these documents were received in his office on the same day, i.e., 04.09.2017.

8. After receiving all the documents along with the covering letter dated 04.09.2017, the Basic Shiksha Adhikari marked the letter to Shri Dinesh of his office on 06.09.2017. In the letter dated 04.09.2017, the Manager also informed about the floods in Gorakhpur, explaining that the documents could not be filed within the prescribed time due to delays caused by the situation of floods.

9. On 07.10.2017, the institution received a registered post containing a copy of the order dated 28.09.2017, passed by the Basic Shiksha Adhikari, disapproving the selection of Vikas Alexander as Clerk. According to the envelope, the said letter was posted on 05.10.2017 at 06:37 p.m. and received by the institution on 07.10.2017. Accordingly, the petitioner has challenged the aforesaid order.

10. Learned counsel for the petitioner submits that there was a delay in submitting the papers of Vikas Alexander in the office of the Basic Shiksha Adhikari, which has been explained in the covering letter dated 04.09.2017. The delay was caused by the floods in Gorakhpur, which prevented the timely filing of the papers related to the selection process.

11. Learned counsel for the petitioner further submits that the institution received the impugned order dated 28.09.2017, which disapproved the selection of Vikas Alexander as Clerk in the institution. The order also mentioned that the papers be returned and issued a direction to initiate fresh proceedings for selection, after obtaining approval for publishing notices declaring the vacancies for the post of Clerk.

12. The Manager, by her letter dated 26.10.2017 addressed to the Basic Shiksha Adhikari, Gorakhpur, claimed that there was deemed approval, as no order from the Basic Shiksha Adhikari had been received within the prescribed period of thirty days, as stipulated under Rule 15(5)(iii) of the Rules of 1984. In response to the aforesaid letter, the Basic Shiksha Adhikari informed the Manager of the institution that, as per the order dated 28.09.2017, the papers related to the selection process had been returned with directions to initiate fresh selection proceedings.

13. The Manager of the institution again by letter dated 06.11.2017, reiterated the claim of deemed approval; however, in response, the Basic Shiksha Adhikari issued a letter dated 10.11.2017, reiterating his stand and relying upon the impugned order dated 28.09.2017.

14. Learned counsel for the petitioner has challenged the impugned order dated 28.09.2017 on the ground that as per the Recruitment and Conditions of Service of Ministerial Staff and Group-D employees of Recognized Basic Schools, governed by Rule 1984, the District Basic Education Officer is required to communicate the decision within one month of receiving the relevant papers, failing which there shall be deemed approval, accordingly, the impugned order is illegal.

15. He further submits that the papers relating to the selection proceedings for the post of Clerk were submitted to the office of the Basic Shiksha Adhikari on 04.09.2017, and prior to 07.10.2017, no information was received regarding the order dated 28.09.2017 disapproving the appointment of Vikas Alexander to the post of Clerk.

16. He further submits that though the impugned order is stated to have been passed on 28.09.2017 and posted on 05.10.2017, i.e., after a delay of one week, there is no explanation as to why the Basic Shiksha Adhikari withheld the impugned order if it had indeed been passed on 28.09.2017.

17. The aforesaid impugned order was posted by the Basic Shiksha Adhikari on 05.10.2017 at 06:37 p.m., seemingly hurriedly, in an attempt to defeat the provisions of Rule 15(5)(iii) of the Rules of 1984, which stipulates deemed approval.

18. The envelope containing the impugned order dated 28.09.2017 was received by the institution on 07.10.2017. Since the papers were submitted on 04.09.2017 and the thirty-day period expired on 03.10.2017, learned counsel for the petitioner submits that under Rule 15(5)(iii) of the 1984 Rules, deemed approval took effect on 04.10.2017. Consequently, the impugned order became non-est and infructuous, as no further action could be taken after the deemed approval.

19. It is further submitted that the passing of the order dated 28.09.2017 by the Basic Shiksha Adhikari is irrelevant, as it requires further steps to communicate the order within 30 days. While the impugned order may have been passed on 28.09.2017 within the thirty-day period, it was communicated after the expiration of that period, thereby triggering the provision of deemed approval.

20. He further submits that in respect of teachers, there exists a rule known as The U.P. Recognized Basic School (Junior High School) (Recruitment and Conditions of Service of Teachers) Rules, 1978 (hereinafter referred to as the 'Rules of 1978'). These rules also provide for deemed approval. Rule 10(5)(iii) of the Rules of 1978 is analogous to Rule 15(5)(iii) of the 1984 Rules. Rule 10(5)(iii) is quoted herein for ready reference:-

"If the District Basic Education Officer does not communicate his decision within one month from the date of receipt of papers under clause (iv), he shall be deemed to have accord approval to be recommendation made by the Selection Committee."

21. Learned counsel for the petitioner has relied upon the judgment of this Court, in the case of **Sant Ram v. State of U.P. and others**¹, wherein the Co-ordinate Bench of this Court considered the provisions of Rule 10(5)(iii) of the 1978 Rules and held that if the order is not communicated within thirty days from the receipt of the papers regarding the selection process, it would result in deemed approval.

22. He has also relied upon the case of **Sanjay Kumar Singh Vs. State of U.P. and others**², wherein the same proposition of law has been held.

23. Thus, the petitioner submits that, in view of the deemed approval, the impugned order is ante-dated, becomes non-est. The petitioner has specifically stated in paragraph 13 of the writ petition that the impugned order is ante-dated. This fact has not been denied in the counter-affidavit filed by the State. The reply to paragraph 13 of the writ petition is provided in paragraph 12 of the counter-affidavit. Consequently, the petitioner is entitled to receive salary, as his appointment has been ratified by deemed approval.

24. The Selection Committee is constituted under Rule 14 of the 1984 Rules. The Manager of the institution requested the Basic Shiksha Adhikari to send a nominee to be a member of the Selection Committee. On 25.05.2017, one Sri Jitendra Kumar Pandey appeared as the nominee of the Basic Shiksha Adhikari, and the Principal and Manager of the institution assumed that Sri Jitendra Kumar Pandey, Principal of Rajkiya High School Barigaon, Belghat, Gorakhpur, was the nominee of the Basic Shiksha Adhikari. Sri Jitendra Kumar Pandey participated in the selection process, and the selection of Vikas Alexander on the post of Clerk was unanimously accepted, with the papers subsequently forwarded. However, the impugned order dated 28.09.2017 states that no record exists in the office of the Basic Shiksha Adhikari nominating Sri Jitendra Kumar Pandey as its nominee. In other words, the Basic Shiksha Adhikari did not officially appoint a nominee to the Selection Committee, thereby rendering the selection process invalid and contrary to law.

25. However, even assuming, without conceding, that the Basic Shiksha Adhikari did not send a nominee to the Selection Committee, such an omission does not vitiate the selection process. This contention is supported by the judgment in **Dhirendra Pratap Singh v. State of U.P. and others**³, where this Court held that the absence of a nominee from the District Basic Education Officer does not invalidate the selection process. The Committee of Management can proceed with the selection, and the District Basic Education Officer is required to formally approve the appointment of the selected candidate after one month from the receipt of the papers for approval. This judgment is fully applicable to the facts and circumstances of the present case.

26. Even if it is presumed that Sri Jitendra Kumar Pandey participated as a nominee of the Basic Shiksha Adhikari, the selection process was unanimously decided by the Principal and the Manager, who were members of the Selection Committee. Even if the participation of Sri Jitendra Kumar Pandey is disregarded, it would not vitiate the selection process, regardless of whether he was a nominee of the Basic Shiksha Adhikari or not.

27. As demonstrated above, the papers related to the selection process were submitted on 04.09.2017. The Basic Shiksha Adhikari, in his internal administrative capacity, marked the case to Sri Dinesh on 06.09.2017. However, it is irrelevant when the Basic Shiksha Adhikari took steps in his administrative capacity, as the papers were received in the office of the Basic Shiksha Adhikari, not personally by him. Even assuming, without conceding, that the papers were received by the Basic Shiksha Adhikari on 06.09.2017, the thirty day period expired on 05.10.2017. It is evident that the Basic Shiksha Adhikari hurriedly posted the impugned order on 05.10.2017 at 6:37 P.M. Even if this is accepted, the thirty-day period had already expired on 05.10.2017, and the order was communicated on 07.10.2017, i.e., after the thirty-day period, thereby making the selection of Vikas Alexander perfected by deemed approval prior to the communication of the order.

28. The impugned order further mentions a delay in submitting the papers related to the selection process, which had already been explained in the letter dated 04.09.2017, citing the floods in Gorakhpur as the cause of the delay. However, the Basic Shiksha Adhikari has not addressed this explanation and has instead made a mere bald assertion that there was a delay in receiving the papers.

29. On the other hand, learned counsel for the respondents submits that the Manager of the institution submitted an application dated 08.04.2016 before the District Basic Education Officer (Respondent No. 2) seeking permission to fill up the post of Clerk. The said permission was eventually accorded by Respondent No. 2 vide order dated 23.06.2018.

30. In the interregnum, the post of Clerk (Class III) was advertised in two widely circulated newspapers on 26.07.2016. Subsequently, the Manager addressed a communication dated 09.05.2017 to the District Basic Education Officer requesting nomination of an authorized representative to participate in the selection process, as mandated under law. The interviews were conducted on 25.05.2017, and the selection proceedings were thereafter placed before the Committee of Management. The Committee forwarded the entire record to the District Basic Education Officer for approval on 04.09.2017, which was duly received in the office of Respondent No. 2 on 06.09.2017.

31. Upon due consideration, the District Basic Education Officer, by a reasoned order dated 28.09.2017, declined to accord approval to the appointment of one Vikas Alexander, inter alia, on the ground that the selection had been conducted by an unlawfully constituted Selection Committee, in flagrant violation of Rules 14, 15, and 16 of the U.P. Recognized Basic Schools (Junior High School) Recruitment and Conditions of Service of Ministerial Staff and Group D Employees Rules, 1984.

32. The said order dated 28.09.2017 is legally sound, well-reasoned, and in strict conformity with the applicable statutory provisions, warranting no interference.

33. Learned counsel for the respondents has also raised a preliminary objection with regard to the maintainability of the present petition, contending that the same has been instituted at the behest of a member of the Committee of Management and is, therefore, not maintainable in law. On this ground alone, the writ petition is liable to be dismissed.

34. He further submits that the Committee of Management lacks locus standi to institute the present writ petition, inasmuch as the challenge is directed against the order rejecting approval of the appointment of one Vikas Alexander, who has not been impleaded as a petitioner in the present proceedings. Consequently, the Committee of Management cannot be said to be an aggrieved party competent to invoke the writ jurisdiction of this Hon^{ble} Court.

35. Learned counsel for the respondents has further raised an objection that the advertisement pertaining to the selection was not published in two widely circulated newspapers, as mandated. Consequently, the same is in clear violation of Rule 13(1) of the Rules, 1984.

36. Learned counsel for the respondents has further raised an objection regarding the improper constitution of the Selection Committee. It is contended that, under the relevant provisions of the Rules, 1984, one member of the Selection Committee is required to be nominated by the District Basic Education Officer. However, in the present case, the third member was not nominated by the District Basic Education Officer but was instead chosen by the Selection Committee itself, which is clearly impermissible in law.

37. It has also been submitted that the Principal of Government High School, Barigaon, Bela Ghat, Gorakhpur, is neither under the administrative control nor the supervisory jurisdiction of the District Basic Education Officer, Gorakhpur. Consequently, such person could not have been validly nominated by the District Basic Education Officer to act as a member of the Selection Committee for the purposes of the selection in question.

38. It is also an undisputed fact that the Selection Committee selected Vikas Alexander for the post of Clerk in its proceedings dated 25.05.2017; however, the relevant papers were forwarded only on 04.09.2017, after an inordinate delay of three months and ten days, which is in clear contravention of Rule 15(4) of the Rules, 1984.

39. Accordingly, the impugned order dated 28.11.2019 has been passed strictly in accordance with the provisions of the Rules, 1984, particularly Rule 15(5)(iii) thereof.

40. Thus, the entire selection process conducted by the Selection Committee and the Committee of Management stands vitiated, having been undertaken in flagrant violation of Rules 14, 15, 16, as well as Rule 13(1) of the Rules, 1984. Consequently, the present writ petition is devoid of merit and is liable to be dismissed.

41. The Court called upon the parties and perused the records. The impugned order has been passed primarily on the grounds that the advertisement was not published in widely circulated newspapers; that no nominee was deputed by the District Basic Education Officer to constitute the Selection Committee for the post in question; and further, that the proposal for approval was forwarded after an inordinate delay.

42. In order to effectively adjudicate upon the controversy involved in the present case, it would be apposite to advert to the relevant statutory provisions governing the field, namely, the provisions contained under the Uttar Pradesh Recognized Basic Schools (Junior High School) (Recruitment and Conditions of Service of Ministerial Staff and Group 'D' Employees) Rules, 1984, which are extracted hereinbelow:-

“13. Advertisement of vacancy. –

(1) No vacancy shall be filled, except after its advertisement in at least one newspaper having adequate circulation in the locality and the intimation of such vacancy to the District Basic Education Officer.

14. Selection Committee. - The Management shall constitute a selection committee consisting of :-

(1) Manager.

(2) Headmaster of the recognised school in which the appointment is to be made.

(3) A specialist nominated by the District Basic Education Officer who will be from amongst minority in respect of a school established and administered by a minority or from amongst Scheduled Castes in respect of any other school.

15. Procedure for selection. –

(5) (iii) If the District Basic Education Officer does not communicate his decision within one month from the date of receipt of the papers under clause (4), he shall be deemed to have accorded approval to the recommendations made by the Selection Committee.”

43. The undisputed facts of the present case are that several vacancies existed in the institution, including one post of Clerk. In this regard, prior permission was duly sought from the Basic Shiksha Adhikari for initiating the process of recruitment by way of advertisement.

44. Pursuant to the permission so granted, the vacancies, including the post of Clerk, were duly advertised in two widely circulated newspapers, namely, Swatantra Janmitra and Swatantra Bharat, both dated 26.07.2016. Thereafter, 25.05.2017 was fixed as the date for conducting interviews before the duly constituted Selection Committee.

45. Thereafter, the Manager of the institution, vide communication dated 09.05.2017 addressed to the Basic Shiksha Adhikari, requested for deputation of his nominee to serve as a member of the Selection Committee to be constituted under Rule 14 of the Rules, 1984. Pursuant thereto, one Shri Jitendra Kumar Pandey, Principal, Rajkiya High School, Barigaon Bela Ghat, Gorakhpur, participated in the selection proceedings, claiming to be the nominee of the Basic Shiksha Adhikari.

46. Subsequently, one Shri Vikas Alexander came to be unanimously selected for appointment on the post of Clerk on 25.05.2017. Thereafter, on 04.09.2017, the Manager of the institution forwarded the entire record pertaining to the selection process to the office of the Basic Shiksha Adhikari under a covering letter, which was received in the said office on the same day.

47. The Basic Shiksha Adhikari, on 06.09.2017, marked the file to one Dinesh through internal administrative arrangement for necessary examination. The delay in submission of the papers was sought to be explained on account of the flood situation prevailing in Gorakhpur at the relevant time.

48. Thereafter, the impugned order dated 28.09.2017 came to be passed by the Basic Shiksha Adhikari, whereby the selection of Shri Vikas Alexander to the post of Clerk in the institution was disapproved. The said order further directed that the entire record relating to the

selection process be returned, with a direction to initiate fresh selection proceedings after obtaining prior approval for issuance of advertisement notifying the vacancy of Clerk.

49. At the outset, it is not in dispute that the Manager of the institution had duly requested the Basic Shiksha Adhikari to nominate his representative for inclusion in the Selection Committee, as mandated under Rule 14 of the Rules, 1984. In pursuance thereof, Shri Jitendra Kumar Pandey, Principal, Rajkiya High School, Barigaon Bela Ghat, Gorakhpur, in fact participated in the selection proceedings and duly appended his signatures on the proceedings of the Selection Committee.

50. Once a nominee, representing the office of the Basic Shiksha Adhikari, has in fact participated in the selection process without any demur, the objection that his name was not specifically mentioned in the communication, or that he was not formally authorized, is a hyper-technical plea which cannot be permitted to vitiate an otherwise valid selection.

51. It is a settled principle of law that acts done in substance in compliance with statutory requirements ought not to be invalidated on mere technical or procedural irregularities, particularly when no prejudice is shown to have been caused. The participation of the said nominee lends due legitimacy and transparency to the selection process, fulfilling the very object for which such nomination is contemplated under the Rules.

52. Furthermore, even assuming, without admitting, that there was any irregularity in the manner of nomination, the same would, at best, constitute an irregularity and not an illegality, especially when the authority itself permitted such participation and never objected to it at the relevant point of time. The respondents cannot be allowed to approbate and reprobate by accepting the participation of the nominee during the selection process and subsequently questioning the same to defeat the selection.

53. It is equally well settled that the candidate cannot be made to suffer for any alleged procedural lapse on the part of the authorities, particularly when the selection has otherwise been conducted fairly and in accordance with the prescribed procedure.

54. Thus, in the absence of any allegation of mala fide, bias, or prejudice, and there being substantial compliance with the requirement of inclusion of the nominee, the disapproval of selection on this ground alone is arbitrary, unsustainable, and liable to be set aside.

55. The first ground taken in the impugned order for disapproving the appointment of the said Clerk is that no specific nominee was indicated in the communication issued from the office of the Basic Shiksha Adhikari. However, it is an admitted position that Shri Jitendra Kumar Pandey, Principal, Rajkiya High School, Barigaon, Belaghat, Gorakhpur, participated in the selection proceedings and duly signed the proceedings of the Selection Committee.

56. In view of the above discussion, the further objection that the District Basic Education Officer was not empowered to nominate Principal of Rajkiya High School, and that there existed no justification or occasion for such nomination has no legs to stand.

57. The second ground taken in the impugned order is that, although the selection to the post of Clerk was finalized on 25.05.2017, the provisions contained in Rule 15(3) and 15(4) of the Rules, 1984 mandate that the entire record of the selection proceedings be forwarded to the office of the Basic Shiksha Adhikari within a period of one week. However, in the present case, the said papers were transmitted only on 04.09.2017, after a considerable delay.

58. The delay, though apparent on the face of record, is neither deliberate nor fatal to the selection process. It stands duly explained on account of extraordinary and unavoidable circumstances, namely the severe flood situation prevailing in Gorakhpur during the relevant period, which disrupted normal administrative functioning. Such circumstances constitute a valid and sufficient cause, beyond the control of the institution.

59. It is well settled that procedural provisions relating to timelines are ordinarily directory in nature, unless the statute expressly provides consequences of non-compliance. Rule 15(3) and (4) of the Rules, 1984, though prescribing a time frame, do not stipulate that delay in submission of papers would automatically vitiate the entire selection process. Therefore, the said provision cannot be construed as mandatory so as to nullify an otherwise valid selection.

60. Further, no prejudice has been shown to have been caused to any party on account of the said delay. The selection process had already been duly completed in a fair and transparent manner, and the delay in forwarding papers is a post-selection procedural lapse, which does not go to the root of the selection.

61. It is equally trite that substantial justice ought not to be defeated on account of technicalities, particularly when the delay stands reasonably explained. The authorities, instead of adopting a hyper-technical approach, ought to have considered the explanation in its proper perspective.

62. Thus, the delay in forwarding the papers, being satisfactorily explained and not affecting the merits of the selection, could not have been made a ground to disapprove the appointment.

63. It is an admitted position on record that the papers relating to the selection process were submitted in the office of the Basic Shiksha Adhikari, Gorakhpur, on 04.09.2017, and the same were internally marked to Shri Dinesh on 06.09.2017 for necessary consideration. Thus, the receipt of the selection papers in the office of the Basic Shiksha Adhikari stands duly established.

64. Even if, for the sake of argument, the date of receipt is taken to be 06.09.2017, the statutory period of 30 days prescribed under the Rules would expire on 05.10.2017. In the present case, the impugned order was communicated to the petitioner only on 07.10.2017, i.e., beyond the stipulated period of 30 days.

65. In view of the provisions contained in Rule 15(5) of the Rules, 1984, which clearly stipulate that if no communication regarding approval or disapproval is made within 30 days from the date of receipt of the selection papers, the selection shall be deemed to have been approved, the

consequence that necessarily follows is that the selection in question stood deemed to have been approved upon expiry of the prescribed period.

66. Accordingly, the subsequent communication of the impugned order, having been made beyond the statutory period, is rendered inconsequential in the eyes of law, and the selection of the petitioner, namely Vikas Alexander, must be held to have attained finality by virtue of deemed approval.

67. The controversy pertaining to the validity of the selection proceedings in the absence of a duly nominated representative of the **Basic Shiksha Adhikari stands authoritatively considered in State of Uttar Pradesh & 2 Others vs. Gunjan Singh & Another**⁴. In the said decision, the Court, while interpreting the statutory scheme, observed that it cannot remain oblivious to the practical realities and the mandate of the Rules, which cast an obligation upon the Management to conclude the selection process within a stipulated time frame.

68. The Court further held that where a request has been duly made by the Management for nomination of a representative, but the Basic Shiksha Adhikari either fails to nominate a specific individual or does not communicate the name of such nominee, the selection process cannot be rendered invalid on that ground alone.

69. Applying the aforesaid principle to the facts of the present case, it is evident that although no specific name of the nominee was communicated, Shri Jitendra Kumar Pandey did, in fact, participate in the proceedings of the Selection Committee, asserting himself to be the nominee of the Basic Shiksha Adhikari. His participation stands duly recorded, and the proceedings bear his signatures.

70. In such circumstances, the absence of formal nomination or communication thereof constitutes, at best, a procedural irregularity and not an illegality going to the root of the matter. The selection proceedings, having been conducted with the participation of a representative claiming to act on behalf of the competent authority, cannot be invalidated on such a hyper-technical ground.

71. Accordingly, the objection raised in the impugned order in this regard is unsustainable in law.

72. In **District Basic Shiksha Adhikari, Ambedkar Nagar & Another v. Chandraprakash Tripathi & Others**⁵, the Court had occasion to consider a similar controversy concerning the validity of selection proceedings in the absence of participation of the nominee of the District Basic Education Officer in the Selection Committee. The Court observed that although the composition of the Selection Committee is prescribed under the statutory Rules to include the Manager of the institution, the Headmaster, and one nominee of the District Basic Education Officer, the selection process cannot be frustrated merely on account of non-participation of such nominee, particularly when the Management had duly requested the District Basic Education Officer to depute his representative. In the said case, despite a request having been made, the District Basic Education Officer failed to send any nominee, and consequently, the Selection

Committee, comprising the remaining two members, proceeded to complete the selection process. The Court declined to interfere, holding that the authority could not be permitted to take advantage of its own lapse in failing to nominate a representative.

73. Applying the aforesaid principle to the facts of the present case, it is evident that a proper and timely request was made by the Manager of the institution to the District Basic Education Officer for deputation of his nominee. Pursuant thereto, one individual, namely Shri Jitendra Kumar Pandey, participated in the selection proceedings, asserting himself to be the nominee of the said authority, and his participation stands duly recorded in the proceedings.

74. In such circumstances, even if the name of the nominee was not formally communicated by the District Basic Education Officer, the participation of a representative claiming to act on his behalf, coupled with the prior request made by the Management, sufficiently satisfies the requirement of the Rules. At any rate, the absence of formal communication of the nominee's name cannot be construed as an illegality so as to vitiate the entire selection process.

75. Thus, the selection proceedings cannot be held to be bad in the eyes of law on this ground, particularly when the alleged lapse, if any, is attributable to the inaction or omission on the part of the authority itself.

76. So far as the contention raised regarding non-publication of the advertisement in two newspapers is concerned, the same is wholly untenable and devoid of merit. The records placed before this Court unequivocally establish that the advertisement was, in fact, duly published in two widely circulated newspapers, thereby satisfying the prescribed requirement.

77. In such view of the matter, the objection sought to be raised at this belated stage, after culmination of the entire selection process, is clearly an afterthought and appears to have been taken merely to unsettle a concluded process. It is a settled principle of law that once a candidate has participated in the selection process without demur, he/she is estopped from subsequently challenging the same on grounds which were available at an earlier point of time.

78. Accordingly, the said ground, being misconceived and lacking in substance, does not merit acceptance and is hereby rejected.

79. The objection raised by the respondents with regard to the alleged lack of locus standi of the petitioner, and consequently the maintainability of the present writ petition, does not commend acceptance at this stage.

80. It is noteworthy that the writ petition was duly entertained by this Court as far back as the year 2018 and has since remained pending, with pleadings having been exchanged and the matter having proceeded substantially on merits. At such an advanced stage, it is no longer open to the respondents to assail the maintainability of the petition on a ground which was very much available to them at the threshold but was not pressed with due diligence.

81. The law is well settled that objections relating to maintainability, particularly on the ground of locus standi, ought to be raised at the earliest possible opportunity. Permitting such an objection to be entertained belatedly would not only defeat the cause of substantive justice but would also result in unnecessary protraction of proceedings that have already attained considerable maturity before the Court.

82. In the considered opinion of this Court, the belated plea of lack of locus standi is clearly an afterthought and is liable to be rejected. Accordingly, the said objection does not merit acceptance and stands overruled.

83. In view of the aforesaid submissions advanced on behalf of the petitioner, the precedents relied upon, and the discussion undertaken herein-above, this Court arrives at the considered conclusion that the impugned order cannot be sustained in the eyes of law. The same suffers from manifest arbitrariness, non-application of mind, and is contrary to the settled legal principles governing the field.

84. Accordingly, the impugned order dated 28.09.2017 passed by the District Basic Shiksha Adhikari, Gorakhpur is hereby set aside and quashed.

85. The writ petition, being meritorious, stands allowed.

86. Consequently, all consequential benefits shall follow.

87. No order as to costs.

(2026) 4 ILRA 1895
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 02.04.2026

BEFORE

THE HON'BLE ARINDAM SINHA, J.
THE HON'BLE PRASHANT KUMAR, J.

Writ A No. 11604 of 2025
Alongwith
Writ A No. 18038 of 2025

Akhilesh & Ors.

...Petitioners

Versus

State of U.P. & Ors.

...Respondents

Issue(s) for consideration

Is the State's recruitment process for Trained Graduate Teachers (TGT) legally sound if its service rules omit the Teacher Eligibility Test (TET) qualification required by notification?

Headnotes

A. Service/Education Law – Uttar Pradesh Subordinate Educational (Trained Graduate Grade) Service Rules, 1983: Rule 8; Right of Children to Free and Compulsory Education Act, 2009: Section 23 - Petitioners challenged Rule 8 of the U.P. Subordinate Educational Service Rules, 1983 (amended in 2025) and a UPPSC recruitment advertisement dated July 28, 2025. They argued that the rule omitted TET (pass) as a mandatory qualification, directly violating a National Council for Teacher Education (NCTE) 2010 notification (dated 23.08.2010) that requires TET for teaching classes VI to VIII.

The State of U.P. countered that this specific recruitment drive was strictly meant for Classes IX and X (which do not require TET under a separate 2014 NCTE notification). They argued that no recruitments were actively being made for classes VI to VIII under these rules.

B. The State admitted that there are 904 institutions in Uttar Pradesh where combined classes from VI to XII are taught. The disputed UPPSC recruitment advertisement failed to specify which classes the selected teachers would actually be assigned to teach. Because the rules and the advertisement were ambiguous, there was a clear risk of non-TET-qualified teachers being deployed to teach classes VI to VIII.

It was held that the State of Uttar Pradesh must insert "TET (pass)" into Rule 8 as a mandatory prerequisite qualification for any future recruitment intended for teaching classes VI to VIII. And the Public Service Commission (UPPSC) must immediately issue a clarification/corrigendum explicitly stating that the recruitment advertisement dated July 28, 2025, is strictly for teaching Classes IX and X.

Writ petitions are allowed to the above extent and disposed of. (E-4)

List of Acts

Uttar Pradesh Subordinate Educational (Trained Graduate Grade) Service Rules, 1983; Right of Children to Free and Compulsory Education Act, 2009.

List of Keywords

Service, recruitment, teachers, mandatory, qualification, TET.

Appearances for Parties

For Petitioner(s): Taniya Pandey

For Respondent(s): C.S.C., M.N. Singh, Vaibhav Tripathi

(Delivered by Hon'ble Arindam Sinha, J.)

1. Two writ petitions have been taken up for hearing. In Writ - A no.11604 of 2025 prayer is for quashing rule 8 of Uttar Pradesh Subordinate Educational (Trained Graduate Grade) Service Rules, 1983 as amended by 6th amendment dated 30th January, 2025 insofar as the same is in contravention of National Council for Teacher Education (NCTE) notification dated 23rd August, 2010. Petitioners say the notification mandates passing of Teacher Eligibility Test (TET) for appointment to post of Assistant Teacher, to teach classes VI to VIII. Prayer in Writ - A no.18038 of 2025 carries similar prayer inasmuch as, allegedly offending rule 8 is sought to be declared ultravires and consequent quashing of advertisement dated 28th July, 2025 issued by Public Service Commission, Uttar Pradesh for recruitment under the rules. Ms. Taniya Pandey, learned advocate appears on behalf of petitioners in Writ -A no.11064 of 2025 and Mr. Sanjay Kumar Yadav, learned advocate appears on behalf of petitioners in the other writ petition.

2. Ms. Pandey submits, by notification dated 31st March, 2010 published by authority in Gazette of India Extraordinary on 5th April, 2010, NCTE was conferred power under sub-section (1) in section 23 of Right of Children to Free and Compulsory Education Act, 2009, to be authorized as the academic authority to lay down minimum qualification(s) for a person to be eligible for appointment as a teacher. We obtained confirmation from respondents that the Act applies to teachers to teach upto class VIII.

3. Ms. Pandey submits further, pursuant to this authorization there was notification dated 23rd August, 2010 issued by the authority, mandating eligibility criteria of possessing, apart from other qualification(s) TET (pass). She demonstrates from allegedly offending rule 8 that inspite of the amendment made thereto subsequent to the Act and notification, it did not include the mandated qualification TET (pass) for purpose of the recruitment. She submits upon reliance on statement made in paragraph 8 of supplementary counter affidavit affirmed by the Additional Director of Education that there are 904 institutions, where students in classes VI to XII are being taught. The paragraph is reproduced below.

"8. That at this juncture, it may also be stated that in the State of U.P. there are 1488 government high schools where only classes IX and X are taught. Further, there are 70 intermediate colleges where only classes IX to XII are being taught, and ***there are only 904 institutions where classes VI to XII are being taught.***" (emphasis supplied)

She submits, there has been no recruitment pursuant to the notification. In the circumstances, existence of 904 institutions, where classes VI to XII are being taught necessarily means that Assistant Teachers, who do not have qualification of TET (pass) are also teaching classes VI to VIII. The rule is thus ultravires section 23 in Right of Children to Free and Compulsory Education Act, 2009, by omission. She seeks interference.

4. Mr. Sanjay Kumar Yadav adopts submissions made by Ms. Pandey and adds, the Defence forces have incorporated the requirement for recruiting teachers to their institutions. Learned advocate for petitioners pray for direction on quashing the advertisement.

5. Mr. Kartikeya Saran, learned advocate, Additional Advocate General assisted by Mr. Saurabh, learned advocate, Standing Counsel appear on behalf of respondent nos.1 to 3. They are State through the education department. Mr. Saran submits, there was notification dated 12th November, 2014 issued by NCTE, mandating educational qualifications for recruitment of teachers to classes IX and X. Consequent thereto, two amendments were made to the rules. First was in year 2016, to insert additional requirement of bachelor degree and BEd or equivalent thereto and second was more in nature of clarification in year 2025, inserting inclusive term 'graduation degree'. The amended rules have been relied upon for issuance of aforesaid recruitment notice dated 28th July, 2025. He submits he has clear instructions that there has been no recruitment under the rules for teachers to teach classes VI to VIII. He points out from counter affidavit dated 9th December, 2025, there stands disclosed order dated 28th February, 2017 made by coordinate Bench. Relevant text of the order is reproduced below.

"The prayer made in the writ petition reads thus:

"a) Issue a writ, order or direction in the nature of Certiorari quashing the impugned advertisement dated 21.12.2016 advertising total 9342 posts of Trained Graduate Teacher/L.T. Grade Teacher to be appointed in Government Inter Colleges for teaching the students from Class 6th to 10th without prescribing Teacher Eligibility Test as essential qualification."

*The petition is filed on the assumption that the advertisement has been issued for appointing 9342 Trained Graduate Teachers/L.T. Grade Teachers for classes 6 to 10. Counsel appearing for respondents 1 to 3, on instructions, submits **that the impugned advertisement and the posts of Trained Graduate Teachers/L.T. Grade Teachers are for classes 9 and 10, and not for classes 6 to 8th standard.** His statement is recorded and accepted. In view thereof, counsel for the petitioner does not press this writ petition."*

(emphasis supplied)

Thereby is demonstration that the rule under challenge was duly amended pursuant to the year 2014 notification issued by NCTE, in respect of recruitment of teachers for classes IX and X. He opposes the writ petitions.

6. Mr. Fuzail Ahmad Ansari, learned advocate appears on behalf of respondent no.5 (the Commission) in one writ petition and respondent no.4 in the other. He submits, the recruitment notice was issued by his client for recruitment of trained graduate teachers (TGT). On query he submits, there is no indication in the advertisement regarding classes to be taught by the teachers recruited. Mr. Vaibhav Tripathi, learned advocate appears on behalf of NCTE. He submits, his client was duly empowered to mandate qualifications on recruitment of the teachers. By notification dated 23rd August, 2010 requisite qualifications for recruitment of teachers appointed to teach upto classes VIII were notified. By subsequent notification dated 12th November, 2014, same was notified in respect of teachers who are to be recruited to teach classes IX and X.

7. On specific query, we have not been shown by respondents that there has been recruitment or at least initiated by a recruitment notice, pursuant to the requisite qualification mandated by NCTE on notification dated 23rd August, 2010. It follows, respondents cannot say that no vacancy has arisen in post of teachers to teach classes VI to VIII, particularly when there is admission on affidavit made by the Additional Director of Education that there exists 904 institutions where students study from classes VI to XII. As such, petitioners have demonstrated the omission, more so because the recruitment notice dated 28th July, 2025 does not specify the recruitment necessity of the recruited, in respect of classes to be taught. We find there is a gap in rule 8. On query Mr. Saran submits, upon direction made, State will have to propose amendment. Thus we do direct that there be insertion in rule 8, as requisite qualification in addition to those mentioned, TET (pass). We direct the Commission to issue corrigendum clarifying that the advertisement relates to recruitment of teachers for class IX and X. For the purpose, the State will issue necessary instructions.

9. The writ petitions are **allowed** to above extent and disposed of.

(2026) 4 ILRA 1899
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 13.04.2026

BEFORE

THE HON'BLE MRS. MANJU RANI CHAUHAN, J.

Writ A No. 18434 of 2025

Smt. Meenakshi Sharma & Anr. ...Petitioners
State of U.P. & Ors. ...Respondents
Versus

Issue(s) for consideration

- (a) Whether the respondent authorities exceeded their legally prescribed jurisdiction by reopening and reviewing the validity of the petitioners' 2006 selection (which had already attained finality through a comprehensive approval order in 2018) when a Division Bench of the High Court had explicitly restricted the scope of inquiry solely to the determination of salary arrears from 2014 to 2018.
- (b) Whether the State's sudden ex-parte cancellation of the 2018 approval and the subsequent termination of the teachers' right to work without issuing notices, furnishing adverse reports, or granting a meaningful opportunity of hearing was legally sustainable?
- (c) Whether the long, uninterrupted, and fraud-free service of the teachers since 2006 could be legally dismantled on the technical ground that they held B.Ed. degrees rather than basic training certificates, particularly when Supreme Court precedents explicitly protect B.Ed. teachers appointed prior to the 2008 rule amendment?
- (d) Whether the Regional Approval Committee possessed any statutory power under the law to review and rescind its own detailed, multi-year-old approval order?

Headnotes

A. Service Law – Uttar Pradesh Recognized Basic Shiksha (Junior High School) (Recruitment and Conditions of Service of Teachers) Rules, 1978: Rule 4(1) - The petitioners were appointed by the Committee of Management of the institution on 18.11.2006 and 18.12.2006 respectively. The institution in question was brought under the grant-in-aid list pursuant to the GO dated 02.12.2006. Teachers of the institution were receiving their salaries from the State exchequer pursuant to the order dated 21.02.2007. However, the petitioners were extended this benefit only after the issuance of the order dated 19.12.2014, whereby provision was made for payment of their salaries from the State exchequer. (Para 39, 40)

After thoroughly scrutinizing initial objections regarding their qualifications (holding B.Ed. degrees) and the selection process, the Regional Approval Committee fully validated their appointments and directed the payment of their current salaries from the State exchequer via a detailed order dated 14.08.2018. The petitioners were denied back-pay/arrears for the interim period between 2014 and 2018. In Special Appeal No. 488 of 2024, on 16.05.2024, a Division Bench directed the Secretary of Basic Education to strictly consider their limited claim regarding those salary arrears. (Para 48, 49)

Instead of deciding the restricted issue of 2014–2018 arrears, the Secretary of Basic Education issued an order on 26.08.2025, declaring the petitioners' original 2006 appointments void because B.Ed. degrees were allegedly not an approved qualification in 2006. Based on this directive, successive cascading orders were issued by the respondents, culminating in an ex-parte order on 08.09.2025, by the Regional Approval Committee cancelling its own 2018 approval.

B. The respondent authorities exceeded their jurisdiction in seeking to reopen the question relating to the validity of the petitioners' selection, which had already attained finality upon due consideration and was found to be in accordance with law. Such an exercise, being beyond the scope of the directions issued by the appellate court, is impermissible in the eyes of law. (Para 52, 60)

Once all objections pertaining to the selection of the petitioners had been duly examined and adjudicated, culminating in the order dated 14.08.2018 directing payment of salary, the issue that remained to be determined was confined to the entitlement of the petitioners to salary for the period from 2014 to 2018, in terms of the directions issued by the Hon'ble Court in the Special Appeal (order dated 16.05.2024). (Para 51, 57, 58)

C. The respondents have proceeded to the extent of rescinding the order dated 14.08.2018 by passing the impugned order dated 08.09.2025, that too without affording any opportunity of hearing to the petitioners and without conducting any inquiry whatsoever. Such action is patently arbitrary, violative of the principles of natural justice, and clearly unsustainable in the eyes of law. (Para 59)

D. The petitioners who had B.Ed degree and were appointed before 2008 i.e. before the date of amendment in the Rules, which came into existence in 1978, their appointment cannot be disturbed subsequently, especially when the appointment has been sought without playing fraud and the teachers have put in long years of service. (Para 62)

E. Where a teacher has been appointed and has continued in service for a long period, particularly with the knowledge of the competent authorities, such service ought not to be unsettled on mere technical objections. Where the appointment has either been expressly approved or the incumbent has been permitted to continue for years without objection, it is not open to the authorities to subsequently turn around and invalidate such appointment on grounds which were very much available at the time of appointment but were not raised. The State cannot take advantage of its own lapses after having taken work from the employees. Long and uninterrupted continuance in service creates a legitimate equity in favour of the employee. (Para 53, 54, 63, 64)

It is evident that the petitioners have continuously discharged their duties and have worked for a considerable length of time, including during the period from 2014 to 2018. **The petitioners are, therefore, prima facie entitled to payment of salary for the said period.** (Para 56)

Writ petitions allowed. (E-4)

Case Law Cited

1. Alka Singh, Writ Petition No. 14989 of 2018, decided on 29.08.2018 (Para 32)
2. Yadu Nath Singh, Writ Petition No. 19524 of 2018, decided on 13.09.2018 (Para 32)
3. District Basic Education Officer, District Mau Vs. Jagdamba Singh, Special Appeal Defective No.123 of 2009, decided on 27.07.2010 (Para 53)
4. Kalindi Pandey Vs. State of U.P. & Others, Writ-A No.52438 of 2010, decided on 21.12.2012 (Para 55)
5. State of Karnataka Vs. M.L. Kesari, (2010) 9 SCC 247 (Para 63)
6. Rattan Lal Vs. State of Haryana, (1985) 4 SCC 43 (Para 64)
7. Narendra Kumar Tiwari Vs. State of Jharkhand, (2018) 8 SCC 238 (Para 65)
8. Vikas Pratap Singh Vs. State of Chhattisgarh, (2013) 14 SCC 494 (Para 66)

List of Acts

Uttar Pradesh Recognized Basic Shiksha (Junior High School) (Recruitment and Conditions of Service of Teachers) Rules, 1978.

List of Keywords

long years of service, teacher, technical, natural justice, unsustainable, jurisdiction, salary, objections.

Appearances for Parties

For Petitioner(s): Adarsh Singh, Adwait Singh, Sr. Advocate

For Respondent(s): C.S.C.

(Delivered by Hon'ble Mrs. Manju Rani Chauhan, J.)

1. Heard Mr. Adarsh Singh, learned counsel for the petitioners, Mr. Radhe Shyam Gupta, learned counsel for respondent no.3 and Mr. Shailendra Singh, learned Standing Counsel for the State.

2. The present writ petition has been instituted, inter alia, seeking issuance of a writ of certiorari for quashing the impugned order dated 08.09.2025 passed by respondent no. 4, namely the Regional Approval Committee under the chairmanship of the Regional Assistant Director, (Basic), Meerut Region, Meerut. A further prayer has been made for issuance of a writ of mandamus commanding the respondents not to interfere with the peaceful functioning of the petitioners on the post of Assistant Teacher in Ram Singh Vishwa Chaitanya Kanya Junior High School, Astauli, District Gautam Buddha Nagar. Additionally, a direction has been sought against respondent no. 2 to ensure payment of the current salary to the petitioners in accordance with law.

3. Learned counsel for the petitioners submits that the institution, namely Ram Singh Vishwa Chaitanya Kanya Junior High School, Astauli, District Gautam Buddha Nagar (hereinafter referred to as "the institution"), is a duly recognized and aided junior high school. It is governed by the provisions of the U.P. Basic Education Act, 1972, the U.P. Recognized Basic Schools (Junior High School) (Recruitment and Conditions of Service of Teachers) Rules, 1978, and the Uttar Pradesh Junior High Schools (Payment of Salaries of Teachers and Other Employees) Act, 1978. Two posts of Assistant Teachers, one post of Clerk, and one post of Class-IV employee fell vacant in the year 2006, primarily on account of resignation.

4. He further submits that the Manager of the Committee of Management of the institution sought prior permission from the District Basic Education Officer to fill up the aforesaid vacancies vide letter dated 09.06.2006, which was duly granted by order dated 20.09.2006. Pursuant thereto, the vacancies were advertised in two widely circulated newspapers on 23.09.2006 and 24.09.2006. The petitioners, being duly qualified, applied in response to the said advertisement and participated in the selection process conducted by a duly constituted Selection Committee on 05.10.2006. Thereafter, all relevant papers pertaining to the selection proceedings were forwarded by the Manager of the institution to the District Basic Education Officer vide letter dated 08.10.2006. The said appointments were accorded approval by order dated 18.11.2006, in pursuance whereof an appointment letter was issued to petitioner no. 1 on the same date appointing her as Assistant Teacher (English).

5. As Ms. Deepti Gaur, who had been selected for the post of Assistant Teacher (Science), did not join the institution on account of her appointment elsewhere, the Manager of the institution proceeded to issue an appointment letter to petitioner no. 2 on 18.12.2006. The said appointment

was duly approved by the District Basic Education Officer, Gautam Budh Nagar, vide order dated 18.12.2006. In pursuance thereof, petitioner no. 2 joined the post of Assistant Teacher (Science) on the same date.

6. It is further contended that the State Government invited applications from eligible institutions for their inclusion in the grant-in-aid list. In pursuance thereof, the State Government, vide Government Order dated 02.12.2006, brought a large number of institutions within the grant-in-aid fold. Consequently, the institution of the petitioners was also included in the said list, as communicated vide letter dated 04.01.2007 issued by the Director of Education (Basic).

7. Pursuant to the inclusion of the institution in the grant-in-aid list, the salary of only one Headmaster and two Assistant Teachers was being disbursed from the State Exchequer in terms of the order dated 21.02.2007. However, the petitioners were not extended the said benefit, as at the time of submission of the application for grant-in-aid, the selection proceedings in respect of the petitioners were still underway.

8. Being aggrieved by the non-payment of salary, the petitioners submitted a representation before the State Government seeking release of their salary from the State Exchequer. The said representation was duly considered, and consequently, a Government Order dated 19.12.2014 came to be issued, providing for payment of salary to the petitioners.

9. Pursuant to the aforesaid Government Order dated 19.12.2014, the Regional Approval Committee, under the chairmanship of the Regional Assistant Director (Basic), Meerut Region, Meerut, undertook scrutiny of the selection and appointment of the petitioners. Upon due consideration and being satisfied with the validity of the said selection proceedings, the Committee passed an order dated 14.08.2018, directing payment of salary to the petitioners with effect from 19.12.2014, i.e., the date of issuance of the aforesaid Government Order.

10. It is also submitted that although, the petitioners had been regularly discharging their duties on the post of Assistant Teachers in the institution with effect from 18.11.2006 and 18.12.2006 respectively, after obtaining prior approval from the District Basic Education Officer, Gautam Buddh Nagar, they were denied payment of salary till the issuance of the order dated 14.08.2018.

11. Aggrieved thereby, the petitioners preferred Writ-A No. 970 of 2019 (Shrimati Minakshi Sharma and another vs. State of U.P. and 4 others), which came to be dismissed vide judgment and order dated 2.04.2024. The said judgment was assailed by the petitioners by filing Special Appeal No. 488 of 2024, which was disposed of by the Hon^{ble} Division Bench vide judgment and order dated 16.05.2024.

12. By the said order, the Hon^{ble} Division Bench set aside the judgment of the learned Single Judge dated 2.04.2024 and modified the order dated 14.08.2018 to the extent that the claim of the petitioners for payment of salary and arrears shall be considered by the Secretary, Basic Education, in accordance with law.

13. Upon filing of the contempt petition, the Secretary, Basic Education, proceeded to pass an order dated 26.08.2025, whereby the appointments of the petitioners were declared void, on the ground that the same had been made in contravention of the applicable rules.

14. Pursuant thereto Respondent No. 2 proceeded to pass the order dated 30.08.2025 at the behest of Respondent No. 1, without any independent application of mind, and further compelled Respondent No. 3 to initiate action against the petitioners without affording them any opportunity of hearing.

15. Consequently, Respondent No. 3, acting under the dictates of Respondent No. 2, passed the order dated 01.09.2025 in an arbitrary and perverse manner, in gross violation of the principles of natural justice, thereby restraining the petitioners from discharging their duties in the institution.

16. He further submits that the petitioners thereafter preferred Writ-A No. 14225 of 2025, assailing the orders dated 26.08.2025, 30.08.2025 and 01.09.2025. In the said writ petition, this Hon'ble Court was pleased to pass an order dated 09.10.2025, directing the respondents to file their counter affidavit.

17. To the utter surprise of the petitioners, Respondent No. 4 passed an ex-parte order dated 08.09.2025, being adversely influenced by the findings recorded in the order dated 26.08.2025 passed by Respondent No. 1, without issuing any notice or affording any opportunity of hearing to the petitioners. By means of the said order, Respondent No. 4 proceeded to cancel its earlier order dated 14.08.2018, despite there being no provision under law conferring any power of review upon it.

18. He further submits that the petitioners had neither any knowledge of the order dated 08.09.2025 nor was the same ever served upon them. Consequently, at the time of filing the writ petition, the aforesaid order was not brought under challenge.

19. It is also contended that the respondent No. 2 proceeded to pass the impugned order dated 30.08.2025 at the dictates of Respondent No. 1, without any independent application of mind. Further, Respondent No. 3, acting under the compulsion and directions of Respondent No. 2, was constrained to initiate action against the petitioners without affording them any opportunity of hearing.

20. Likewise, Respondent No. 3, acting at the dictates of Respondent No. 2 and without any independent application of mind, proceeded to pass the impugned order dated 01.09.2025, without affording any opportunity of hearing to the petitioners, thereby restraining them from discharging their duties in the institution.

21. The order dated 26.08.2025 passed by Respondent No. 1 is founded upon certain letters and reports submitted by the Director of Education (Basic), U.P. However, at no point of time were the said reports or materials ever furnished to the petitioners, nor were they afforded any opportunity to submit their explanation in respect thereof. Consequently, the entire exercise stands vitiated, having been undertaken in flagrant violation of the principles of natural justice.

22. The impugned orders have been assailed, inter alia, on the ground that Respondent No. 1 has acted wholly without jurisdiction in travelling beyond the scope of the authority vested in him, and in venturing into the question of the validity of the petitioners' appointments, which was neither in issue nor liable to be reopened. Rather, in terms of the directions issued by this Hon'ble Court, Respondent No. 1 was required to confine the inquiry strictly to the limited question of payment of salary and arrears for the period prior to 14.08.2018.

23. He further submits that while passing the impugned order, Respondent No. 1 has ventured into examining the validity of the selection and appointments of the petitioners, an issue which had already been duly considered and conclusively determined by the Regional Approval Committee, chaired by the Regional Assistant Director (Basic), Meerut Region, Meerut. The said Committee, after thoroughly examining all relevant aspects and dealing with the objections raised, had recorded its satisfaction and accordingly approved the appointments of the petitioners.

24. Inasmuch as the order dated 14.08.2018 has neither been revoked nor recalled by any competent authority and continues to hold the field, the petitioners remain entitled to continue in service and discharge their duties, along with all consequential benefits, including payment of salary from the State Exchequer. Thus, the impugned order, having failed to take into consideration the subsistence and binding effect of the aforesaid order dated 14.08.2018, is liable to be set aside.

25. There was no occasion for Respondent No. 1 to question the factum of appointment of the petitioners or to reopen the issue, particularly after the judgment and order passed by the Hon'ble Division Bench in Special Appeal No.488 of 2024 (Smt. Meenakshi Sharma And Another vs. State of U.P. And 4 Others) dated 16.05.2024, whereby the matter stood relegated to Respondent No. 4 therein with specific observations and directions which are as follows:

“6. Having heard rival submissions and perusing the record, we find that while according financial approval in the year 2018 there is no finding by the respondents to the effect that initial appointment/ engagement of the petitioners in the institution was contrary to the relevant Rules. The letters dated 16.4.2013 and 19.12.2014 also reflect that inter-departmental correspondence were on to accord financial approval to the petitioners-appellants. Therefore, it is clear that the claim was pending consideration before the Authority for according financial approval in favour of the petitioners-appellants and moreover the Authority has also accorded salary since 2018. But once positive communication was made on 19.12.2014 to send requisite papers of the appellants for financial approval within 15 days but the same was not complied with, therefore, in such situation, we find that it was not in dispute before the Authority to verify whether the petitioners were working in the institution or not. The dispute was only to accord salary. Once this finding of fact is returned in the above letters that they were working in the institution, the rightful claim cannot be denied qua the salary.

7. Considering the facts and circumstances of the case, we set aside the impugned judgment and order passed by learned Single Judge dated 2.4.2024. We further modify the order dated 14.8.2018 to the extent that the claim of the petitioners-appellants qua salary and arrears may be considered by the Secretary (Basic Education) in accordance with law but certainly after verifying the material/ record and after giving due opportunity to all the stake holders. The said

exercise is to be carried out within three months from the date of production of certified copy of this order.

8. Accordingly, the present special appeal stands disposed of. “

26. The scope of inquiry was thus clearly circumscribed, and the same could not have been expanded beyond the mandate of the Hon’ble Court.

27. Learned counsel for the petitioners further submits that the alleged infirmities, as recorded in the order dated 26.08.2025 passed by Respondent No. 1, had already been duly examined by the competent authority at the time of granting approval to the appointments of the petitioners vide a detailed order dated 14.08.2018. In the said order, it was categorically recorded that the appointments of the petitioners were made in accordance with the procedure prescribed under law, including due publication of advertisement in newspapers, one of which was a local daily. It was further observed that there was no requirement of obtaining prior permission from the State Government at the relevant point of time, as the institution had not yet been brought under the grant-in-aid list.

28. In view of the aforesaid findings, all relevant aspects stood duly considered and concluded by the competent authority. Therefore, there was no occasion for Respondent No. 1 to reopen the matter and re-examine the very same issues, which had already been adjudicated upon by the concerned Committee vide order dated 14.08.2018, which continues to subsist and hold the field.

29. It is also submitted that the issue regarding the qualifications of the petitioners was also duly examined by the Regional Approval Committee while passing the order dated 14.08.2018. Upon such consideration, the Committee accorded approval to the appointments of the petitioners. Once such an approval had been granted after due scrutiny, no occasion arose for reopening the matter with regard to the selection and appointment of the petitioners, particularly when the order dated 14.08.2018 continues to subsist and hold the field.

30. The order dated 26.08.2025 passed by Respondent No. 1 is patently illegal, inasmuch as it fails to consider and deal with the relevant grounds and proceeds in excess of the jurisdiction vested in it. Consequently, the order dated 08.09.2025, which is founded upon the aforesaid order dated 26.08.2025, having been passed ex parte without issuance of notice or affording any opportunity of hearing to the petitioners, is wholly arbitrary and without jurisdiction.

31. Further, Respondent No. 4 lacked any statutory power to review its earlier order, and the impugned order, having been passed without assigning any cogent reasons, is liable to be set aside on the ground of being a non-speaking and arbitrary order.

32. Learned counsel for the petitioners, in support of his submissions, has placed reliance upon the judgments rendered in **Alka Singh (Writ Petition No. 14989 of 2018, decided on 29.08.2018)** and **Yadu Nath Singh (Writ Petition No. 19524 of 2018, decided on 13.09.2018)**, wherein it has been laid down that once appointments have been made in accordance with the rules

prevailing at the relevant point of time, the same cannot be unsettled on the basis of any subsequent amendment in the rules.

33. Applying the aforesaid settled proposition of law to the facts of the present case, it is submitted that the petitioners, having been appointed in accordance with law prior to the institution being brought under the grant-in-aid list, their appointments could not have been disturbed on the grounds as mentioned in the impugned orders.

34. The learned counsel for the respondent no.3 as well as learned Standing Counsel for the State-respondents submitted that the advertisement issued for the appointment of two Assistant Teachers, one Clerk, and one Class IV employee failed to specify the minimum qualifications, thereby being in clear violation of the provisions of the Uttar Pradesh Recognized Basic Shiksha (Junior High School) (Recruitment and Conditions of Service of Teachers) Rules, 1978.

35. It is further submitted that as per Rule 4(1) of the Uttar Pradesh Recognized Basic Shiksha (Junior High School) (Recruitment and Conditions of Service of Teachers) Rules, 1978, the minimum qualification prescribed for appointment as an Assistant Teacher in a recognized school was a pass in Secondary Education, i.e., Uttar Pradesh Intermediate Examination or an equivalent examination with Hindi as a subject, along with the requisite teacher training qualification such as STC, JTC, BTC, or any Training Certificate recognized by the State Government or the competent Council.

36. It is further submitted that in the year 2006, a B.Ed degree was not included as a minimum qualification for the post of Assistant Teacher. The said qualification was incorporated only in the year 2008. Therefore, it is evident that the petitioners did not possess the prescribed minimum qualification for appointment as Assistant Teacher in a recognized school in the year 2006. Consequently, their appointment is in clear violation of Rule 4 of the Uttar Pradesh Recognized Basic Shiksha (Junior High School Rules) (Recruitment and Conditions of Service of Teachers), 1978.

37. In view of the foregoing submissions, the petitioners are not entitled to the reliefs as claimed.

38. Heard counsel for the parties and perused the record.

39. From the records, it is evident that the petitioners were appointed by the Committee of Management of the institution on 18.11.2006 and 18.12.2006 respectively. The institution in question was brought under the grant-in-aid list pursuant to the Government Order dated 02.12.2006.

40. Teachers of the institution were receiving their salaries from the State exchequer pursuant to the order dated 21.02.2007. However, the petitioners were extended this benefit only after the issuance of the order dated 19.12.2014, whereby provision was made for payment of their salaries from the State exchequer.

41. Certain objections were raised by Respondent No. 4 in the letter dated 02.02.2015 with regard to the selection proceedings of the petitioners. It was stated that the advertisement for the said selection was published only in one newspaper, Dainik Jagran on 23.09.2006. It was further alleged that no prior approval had been obtained before making the appointments, and therefore, the same were in violation of the Government Order issued under the 20.11. 2003.

42. It was also pointed out that although Mr. Majuddin Ansari, ABSA, was present during the selection proceedings, he had not been duly nominated by the District Basic Education Officer for that purpose. Additionally, an objection was raised regarding the educational qualifications of the petitioners, stating that they possessed B.Ed degree, which was not the prescribed qualification for the post.

43. In response to the aforesaid query, a report dated 15.02.2017 was submitted from the office of the Director of Education (Basic), stating that the advertisement for the selection had been published in Dainik Jagran as well as Hind ki Zameen. It was further clarified that at the time when the selection process was undertaken, the institution in question was not included in the grant-in-aid list, and therefore, no prior approval was required in terms of the Government Order dated 20th November, 2003.

44. With regard to the presence of ABSA, Mr. Majuddin Ansari, it was reported that the Basic Education Officer, Gautam Buddha Nagar, had informed him telephonically to remain present at the time of the interview.

45. As regards the qualifications of the petitioners, petitioner no. 1, who possessed B.A., B.Ed., and petitioner no. 2, who possessed M.Sc., B.Ed., were duly eligible for appointment on the post of Assistant Teacher in terms of the amended Fifth Amendment to the Rules, 1978.

46. Considering all the aforesaid aspects, approval for payment of salary to the petitioners from the State exchequer was accordingly granted vide order dated 19.12.2014.

47. Accordingly, upon due consideration and after addressing all the objections, the Regional Approval Committee, under the chairmanship of the Regional Assistant Director (Basic), Meerut Region, Meerut, passed an order dated 14.08.2018, directing that the petitioners be paid their salaries from the State exchequer with effect from 19.12.2014, i.e., the date of issuance of the aforesaid Government Order providing for such payment.

48. However, the petitioners were denied payment of salary for the period from 2014 to 2018. Aggrieved thereby, they filed a writ petition, which came to be dismissed.

49. The special appeal preferred against the said order of dismissal was, however, entertained and ultimately disposed of by order dated 16.05.2024, whereby the Secretary, Basic Education, was directed to consider and decide the claim of the petitioners/appellants regarding payment of salary and arrears, in accordance with law, after verifying the relevant records and affording due opportunity of hearing to the petitioners.

50. While disposing of the appeal, the appellate court also recorded a finding that the petitioners had been working in the institution, as was evident from the records, and the said fact was not in dispute.

51. Upon due consideration, this Court is of the considered opinion that once all objections pertaining to the selection of the petitioners had been duly examined and adjudicated, culminating in the order dated 14.08.2018 directing payment of salary, the issue that remained to be determined was confined to the entitlement of the petitioners to salary for the period from 2014 to 2018, in terms of the directions issued by the Hon'ble Court in the Special Appeal.

52. It is, therefore, manifest that the respondent authorities exceeded their jurisdiction in seeking to reopen the question relating to the validity of the petitioners' selection, which had already attained finality upon due consideration and was found to be in accordance with law. Such an exercise, being beyond the scope of the directions issued by the appellate court, is impermissible in the eyes of law.

53. The controversy in the present case stands squarely covered by the judgment of the Division Bench of this Court passed in **Special Appeal Defective No.123 of 2009 (District Basic Education Officer, District Mau v. Jagdamba Singh)**, decided on **27.07.2010** wherein it has been authoritatively held that where a teacher has been appointed and has continued in service for a long period, particularly with the knowledge of the competent authorities, such service ought not to be unsettled on mere technical objections.

54. The Court further emphasized that long and uninterrupted continuance in service creates a legitimate equity in favour of the employee. It was also observed that where the appointment has either been expressly approved or the incumbent has been permitted to continue for years without objection, it is not open to the authorities to subsequently turn around and invalidate such appointment on grounds which were very much available at the time of appointment but were not raised.

55. The Court while deciding the issued involved in **Writ-A No.52438 of 2010 (Kalindi Pandey vs. State of U.P. & Others as decided on 21.12.2012)**, wherein the Selection Committee had recommended the name of the petitioner therein in the year 1996 and the District Basic Education Officer has granted approval to the aforesaid recommendation for appointment of the petitioners therein as Assistant Teachers and the petitioners continued to teach for 14 years, when an objection was the District Basic Education Officer regarding the fact that the petitioners did not possess the requisite teachers training course certificate at the time of his appointment, had observed that the petitioners cannot be said to be at any fault because it is not the case that the documents on the basis of which appointment was sought were forged. Thus, at this stage i.e. after 14 years, even if it is assumed that the said certificate, possessed by the petitioners does not satisfy the requirement of the relevant rules, then too, the absence of requisite training certificate would not be that grave in the light of the other factors narrated in that case and the fact that the petitioners had gained sufficient experience, the decision for cancelling the appointment or dismissing the petitioners therein from service was arbitrary.

56. From the record, as also noticed by the Division Bench while deciding the Special Appeal, it is evident that the petitioners have continuously discharged their duties and have worked for a considerable length of time, including during the period from 2014 to 2018. Their working in the institution has, at no point, been disputed by the respondents. The petitioners are, therefore, prima facie entitled to payment of salary for the said period.

57. The appellate court, while disposing of the Special Appeal vide order dated 16.05.2024, had specifically directed the competent authority to consider the claim of the petitioners with regard to payment of salary and arrears, after due verification of the relevant records and upon affording an opportunity of hearing to the petitioners.

58. In such circumstances, once the aforesaid direction had been issued, the scope of consideration before the respondents stood confined to the determination of the petitioners' entitlement to salary for the relevant period. There was, therefore, no occasion or jurisdiction for the respondent authorities to reopen the issue relating to the validity of the petitioners' selection, particularly when all objections in that regard had already been duly examined and addressed while passing the order dated 14.08.2018.

59. The respondents have proceeded to the extent of rescinding the order dated 14.08.2018 by passing the impugned order dated 08.09.2025, that too without affording any opportunity of hearing to the petitioners and without conducting any inquiry whatsoever. Such action is patently arbitrary, violative of the principles of natural justice, and clearly unsustainable in the eyes of law.

60. Moreover, the impugned action runs directly contrary to, and in the teeth of, the directions issued by this Hon'ble Court in the Special Appeal, whereby the scope of consideration was specifically confined to the issue of payment of salary and arrears. The respondent authorities have thus acted beyond their jurisdiction in reopening and unsettling a matter which had already attained finality.

61. In Special Appeal No.1461 of 2005 (Committee of Management vs. State of U.P. and Others) and other connected special appeals, by order dated 09.01.2009, the appointment of the teachers who had B.Ed qualification and appointment made before the amendment of 1978 Rules in the year 2008, was set-aside on the ground that B.Ed is not one of the essential qualifications prescribed under the Rules. The teachers approached the Hon'ble Apex Court by means of filing Special Leave to Appeal (C) No(s)14907/2009 along with Special Leave to Appeal (C) Nos.24549-24580 of 2011, 27396 of 2016, 26331 of 2009 and C.A. No.3904 of 2013, in which the Apex Court vide order dated 14.07.2017 has passed the following order:

"Heard learned counsel for the parties.

Having regard to the fact that the petitioners have been in service for a long period, we are of the view that their appointments ought not be disturbed only on the ground of alleged lack of qualification which is contested by the petitioners.

Accordingly, the special leave petitions are disposed of by directing that the services of the petitioners be not disturbed on the above grounds.

Pending application(s), if any, shall also stand disposed of."

62. Once a view has been taken in several judgments as passed by this Court and the Hon'ble Apex Court that the petitioners who had B.Ed degree and were appointed before 2008 i.e. before the date of amendment in the Rules, which came into existence in 1978, their appointment cannot be disturbed subsequently, especially when the appointment has been sought without playing fraud and the teachers have put in long years of service.

63. In the case of **State of Karnataka v. M.L. Kesari**, reported in (2010) 9 SCC 247, the Hon'ble Supreme Court held that where employees have worked for a long period and their appointments were not tainted by fraud or illegality, their services deserve protection. The Court emphasized that long and continuous service cannot be ignored on technical grounds.

64. The Apex Court in the case of **Rattan Lal v. State of Haryana**, reported in (1985) 4 SCC 43 has held that where teachers had worked for a considerable time, denial of salary or termination on technical grounds would be arbitrary. The Court observed that the State cannot take advantage of its own lapses after having taken work from the employees.

65. The Hon'ble Supreme Court in the case of **Narendra Kumar Tiwari v. State of Jharkhand**, reported in (2018) 8 SCC 238, has reiterated that employees who have continued for long periods should not be deprived of benefits, particularly when the employer has taken work from them and there is no fraud attributable to the employee.

66. The Apex Court in the case of **Vikas Pratap Singh vs. State of Chhattisgarh**, reported in (2013) 14 SCC 494, has held that in cases where a wrongful or irregular appointment is made without any mistake on the part of the appointee and upon discovery of such error or irregularity, the appointee is terminated, this Court has taken a sympathetic view in the light of various factors including bona fide of the candidate in such appointment and length of service of the candidate after such appointment.

67. In view of the aforesaid discussion, the orders impugned are liable to be **set-aside**. Accordingly, the impugned order dated 08.09.2025 passed by Respondent No.4, order dated 26.08.2025 passed by Respondent No.1, order dated 30.08.2025, passed by respondent No.2 and order dated 01.09.2025, passed by Respondent No.3 are quashed.

68. With the aforesaid observations, these petitions are **allowed**.

69. Accordingly, all the benefits may be provided to the petitioners, for which they is entitled for.

70. The Court records its appreciation for the meticulous efforts and valuable assistance rendered by Ms. Anushka Gupta and Ms. Vaishnavi Kesarwani, Research Associates. The

precision, clarity and exactitude reflected in the legal research and analysis submitted by them, demonstrates commendable attention to detail. The Court acknowledges their contribution in aiding the adjudication of the matter.

(2026) 4 ILRA 1911
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 06.04.2026

BEFORE

THE HON'BLE KARUNESH SINGH PAWAR, J.

Writ A No. 29002 of 2019

Ankit Kumar

...Petitioner

Versus

State of U.P. & Ors.

...Respondents

Issue(s) for consideration

Whether respondents can deprive the petitioner of his claim on compassionate appointment merely on the ground that on the date of registration of the adoption deed, the petitioner was a major?

Headnotes

A. Service Law – Hindu Adoptions and Maintenance Act, 1956: Section 16 – Presumption as to registered documents relating to adoption - It is not open to the respondents to deprive the petitioner for his claim on compassionate appointment merely on the ground that on the date of registration of the adoption deed, i.e., 15.05.2014, the petitioner was a major. The adoption deed on record clearly mentions that the adoption ceremony had taken place on the eve of Basant Panchami in the year 1997, when the petitioner was about six years old. (Para 11)

Thus, considering the provisions of the Act of 1956, including Section 16 which provides for presumption as to registered documents relating to adoption, **the contention of the respondents that the adoption is invalid on account of the petitioner being a major on the date of registration is erroneous and cannot be a ground to deprive the petitioner of his claim for compassionate appointment** on account of the demise of his adoptive mother, Smt. Sharda Devi, who was admittedly working as a Basic Health Worker under respondent No. 4. (Para 12)

Writ petition disposed of. (E-4)

Case Law Cited

1. Daryao Vs. State of U.P., AIR 1961 SC 1457 (Para 9)
2. Prema Gopal Vs. Central Adoption Resource Authority & Ors., Special Leave to Appeal (C) No. 14886 of 2024, decided on 29.01.2025 (Para 10)
3. Union of India and Another Vs. Sukhpreet Kaur and Another, Judgment of the Punjab and Haryana High Court at Chandigarh, CWP No. 28074 of 2024, decided on 13.02.2025 (Para 10)

List of Acts

Hindu Adoptions and Maintenance Act, 1956.

List of Keywords

service, dying-in-harness, compassionate, appointment, *res judicata*,

Appearances for Parties**For Petitioner(s)**

Prahlad Maurya, Alok Kr. Misra, Anam Som Ratna Maurya, Neelam Kumari, Pawan Kumar Upadhyay, Ram Ji Trivedi, Ram Phal, Shraddha Tripathi

For Respondent(s)

C.S.C.

(Delivered by Hon'ble Karunesh Singh Pawar, J.)

1. Heard Mrs. Shraddha Tripathi, learned counsel for the petitioner and learned Additional C.S.C. appearing for the State-respondents.

2. By means of the present petition, the petitioner has prayed for a writ in the nature of mandamus commanding respondent No. 2 to consider his case for appointment under the Dying-in-Harness Rules in accordance with the order dated 04.07.2018 passed by the Inspector General (Stamp & Registration), Lucknow.

3. Submission of the learned counsel for the petitioner is that earlier the petitioner had filed Writ Petition No. 19158 (S/S) of 2017 (Ankit Kumar vs. State of U.P. & Ors.), which was decided vide judgment and order dated 18.09.2017, wherein a direction was issued to the Inspector General (Registration & Stamps) to examine the issue.

4. It is submitted that in compliance of the aforesaid order, the Inspector General (Registration & Stamps), vide order dated 04.07.2018, has upheld the validity of the adoption deed of the petitioner. Thus, it is prayed that respondent No. 2 be directed to consider the case of the petitioner for compassionate appointment.

5. Learned Standing Counsel appearing for the State has opposed the contention and submitted that on the date of registration of the adoption deed, i.e., 15.05.2014, the petitioner was a major and, therefore, his case could not be considered under the provisions of the Hindu Adoptions and Maintenance Act, 1956 (hereinafter referred to as "the Act of 1956").

6. Perused the record.

7. Although, considering the peculiar circumstances under which the petitioner's adoption was not in accordance with law, the direction for compassionate appointment was earlier refused, however, a direction was issued to the Inspector General (Registration & Stamps) to examine the issue. Relevant paragraphs 3 and 4 of the order dated 18.09.2017 are extracted hereinbelow:-

"3. Since the petitioner's adoption is not in accordance with law, as such no direction can be issued for grant of compassionate appointment, as is prayed in this matter. The order of Deputy Director (Administration) dated 21st June, 2017, therefore, does not require any interference and the challenge laid to the order fails.

4. A direction, however, is issued to the I.G. (Registration & Stamps) to examine the issue as to how a document of 1997 has been entertained for registration in 2014, without any

orders passed by the competent court and appropriate steps, as may be required to be drawn to deal with the situation, shall be undertaken, within a period of two months from the date of presentation of certified copy of this order. Learned Standing Counsel is directed to communicate this order to the I.G. (Registration & Stamps), within a week from today."

8. In compliance of the order dated 18.09.2017 passed by the Court earlier, the Inspector General (Registration & Stamps), vide order dated 04.07.2018, has upheld the validity of the adoption deed. The said order is on record as Annexure No. 18 to the petition. A Co-ordinate Bench of this Court, while recalling the earlier order dated 11.03.2024 vide order dated 21.08.2025, has also noticed that the adoption deed has been held to be valid by the Inspector General (Registration & Stamps).

9. It has further been observed that since the present petition has been filed in terms of the order dated 04.07.2018, it constitutes a fresh cause of action and, therefore, the principle of res judicata would not apply, as enunciated by the Hon'ble Supreme Court in **Daryao vs. State of U.P., AIR 1961 SC 1457**.

10. During the course of arguments, learned counsel for the petitioner has placed reliance upon the judgment of the Hon'ble Supreme Court in *Prema Gopal vs. Central Adoption Resource Authority & Ors.* (Special Leave to Appeal (C) No. 14886 of 2024, decided on 29.01.2025). Reliance has also been placed on the judgment of the Punjab and Haryana High Court at Chandigarh in *Union of India and Another vs. Sukhpreet Kaur and Another* (CWP No. 28074 of 2024, decided on 13.02.2025), wherein it has been held that once an adoption deed is registered, it would be presumed that a valid adoption has taken place with of course the right of rebuttal. Relevant paragraphs are extracted hereinbelow:-

"7. Once an adoption-deed is registered, it would be presumed that a valid adoption has taken place with, of course, the right of rebuttal. The provisions regarding such presumption are provided under Section 16 of the Act. The contention of the petitioners that the adoption of respondent no. 1 not being in accordance with law on the ground that she has attained the age of majority on the day of the registration of the adoption-deed, is also erroneous. The date of birth of the applicant-respondent no. 1 (Sukhpreet Kaur) is 23.03.1997. The registered adoption-deed reflects that the adoption had taken place on 12.01.2010 but the registration could not take place. It is a matter of common knowledge that so far as the School Education Boards are concerned, they would only recognize actual parents of a child for being mentioned in the certificate and the names of father and mother would change only on the presentation of a registered adoption-deed. In June, 2013, there was no registered adoption-deed and, therefore, it is natural that in the Punjab School Education Board Certificate, the names of original parents, instead of adoptive parents, of the applicant-respondent no. 1 were mentioned. The same would, therefore, not be a reason to deprive her claim for compassionate appointment on account of demise of her adoptive father Vijay Kumar, who was, admittedly, an employee of the Railways and had died while in service.

9. It may be pertinent to note that in a recent judgment passed in *Special Leave to Appeal (C) No. 14886 of 2024 Prema Gopal v. Central Adoption Resource Authority* dated 29.01.2025, the Apex Court considered the aspect with regard to relating back and held as under:?

"Learned counsel submitted that although the adoption of twin children in the instant case took place on the 09.01.2020, the Deed of Adoption was subsequently registered on 19.09.2022. He submitted that the said Deed of Adoption would relate back to 09.01.2020, on which date the religious ceremonies were performed in the presence of relatives and friends for the formal adoption of the children under the provisions of the HAMA, 1956. In the circumstances, Regulation 67 has to be read in a manner relatable to the date of adoption. although The submission of the learned counsel was that Deed of Adoption 19.09.2022 which is subsequent to the was registered on commencement of the Adoption (Amendment) Regulations, 2021, the said Deed of Adoption relates back to the date of adoption being 09.01.2020. In the circumstances, there can be no hurdle in the consideration of the case of the petitioner herein under Regulation 67 of the Regulations, 2022. Therefore, he urged that initially direction may be issued to respondent a no. 3/Collector, and respondent no. 2 as well, for the purpose of consideration of the case under Regulation 67 of the Regulations, 2022.

xx xx xx xx x

We are prima facie of the view that the learned counsel for the petitioner is right in his submissions."

11. In view of the aforesaid, it is not open to the respondents to deprive the petitioner for his claim on compassionate appointment merely on the ground that on the date of registration of the adoption deed, i.e., 15.05.2014, the petitioner was a major. The adoption deed on record clearly mentions that the adoption ceremony had taken place on the eve of Basant Panchami in the year 1997, when the petitioner was about six years old.

12. Thus, considering the provisions of the Act of 1956, including Section 16 which provides for presumption as to registered documents relating to adoption, the contention of the respondents that the adoption is invalid on account of the petitioner being a major on the date of registration is erroneous and cannot be a ground to deprive the petitioner of his claim for compassionate appointment on account of the demise of his adoptive mother, Smt. Sharda Devi, who was admittedly working as a Basic Health Worker under respondent No. 4.

13. In view of the peculiar facts and circumstances of the case, as well as the judgments referred to hereinabove, a writ of mandamus is issued to respondent No. 2 to consider the case of the petitioner for appointment under the Dying-in-Harness Rules.

14. The petitioner shall submit a fresh representation before respondent No. 2 within a period of two weeks from today. In case such a representation is submitted, the same shall be considered and a decision shall be taken within a further period of four weeks, in accordance with law, for making compassionate appointment.

15. The petition is, accordingly, **disposed of.**

(2026) 4 ILRA 1915
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 15.04.2026

BEFORE

THE HON'BLE VIKRAM D. CHAUHAN, J.

Writ A No. 38777 of 2015

Sachin Kumar & Ors.

...Petitioners

Versus

U.O.I. & Ors.

...Respondents

Issue(s) for consideration

- (a) Whether a disciplinary authority can rely solely on an uncorroborated, opinion-based handwriting report to dismiss an employee, particularly when other primary modes of physical identification are available?
- (b) Whether an employee's admission regarding the authenticity of an official document legally equates to admitting that the internal findings and conclusions of that document are true, thereby waiving the right to cross-examination?
- (c) Whether a departmental inquiry fundamentally flawed if the employer suppresses or ignores primary biometric and eyewitness indicators (thumbprints, verified photos, and invigilator testimony) tied to its own verification process?

Headnotes

A. Service Law – The three petitioners were recruited as Clerks (Assistants) by the State Bank of India (SBI) through a competitive selection process initiated via an advertisement dated 08.08.2009. They successfully cleared the written examination held on 08.11.2009, passed their interviews, and were appointed in late 2010. Following a successful six-month probation period, they were confirmed in service by May 2011. In 2012–2013, following external complaints alleging fraudulent recruitment, the Bank placed the petitioners under suspension. SBI subsequently issued a charge-sheet on July 11, 2013, accusing them of adopting unfair means and hiring impersonators to take the written examination on their behalf.

The Bank's case rested entirely on a report dated 19.11.2012, from a Forensic Science Laboratory handwriting expert, which concluded that the signatures on the written exam call letters did not match the petitioners' genuine signatures. No other departmental witnesses were examined. Based solely on this report, the Regional Manager dismissed the petitioners from service on 17.01.2014, and the Deputy General Manager rejected their subsequent statutory appeal on 11.03.2015. The petitioners moved the High Court to challenge these orders.

B.(i) A handwriting expert's report is a document prepared by a specialist, analysing handwriting or documents to help resolve disputes. Its nature as evidence is opinion-based. The opinion of handwriting expert is based on familiarity resulting from frequent observation and experience. The science of handwriting recognition is not a perfected proposition. (Para 11)

In disciplinary proceedings, the question to be probed is targeted towards finding as to whether the employee is guilty of misconduct as would merit punishment. It will depend on the facts and circumstances of each case, which are sufficient for the employee to be punished. (Para 12)

While passing the impugned order dated 17.01.2014, findings are based on handwriting expert report without there being any independent finding being recorded by the Enquiry Officer or the disciplinary authority. The disciplinary authority while passing the impugned order further has not taken into consideration the effect of thumb impression and the photograph of petitioners on call letter. In the disciplinary proceedings, handwriting expert was never examined, and was not permitted to be cross-examined by the employee/petitioners. (Para 13, 14, 15, 19, 23, 24)

Petitioners argued that the request was made to the Enquiry Officer for examination of the invigilator, however, aforesaid request was not accepted by the Enquiry Officer. The invigilator verified the photograph, thumb impression as well as signature of petitioners on the call letter of written examination and as such, he was the best person to have certified the presence of petitioners at the time of written examination. In reply submitted by petitioners, a specific stand was taken for cross-examination of invigilator, however, the aforesaid fact was ignored in the enquiry proceedings. (Para 24)

The impugned order of dismissal has been passed relying on mismatch of signature of petitioners on call letter with sample signatures based on report of handwriting expert. The other two factors (photograph and thumb impression) which were also the factor of identification of petitioners, had not been considered. (Para 16, 27, 28)

B.(ii) In disciplinary proceedings, "preponderance of probability" is the legal standard of proof used to determine if an employee is guilty of misconduct. It means that, based on the evidence presented, it is more likely than not that the alleged incident occurred. The decision is to be based on a careful weighing of all available facts and circumstances. The scales are to be perfectly balanced and all evidences, facts and circumstances must be considered to come to finding of misconduct. (Para 17)

It was imperative for respondent-Bank to have verified participation of petitioners in written examination by verifying all factors/modes of identification of petitioners w.r.t. his presence at the time of written examination. The respondent-Bank by doubting the candidature of petitioners is in fact challenging it's own examination process and the verification conducted by invigilator appointed by respondent-Bank. It is not the case of respondent-Bank that the recruitment department has reported any fault in the examination process. (Para 18)

C. If a party admits to the documents authenticity and genuineness thereby accepts that the document, was signed by the person it claims to be signed by, and is not a forgery. However, the aforesaid would not amount to admitting that the information, allegations, contents or statements written in the document are true or accurate. It is to be seen that accepting the authenticity of handwriting expert report would only mean that the handwriting expert report has been submitted by the authority concerned and the aforesaid would not have effect to have admitted the contents of handwriting expert report. The acceptance of the authenticity and genuineness of the handwriting expert report would not have the effect that the department would not give opportunity to delinquent employee to cross examine the hand writing expert. (Para 21)

D. The right to cross-examine the witnesses is an essential part of the doctrine of fairness and principles of natural justice. It is settled law that departmental proceedings should be fair, just and reasonable. The principle of natural justice is required to be followed at each step in departmental proceeding so that right of an employee to defend may not be prejudiced. Even in the memo of appeal preferred by petitioners, they had raised the issue with regard to non-production of handwriting expert for cross-examination before appellate authority, however, the appellate authority has brushed aside the aforesaid contention of petitioners on the ground that petitioners have admitted the genuineness and authenticity of handwriting expert report. The aforesaid finding of appellate authority is not sustainable in the eyes of law in view of the reasoning given hereinabove. (Para 22)

E. It is to be seen that the disciplinary proceedings are initiated to enquire into the alleged misconduct of an employee and come to a fair finding of fact w.r.t. the misconduct alleged to have been conducted by the employee. The employer is expected in the disciplinary proceeding to bring the best available evidence to prove the charge of misconduct against an employee. In the present case, neither invigilator was examined as a witness in support of departmental charge-sheet nor impugned order of dismissal has taken into consideration the endorsement of invigilator on the call letter for written examination that the thumb impression, photograph and signature were verified by invigilator. (Para 25)

In view of the above-mentioned reasoning, the impugned order dated 17.01.2014 passed by respondent no.4 and order dated 11.03.2015 passed by respondent no.3 are set aside. Liberty granted to respondent-Bank to hold disciplinary proceeding afresh against petitioners. (Para 29)

Writ petition allowed. (E-4)

Case Law Cited

1. Ran Vijay Singh and others Vs. Union of India and others, 2018 (6) ADJ 369 (Para 4-C)
2. Union of India and others Vs. Devendra Kumar Chaudhary and others, 2018 (9) ADJ 570 (Para 4-C)
3. Ravi Kumar Yadav Vs. Union of India and 4 others, Order dated 15.11.2022 passed in Writ-A No.8534 of 2018 (Para 4-C)
4. Murari Lal Vs. State of Madhya Pradesh, AIR 1980 SC 531 (Para 11)
5. Lalit Popli Vs. Canara Bank, 2003 (3) SCC 583 (Para 27)

List of Keywords

selection, suspension, complaint, recruitment, fraudulent, signature, unfair means, dismiss, handwriting.

Appearances for Parties

For Petitioner(s): Ashok Khare, Siddharth Khare

For Respondent(s): Ashutosh Mishra, A.S.G.I., Jayant Banerji, Satish Chaturvedi, Shyam Singh Sengar

(Delivered by Hon'ble Vikram D. Chauhan, J.)

1. Heard Sri Siddharth Khare, learned counsel for petitioners and Sri Ashutosh Mishra, learned counsel for respondent-Bank

2. The writ petition is preferred by petitioners challenging the order dated 17.1.2014 passed by respondent no.4-Regional Manager, State Bank of India, Regional Business Office, Meerut and order dated 11.3.2015 passed by respondent no.3-Deputy General Manager (B&O), Administrative Office, Noida.

3. The brief facts of the case are that:

(i) An advertisement dated 8.8.2009 was issued by respondent Bank for recruitment to the post of Clerk in State Bank of India. In pursuance to said advertisement, petitioner no.1-Sachin Kumar and petitioner no.2-Sanjeev Kumar applied under general category, while petitioner no.3-Vipin Kumar applied under Schedule Caste category. In pursuance to above-mentioned advertisement, petitioners appeared in written examination. Call letters of petitioners are annexed as Annexure Nos.2A, 2B and 2C to the writ petition. The result of written examination was declared on 3.3.2010 and petitioners were declared successful in aforesaid written examination.

Thereafter, petitioner no.1 appeared for interview on 1.5.2010, while petitioner no.3 appeared for interview on 27.4.2010 and petitioner no.2 also appeared for interview. Final result of above-mentioned recruitment process was declared on 29.9.2010 wherein petitioners were selected for appointment on the above-mentioned post.

(ii) In pursuance to above-mentioned selection of petitioners, petitioner no.1 submitted his joining on 18.12.2010 as Assistant in Baraut main branch, while petitioner no.2 submitted his joining at Agrawal Mandi, Tatri, District Baghpat and petitioner no.3 submitted his joining at Kotana Branch, District Baghpat. Initially, petitioners were appointed on probation for six months, however, after completion of aforesaid period, petitioners were confirmed in service.

(iii) On 9.10.2013, a notice was issued to petitioner nos. 1 and 3 to the effect that a complaint has been received with regard to fraudulent appointment in the bank. The petitioner nos.1 and 3 submitted reply denying the allegations of complaint. Petitioner nos.1 and 3 were thereafter suspended by means of order dated 16.1.2013, while petitioner no.2 was suspended by means of order dated 15.5.2012. The suspension of petitioners were based on allegation of fraudulent appointment in bank service by adopting unfair means.

(iv) Petitioner nos.1 and 3 being aggrieved by above-mentioned suspension order had preferred Writ-A No.19868 of 2013 (Sachin Kumar and 2 others Vs. S.B.I. Thru Chairman and 2 others). The aforesaid writ petition was disposed of by means of order dated 12.4.2013, whereby, this Court issued directions to the respondent-Bank that the disciplinary proceedings against petitioners be concluded preferably within three months from the date of presentation of certified copy of the order.

(v) Petitioners were issued charge-sheet dated 11.7.2013 in disciplinary proceedings. Charge against petitioners were with respect to obtaining appointment in Bank service by adopting unfair means/impersonation while attempting an examination which was held on 8.11.2009. Petitioners thereafter preferred reply to the above-mentioned charge-sheet denying allegations. Petitioners also sought for details of the complainant and copy of the complaint in respect of which disciplinary proceedings were initiated against petitioners. Petitioners also sought for cross-examination of complainant as well as the invigilator before whom petitioners appeared in written examination. Thereafter, respondents appointed an Enquiry Officer to enquire into allegations against petitioners.

(vi) Petitioners participated in disciplinary/enquiry proceedings. Thereafter, a show cause notice was issued to petitioners, which was replied by petitioners. Respondents by impugned order dated 17.1.2014 dismissed the petitioners from service. Petitioners being aggrieved by above-mentioned order dated 17.1.2014 preferred an appeal before respondent no.3. The aforesaid appeal of petitioners were rejected by order dated 11.3.2015 passed by respondent no 3.

4. It is submitted by learned counsel for petitioners that petitioners were working on the post of Clerk in the respondent-Bank after having been duly selected. A complaint was received by respondent-Bank against petitioners and on the aforesaid basis, disciplinary proceedings were initiated against petitioners and a charge sheet was issued on the ground that petitioners had

adopted unfair means and impersonation while attempting the written examination, which was held on 8.11.2009. Petitioners filed their reply denying the aforesaid allegations and disciplinary proceedings were held. The department produced handwriting expert report to substantiate the charge against petitioners that petitioners were not the person, who had appeared in the written examination held on 8.11.2009.

4-A. Learned counsel for petitioners submits that in the departmental proceedings no departmental witness was produced and the order of dismissal from service was passed against the petitioners. Thereafter, petitioners had filed an appeal. In the appeal, a specific ground was raised by petitioners that the handwriting expert was never permitted to be cross-examined. However, appellate authority has denied the aforesaid on the ground that the authenticity and genuineness of the handwriting expert report was not denied by petitioners as such there was no requirement for cross-examining the handwriting expert. The report of handwriting expert is only an opinion. The written examination was conducted by recruitment department of Bank and invigilator was present and admit card was signed in presence of invigilator, as such, it was imperative for department to have examined the invigilator as a department witness.

4-B. It is further submitted by learned counsel for petitioners that invigilator was never examined, who was the best person to substantiate the allegations. There was thumb impression on the admit card, which was also taken in presence of invigilator and aforesaid would have also been an indicative factor to be considered whether the petitioners had participated in the written examination. Mere relying upon report of handwriting expert, who was never cross-examined and was never produced as department witness would not be tenable under law. The request for examination of invigilator was also made, however, the same has also been turned down. In the facts and circumstances of the case, the manner in which the departmental proceedings have been proceeded is surrounded with suspicious circumstances as the department could have produced the invigilator, who was present at the time of examination, who was employee of Bank and examination was conducted by the recruitment department of the Bank and as such mere relying upon the handwriting expert report is not sustainable.

4-C. Learned counsel for petitioners has relied upon the judgment of this Court in **Ran Vijay Singh and others Vs. Union of India and others, 2018 (6) ADJ 369, Union of India and others Vs. Devendra Kumar Chaudhary and others, 2018 (9) ADJ 570 and order dated 15.11.2022 passed in Writ-A No.8534 of 2018, (Ravi Kumar Yadav Vs. Union of India and 4 others).**

4-D. Learned counsel for petitioners submits that while submitting reply to charge sheet, specific stand was taken for cross-examination of the invigilator, who was present at the time of examination. The punishment order mechanically relies upon the handwriting expert report without recording its independent finding.

5. Learned counsel for respondent-Bank has opposed the writ petition and submits that the handwriting expert report was the evidence found against petitioners in the disciplinary proceedings and on the aforesaid basis, the petitioners' services have been dispensed with and the appeal has been rejected. Petitioner have accepted the authenticity and genuineness of the

handwriting expert report, as such, once the document has been accepted as authentic and genuine, then requirement of cross-examination of handwriting expert would not arise.

6. Petitioners had appeared in a recruitment drive initiated by the respondent Bank for the post of Clerk in State Bank of India. Petitioners participated in written examination held on 18.11.2009 and were issued call letter for written examination which are Annexure Nos.2A, 2B and 2C to the writ petition. A perusal of the aforementioned call letter for written examination would go to show that call letter contained signature of petitioners as well as of Invigilator. The aforesaid call letter also carried thumb impression of petitioners made in the presence of Invigilator (as per call letter). The call letter also contained photograph of petitioners. Petitioners after the written examination were declared successful and, thereafter, were called for interview. The final result was declared on 29.9.2010 wherein all the petitioners stood selected for appointment. Petitioners were issued appointment letter and, thereafter, submitted their joining in the year 2010. Petitioners completed their probation successfully and after completion of probation period were confirmed in service by order dated 9.5.2011.

7. The respondent-Bank initiated disciplinary proceedings against the petitioners on the ground that petitioners had adopted unfair means and impersonation while attempting written examination for the post in question with the respondent-Bank. Petitioners denied the allegations made in the charge-sheet issued to the petitioners. The employer relied upon the report of handwriting expert dated 19.11.2012 to substantiate charges against petitioners with regard to unfair means and impersonation. The handwriting expert compared signature of petitioners on call letter for written examination with other signature and thereafter came to conclusion that signature on call letter was not written by the same person as the other signature.

8. It is not in dispute between the parties that except for above-mentioned handwriting expert report, no departmental witness was examined nor other material was relied upon by employer in support of the charges. The dismissal order dated 17.1.2014 was passed against petitioners solely relying upon handwriting expert report issued by the Forensic Science Laboratory.

9. The primary submission of learned counsel for petitioners is to the effect that the handwriting expert report was only an opinion and it was imperative on the part of department to have relied upon substantive evidence with regard to allegation to corroborate the conclusion arrived by the handwriting expert.

10. Learned counsel for respondent submitted that the handwriting expert report was the only evidence found against petitioners in the disciplinary proceeding and the same was enough for passing the dismissal order against petitioners.

11. A handwriting expert's report is a document prepared by a specialist, analysing handwriting or documents to help resolve disputes. Its nature as evidence is opinion-based. The opinion of handwriting expert is based on familiarity resulting from frequent observation and experience. The science of handwriting recognition is not a perfected proposition. The Hon^{ble}le

Supreme Court in **Murari Lal Vs State of Madhya Pradesh, AIR 1980 SC 531** with regard to the value of a handwriting expert has observed as under :-

“We are firmly of the opinion that there is no rule of law, nor any rule of prudence which has crystalized into a rule of law, that opinion-evidence of a handwriting expert must never be acted upon, unless substantially corroborated. But, having due regard to the imperfect nature of the science of identification of handwriting, the approach, as we indicated earlier, should be one of caution. Reasons for the opinion must be carefully probed and examined. All other relevant evidence must be considered. In appropriate cases, corroboration may be sought. In cases where the reasons for the opinion are convincing and there is no reliable evidence throwing a doubt, the uncorroborated testimony of an handwriting expert may be accepted. There cannot be any inflexible rule on a matter which, in the ultimate analysis, is no more than a question of testimonial weight. We have said so much because this is an argument frequently met with in subordinate courts and sentences torn out of context from the judgments of this Court are often flaunted.□”

12. In view of above mentioned, handwriting expert opinion is not a perfected proposition and is based on science of comparison and observation. In disciplinary proceedings, the question to be probed is targeted towards finding as to whether the employee is guilty of misconduct as would merit punishment. The standard of proof is based on preponderance of probability. It will depend on the facts and circumstances of each case, which are sufficient for the employee to be punished. The question whether the report of handwriting expert itself can be enough to proceed against the employee and disciplinary proceedings will depend on the facts and circumstances of each case.

13. It is admitted case that in the disciplinary proceedings, handwriting expert was never examined. The aforesaid expert further was not permitted to be cross-examined by the employee/petitioners. Further, the call letter on which the disputed signature of petitioners was examined by the handwriting expert also contained the photograph, thumb impression of petitioners. The aforesaid call letter for written examination, also stated that thumb impression of petitioners was made in the presence of Invigilator and signature of petitioners on call letter was also obtained in the presence of invigilator. Further, invigilator has also certified that signature of petitioners was obtained in his presence and photograph of petitioners on call letter for written examination was verified by invigilator.

14. No explanation is offered by counsel for respondent-Bank as to why the invigilator was not witnessed in departmental proceedings. The respondent-Bank has also not disputed the fact that signature & thumb impression of petitioners were obtained in presence of invigilator (as has been stated in the call letter). Further, counsel for respondent-Bank has not explained the fact that the photograph of petitioners has been verified by invigilator (as has been noted in the call letter itself). No dispute has been raised before this Court by counsel for respondent-Bank that the photograph of call letter does not belong to petitioners. It is important to note that recruitment to the post in question was carried on by the respondent-Bank itself through its recruitment department.

15. It is important to note that while passing the impugned order dated 17.1.2014, findings are based on handwriting expert report without there being any independent finding being recorded by the Enquiry Officer or the disciplinary authority. The disciplinary authority while passing the

impugned order further has not taken into consideration the effect of thumb impression and the photograph of petitioners on call letter.

16. The examination for recruitment in the Banks is required to be free and fair. If the examination is found to be unfair then it was for the examining body to have reported the same. Various mechanisms were embedded in the examination process to verify the identity of candidate as the call letter contained photograph of petitioners (verified by Invigilator), thumb impression and signature of petitioners. The impugned order of dismissal has been passed relying on mismatch of signature of petitioners on call letter with sample signatures based on report of handwriting expert. The other two factors (photograph and thumb impression) which were also the factor of identification of petitioners, had not been considered while passing the impugned order.

17. In disciplinary proceedings, "preponderance of probability" is the legal standard of proof used to determine if an employee is guilty of misconduct. It means that, based on the evidence presented, it is more likely than not that the alleged incident occurred. The decision is to be based on a careful weighing of all available facts and circumstances. The scales are to be perfectly balanced and all evidences, facts and circumstances must be considered to come to finding of misconduct.

18. It was imperative for respondent-Bank to have verified participation of petitioners in written examination by verifying all factors/modes of identification of petitioners with regard to his presence at the time of written examination. The respondent-Bank by doubting the candidature of petitioners is in fact challenging it's own examination process and the verification conducted by invigilator appointed by respondent-Bank. It is not the case of respondent-Bank that the recruitment department has reported any fault in the examination process.

19. The handwriting expert was not examined in disciplinary proceedings. The report of handwriting expert, which is not subjected to cross-examination by employee is a weak piece of evidence, more particularly when the call letter provides other modes of identification i.e. thumb impression and photograph, which were verified by invigilator. The circumstances and facts of the present case do not warrant that a mere handwriting expert report be concluded as conclusive evidence in respect of passing the impugned order against petitioners. The disciplinary proceedings scope should have been wide enough to have considered all the evidences, material, facts and circumstances with regard to identification of petitioners to have participated in the written examination conducted by Bank, however, in the present case handwriting expert report has only been considered, which is in the nature of the opinion and was not even subjected to cross-examination.

20. One of arguments raised by learned counsel for respondent-Bank was to the effect that the cross-examination of handwriting expert was not required as the petitioners admitted the authenticity and genuineness of handwriting expert report.

21. It is to be seen that accepting the authenticity of handwriting expert report would only mean that the handwriting expert report has been submitted by the authority concerned and the aforesaid would not have effect to have admitted the contents of handwriting expert report. It is

settled law that if a party admits to the documents authenticity and genuineness thereby accepts that the document, was signed by the person it claims to be signed by, and is not a forgery. However, the aforesaid would not amount to admitting that the information, allegations, contents or statements written in the document are true or accurate. Petitioners were not given any opportunity by respondent-Bank to cross-examine the handwriting expert, who has submitted the report. The acceptance of the authenticity and genuineness of the handwriting expert report would not have the effect that the department would not give opportunity to delinquent employee to cross examine the hand writing expert.

22. The right to cross-examine the witnesses is an essential part of the doctrine of fairness and principles of natural justice. It is settled law that departmental proceedings should be fair, just and reasonable. The principle of natural justice is required to be followed at each step in departmental proceeding so that right of an employee to defend may not be prejudiced. Even in the memo of appeal preferred by petitioners, they had raised the issue with regard to non-production of handwriting expert for cross-examination before appellate authority, however, the appellate authority has brushed aside the aforesaid contention of petitioners on the ground that petitioners have admitted the genuineness and authenticity of handwriting expert report. The aforesaid finding of appellate authority is not sustainable in the eyes of law in view of the reasoning given hereinabove.

23. The fact that handwriting expert was not cross-examined coupled with the fact that other factors of identification of petitioners, which were available were not part of disciplinary proceedings and further such factors and circumstances were not considered by disciplinary authority and only relying upon the handwriting expert report, which is not the perfect science, the drawing of conclusion by respondent authorities would not be fair more particularly when the petitioners had already been appointed and were working in the Bank after due verification of the records and no complaint has been sent by the recruitment department of the Bank that the recruitment process was tainted by the petitioners. Further the respondent-Bank has not examined the invigilator in disciplinary proceeding, who was present at the time of examination and has identified the petitioners.

24. Learned counsel for petitioners has further raised argument that the request was made to the Enquiry Officer for examination of the invigilator, however, aforesaid request was not accepted by the Enquiry Officer. The invigilator verified the photograph, thumb impression as well as signature of petitioners on the call letter of written examination and as such, he was the best person to have certified the presence of petitioners at the time of written examination. In reply submitted by petitioners, a specific stand was taken for cross-examination of invigilator, however, the aforesaid fact was ignored in the enquiry proceedings.

25. It is to be seen that the disciplinary proceedings are initiated to enquire into the alleged misconduct of an employee and come to a fair finding of fact with regard to the misconduct alleged to have been conducted by the employee. The employer is expected in the disciplinary proceeding to bring the best available evidence to prove the charge of misconduct against an employee. In the present case, neither invigilator was examined as a witness in support of departmental charge-sheet nor impugned order of dismissal has taken into consideration the endorsement of invigilator on the

call letter for written examination that the thumb impression, photograph and signature were verified by invigilator. Although in counter affidavit filed by respondent-Bank, it is stated that in the case of petitioner no.2-Sanjeev Kumar, fingerprint expert report was obtained, however, the aforesaid report is not part of disciplinary proceedings and as such, the same could not have been relied upon before this court for the first time.

26. A perusal of impugned order would further go to show that no independent finding has been recorded by disciplinary authority as to why handwriting expert report has been accepted by the disciplinary authority and further no reasons have been recorded in the impugned order as to why other identification marks (thumb impression and photograph verified by Invigilator) were not considered by disciplinary authority when the same has not been disputed by respondent-Bank.

27. The judgment of **Lalit Popli Vs Canara Bank, 2003(3) SCC 583** relied upon by counsel for respondent-Bank in the facts of said case other evidence were also read as has been stated in paragraph 4 of the aforesaid judgment and further the court in aforesaid judgment especially recorded that disciplinary authority took pains to carefully consider the handwriting expert report and also looked at the documents to arrive at its own conclusion and, therefore, the aforesaid judgment relied upon by counsel for respondent-Bank is distinguishable from the facts and circumstances of present case. In the present case, it is not disputed by counsel for respondent-Bank that during enquiry proceedings no opportunity was given to the petitioners to cross-examine the handwriting expert, who has prepared the handwriting expert report. Further, no independent finding is recorded by disciplinary authority in the impugned order as to why report of handwriting expert is found acceptable despite the fact that in disciplinary proceedings the employer has not doubted the thumb impression and photograph of petitioners on call letter which was verified by invigilator.

28. The only material relied upon by respondent-Bank while passing the impugned order of dismissal against petitioners is the report of handwriting expert. The aforesaid handwriting expert was not subjected to any cross-examination and as such, there was no opportunity for petitioners/employees to have demolished the handwriting expert report in the cross examination. Not providing an opportunity of cross-examination to petitioners on the pretext that handwriting expert report genuineness and authenticity was not disputed is not tenable under law as even if the document execution is not disputed the contents of document can always be subject matter of cross-examination to demolish the conclusion of handwriting expert and the same is essentially part of principles of natural justice. There was other material available on the basis of which the identity or presence of petitioners at the time of written examination could have been established as has been detailed herein above. The aforesaid factors have neither been considered in the impugned order nor any evidence in this respect is led in the disciplinary proceeding.

29. In view of the above-mentioned reasoning, the impugned order dated 17.1.2014 passed by respondent no.4 and order dated 11.3.2015 passed by respondent no.3 are hereby set aside. The nature of allegation made against petitioners are serious in nature and as such, liberty stands granted to respondent-Bank to hold disciplinary proceeding afresh against petitioners and respondent-Bank shall also be at liberty to place the petitioners under suspension after reinstatement of petitioners. If the respondent-Bank takes a decision to hold the enquiry afresh then

all the materials with regard to identity of petitioners at the time of written examination including photograph, thumb impression and signature would be taken into consideration.

30. The writ petition is **allowed** with aforesaid directions.

(2026) 4 ILRA 1925
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 02.04.2026

BEFORE

THE HON'BLE MRS. MANJU RANI CHAUHAN, J.

Writ A No. 68411 of 2015

Km. Ritu Mishra & Ors.

...Petitioners

Versus

State of U.P. & Ors.

...Respondents

Issue(s) for consideration

- (a) Whether a meticulous adherence to a selection procedure under an inapplicable rule framework validate an appointment or generate an enforceable legal right?
- (b) Whether the Commissioner lacked jurisdiction to interfere in the functioning of the institution or to direct cancellation of the appointment in question?
- (c) Whether the impugned order has been passed in violation of principles of natural justice?
- (d) Whether the impugned order is a non-speaking one?

Headnotes

A. Service Law – Anglo Junior High School Persia, Gorakhpur, was initially recognized under the U.P. Basic Education Act, 1972, and came into the State's grant-in-aid list in 1980–81. In the year 2006, the school was upgraded to a High School under the U.P. Intermediate Education Act, 1921. Between 2008 and 2012, five sanctioned teachers retired. To fill these vacancies, the Committee of Management sought permission from the District Basic Education Officer (BSA), who granted permission to advertise the posts on 25.06.2015.

The selection process was conducted in August 2015 under the U.P. Recognized Basic Schools (Junior High Schools) (Recruitment and Conditions of Service of Teachers) Rules, 1978. The four petitioners (who were fully qualified (Graduates with B.Ed. and TET certificates)) were selected by a committee that included a nominee of the BSA. They joined the institution at the end of August 2015. Following a complaint by a third party, the Divisional Commissioner of Gorakhpur ordered an inquiry. Based on the subsequent inquiry report, the Assistant Director of Education (Basic) directed the BSA to remove the teachers. Consequently, on 10.12.2015, the BSA issued the impugned order terminating the services of the petitioners and cancelling their appointments.

B. Compliance with a procedure under an inapplicable statutory framework does not cure the inherent lack of jurisdiction. Appointments made in contravention of statutory provisions are illegal and do not confer any enforceable right. (Para 25)

Once the institution stood upgraded, all appointments were necessarily required to be made strictly in accordance with the statutory provisions governing such upgraded institutions. The appointments of the petitioners have been made under the provisions of the Rules of 1978, which are wholly inapplicable to the institution in question. Upon its upgradation, the institution is governed by the provisions of the U.P.

Intermediate Education Act, 1921 r/w the Rules of 1982, and any appointment was required to be made strictly in accordance therewith. (Para 41, 42, 44)

Thus, even if the entire procedure under the 1978 Rules was meticulously followed, the same would not validate an appointment which ought to have been made in accordance with the statutory regime governing secondary institutions. (Para 29, 30, 34, 36)

C. Jurisdiction of Commissioner - Where an appointment is ex facie contrary to statutory provisions, the competent authority is not rendered powerless to annul the same. The impugned action reflects an exercise of supervisory and corrective jurisdiction to rectify a patent illegality in the matter of appointment. Petitioners have failed to demonstrate any statutory embargo restraining such exercise of power. Even assuming, for the sake of argument, that the Commissioner could not have interfered in matters strictly governed by the applicable statutory rules, the present case does not fall in that category, as the very foundation of the appointments is contrary to the statutory scheme. (Para 31, 39)

D. Principles of natural justice are not to be applied in a straitjacket formula. Where the admitted or undisputed facts lead to only one inevitable conclusion, and no prejudice is demonstrably caused, the requirement of affording a prior opportunity of hearing may be dispensed with. (Para 37)

In the present case, the foundational facts, namely the upgradation of the institution to a High School and the consequent applicability of a different statutory regime, are not in dispute. Once the institution stood upgraded, the field stood governed by the statutory provisions applicable to High Schools, and not by the Rules of 1978. The appointments of the petitioners, having been made *dehors* the governing statutory framework, are thus rendered *ex facie* illegal. In such circumstances, no useful purpose would have been served by affording an opportunity of hearing. The plea of violation of natural justice, therefore, does not persuade this Court to interfere. (Para 32, 38)

E. Mere brevity of the order does not render it invalid when the underlying illegality is apparent. The basis of cancellation, namely non-adherence to the applicable statutory provisions, is clearly discernible from the record. The impugned orders sufficiently indicate that the appointments were not made in accordance with the statutory provisions applicable to institutions governed by the relevant enactments, including the Act, 1921 and the Act, 1982 (Para 33, 40)

F. Where the substantive action itself is contrary to the governing statute, this Court would be loath to exercise its discretionary writ jurisdiction to grant relief on technical or procedural grounds. In present case, even though certain grounds have been urged with regard to lack of jurisdiction and the impugned order being nonspeaking in nature, the same pale into insignificance and do not merit adjudication. (Para 43)

Applicability of recruitment rules is dependent upon the status of the institution on the date of appointment. Thus, the entire proceedings culminating in the appointments of the petitioners stand vitiated in the eyes of law, being *dehors* the applicable statutory framework. (Para 45, 46)

Writ petition dismissed. (E-4)

Case Law Cited

1. Sunil Kumar Dubey Vs. State of U.P., Writ-A No. 23887 of 2009, decided on 06.04.2015 (Para 12)
2. Manju Awasthi Vs. State of U.P., 2013 (3) ADJ 64 (DB) (Para 20)
3. Shailendra Pratap Singh Vs. State of U.P., Writ A No. 6879 of 2012, Neutral Citation No. 2024 AHC-LKO-41360 (Para 22)
4. Committee of Management, Standard Intermediate College, Mau, Aima and others Vs. State of U.P. and others, Special Appeal No. 503 of 2019 (Para 25)

5. State of Karnataka Vs. Umadevi, (2006) 4 SCC 1 (Para 35)

6. Manju Awasthi v. State of U.P., 2013 (3) ADJ 64 (DB) (Para 45)

List of Acts

Uttar Pradesh Recognized Basic Schools (Junior High Schools) (Recruitment and Conditions of Service of Teachers) Rules, 1978; U.P. Basic Education Act, 1972; U.P. Intermediate Education Act, 1921.

List of Keywords

compliance, upgrade, basic, intermediate, school, teacher, recruitment, appointment, jurisdiction, principles, natural justice.

Appearances for Parties

For Petitioner(s): Sudeep Dwivedi

For Respondent(s): Arun Kumar, Ashish Kumar (nagvanshi), C.S.C., S.p.k. Tripathi

(Delivered by Hon'ble Mrs. Manju Rani Chauhan, J.)

Order on Impleadment Application

1. Heard learned counsel for the petitioners and learned counsel for the respondents.

2. The impleadment application has been moved for impleading Manish Kumar and Durgesh Dhar as respondents No. 7 & 8 as they are the persons who participated in the selections, but have been declared unsuccessful and made a complaint regarding the selection proceeding. Therefore, as complainants, they cannot be permitted to be arrayed as party. They can also not be permitted on the ground that they have not challenged the appointment of the petitioners on any ground which was the option left to them.

3. Accordingly, the impleadment application is rejected.

Order on petition

1. Heard learned counsel for the petitioners and Mr. Shailendra Singh, learned Standing Counsel for the State-respondents.

2. The present petition has been filed, with a prayer to quash the orders dated 2.12.2015 and 10.12.2015, passed by respondents No. 3 & 4, respectively, with a further prayer to direct the respondents not to interfere in the peaceful functioning of the petitioners as Assistant Teachers in the concerned institution and also make payment as and when it comes due.

3. Learned counsel for the petitioner submits that the institution of respondent No.6, namely, Anglo Junior High School Persia, Gorakhpur is an institution, established up to Junior High School level and the said institution was recognized under U.P. Basic Education Act, 1972 (in short 'Act, 1972') and appointment of teachers are being made under the U.P. Recognized Basic Education (Junior High School) (Recruitment and Conditions of Service of Teachers) Rules, 1978 (in short 'Rules, 1978').

4. The aforesaid institution came into grant-in-aid list in 1980-81 up to Junior High School. Initially one post of Head Master and four posts of Assistant Teachers were sanctioned. However, by order of respondent No.3 dated 31.3.2019, one extra post of Assistant Teacher was sanctioned. Accordingly, five teachers, namely, Radhey Shyam Mishra, Shiv Shankar, Moti Yadav, Ravindra Rai and Ram Kripal Maurya, who were getting salary under the Rules, 1978 in the Junior High School, retired in the year 2008, 2009, 2010, 2011 and 2012, respectively.

5. The institution was upgraded up to High School level under the U.P. Intermediate Education Act and was granted recognition up to the aforesaid level in the year 2006. After upgradation of the institution up to High School level, as there was no provision of creation of posts, therefore, in order to fill up the aforesaid vacant posts, due to retirement of five teachers as named above, who were drawing salary under the Rules, 1978, a permission was taken for advertising the aforesaid posts of four teachers. The District Basic Education Officer granted permission for advertisement by order dated 25.6.2015. Accordingly, the advertisement was published in two newspapers, namely, Aaj and Swatantra Chetna on 27.6.2015.

6. The petitioners, being duly qualified with a Graduation degree, B.Ed. training qualification, and having also qualified the Teacher Eligibility Test (TET), were selected and appointed to the post of Assistant Teacher after undergoing due selection before the duly constituted Selection Committee. Their appointments were accorded approval vide order dated 25.08.2015, pursuant where to the Committee of Management issued formal appointment letters of even date, i.e., 25.08.2015, in favour of the petitioners.

7. Thereafter, the candidates who had applied appeared before the duly constituted Selection Committee, formed in accordance with the relevant statutory provisions. The Committee comprised the Manager, the Headmaster, and a nominee of the District Basic Shiksha Adhikari, Gorakhpur—namely, the Deputy Education Officer, Shri Parasnath Kushwaha.

8. Thereafter, the petitioners duly joined the institution as Assistant Teachers on 28/31.08.2015 and have been continuously discharging their duties since then.

9. Upon a complaint lodged by one Udhay Narayan Mishra, who had earlier instituted proceedings before the court below, the Commissioner, Gorakhpur Mandal, Gorakhpur, initiated an enquiry and, vide order dated 24.11.2015, directed the Assistant Director of Education (Basic) to submit a report with respect to the said complaint.

10. Pursuant thereto, the Assistant Director of Education (Basic) called for a report from the District Basic Education Officer, who, in turn, submitted the same. Relying upon the said report, the Assistant Director of Education, Mandal, thereafter passed an order dated 02.12.2015 directing the District Basic Education Officer, Gorakhpur, to take steps for removal/termination of the petitioners from service. Subsequently, the District Basic Education Officer has passed the impugned order dated 10.12.2015, whereby the services of the petitioners have been terminated; in effect, their appointments have been cancelled.

11. The aforesaid orders have been assailed, inter alia, on the ground that the Commissioner lacked inherent jurisdiction to issue directions to the Assistant Director of Education to initiate or pass such orders, thereby impermissibly interfering in the statutory functioning of the educational authorities governing appointments made under the provisions of the Act. It is contended that such interference is wholly without authority of law and renders the impugned orders ex facie illegal and without jurisdiction.

12. In support of the aforesaid submission, reliance has been placed upon the judgment rendered in **Sunil Kumar Dubey v. State of U.P., Writ-A No. 23887 of 2009, decided on 06.04.2015**, wherein it has been observed that the State Government does not possess any direct role or authority in matters pertaining to recruitment of teachers, non-teaching staff, or Class-IV employees, as such powers are statutorily vested in the competent educational authorities designated for the said purpose.

13. The learned counsel for the petitioners further submits that the impugned orders have been passed in flagrant violation of the principles of natural justice, inasmuch as no notice was ever issued nor any opportunity of hearing was afforded to the petitioners prior to the passing of the said orders.

14. It is further contended that the petitioners were duly appointed as Assistant Teachers strictly in accordance with the procedure prescribed under law. However, their services have been dispensed with without conducting any regular or detailed inquiry, as mandatorily required, before taking such an adverse action.

15. In view thereof, it is urged that the impugned orders, having been passed in breach of the settled legal principles and without adherence to the due process of law, are wholly arbitrary, unsustainable, and liable to be set aside as being bad in the eyes of law.

16. The impugned orders are wholly non-speaking in nature, bereft of any reasons whatsoever as to why the appointments of the appellants have been cancelled. Such orders, passed without disclosing the basis or rationale, fail to meet the essential requirement of reasoned decision-making.

17. Furthermore, the same have been issued without affording any proper notice or opportunity of hearing to the appellants, thereby rendering the action in clear violation of the principles of natural justice.

18. In consequence, the impugned orders, being arbitrary, unreasoned, and procedurally infirm, are unsustainable in the eyes of law and cannot be allowed to stand.

19. It is submitted by the learned Standing Counsel that it is an admitted position on record that the institution in question stood upgraded to a High School in the year 2006. Consequently, any appointment made thereafter could not have been governed by the provisions of the Uttar Pradesh Recognized Basic Schools (Junior High Schools) (Recruitment and Conditions of Service

of Teachers) Rules, 1978, which are applicable only to institutions imparting education up to the Junior High School level.

20. He further submits that the controversy involved in the present case is no longer res integra and stands squarely covered by the judgment of this Court in **Manju Awasthi v. State of U.P. reported in 2013 (3) ADJ 64 (DB)**, wherein it has been categorically held that the applicability of recruitment rules is dependent upon the status of the institution on the date of appointment. It has been authoritatively laid down that upon upgradation, the earlier statutory framework stands eclipsed and the field becomes governed by the provisions of the Uttar Pradesh Intermediate Education Act, 1921 and the Uttar Pradesh Secondary Education Services Selection Board Act, 1982.

21. Learned Standing Counsel further contends that the determinative factor is the date of appointment and not the stage at which the selection process may have been initiated. Thus, any appointment made subsequent to upgradation, by invoking the provisions of the 1978 Rules, is wholly without jurisdiction. Such an appointment, being in clear contravention of the statutory mandate, is void ab initio and confers no legal right upon the appointee.

22. The learned Standing Counsel has placed reliance upon the judgment rendered in **Shailendra Pratap Singh vs. State of U.P., Writ A No. 6879 of 2012, decided on 3rd March, 2024 (Neutral Citation No. 2024 AHC-LKO-41360)**. In the said case, the impugned order arose out of a procedural irregularity in the appointment of a clerk, wherein the provisions of the Rules, 1984 were invoked for making such appointment.

23. The Court, upon due consideration, dismissed the petition holding that the provisions of the Rules, 1984 governing such appointments would not be applicable to an institution that had already been upgraded to the level of a High School. It was categorically observed that, upon such upgradation, the field stood occupied by the provisions of the U.P. Intermediate Education Act, 1921, and the appointments were required to be made strictly in accordance therewith.

24. Consequently, it was held that any appointment made de hors the applicable statutory framework, i.e., by erroneously invoking the Rules, 1984, stood vitiated in the eyes of law. Thus, in light of the settled legal position, the entire proceedings culminating in such appointment were rendered unsustainable.

25. He further submits that a batch of Special Appeals, the leading one being **Special Appeal No. 503 of 2019 (Committee of Management, Standard Intermediate College, Mau, Aima and others vs. State of U.P. and others)**, has authoritatively delineated the statutory provisions applicable to institutions which were initially Junior High Schools but were subsequently upgraded to High Schools.

26. It is contended that the Court, in the aforesaid judgment, has clearly held that upon such upgradation, the earlier regulatory framework ceases to operate and the appointments are thereafter required to be made strictly in accordance with the provisions governing High Schools under the relevant Act and Rules.

27. On the strength of the said pronouncement, it is urged that if the applicable statutory scheme is correctly applied to the facts of the present case, the appointments of the petitioners are *ex facie* dehors the prescribed rules. Consequently, it is submitted that the petitioners are not entitled to any relief from this Court.

28. Heard learned counsel for the parties and perused the records.

29. The petitioner asserts that his appointment was made against vacancies arising on account of the retirement of four teachers, and that the entire selection process was conducted strictly in accordance with the provisions of the Uttar Pradesh Recognized Basic Schools (Junior High Schools) (Recruitment and Conditions of Service of Teachers) Rules, 1978.

30. He further submits that the vacancies in question were duly advertised and the selection was conducted strictly in accordance with the provisions of the Uttar Pradesh Recognized Basic Schools (Junior High Schools) (Recruitment and Conditions of Service of Teachers) Rules, 1978. It is contended that the competent authority, namely the Committee of Management, having adhered to the prescribed procedure, the appointment in question cannot be faulted.

31. It is next submitted that the Commissioner lacked jurisdiction to interfere in the functioning of the institution or to direct cancellation of the appointment in question.

32. Learned counsel further submits that the impugned order has been passed without holding any proper inquiry and without affording the petitioner an adequate opportunity of hearing, thereby being in clear violation of the principles of natural justice.

33. Lastly, it is urged that the impugned order is a non-speaking one, as it fails to disclose any cogent reasons, and is therefore liable to be set aside on this ground alone.

34. The principal submission advanced on behalf of the petitioner, that since the procedure prescribed under the 1978 Rules was duly followed, the appointment deserves protection, does not merit acceptance. The issue is not merely whether a procedure has been followed, but whether the correct statutory procedure has been adhered to. Once it is found that the 1978 Rules themselves were inapplicable, any adherence to the procedure prescribed thereunder becomes wholly inconsequential.

35. Compliance with a procedure under an inapplicable statutory framework does not cure the inherent lack of jurisdiction. The Hon'ble Supreme Court in **State of Karnataka v. Umadevi** reported in (2006) 4 SCC 1 has clearly held that appointments made in contravention of statutory provisions are illegal and do not confer any enforceable right.

36. Thus, even if the entire procedure under the 1978 Rules was meticulously followed, the same would not validate an appointment which ought to have been made in accordance with the statutory regime governing secondary institutions.

37. As regards the submission advanced by learned counsel for the petitioner on the alleged violation of the principles of natural justice, this Court finds that it is a settled proposition of law that such principles are not to be applied in a straitjacket formula. Where the admitted or undisputed facts lead to only one inevitable conclusion, and no prejudice is demonstrably caused, the requirement of affording a prior opportunity of hearing may be dispensed with.

38. In the present case, the foundational facts, namely the upgradation of the institution to a High School and the consequent applicability of a different statutory regime, are not in dispute. Once the institution stood upgraded, the field stood governed by the statutory provisions applicable to High Schools, and not by the Rules of 1978. The appointments of the petitioners, having been made dehors the governing statutory framework, are thus rendered *ex facie* illegal. In such circumstances, no useful purpose would have been served by affording an opportunity of hearing. The plea of violation of natural justice, therefore, does not persuade this Court to interfere.

39. As regards the contention pertaining to lack of jurisdiction of the Commissioner, the same is equally devoid of merit. The impugned action reflects an exercise of supervisory and corrective jurisdiction to rectify a patent illegality in the matter of appointment. It is well settled that where an appointment is *ex facie* contrary to statutory provisions, the competent authority is not rendered powerless to annul the same. The petitioners have failed to demonstrate any statutory embargo restraining such exercise of power. Even assuming, for the sake of argument, that the Commissioner could not have interfered in matters strictly governed by the applicable statutory rules, the present case does not fall in that category, as the very foundation of the appointments is contrary to the statutory scheme.

40. So far as the submission regarding the impugned orders being non-speaking is concerned, this Court finds that the basis of cancellation, namely non-adherence to the applicable statutory provisions, is clearly discernible from the record. Mere brevity of the order does not render it invalid when the underlying illegality is apparent. The impugned orders sufficiently indicate that the appointments were not made in accordance with the statutory provisions applicable to institutions governed by the relevant enactments, including the U.P. Intermediate Education Act, 1921 and the U.P. Secondary Education Services Selection Board Act, 1982.

41. The contention sought to be raised on behalf of the petitioners, attempting to justify the appointments under an inapplicable statutory regime, cannot be sustained. Once the institution stood upgraded, all appointments were necessarily required to be made strictly in accordance with the statutory provisions governing such upgraded institutions. Any deviation therefrom vitiates the very foundation of the appointment.

42. In the present case, it is evident that the procedure adopted for appointment of the petitioners is traceable to the rules governing Junior High Schools, which, in view of the upgradation, had already lost their applicability. Thus, the very foundation of the appointments stands vitiated, being dehors the statutory provisions in force.

43. In such circumstances, even though certain grounds have been urged with regard to lack of jurisdiction and the impugned order being non-speaking in nature, the same pale into

insignificance and do not merit adjudication. It is well settled that where the substantive action itself is contrary to the governing statute, this Court would be loath to exercise its discretionary writ jurisdiction to grant relief on technical or procedural grounds.

44. Ultimately, this Court is of the considered opinion that the appointments of the petitioners have been made under the provisions of the Rules of 1978, which are wholly inapplicable to the institution in question. Upon its upgradation, the institution is governed by the provisions of the U.P. Intermediate Education Act, 1921 read with the Rules of 1982, and any appointment was required to be made strictly in accordance therewith.

45. This position stands settled by the judgment of this Court in **Manju Awasthi v. State of U.P. reported in 2013 (3) ADJ 64 (DB)**, wherein it has been categorically held that the applicability of recruitment rules is dependent upon the status of the institution on the date of appointment.

46. Thus, in light of the settled proposition of law, the entire proceedings culminating in the appointments of the petitioners stand vitiated in the eyes of law, being dehors the applicable statutory framework.

47. In view of the aforesaid discussion, this Court is of the considered opinion that no illegality or infirmity can be said to exist in the impugned orders warranting interference under Article 226 of the Constitution of India.

48. Accordingly, the writ petition, being devoid of merit, is liable to be and is hereby **dismissed**. No order as to costs.

(2026) 4 ILRA 1933
REVISIONAL JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 09.04.2026

BEFORE

THE HON'BLE SAURABH LAVANIA, J.

Criminal Revision No. 131 of 2023

Vinod Kumar

...Revisionist

Versus

State of U.P. & Anr.

...Opposite Parties

Issues for Consideration

(i) Whether a criminal revision under Section 102 of the Juvenile Justice (Care and Protection of Children) Act, 2015 is maintainable against an order of the Juvenile Justice Board when the statutory remedy of appeal under Section 101 of the Act has not been availed?

(ii) Whether the decision of the Supreme Court in *Child in Conflict with Law through his Mother v. State of Karnataka* permits bypassing the appellate remedy under Section 101 of the Act in every case?

(iii) Whether the order impugned in the revision was a *non est* order so as to justify direct invocation of revisional jurisdiction under Section 102 of the Act?

Headnotes

Juvenile Justice (Care and Protection of Children) Act, 2015 — Ss. 101 and 102 — Criminal Revision — Maintainability — Statutory remedy of appeal — Bypassing appellate remedy — Permissibility.

HELD: Where the Act of 2015 provides a statutory remedy of appeal under Section 101 against an order passed by the Juvenile Justice Board, the revisional jurisdiction under Section 102 ordinarily cannot be invoked by bypassing such remedy. In the absence of exceptional circumstances, a revision filed directly before the High Court without exhausting the statutory appellate remedy is not maintainable. The impugned order ought to have been challenged before the appellate authority constituted under Section 101 of the Act. [Paras 9, 10, 14 and 15]

Juvenile Justice (Care and Protection of Children) Act, 2015 — Ss. 101 and 102 — Revision — Exception carved out by Supreme Court — *Non est* order — Scope.

HELD: The observations of the Supreme Court in *Child in Conflict with Law through his Mother v. State of Karnataka* do not lay down that a revision under Section 102 is maintainable in every case notwithstanding the availability of an appeal. The exception recognised therein was confined to a situation where the impugned order was *non est* in law. Unless the order sought to be challenged is shown to be *non est*, the statutory remedy of appeal cannot be bypassed by directly invoking the revisional jurisdiction of the High Court. [Paras 6 to 8 and 11]

Juvenile Justice (Care and Protection of Children) Act, 2015 — Ss. 101 and 102 — *Non est* order — Distinction between void order and illegal or erroneous order — Effect.

HELD: A *non est* order is one passed without inherent jurisdiction and can be ignored or challenged at any stage. However, an order which is merely erroneous, irregular, illegal or passed in an improper exercise of jurisdiction cannot be equated with a *non est* order. Such defects are capable of correction by the appellate authority provided under the statute. Since the impugned order had been passed by the Juvenile Justice Board in exercise of jurisdiction vested in it under the Act of 2015, it could not be treated as a *non est* order merely because its correctness was disputed. [Paras 11 to 15]

Juvenile Justice (Care and Protection of Children) Act, 2015 — Ss. 101 and 102 — Revision — Alternative statutory remedy available — Merits not examined.

HELD: Once the Court found that the revision itself was not maintainable in view of the availability of the statutory remedy of appeal, there was no occasion to examine the merits of the order passed by the Juvenile Justice Board. Liberty was granted to the revisionist to avail the remedy of appeal under Section 101 of the Act of 2015 in accordance with law. [Paras 14 and 15]

Revision dismissed with liberty to the revisionist to avail the statutory remedy of appeal under Section 101 of the Juvenile Justice (Care and Protection of Children) Act, 2015. (E-14)

Case Law Cited

Child in Conflict with Law through his Mother v. State of Karnataka and Another, (2024) 8 SCC 473 — relied on; *Smt. Bismillah v. Janeshwar Prasad and Others*, (1990) 1 SCC 207 — relied on; *Goarakh Nath Dube v. Hari Narain Singh*, (1973) 2 SCC 535 — referred to.; *Ningawwa v. Byrappa*, (1968) 2 SCR 797 : AIR 1968 SC 956 — referred to; *Foster v. Mackinnon*, (1869) LR 4 CP 704 — referred to; *Saunders v. Anglia Building Society*, (1971) AC 1004 — referred to.

List of Acts / Statutes

Juvenile Justice (Care and Protection of Children) Act, 2015; Indian Penal Code, 1860; Protection of Children from Sexual Offences Act, 2012.

List of Keywords

Juvenile Justice Board; Appeal; Criminal Revision; Alternative remedy; Maintainability; *Non est* order; Illegal order; Erroneous order; Revisional jurisdiction; Statutory appeal; Juvenile Justice Act.

Case Arising From

Judgment and decree dated 15.11.2025 passed by the Court of Civil Judge (Senior Division)/FTC, Bulandshahr in O.S. No. 863 of 2020, Rajesh Kumar v. Rakesh Kumar and Others.

Appearance for Parties

For Appellant: Sri Madhulika Yadav and Sri Balkeshwar Srivastava

For Respondent: Sri S.P. Tiwari, learned A.G.A. and Sri Adarsh Kumar Maurya..

(Delivered by Hon'ble Saurabh Lavania, J.)

1. Heard Sri Balkeshwar Srivastava, learned Counsel for the revisionist, Sri Adarsh Kumar Maurya, learned Counsel for the side opposite, whose name inadvertently could not be mentioned when the order dated 12.03.2026 was reserved, Sri S.P.Tiwari, learned A.G.A. appearing for the State and perused the records.

2. This criminal revision under Section 102 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (in short "Act of 2015") has been filed against the order dated 25.01.2023, passed by the Juvenile Justice Board, Lakhimpur Kheri (in short 'JJB'), arising out of Case Crime No. 139 of 2014 under Sections 302, 201, 377 IPC and 3/4 POCSO Act, Police Station-Paliya, District-Kheri.

3. Learned A.G.A. has raised preliminary objections regarding maintainability/entertainability of the present 'Revision' by stating that revisionist has bypassed the remedy of 'Appeal' provided under Section 101 of the Act of 2015 and as such the present revision be dismissed with liberty to the revisionist to avail, the statutory remedy of 'Appeal' provided under Section 101 of the Act of 2015.

4. The availability of statutory remedy i.e filing of an 'Appeal' against the order under challenge dated 25.01.2023 passed by JJB Kheri, arising out of Case Crime No. 139 of 2014, under Sections 302, 201, 377 IPC and 3/4 POCSO Act, Police Station-Paliya, District-Kheri, has not been refuted.

5. It is stated that instant 'Revision' under Section 102 of the Act of 2015 is entertainable and maintainable, therefore, the order be passed on merits.

6. On the issue of entertainability and maintainability of the instant 'Revision', the reference has been made to paragraph no(s). 46 to 48 of the judgment passed by the Hon'ble Apex Court in the case of Child in Conflict with Law through his mother Versus State of Karnataka and another, reported in (2024) 8 SCC 473. Paragraphs, referred, are extracted hereunder:-

"46. Another argument raised by the learned counsel for the appellant was that there being remedy of appeal available with the complainant against the order dated 12-4-2024 vide which two members of the Board had directed inquiry into the offence allegedly committed by CCL by the Board. In our opinion, even though such a remedy may be available to the complainant which should normally be availed, but what is evident from the facts of the case is that there was an earlier order passed by the Principal Magistrate on 5-4-2022, which was final regarding conduct of trial of CCL by the Children's Court, still subsequently two members of the Board without the Principal Magistrate being there passed an order on 12-4-2022 directing inquiry into the offence by the Board. In fact, the subsequent order was totally non est. Even if in such a situation the aforesaid order was not challenged by availing the remedy of appeal, in our opinion the revision under Section 102 of the Act cannot be said to be not maintainable.

47. Firstly, there is no time-limit provided for filing a revision therein, and secondly it could be on an application filed by any of the parties. The High Court can exercise its revisional powers for satisfying itself as to the legality or propriety of any such order and may pass such order in relation thereto as it thinks fit. Besides the legality of the order dated 12-4-2022, the case in hand is such where even the propriety of the proceeding was also in question. The proceedings before the Board could not continue after the passing of the order dated 5-4-2022, in terms of Section 7(4) of the Act.

48. Hence, non-availment of the remedy of appeal by the complainant in such a situation cannot be held to be fatal. We may also add here that even the appellant could have availed the remedy of appeal against the order dated 5-4-2022, but he thought of continuing before the Board in a non est proceeding."

7. In response of aforesaid, it is stated that a perusal of paragraphs referred i.e. paragraph no(s). 46 to 48 of the report, would indicate that the Hon'ble Apex Court declined to interfere in the order dated 15.11.2023 passed by High Court in exercise of power under Section 102 of the Act of 2015, on the ground to the effect that without availing the statutory remedy of 'Appeal' available under Section 101 of the Act of 2015 against the order dated 12.04.2022 passed by JJB Kheri, the 'Revision' in terms of Section 102 of the Act of 2015 was filed, for the reason that the order dated 12.04.2022 was a 'Non-est' order.

8. It is also stated that instant case the order dated 25.01.2023 passed by JJB, challenged in the instant 'Revision' is not a 'Non-est' order and therefore, the judgment on which reliance has been placed would not apply in the present case.

9. Considered the aforesaid and perused the record.

10. The order impugned dated 25.01.2025 ought to have been impeached by way of an 'Appeal' provided under Section 101 of the Act of 2015 and without availing the remedy of 'Appeal' the instant 'Revision' has been filed under Section 102 of the Act of 2015 challenging the order dated 25.01.2023.

11. It is settled principle of law that a 'Non-est' order can be ignored and can be questioned/impeached at any stage or/and in any proceedings.

12. On the aforesaid aspects of the case, this Court finds it appropriate to refer the relevant paragraphs of the judgment passed by the Hon'ble Apex Court in the case of Smt. Bismillah Versus Janeshwar Prasad and Others, (1990) 1 SCC 207, which reads as under:-

"7. It is settled law that the exclusion of the jurisdiction of the civil court is not to be readily inferred, but that such exclusion must either be explicitly expressed or clearly implied. The provisions of a law which seek to oust the jurisdiction of civil court need to be strictly construed. Section 331 of the Act has been the subject of series of pronouncements of the High Court as to the circumstances and the nature of the suits in which its exclusionary effect operates. Distinction was sought to be drawn between the class of cases where the binding effect of a deed had had to be got rid of by an appropriate adjudication on the one hand and the class of cases in which a transaction could be said to be void in law where what the law holds to be void, there is nothing to cancel or set aside on the other. In the former case, it was held, a suit was cognisable by the civil court while in the latter, it was not, it being open to the statutory authority to take note of the legal incidents of what was non est.

8. In the instant case, the High Court has construed, in our opinion not quite correctly, appellant's pleadings to amount to a plea of nullity of the sales and has held that the prayer for cancellation of the sale deeds was 'simply illusory' and that such a relief was neither necessary nor appropriate in the context of a plea of nullity. The High Court has further held that the relief of possession, though appearing to be a consequential relief, was really the main relief and would fall within the statutory jurisdiction.

9. It is true that the question of jurisdiction depends upon the allegations in the plaint and not the merits or the result of the suit. However, in order to determine the precise nature of the action, the pleadings should be taken as a whole. If as, indeed, is done by the High Court the expression 'void' occurring in the plaint as descriptive of the legal status of the sales is made the constant and determinate and what is implicit in the need for cancellation as the variable and as inappropriate to a plea of nullity, equally, converse could be the position. The real point is not the stray or loose expressions which abound in inartistically drafted plaints, but the real substance of the case gathered by construing pleadings as a whole. It is said "Parties do not have the farsight of prophets and their lawyers the draftsmanship of a Chalmers".

10. Indeed in *Gorakh Nath Dube v. Hari Narain Singh* [(1973) 2 SCC 535 : (1974) 1 SCR 339] this Court, dealing with the provisions of the U.P. Consolidation of the Holdings Act, 1954 where the provision excluding the civil court's jurisdiction is even wider, has had occasion to observe: (SCR p.342 : SCC p.538, para 5)

'...but, where there is a document the legal effect of which can only be taken away by setting it aside or its cancellation, it could be urged that the consolidation authorities have no power to cancel the deed, and, therefore, it must be held to be binding on them so long as it is not cancelled by a court having the power to cancel it...."

(emphasis supplied)

11. The assumption underlying the reasoning of the High Court is that if the action had really been one based on the need for the cancellation of the deeds, without which possession could not be granted, the civil court would have had jurisdiction. The cause of action in the appellant's suit does admit of being brought within this class of cases.

12. The common law defence of non est factum to actions on specialties in its origin was available where an illiterate person, to whom the contents of a deed had been wrongly read, executed it under a mistake as to its nature and contents, he could say that it was not his deed at all. In its modern application, the doctrine has been extended to cases other than those of illiteracy and to other contracts in writing. In most of the cases in which this defence was pleaded the mistake was induced by fraud; but that was not, perhaps, a necessary factor, as the transaction is "invalid not merely on the ground of fraud, where fraud exists, but on the ground that the mind of the signor did not accompany the signature; in other words, that he never intended to sign, and therefore, in contemplation of law never did sign, the contract to which his name is appended" [Chitty on Contracts, 25th edn., p. 341].

13. Authorities drew a distinction between fraudulent misrepresentation as to the character of the document and fraudulent misrepresentation as to the contents thereof. It was held that the defence was available only if the mistake was as to the very nature or character of the transaction.

14. In *Foster v. Mackinnon* [(1869) LR 4 CP 704 : 38 LJCP 310] , Mackinnon, the defendant was induced to endorse a bill of exchange on the false representation that it was a guarantee similar to one he had signed on a previous occasion. He was held not liable when sued even by an innocent endorsee of the bill. Byles, J. said:

"... The defendant never intended to sign that contract or any such contract. He never intended to put his name to any instrument that then was or thereafter might become negotiable. He was deceived, not merely as to the legal effect, but as to the 'actual contents' of the instrument."

15. This decision was referred to with approval by this Court in *Ningawwa v. Byrappa* [(1968) 2 SCR 797 : AIR 1968 SC 956] . It was observed: (SCR pp. 800-01)

"It is well established that a contract or other transaction induced or tainted by fraud is not void, but only voidable at the option of the party defrauded. Until it is avoided, the transaction is valid, so that third parties without notice of the fraud may in the meantime acquire rights and interests in the matter which they may enforce against the party defrauded."

This would be a voidable transaction. But the position was held to be different if the fraud or misrepresentation related to the character of the document. This court held: (SCR p. 801)

"The legal position will be different if there is a fraudulent misrepresentation not merely as to the contents of the document but as to its character. The authorities make a clear distinction between fraudulent misrepresentation as to the character of the document and fraudulent

misrepresentation as to the contents thereof. With reference to the former, it has been held that the transaction is void, while in the case of the latter, it is merely voidable."

(emphasis supplied)

However the House of Lords in *Saunders v. Anglia Building Society* [1971 AC 1004 : (1970) 3 All ER 961] reviewed the law and held that the essential features of the doctrine, as expressed by Byles, J. in *Foster v. Mackinnon* [Chitty on Contracts, 25th edn., p. 341], had been correctly stated. Lord Reid, however, observed: (AC headnote at p. 1005)

"The plea of non est factum could not be available to anyone who signed without taking the trouble to find out at least the general effect of the document. Nor could it be available to a person whose mistake was really a mistake as to the legal effect of the document. There must be a radical or fundamental difference between what he signed and what he thought he was signing."

16. However the distinction based on the character of the document and the contents of the document was considered unsatisfactory. The distinction based on the character and contents of a document is not without its difficulties in its practical application; for, in conceivable cases the 'character' of the document may itself depend on its contents. The difficulty is to be resolved on a case by case basis on the facts of each case and not by appealing to any principle of general validity applicable to all cases. Chitty on Contracts ["General Principles" 25th edn, para 343, page 194] has this observation to make on Saunders decision [(1968) 2 SCR 797 : AIR 1968 SC 956] :

"....It was stressed that the defence of non est factum was not lightly to be allowed where a person of full age and capacity had signed a written document embodying contractual terms. But it was nevertheless held that in exceptional circumstances the plea was available so long as the person signing the document had made a fundamental mistake as to the character or effect of the document. Their Lordships appear to have concentrated on the disparity between the effect of the document actually signed, and the document as it was believed to be (rather than on the nature of the mistake) stressing that the disparity must be "radical", "essential", "fundamental", or "very substantial."

In the instant case, prima facie appellant seems to proceed on the premises that she cannot ignore the sales but that the sales require to be set aside before she is entitled to possession and other consequential reliefs.

17. Even in cases where the transaction was assailed as void, the High Court of Allahabad in *Indra Dev v. Ram Pyari* [1982 All LJ 1308 : 1982 (8) ALR 517 (All HC)] held the civil court's jurisdiction not barred. The facts in that case were that: (All LJ p. 1309)

"... plaintiff-appellants claimed a decree for cancellation of the sale deed dated July 10, 1969 executed by Smt. Ram Pyari Devi, mother of appellant 1 Indra Deo, minor, in favour of Bramha Nand respondent 1 in respect of certain agricultural plots. The cancellation was sought on the ground that Smt. Ram Pyari had no interest in the property in suit and, therefore, she was not entitled to execute the sale deed."

In that case the learned District Judge had held that the allegations made in the plaint amounted to saying that the sale deed was a void document. The civil court was held to have no jurisdiction.

18. The High Court, allowing the plaintiff's appeal and reversing the finding of the District Judge, held: (All LJ pp. 1313 and 1314)

"A survey of the above decisions shows that the consistent view of this Court is that the cause of action in a suit for cancellation of sale deed is not the denial of plaintiff's title which may be said to be implicit in the execution of the sale deed by the defendant but is the execution of the deed itself."

.... Therefore, under the provisions of the Act itself, the jurisdiction of the civil court would not be barred when declaration is sought against a person who has transferred agricultural property which the plaintiff claims to be his. Section 229-B does not contemplate all kinds of declaratory suits. It deals with declaratory suits of the specific type hereinbefore mentioned."

This case has since been approved by a Full Bench of that Court in *Ram Padarath v. Second ADJ, Sultanpur* [(1989) RD 21 (All) (FB)] . The Full Bench held:

"We are of the view that the case of *Indra Dev v. Smt. Ram Pyari* [1971 AC 1004 : (1970) 3 All ER 961] , has been correctly decided and the said decision requires no consideration, while the Division Bench case, *Dr. Ayodhya Prasad v. Gangotri Prasad* [1981 AWC 469 (DB)] is regarding the jurisdiction of consolidation authorities, but so far as it holds that suit in respect of void document will lie in the revenue court it does not lay down a good law. Suit or action for cancellation of void document will generally lie in the civil court and a party cannot be deprived of his right getting this relief permissible under law except when a declaration of right or status and a tenure holder is necessarily needed in which event relief for cancellation will be surplusage and redundant. A recorded tenure holder having prima facie title in his favour can hardly be directed to approach the revenue court in respect of seeking relief for cancellation of a void document which made him to approach the court of law and in such case he can also claim ancillary relief even though the same can be granted by the revenue court."

In any view of the matter, the present action would be covered by the pronouncement of the Full Bench. It is not necessary to go into the correctness of the view of the Full Bench as its correctness was not assailed before us."

13. Relevant paragraphs of the judgment passed by the Hon'ble Apex Court in the case of *Deepak Agro Foods Versus State of Rajasthan and others* reported in (2008) 7SCC 748.

"17. All irregular or erroneous or even illegal orders cannot be held to be null and void as there is a fine distinction between the orders which are null and void and orders which are irregular, wrong or illegal. Where an authority making order lacks inherent jurisdiction, such order would be without jurisdiction, null, non est and void ab initio as defect of jurisdiction of an authority goes to the root of the matter and strikes at its very authority to pass any order and such a defect cannot be

cured even by consent of the parties. (See *Kiran Singh v. Chaman Paswan* [AIR 1954 SC 340] .) However, exercise of jurisdiction in a wrongful manner cannot result in a nullity? it is an illegality, capable of being cured in a duly constituted legal proceedings.

18. Proceedings for assessment under a fiscal statute are not in the nature of judicial proceedings, like proceedings in a suit inasmuch as the assessing officer does not adjudicate on a lis between an assessee and the State and, therefore, the law on the issue laid down under the civil law may not *stricto sensu* apply to assessment proceedings. Nevertheless, in order to appreciate the distinction between a null and void order and an illegal or irregular order, it would be profitable to notice a few decisions of this Court on the point.

19. In *Rafique Bibi v. Sayed Waliuddin* [(2004) 1 SCC 287] explaining the distinction between null and void decree and illegal decree, this Court has said that a decree can be said to be without jurisdiction, and hence a nullity, if the court passing the decree has usurped a jurisdiction which it did not have; a mere wrong exercise of jurisdiction does not result in a nullity. The lack of jurisdiction in the court passing the decree must be patent on its face in order to enable the executing court to take cognizance of such a nullity based on want of jurisdiction. The Court further held that a distinction exists between a decree passed by a court having no jurisdiction and consequently being a nullity and not executable and a decree of the court which is merely illegal or not passed in accordance with the procedure laid down by law. A decree suffering from illegality or irregularity of procedure, cannot be termed inexecutable.

20. In view of the above, in the present case, apart from the fact that on a plain reading of Section 29(8)(b) of the Act, it is manifestly clear that fresh assessment for Assessment Year 1995-1996, framed pursuant to the order passed by the appellate authority on 8-6-2000, was well within the prescribed time, even otherwise, in the light of the aforesaid settled law, the assessment orders in question could not be held to be null and void on account of the stated irregularities committed by the assessing officer during the course of assessment proceedings. In our opinion, therefore, despite scathing observations by the Division Bench on the conduct of the assessing officer, it was a case of an irregularity in assessment proceedings by the officer, who was not bereft of authority to assess the appellant. At best, it was an illegality, which defect was capable of and has been cured by the High Court by setting aside the orders and by granting consequential relief."

14. Upon due consideration, this Court is not inclined to interfere in the order impugned in the instant 'Revision' in exercise of revisional power provided under Section 102 of the Act of 2015, which has been instituted without availing the statutory remedy of 'Appeal' provided under Section 101 of the Act of 2015, and therefore without entering into the merits of the case, the present revision is dismissed with liberty to the petitioners to approach the appellate authority under Section 101 of the Act of 2015 as per law.

15. Aforesaid is for the reason that the impugned order dated 25.01.2023 passed by Juvenile Justice Board, Lakhimpur Kheri, in a case arising out of Case Crime No. 139 of 2014, Police Station- Palia, District-Kheri, if established, would fall under the expression(s) 'irregular order' or 'erroneous order' or 'illegal order' or 'wrong order' but it cannot be termed as 'Non-est' order, as the same has been passed by the Board in exercise of power provided to it under the provisions of the

Act of 2015, and therefore it can be cured by the Appellate Court/Authority created under Statute itself i.e. the Act of 2015.

(2026) 4 ILRA 1942
REVISIONAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 16.04.2026

BEFORE

THE HON'BLE MANOJ BAJAJ, J.

Criminal Revision No. 1617 of 2011

Rishipal & Ors.

...Revisionists

Versus

State of U.P. & Anr.

...Opposite Parties

Issue for Consideration

(i) Whether the trial court was justified in exercising powers under Section 319 Cr.P.C. to summon the unmarried sisters of the husband as additional accused on the basis of general allegations contained in the F.I.R. and the depositions of prosecution witnesses?

(ii) Whether reiteration during trial of allegations already available before the Investigating Officer and found insufficient for prosecution constitutes fresh evidence warranting exercise of powers under Section 319 Cr.P.C.?

(iii) Whether the trial court could invoke Section 319 Cr.P.C. by relying upon the F.I.R. and statements recorded under Section 161 Cr.P.C. instead of the evidence adduced during trial?

Headnotes

Code of Criminal Procedure, 1973 — S. 319 — Summoning of additional accused — Extraordinary power — Nature and scope of jurisdiction.

HELD: The power conferred under Section 319 Cr.P.C. is extraordinary in nature and cannot be exercised casually. Such jurisdiction can be invoked only where the evidence adduced during trial strongly indicates the involvement of a person not already facing trial. Mere existence of allegations or suspicion does not justify summoning an additional accused unless the evidence satisfies the higher degree of satisfaction contemplated under Section 319 Cr.P.C. [Paras 6 and 7]

Code of Criminal Procedure, 1973 — S. 319 — Additional accused — Persons exonerated during investigation — General allegations in F.I.R. — Evidence merely reiterating prosecution version — Summoning impermissible.

HELD: The unmarried sisters of the husband were exonerated during investigation as neither the F.I.R. nor the dying declaration contained any specific allegation regarding demand of dowry or participation in the alleged offence. The depositions of P.W.-1 and P.W.-2 merely reiterated the allegations already contained in the F.I.R. and did not disclose any fresh incriminating material emerging during trial. Such evidence, having already been considered by the Investigating Officer while exonerating the proposed accused, could not constitute the basis for exercising powers under Section 319 Cr.P.C. [Paras 8 and 9]

Code of Criminal Procedure, 1973 — Ss. 161 and 319 — Summoning of additional accused — Reliance upon F.I.R. and statements recorded during investigation — Legality.

HELD: The trial court committed a serious error of law by exercising jurisdiction under Section 319 Cr.P.C. on the basis of allegations contained in the F.I.R. and statements recorded under Section 161 Cr.P.C. The power under Section 319 Cr.P.C. can be exercised only on the strength of evidence adduced during trial and not on the basis of material collected during investigation, which had already been considered at the stage of cognizance and framing of charge. [Para 10]

Code of Criminal Procedure, 1973 — S. 319 — Dying declaration — Absence of allegation against proposed accused — Effect.

HELD: Where the dying declaration of the deceased implicated only the mother-in-law and did not attribute any role to the unmarried sisters of the husband, the bald allegations made by prosecution witnesses during trial could not be regarded as strong prima facie evidence justifying their summoning as additional accused. The trial court failed to examine the evidentiary value of the dying declaration while exercising jurisdiction under Section 319 Cr.P.C. [Paras 8, 10 and 11]

Code of Criminal Procedure, 1973 — Ss. 397 and 401 — Revision — Order under Section 319 Cr.P.C. — Interference.

HELD: Since the trial court exercised jurisdiction under Section 319 Cr.P.C. on legally impermissible considerations and without the existence of strong evidence emerging during trial against petitioner nos. 3 to 5, the impugned order suffered from grave illegality and impropriety and was liable to be set aside. The revision, however, stood dismissed as infructuous in respect of petitioner nos. 1 and 2, who had already faced trial and were acquitted. [Paras 10 and 11]

Revision partly allowed. Impugned order set aside qua petitioner nos. 3 to 5; revision dismissed as infructuous qua petitioner nos. 1 and 2. (E-14)

Case Law Cited

Nil

List of Acts / Statutes

Code of Criminal Procedure, 1973; Indian Penal Code, 1860; Dowry Prohibition Act, 1961.

List of Keywords

Additional accused; Extraordinary jurisdiction; Dowry death; Dying declaration; Fresh evidence; Investigation; Revisional jurisdiction; General allegations; Strong prima facie evidence.

Case Arising From

Order dated 03.03.2011 passed by the Additional Sessions Judge, Fast Track Court, Baghpat in Sessions Trial No. 185 of 2010, **State v. Smt. Munesh and Others**, arising out of Case Crime No. 13 of 2010, Police Station Baraut, District Baghpat

Appearance for Parties

For the Appellant: Sri Ali Hasan and Sri Manish Kumar Singh

For the Respondents: Learned Government Advocate and Sri Mohd. Akbar Shah Alam Khan

(Delivered by Hon'ble Manoj Bajaj, J.)

Petitioners have filed this revision petition to challenge the impugned order dated 3.3.2011 passed by Additional Sessions Judge, Fast Track Court, Baghpat in Sessions Trial No. 185 of 2010, titled State Vs. Smt. Munesh and others, arising out of Case Crime No. 13 of 2010, under Sections 498-A, 304-B I.P.C. and Section 3/4 D.P. Act, Police Station Baraut, District Baghpat, whereby the

application under Section 319 Cr.P.C. filed by prosecution was allowed and the petitioners were summoned as additional accused.

Learned counsel for the petitioners has argued that the complainant's daughter namely, Rachna was married to Pradeep on 6.3.2009, who died of burn injuries on 8.1.2010, within a period of one year, whereupon the complainant-opposite party no.2 implicated the petitioners and others for alleged commission of offences punishable under Section 304-B I.P.C. etc. Learned counsel has drawn the attention of the Court to the subject F.I.R to argue that the allegations by complainant-Mainpal against the petitioner nos.3 to 5 (unmarried sisters of Pradeep-husband) are absolutely vague and no specific attribution of demand of dowry is made against them. Learned counsel further submits that the victim gave her statement before death and the said dying declaration only implicates Munesh (mother-in-law of victim), whereas nothing is mentioned by victim about other accused persons, therefore, after investigation, the petitioners were declared innocent and the charge sheet was filed against Pradeep and Munesh.

Learned counsel for the petitioners has further argued that the statements of Mainpal (P.W.-1) and Neeraj Kumar (P.W.-2) echoes the allegations in the F.I.R. and on the basis of those statements, the trial court proceeded to summon the petitioners as additional accused, but the said order is not sustainable. Learned counsel has pointed out that initially the impugned order dated 3.3.2011 was stayed by this Court qua the petitioner nos.3 to 5 namely, Renu, Nidhi @ Chinu and Ritu, whereas the petitioner nos.1 and 2 were directed to associate with the trial, and during the pendency of the revision petition, the trial ended in acquittal of four accused persons namely, Munesh (mother-in-law), Pradeep (husband), Nitin (brother-in-law) and Rishipal (father-in-law). The judgment of acquittal dated 29.3.2012 is on record as Annexure No.SA-1. Learned counsel prays that the impugned order dated 3.3.2011 be set aside.

Learned A.G.A. while opposing the prayer has argued that the impugned order dated 3.3.2011 is based upon proper appreciation of testimonies of P.W.-1 and P.W.-2 and when the impugned order was passed, the trial was pending. He submits that the judgment of acquittal passed in respect of other accused persons may not be relevant as the evidence adduced during trial of the acquitted accused persons cannot be read qua the petitioners, if, the impugned order dated 3.3.2011 is upheld. He prays that the revision petition be dismissed.

After hearing the learned counsel for the parties and considering their submission, this Court finds that as far as petitioner nos.1 and 2 are concerned, qua them the revision petition is rendered infructuous, who faced the trial and stand acquitted vide judgment dated 29.3.2012.

Before analyzing the merits of the petition, it would be appropriate to have a glance of section 319 Cr.P.C., which reads as under:

319. Power to proceed against other persons appearing to be guilty of offence.-(1) Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed.

(2) Where such person is not attending the Court, he may be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid.

3) Any person attending the Court, although not under arrest or upon a summons, may be detained by such Court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed.

(4) Where the Court proceeds against any person under sub-section (1) then-(a) the proceedings in respect of such person shall be commenced afresh, and the witnesses re-heard;

(b) subject to the provisions of clause (a), the case may proceed as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced."

A perusal of the above provision makes it abundantly clear that the power vested with the trial court under Section 319 Cr.P.C. is extraordinary in nature, and by now it is settled law that such a power can not be exercised in a casual manner. The trial court would be justified in resorting to the above provision where the evidence recorded during trial strongly suggests about the involvement of any other person(s), who is not before the trial court.

While examining the alleged involvement of petitioner nos.3 to 5 i.e. unmarried sisters of Pradeep, this Court finds that F.I.R. does not contain any specific allegation against them regarding demand of dowry and even according to the complainant, on 7.1.2010 husband-Pradeep had called Neeraj Kumar (P.W.-2) to demand a sum of Rs.1 lac and motorcycle. That apart, the dying declaration also implicates only one accused namely, Munesh, therefore, the investigating officer proceeded to exonerate the petitioners and filed charge sheet against Pradeep and Munesh. A reading of the testimonies of Mainpal (P.W.-1) and Neeraj Kumar (P.W.-2) also makes it clear that both these witnesses had attributed demand of dowry to accused Pradeep, who telephonically contacted Neeraj on 7.1.2010 to demand cash and motorcycle, therefore, the depositions of these witnesses P.W.-1 and P.W.-2, if, reiterates the version contained in the F.I.R. cannot be construed as a new piece of evidence emerging only during trial as the same stood analyzed and tested by Investigating Officer while declaring them innocent.

Most importantly, the trial court exercised the extraordinary jurisdiction under Section 319 Cr.P.C. while relying upon the allegations in the F.I.R. and the statements of witnesses recorded under Section 161 Cr.P.C., and in the considered opinion of this Court this is a serious error of law, as the powers under Section 319 Cr.P.C. can be exercised only on the strength of the evidence adduced during trial. The material relied upon by trial court was already before it when it took cognizance and framed charges against the accused, but at that stage, no such order was passed against the petitioner nos.3 to 5.

Notably, in the present case the dying declaration of the deceased does not at all implicate the unmarried sisters of Pradeep, therefore, the bald allegations in the deposition of P.W.-1 and P.W.-2 before the trial court cannot be construed as a strong prima facie evidence suggesting involvement of petitioner nos.3 to 5 in the alleged commission of crime. A perusal of the impugned order dated

3.3.2011 would show that the trial court has not carefully examined the evidence on record relied upon by prosecution while exercising powers under Section 319 Cr.P.C. Thus, the impugned order dated 3.3.2011 suffers from grave illegality and impropriety, which calls for interference by this Court.

Resultantly, the revision petition is allowed and the impugned order dated 3.3.2011 is set aside qua the petitioner nos.3 to 5, whereas in respect of petitioner nos.1 and 2, the petition is dismissed as infructuous in view of their acquittal recorded on 29.3.2012.

(2026) 4 ILRA 1946
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 23.04.2026

BEFORE

THE HON'BLE SAURABH SHYAM SHAMSHERY, J.

Writ A No. 34539 of 2009

Vinod Kumar Sethi

...Petitioner

Versus

UCO Bank & Ors.

...Respondents

Issue(s) for consideration

- (a) Whether inquiry was conducted by a Competent Authority or not?
- (b) Whether during disciplinary proceeding due procedure was followed or not?
- (c) Whether punishment, i.e., removal from Bank service, was contrary to bipartite agreement that petitioner was denied pension?

Headnotes

A. Service Law – UCO Bank Officers Employees' (Discipline & Appeal) Regulations, 1976: Regulation 17 - The Petitioner was working as a Manager at the Ghaziabad Branch of UCO Bank from August 2000 to 19.07.2004. He was initially suspended on 11.09.2004, following allegations of several acts of omissions and commissions. A charge sheet with five charges was issued on 18.10.2004. Following a deeper internal investigation, a fresh, specialized Article of Charge and Statement of Allegations dated 29.03.2005, was served to the Petitioner, strictly isolating and detailing the "Fake Bank Guarantee" fraud.

The investigation revealed that the Petitioner issued Bank Guarantee No. 28/02 dated 09.11.2002, for Rs. 47.00 Lakhs in favor of U.P. Jal Nigam, NOIDA, on behalf of M/s Bhavya Credits. He bypassed all mandatory bank guidelines.

The Petitioner later extended the guarantee's validity up to 09.11.2004, via an off-the-record letter on a Rs. 100/- stamp paper. On the strength of this unauthorized document, the private company fraudulently secured a mobilization advance of Rs. 45.89 Lakhs from U.P. Jal Nigam, which was funneled through their current account on 12.11.2004. It was also alleged that the Petitioner personally pocketed Rs. 94,000/- given as an off-market commission by the company's representatives. Parallel to the departmental action, a criminal FIR was lodged u/Ss. 420, 409, 467, 468, 471, and 120B of the IPC. The Petitioner was arrested and subsequently released on bail by the High Court on 23.09.2005.

B. There was no illegality in the appointment of Enquiry Authority. The Disciplinary Authority has a right to appoint any person who is or has been a public servant and in present case the Enquiry Authority was an Ex-Scale-IV Officer of Bank. (Para 25, 26)

C. It is well settled that in a case arising out of disciplinary proceeding, the High Court under writ jurisdiction has a very limited power to review an order of punishment and it can be interfered only on limited grounds. (Para 22)

There is no irregularity in the process of disciplinary proceeding. The charges were found proved on basis of material as well as examination and cross-examination of management witnesses. The reason for management to have taken 14 months to conclude its case was that, the petitioner has taken various adjournments and has not appeared on various dates. Effective dates were very few on which management's case was concluded and thereafter further opportunity of a week was granted to petitioner to present his defence, if any, which is contrary to his submission that only a week's time was granted to put his defence. (Para 35)

(ii) Any allegation that documents were not confronted, being contrary to record, cannot be accepted. The memorandum of charge was submitted to which petitioner submitted his reply. Petitioner has participated in inquiry. He was granted ample opportunity to cross examine management witnesses. Petitioner sought adjournments for number of months on medical grounds and despise examination-in-chief was conducted in his presence, still he failed to cross-examine the management witnesses. He was granted opportunity to examine documents as directed by this Court and he was confronted with all documents placed during inquiry. (Para 28, 29, 34, 37, 38)

(iii) It is not a case that conclusion, on very face of it, was wholly arbitrary and capricious that no reasonable person can arrive to such conclusion as well as it is not a case of no evidence. On perusal of the inquiry report as well as the order passed by Disciplinary Authority, it is found that every argument and objections were considered and only thereafter it was held that both charges were found proved. (Para 30)

D. Objection on report of handwriting expert - The expert report was part of investigation in criminal case and the same was though placed on record in disciplinary proceeding but not much relied on. It was used only for the purpose of corroboration. (Para 32, 33)

E. Clause 6(b) inserted on 10.04.2002 in Bipartite settlement arrived between Indian Bank's Association - Even in proved gross misconduct as in present case petitioner though can be removed from service, however, it must be with superannuation benefits. (Para 41, 42)

The appropriate authority of Respondent-Bank has not taken note of clause of bipartite settlement. Accordingly, without disturbing finding that both charges were found proved and petitioner has committed gross misconduct, the matter is remitted back only to the extent that a fresh order be passed on nature of punishment taking note of above referred clause of bipartite settlement as well as *UCO Bank Vs. Vijay Kumar Handa (infra)*. (Para 43, 44, 45)

Writ petition disposed of. (E-4)

Case Law Cited

1. Purshottam Lal and others Vs. Union of India and another, AIR 1973 SC 1088 (Para 18)
2. UCO Bank and another Vs. Vijay Kumar Handa, 2025 INSC 442 (Para 18)

3. Ujagar Singh Saini (through LRs) Vs. State Bank of Patiala and others, CWP-16738-1999, decided on 09.01.2026 (Para 18)
4. Union of India Vs. P. Gunasekaran, 2015 (2) SCC 610 (Para 19)
5. Union of India and other Vs. Dalbir Singh, 2021 (11) SCC 321 (Para 23)

List of Acts

UCO Bank Officers Employees' (Discipline & Appeal) Regulations, 1976.

List of Keywords: Disciplinary authority, reasonable explanation, FIR, inquiry, review, jurisdiction, documents, examine, witnesses, bipartite agreement, Indian Bank's Association, handwriting expert, public servant.

Appearances for Parties

For Petitioner(s): Amit Saxena, Arvind Srivastava, Vatsal Srivastava

For Respondent(s): Adarsh Bhushan, Sanjai Singh, S.C., V.K. Srivastava, V.K. Srivastava, Yashwant Singh

(Delivered by Hon'ble Saurabh Shyam Shamshery, J.)

1. Petitioner, while working as Manager, UCO Bank at Ghaziabad Branch, has allegedly indulged in several acts of omissions and commissions. Initially an Statement of Allegations and Articles of Charge dated 18.10.2004 was submitted to petitioner on as many as five charges including an allegation of a Fake Bank Guarantee of M/s Bhavya Credit and Investment Pvt. Ltd. for U.P. Rajkiya Nirman Nigam, NOIDA and for that petitioner was earlier put under suspension vide order dated 11.09.2004.

2. Subsequently, on basis of further internal inquiry another Statement of Allegations dated 29.03.2005 was submitted to petitioner which limit the allegation only qua to Fake Bank Guarantee. For reference the Article of Charge dated 29.03.2005 and Statement of Allegations dated 29.03.2005, in its entirety, is reproduced hereinafter:

ARTICLES OF CHARGE

Mr. V.K. Seth, PFM No. 17334, while working as Manager at B/o Ghaziabad from August 2000 to 19.7.2004 had indulged in several acts of omission and commissions. These acts are set out in the enclosed Statement of Allegations for which he is charged as under:

1. Mr. Sethi failed to discharge his duties with utmost integrity, honesty, devotion and diligence and acted in a manner unbecoming of a Bank Officer, which is violative of Regulation 3(1) of UCO Bank Officer Employees (Conduct) Regulations 1976 as amended.

2. Mr. Sethi failed to take all possible steps to ensure and protect interest of the Bank which is violative of Regulations 3(1) of UCO Bank Officer Employees (Conduct) Regulations 1976 as amended.

STATEMENT OF ALLEGATIONS

Mr. V.K. Sethi, PFM No. 17334, while working as Manager, Ghaziabad Branch, had indulged in several acts of omissions and commissions. The allegations are given hereunder: -

1. M/s Bhavya Credits and Investment Pvt. Ltd. a Private Limited Company with its address B-9/6351 Vasant Kunj, New Delhi having two directors namely Mr. Anshuman Tewari and Ambrish Tiwari, opened a current account with our Ghaziabad branch on 4.10.2002. A case of issuance of a fraudulent Bank Guarantee came to the notice of the Bank upon which the matter was got investigated which confirmed that a Bank Guarantee No. 1/03 for Rs. 57,71,500/- dated 4.4.03 had been issued by Mr. V.K. Sethi without following laid down procedure of the Bank. For this lapse on the part of Mr. V.K. Sethi, a Charge sheet dated 18.10.2004 has been issued to him.

During the course of investigation of fraudulent Bank Guarantee No. 1/03 the Investigating Officer came across a credit entry dated 12.11.04 of Rs. 45,89,000/- in the account of M/s Bhavya Credits and investment Pvt. Ltd. On getting the matter further investigated, it transpired that this amount had been released by U.P. Jal Nigam, NOIDA to M/s Bhavya Credits and Investment Pvt. Ltd. as advance on the strength of Bank Guarantee No.28/02 dated 9.11.02 for Rs.47.00 Lac purportedly issued by B/o Ghaziabad. When the Authorities of U.P. Jal Nigam were approached regarding the said Bank Guarantee they furnished a photocopy of the Bank Guarantee No.28/02 to the Investing Officer, which bore one of the signatures of Mr. V.K. Sethi.

Mr. Sethi issued a Bank Guarantee No.28/02 dated 9.11.02 for Rs.47.00 Lac in favour of U.P. Jal Nigam on behalf of M/s Bhavya Credits and Investment Pvt. Ltd. and signed the Bank Guarantee as Manager of the Branch whereas the Bank Guarantee should have been signed by the Senior Manager of the Branch with advance In-charge. Mr. Sethi, deliberately, did not follow any laid down procedure of the Bank viz. bringing it in the knowledge of the Senior Manager, taking an application from the party, Counter Guarantee, Margin, Security for the residual value, obtaining sanction from Regional Office, Bareilly, processing charges and commission entering the Guarantee in Guarantee Register. Nor did he keep any record in the Branch for issuing the said Bank Guarantee. Further, Mr. Sethi extended the validity period of this Guarantee up to 9.11.2004 by a letter dated 4.11.2003 signed by him addressed to Project Manager, U.P. Jal Nigam, NOIDA, written on Stamp Paper of Res.100/-. Mr. Sethi did not keep any record of such extension of Bank Guarantee in Bank's record. On the basis of this Bank Guarantee, M/s Bhavya Credits and Investment Pvt. Ltd. managed to secure a payment of Rs.45.89 Lac from U.P. Jal Nigam, NOIDA which was collected through the account on 12.11.04. In this way, Mr. Sethi, in collusion with the account holder, extended undue gain to M/s Bhavya Credits and Investment Pvt. Ltd. and loss to the Bank and tarnished the image of the Bank. Mr. Sethi also exposed the bank to grave risk. Mr. Sethi has also caused loss to State Government of U.P.

3. Simultaneously a First Information Report was also lodged against petitioner and others under Sections 420, 409, 467, 468, 471, 120B IPC and petitioner was arrested also, though he was granted bail by this Court vide an order dated 23.09.2005.

4. When petitioner has denied allegations and failed to submit any reasonable explanation, the Disciplinary Authority decided to get an inquiry conducted in this matter and appointed Sri H.P.

Varshney, an Ex-Scale-IV Officer of Bank as an Enquiry Authority and also appointed a Manager of Branch at Meerut as Presenting Officer.

5. In aforesaid circumstances, an inquiry was initiated and notice was issued to petitioner (CSOE) as well as Presenting Officer to submit their respective list of documents and witnesses, however, as specifically noted in inquiry report as well as in the order of Disciplinary Authority, the CSOE sought various adjournments between 12.04.2006 to 21.09.2006 on medical grounds for various duration, such as, six weeks, six weeks, six weeks, 10 days and 30 days, therefore, inquiry got delayed.

6. On one hand petitioner himself was guilty of delaying the inquiry and on another hand he has approached this Court by way of filing Writ Petition No. 72210 of 2005 that inquiry be expedited. The writ petition was disposed of vide order dated 15.11.2006 that petitioner cannot ask for documents which were not in the custody of Bank, though a direction was passed that petitioner can inspect the documents likely to be relied on during departmental inquiry.

7. It is also on record that petitioner has appointed his Defense Representative (DR), however, later on he quit and a permission was granted to engage new Defense Representative, however, despite sufficient time was granted, he did not forward a consent letter of his new Defense Representative by 08.11.2006.

8. It is also on record that statement of Management Witness-1 (ME-1) was recorded in presence of CSOE on 13.01.2006, however, cross-examination was adjourned on his request not once but on four dates, i.e., 14.02.2006, 06.02.2006, 21.03.2006 and 22.03.2006 but he still failed to cross-examine MW-1.

9. Similarly examination-in-chief of MW-2 was recorded in presence of CSOE on 22.03.2006 and he was asked for cross-examination, however, he again sought adjournment and still failed to cross-examine on next date, i.e., 20.04.2006 and thereafter he sought adjournment on ground of medical grounds for about four months. Subsequently also, despite petitioner was granted a further opportunity, he repeatedly avoided to cross-examine MW-2 and accordingly a decision was taken to stop opportunity of cross-examination.

10. It is further on record that statement of MW-3 was recorded on 02.11.2006 in presence of petitioner and he was requested to cross-examine MW-3 also, however, again he sought time and finally a last opportunity was granted to petitioner to cross-examine MW-3 on 14.11.2006 but again petitioner failed to cross-examine MW-3 and finally he cross-examined MW-3 on 05.12.2006 and management presentation was declared closed on same day.

11. On basis of aforesaid description, based on material on record, an allegation that petitioner was not afforded opportunity to place his case or to cross-examine MW-1 to MW-3 effectively, has no legal basis since, as referred above, petitioner was granted repeated opportunity to cross-examine management witnesses, however, he failed to cross-examine MW-1 and MW-2 though at very later stage he cross-examined MW-3.

12. The Enquiry Authority submitted report which was forwarded to petitioner by a covering letter dated 05.02.2007. Copy of inquiry report was not enclosed alongwith this writ petition, however, was enclosed alongwith the counter affidavit. Said inquiry report is a very detail report wherein all material including reply of petitioner as well as statements of management witnesses were discussed. It was also noted that CSOE was granted ample opportunity to place defence witness, however, has failed to do so though has filed defence documents, which were considered in inquiry report.

13. The Enquiry Authority after considering all circumstances found both charges to be proved. A detail assessment of evidence was conducted and finally on basis of a reasoned and considered conclusion, Statement of Allegations were found to be proved. For reference conclusion relating to Article of Charges, as mentioned in inquiry report submitted by Enquiry Authority, is reproduced hereinafter:

IX. CONCLUSIONS RELATING TO ARTICLES OF CHARGE:

As mentioned above, the findings of the enquiry show that the matters mentioned in the Statement of Allegations are proved to be correct.

The two charges in Articles of charge reads as under :

1. Mr. Sethi failed to discharge his duties with utmost integrity, honesty, devotion and diligence and acted in a manner unbecoming of a Bank Officer, which is violative of Regulation 3 (1) of UCO Bank Officer Employees' (Conduct) Regulations, 1976 as amended.

2. Mr. Sethi failed to take all possible steps to ensure and protect interest of the Bank which is violative of Regulation 3 (1) of UCO Bank Officer Employees' (Conduct) Regulations, 1976 as amended.

The findings stated above show that :

1. The C.S.O.E. issued the bank guarantee ME-2 and extended its validity by ME-4 unauthorisedly, beyond powers and against the Banks rules/guidelines as contained in ME-12, ME-13 & ME-14.

2. The C.S.O.E. neither took any application from M/s BCIPL for issuance of ME-2 and ME-4, nor did he process the issuance & extension of guarantee as per Bank's rules/ procedures/ guidelines, nor did he place the matter before the higher authorities as per Bank's guidelines/procedures.

3. The C.S.O.E. did not obtain any margin money and collateral security to secure the said guarantee ME-2 as per Bank's guidelines.

4. The C.S.O.E. neither made any entries in the relevant Bank records nor did he keep any records in the Bank about the issuance of ME-2, ME-4 and ME-21/2, as per Bank's guidelines, thereby concealing facts from the Bank authorities.

5. The C.S.O.E. did not obtain counter guarantee from the applicant, nor did he obtain any margin and collateral security while issuing ME-2. Thereby, he exposed the Bank to risk of invocation of the guarantee to the extent of Rs.47 Lacs.

6. The C.S.O.E. caused wrongful financial loss to the Bank by not charging and getting deposited in the Bank, the processing charges and "exchange and commission" which should have been earned for issuance of the bank guarantee ME-2 as well as extension thereof, as per Bank's rules.

7. The C.S.O.E. concealed the material facts from his superior officers/Bank with motive of personal gain, and did not deposit the amount Rs.94,000/- given to him by the representative of the applicant company towards commission for issuing the bank guarantee ME-2, in the Bank.

8. The C.S.O.E. is responsible for doing other such acts for which the C.S.O.E. was not authorised and for causing wrongful benefit to the company M/s BCIPL.

The above findings clearly establish that all the various elements of the Charge No. 1 and Charge No. 2 are individually fully proved.

Here it would be pertinent to mention the ruling given by the Hon'ble Supreme Court in the case Disciplinary Authority-cum-Regional Manager and Others Vs- Nikunja Bihari Patnaik (1996) 9 S.C.C.69, (copy attached marked Annexure-IV) where it has been held that

In acting beyond one's authority is by itself a breach of discipline and a breach of Regulation 3. It constitutes misconduct within the meaning of Regulation 24. No further proof of loss is really necessary

In view of all the aforesaid, it is held that:

Charge No. 1- proved

Charge No. 2- proved

14. Petitioner submitted a reply dated 16.02.2007 to the inquiry report that doctrine of preponderance of probability was not correctly followed and erroneously burden was shifted on CSOE; there were two handwriting expert reports, one by Management and other by CSOE, however, only report of Management was considered; Enquiry Authority has wrongly placed reliance on statements made during police investigation; CSOE was not able to put his defence rightly since allegedly there was a confusion in proceedings; CSOE was not granted opportunity to examine or re-examine witnesses for ME-19 to ME-22; despite a request was made and Management Witnesses were not recalled etc.

15. Disciplinary Authority after considering inquiry report submitted by Enquiry Authority and a reply submitted by petitioner, i.e., CSOE, passed a reasoned final order dated 22.03.2007, whereby the outcome of inquiry report was accepted that both charges were found proved and Disciplinary Authority imposed punishment of removal from service. Relevant part of order dated 22.03.2007 is reproduced hereinafter:

I have also gone carefully through the comments of CSOE to the E.A.'s Report and find that

1. By merely writing that "written brief is a long rambling document" by E.A. does not prove or establish any where that E.A. has not taken into consideration the contents of brief submitted by CSOE.

2. For case referred by E.A. to establish the procedure of issuing Bank Guarantee which was prevailing in B/O Ghaziabad, CSOE has mentioned that he has no comments to make on it, meaning thereby his admission to the system & procedure of the Bank which he has violated. By merely mentioning that he has never been punished in the past and has 30 years of unblemished record, does not disprove or negate contents of allegation. No body can be excused from prosecution for commitment of crime/breach of conduct merely on the basis that he has not committed any crime/breach of conduct in the past. The pleas of CSOE is not tenable. The Doctrine of Preponderance of Probabilities is an accepted doctrine, applied by Hon'ble Supreme Court in various cases. It is not generated by either E.A. or P.O. I hereby reject contention of CSOE in this regard.

It was not within the ambit of enquiry to verify such a document, which was not presented during the course of enquiry. Neither the CSOE put up any record for verification from its original in the enquiry nor put-up such a demand. I see no tenable reason put forth by CSOE to establish that rules of natural justice have not been satisfied.

Filing of complaint in Police Authorities by MW-3 is not result of any biased attitude but discharge of his official duty. Criminal Proceedings are pursued for breach of law while departmental enquiries are meant to look into breach of discipline and/or any act of misconduct as described by Hon'ble Supreme Court in Ms. Neera Yadav's case in January, 2007. Complaint has been filed after thorough investigation into the matter and therefore, was not the result of any biased attitude towards any one. E.A. has relied on the records of trial court because it is connected to the same matter, i.e., B.G. for Rs. 47.00 Lakhs. Hence, I find no substance in CSOE's comments in this regard. i.e., fraudulently issuing a Bank Guarantee for Rs. 47.00 Lakhs on 09/11/2002, for which criminal proceedings as well as departmental proceedings have been instituted. I find that E.A. has acted in a judicious manner. Pleas advanced by CSOE that E.A. has not realized the consequence of his findings on such record on the life of CSOE have no hearance over the matter. Hence, I reject the same.

3. The matter was investigated by another Senior Officer of the Bank Mr. R.K. Gariyali and on the basis of the facts mentioned in that Report suitable action has been taken by Mr.

Bhandari in his capacity of Disciplinary Authority. Contention of CSOE in this regard is hereby rejected.

4. Section 21 of I.P.C. referred to by CSOE is not applicable in this enquiry. The present enquiry has been conducted in accordance with provisions/regulations of UCO Bank Officer Employees' (Discipline & Appeal) Regulations, 1976 as amended & E.A. has been appointed accordingly. I see no violation of Regulations meant for Officer Employees'. Hence I reject plea raised by CSOE in this regard.

5. E.A. has judiciously analysed the record of enquiry before him and then arrived at the findings as mentioned in his Report. Findings are not errors of judgement.

6. I find that CSOE has again raised the point of "errors of judgement" made by E.A. in his findings. CSOE has just narrated his story of last two years, which has no relevancy here. He was advised to offer his comments on E.A.'s Report. What ever CSOE has mentioned on page 13 & 14 under para 6 of his comments, has no relevancy to the matter. If CSOE remained in judicial custody for 46 days, it was due to breach of law committed by him. Other matters are personal in nature. CSOE is supposed to choose an officer as D.R., who is able to assist him as per the time frame of enquiry. In case of any problem regarding his unavailability, he was free to change his D.R. It is wrong to mention that he had no control over his DR. E.A. has expected nothing much from DR but he was duty bound to conclude the enquiry as early as possible, because it was inordinately delayed. It was supposed to be completed by 31/08/2005. It is also a fact that on one hand the enquiry was being delayed on account of adjournments sought by CSOE/DR, but on the other hand, CSOE has filed CMWP No. 72210/2005 against the Bank & Ors. for causing delay to him in completion of enquiry. Then Hon'ble Allahabad High Court fixed time-frame for completion of enquiry. Even then CSOE has been found to be demanding/gaining time on one ground or another, causing delay in completion of enquiry.

7. What so ever CSOE has mentioned in this para, it has no relevancy with the present matter. It is a matter of record that DR has also sought number of adjournments in enquiry due to one reason or another, causing delay in completion of enquiry. Contrarily, CSOE has charged management for delay in completion of enquiry and even filed Writ Petition against the Bank & Others.

8. I find that due opportunities have been provided by E.A. to defence to conduct cross-examination of Mr. R.K. Gariyali (MW-2) His examination-in-chief was conducted and recorded on 22/03/2006 in enquiry proceedings. There-after, many dates were fixed for enquiry, but CSOE sought continuous adjournments for six months, also defying the instructions of Disciplinary Authority to present himself before C.M.O. Bareilly for his medical check-up. I find that there was no denial to CSOE by E.A. to cross-examine MW-2 and the basic tenets of natural justice have been fully observed by E.A. In fact, lot of time and energy was spent to bring CSOE to participate in the enquiry. Cat & Mouse game is figment of imagination of CSOE.

9. I find that defence only wanted to reserve their right to re-cross-examine MW-3, Mr N P Mangla without assigning any acceptable reason, for which there is no provision as per

Regulations of UCO Bank Officer Employees' (Discipline & Appeal) Regulations, 1976 as amended. Cross-examination of MW-3 was duly conducted by defence and recorded in enquiry proceedings. There was no denial to cross-examine MW-2 Mr. R K Gariyali also. The conditions and stipulations are well described in the aforesaid Regulations regarding engagement of DR. I find no substance in this regard in CSOE's comments to E.A.'s Report.

10. Allegations made by CSOE do not contain any substance. Procedure & norms to conduct departmental enquiry are well settled and defined in Discipline & Appeal Regulations. It is just the figment of imagination of CSOE to describe the proceedings as "cat and mouse game".

11. The Charge-sheet served on CSOE is based on facts contained in Investigation Report of MW-2 submitted to the Bank. I reject the plea of CSOE. There is no discrimination or bias-ness against CSOE, as revealed by enquiry proceedings.

12. ME-8 is referred only to prove practice/habit of the CSOE of doing such acts. It was not a subject matter of this enquiry. A separate Charge-sheet dt. 18/10/2004 was issued to CSOE regarding the issuance of ME-8. It is very well mentioned in the Charge-sheet that CSOE was in habit of issuing Bank Guarantees like ME-8. This fact had to be proved in this enquiry. It's very purpose was to lay foundation of Charge. I find E A justified to expunge question no. 9 of defence put to MW-3 during his cross-examination in enquiry.

13. ME-19 to ME-22 have been inducted in the enquiry by P.O. in accordance of Regulation 6(14) of Discipline & Appeal Regulations. I find no violation of natural justice or miscarriage of justice by doing so. Re-examination of any witness is the right of each side after completion of cross-examination of that witness by other side, as defined in aforesaid Regulations.

14. It is prerogative of management or defence, as to which witness they want to produce either to substantiate or rebut/refute the Charge. It is not the right of other side to object to that. I find that P.O. has stated on 02/11/2006 during enquiry proceedings that after cross examination and re-examination of MW-3, the management presentation will be closed, as recorded by E.A. during enquiry proceedings. It goes to establish that CSOE had the prior knowledge of closure of management presentation, as mentioned by E.A. in his Report. I find no substance in CSOE's comments on E.A.'s Report in this regard. It is also a fact as cited supra that enquiry was delayed due to adjournments sought by the defence and if a time of one and a half year was consumed to conclude the management presentation, it was due to delaying tactics adopted by CSOE/DR. I find no miscarriage of justice in conducting the enquiry as alleged by the CSOE.

15. It is a wrong notion of CSOF in saying that E.A. has allowed P.O. over 11 months for inspection of original of ME-3. Right from 04/07/05, CSOE sought continuous adjournments till 07/11/05 and there after also from 22/04/06 to 21/09/06, causing delay in completion of enquiry.. After finding location of original of ME-3, it was got inspected by CSOE. It was very well mentioned by E.A. in enquiry proceedings held on 02/11/2006 that no further time will be allowed for the sake of study of the case/papers by new DR and the defence must come fully prepared for their presentation immediately after cross-examination and re-examination, if any, of MW-3 on 14/11/2006, the next date of hearing. CSOE, instead of attending enquiry, submitted a medical

certificate w e f 08/11/2006 upto 07/12/2006, seeking adjournment of enquiry. The enquiry was held on 05/12/2006. The defence had sufficient time to prepare their presentation. In the meantime, Hon'ble Allahabad High Court issued directions in CMWP No. 72210/2005 filed by CSOE to conclude enquiry within 4 months w.e.f. 15/11/2006. I find that the defence was allowed sufficient time by E.A. for their presentation and no injustice is caused to CSOE. Directions issued by Hon'ble High Court were to be followed scrupulously by E.A.

16. Through the deposition of management witnesses and with the support of management exhibits, the signatures of CSOE have been confirmed on ME-2, ME-4, ME-8, ME-21/2 and various parts of ME-22 beyond any doubt. It corroborated the findings of Handwriting Expert through his Report (ME-22/2, 3 & 4). I find no substance in the contention of CSOE regarding copying and/or forging his signatures on ME-2, ME-4, ME-8 & ME-21/2.

17. ME-2 to ME-22 were brought in the enquiry as they were thought to be relevant to the enquiry. The authenticity of the signatures of CSOE on ME-2, ME-4, ME-8 & ME-21/2 have been discussed supra and else where in enquiry proceedings on the basis of facts brought in during the course of enquiry & not after it is concluded.

18. I find that P.O. declared his intention of closure of management presentation on 02/11/2006 during the enquiry. CSOE can't insist upon the management for it's presentation. I also find that defence was provided sufficient time & opportunity to present their case in the enquiry. I find no material substance in CSOE's contention.

19. It is not correct on the part of CSOE to say that the directions of the Hon'ble Allahabad High Court have been used to cut the throat of the CSOE. Through Notification of the Disciplinary Authority issued on 31/05/2005, E.A. was directed to conclude the enquiry by 31/08/05. The enquiry was inordinately delayed. I find no substance of truth in the contention of the CSOE.

20. The doctrine of "res ipsa loquitur" as quoted by the CSOE has no application in present context.. CSOE has been provided full opportunity to defend himself in the enquiry. I find no denial of natural justice caused to CSOE in the enquiry.

21. Any record which is tendered after completion of enquiry by either side, has no relevancy, as the documents placed as exhibits in enquiry are to be inspected with their original records, testified by the witnesses about their contents and only then taken in the enquiry.

22. ME-22 has been obtained by Investigating Officer of S.I.S., Ghaziabad after lodging F.I.R. by the Bank in the matter of issuance of Bank Guarantee for Rs. 47.00 Lakhs. What ever documents the CSOE has referred to have been handed over to Police, that has been done as per requirements of law during the course of Police Investigation. CSOE has duly inspected all the contents of ME-22 on 26/09/06 in District Court Ghaziabad in presence of E.A. as recorded in enquiry.

After careful study of enquiry record, exhibits on record, deposition of witnesses, management & defence briefs, E.A.'s Report and CSOE's comments there-on, I further find that

1. Matter relating to existence of originals of ME-2 & ME-4 has been raised by the CSOE before the Hon'ble Allahabad High Court through his CMWP No. 72210/2005. Through its Order dt. 15/11/2006, Hon'ble Court has directed that "the Bank is only obliged to show those papers which are in its custody and which it proposes to rely upon during the departmental proceedings. The Bank is not obliged to search out, obtain and supply the defence material, on being requisitioned, to the employee. We may mention here that this is a departmental enquiry and not court proceedings which may be governed strictly by the Indian Evidence Act.

2. ME-2 & ME-4 have not been signed by MW-1, but have been signed jointly with CSOE by such a person, who is not official of Ghaziabad branch. This is as per the deposition made by MW-3, Mr. N.P. Mangla, then Senior Manager of the branch who was well versed with and capable of identifying signatures of Officers of branch.

3. While going through the proceedings, it is clear that no bias-ness was exhibited towards CSOE during the enquiry.

4. Management's case is not based of suspicions but based on hard facts revealed through investigations conducted by MW-2, and the documents connected with the case, alongwith Xerox copies provided to the Bank by concerned beneficiary departments. Contention of CSOE, therefore, does not merit any consideration.

5. Doctrine of Preponderance of Opportunities is applied depending on the circumstances of the case. There are sufficient grounds to apply this doctrine based on management documents and deposition of management witnesses. Contention of CSOE does not merit any consideration.

6. ME-22 is obtained by Investigating Officer, S.I.S., Ghaziabad from Handwriting Expert Mr. Sanjeev Tomar and its conclusion has been drawn on the basis of some documents in original, bearing signatures of CSOE and ME-22/7, 8 & 9, being the copies of ME-2, attested by U P Jal Nigam. It is not obtained by the Bank. While DE-5 is obtained by CSOE himself on 08/12/2006 with the purpose to counter ME-22 and it is not based on any of the documents in original. On perusal of defence brief, it is found that CSOE has annexed Annexure-I, containing (i) Letter of Sh Raj Singh Verma dt. 20/12/2006 addressed to Mr. V.K. Sethi (CSOE) & (ii) Xerox copies of Applications dt. 14/12/2006, moved by Mr. Chetan Kumar Verma & Mr. Raj Singh Verma for conducting Inspection of Records in Cr. Appeal No. 683/05 & 684/05 in the Court of V Addl. District Judge, Ghaziabad. It is hereby established with the record produced by CSOE that inspection of records was conducted by Mr. Raj Singh Verma, Handwriting Expert & writer of DE-5, on 14/12/2006 while he prepared his Report on 08/12/2006, even before he claimed to have inspected the record on 15/12/2006. Hence, its reliance is susceptible and its very purpose seems to negate the effect of ME-22, as mentioned by E.A. in his Report.

7. Bank is under no obligation to consider any such record/ document, which has not been presented in the enquiry at appropriate stage & time by the defence. Extraneous record beyond enquiry is not to be considered.

8. As far as matter of Criminal Court is concerned, the case is regarding fraudulently issuance of Bank Guarantee for Rs. 47.00 Lakhs on 09/11/2002 by CSOE and ME-19, ME-20, ME-21 & ME-22 are connected and related documents pertaining to the present Charge-sheet. There is no such bar in any law, not to use such documents in enquiry.

9. It is also a matter of record that CSOE has caused inordinate delay in completion of enquiry, as mentioned in details by E.A. in his Report. If management presentation was concluded on 05/12/2006, delay was caused due to adjournments sought by CSOE and/or his DR on one reason or other.

10. CSOE has not given any cogent reason to E.A. in the enquiry to further cross-examine any management witness at any stage. He only wanted to reserve his right to further cross-examine MW-3 only, if needed so, which is not permissible in departmental enquiries. There is no provision to re-cross-examine any witness. E.A. is found justified in this regard.

11. As far as the matter of cross-examination of MW-2 is concerned, his examination-in-chief was completed on 22/03/2006 and there-after so many dates were fixed for enquiry, but CSOE sought continuous adjournments of enquiry as recorded by E.A. in his Report and every time, MW-2 had to be informed to attend enquiry and then not to come due to adjournments sought by defence. It is pertinent to mention here that MW-2 is on deputation in Rastriya Mahila Kosh and not under direct control of the Bank. Every time when MW-2 is summoned to appear before the enquiry, Director of Rastriya Mahila Kosh had to be requested. E.A. was justified to mention that CSOE had a sufficient time of 6 months from the date of deposition of MW-2 to prepare for his cross-examination with the assistance of his DR.

12. There is no substance in mentioning by CSOE that enquiry proceedings be kept in abeyance till completion of criminal proceedings. Criminal proceedings are meant for any breach of law, while departmental enquiry is meant to look into breach of discipline and acts of misconduct on the part of an employee. Supreme Court's judgement in Neera Yadav's case pronounced in Jan., 2007 is also referred by E.A. , which has logical application in this matter. The plea of CSOE to keep in abeyance the enquiry till completion of criminal proceedings is not tenable.

13. As alleged by CSOE that findings of E.A. in his Report are errors of judgement, I have gone through all the records of enquiry and do not find any substance of error of judgement in his findings. I consider that the allegation of CSOE is devoid of any reason & is not based on facts.

14. As mentioned by CSOE on page 13 at para (f) that forgetting all the management restrictions at times, he had to shift to Meerut, which was also objected by the management□ goes to show his indiscipline-ness to the orders and directions of the higher authorities of the Bank. It

further proved when he, on three occasions, defied the directions of the Regional Manager/Disciplinary Authority to appear before C.M.O./ Medical Board for his medical check-up.

34. I have further gone through other contents of CSOE's comments on E.A.'s Report, but they merit no consideration. He has also inducted quite a few extraneous matters not relating to E.A.s Report, which have no bearings in the present matter. His last prayer mentioned on page 22 of his comments on E.A.'s Report is that decision of this enquiry proceedings may please be kept in abeyance till the outcome of frivolous criminal proceeding□ is not acceptable, considering the views of the Supreme Court expressed in Neera Yadav's case in January, 2007.

I concur with the finding of Enquiring Authority and hold the contents of Statement of Allegations as correct and proven true. His finding are based on records of enquiry, assessment of exhibits/documents presented in the enquiry and deposition of the witnesses during the conduct of enquiry proceedings, management brief and defence brief. He has arrived to the logical conclusion by considering all the aspects in a justified manner. I find that E.A. has provided ample, reasonable & due opportunities to CSOE to defend his case in enquiry and he has further ensured that every norm of natural justice is met and no injustice is caused to CSOE.

I hold contents of Allegation leveled against Mr. V.K. Sethi, CSOE, as 'proved' beyond any doubt or suspicion.

Charge No. 2: Mr. Sethi failed to take all possible steps to ensure and protect interest of the Bank, which is violative of Regulation 3(1) of UCO Bank Officer Employees' (Conduct) Regulations, 1976, as amended.

E A's findings for this Charge are same as to Charge No. 1. For the sake of brevity, they are not being repeated again. The said findings (from Sl. No. 1 to 8) clearly establish that all the elements of Charge No. 2 are "fully proved"

The Enquiring Authority has referred to the ruling given by Hon'ble Supreme Court in case of "Disciplinary Authority-cum-Regional Manager & Ors. Vs. Nikunj Behari Patnaik" (1996) 9 SCC 69.

It will be pertinent to mention verdict of the Apex Court in (i) Disciplinary Authority-cum-Regional Manager & Ors. Vs. Nikunj Behari Patnaik in Civil Appeal No. 7188 of 1996 decided on dt. 15/04/1996 (1996(9) SCC) and (ii) State Bank of India Vs. Ramesh Dinkar Punde decided in August, 2006, in which the Supreme Court has specifically dealt with misconduct of a Bank Officer under Regulation 24 of UCO Bank Officer Employees (Conduct) Regulations, 1976 covering Regulation 3 which deals with

(i) utmost integrity, honesty, devotion and diligence of a Bank Officer in discharge of his duties and take all possible steps at all times to protect interest of the Bank and do nothing which is unbecoming of a Bank Officer

(ii) every officer employee shall maintain good conduct and discipline and show curtesy and attention to all persons in all transactions & negotiations.

(iii) no officer employee shall, in the performance of his official duties or in the exercise of his powers conferred on him, act otherwise than in his best judgement except where he is acting under the direction of his official superior.

(iv) every officer employee shall take all possible steps to ensure the integrity and devotion to duty of all persons for the time being under his control and authority

In case of Disciplinary Authority-cum-Regional Manager & Ors. Vs. Nikunj Behari Patnaik reported in 1996(9) SCC, Supreme Court held:

In acting beyond one's authority is by itself a breach of discipline and a breach of Regulation 3. It constitutes misconduct within the meaning of Regulation 24. No further proof of loss is really necessary

24 Acts of misconduct- A breach of any of the provisions of these regulations shall be deemed to constitute a misconduct punishable under the Bank Officer Employees(Discipline & Appeal) Regulations, 1976 Breach of Regulation 3 is misconduct within the meaning of Regulation 24 In the case of a Bank- for that matter; in the case of any other organization every officer/employee is supposed to act within the limits of his authority. If such officer/employee is allowed to act beyond his authority, the discipline of the organization/Bank will disappear. Each officer of the Bank can not be allowed to carve out his own little empire wherein he dispenses favors and largesse. No organization, particularly a Bank, can function properly and effectively if it's officers are not emphasized to observe prescribed norms and discipline. Such indiscipline cannot be condoned on the spacious ground that it was not actuated by ulterior motive or by extraneous considerations. The very act of acting beyond authority- that too a course of conduct spreading over a sufficiently long period and involving innumerable instances- is by itself a misconduct. Such acts, if permitted, may bring in profit in some cases, but they may also lead to huge losses. Such adventures are not given to employees of Banks, which deal with public funds. If what we hear about the reasons for the collapse of Barings Bank is true, it is attributable to the acts of one of it's employees, Nick Leeson, a minor officer stationed at Singapore, who was allowed by his superiors to act far beyond his authority. As mentioned here-in-before, the very discipline of an organization and more particularly a Bank is dependent upon each of it's employees and officers, acting and operating within their allotted sphere. Acting beyond one's authority is by itself a breach of discipline and a breach of Regulation 3. It constitutes misconduct within the meaning of Regulation 24. No further proof of loss is really necessary.

Supreme Court has further held in case of State bank of India Vs. Ramesh Dinkar Punde (2006) as:

Mr. Justice H.K.Sema and Mr. Justice A.K.Mathur said- a Bank Officer holds a position of trust where honesty and integrity are in built requirements. In the banking business, absolute devotion, diligence, integrity and honesty need to be preserved by every Bank-employee and in

particular the Bank-officer so that the confidence of the public / depositor is not impaired. It is for this reason that when a Bank-officer commits misconduct for his personal ends and against the interest of the Bank and the depositors, he must be dealt with iron hands and he does not deserve to be dealt with leniently

After careful consideration of the entire material available before me and keeping in mind the due consideration of the above two judgements, I concur with the findings of Enquiring Authority and see no reason to dissent from his findings.

I accordingly, hold

Charge No. 1 proved

Charge No. 2 proved

I, acting as Disciplinary Authority over Mr. V.K. Sethi, PFM No. 17334, delegated to me under Regulation 5(1) of UCO Bank Officer Employees(Discipline & Appeal) Regulations, 1976 as amended, award the following penalties under Regulation 4 of said Regulations:

Charge No. 1

Proved

Mr. V. K. Sethi, P.F.M. No. 17334, Manager B/O Nainital Road Bareilly (Under suspension) is removed from Bank's service with immediate effect with further directions that his suspension w.e.f. 11/09/2004 vide Order of the Disciplinary Authority in the matter of Charge-sheet dt. 18/10/2004 is hereby lifted with immediate effect & he will not be entitled to draw any subsistence allowance further from the date of this Order

Charge No. 2

Proved

Mr. V. K. Sethi, P.F.M. No. 17334, Manager B/O Nainital Road Bareilly (Under suspension) is removed from Bank's service with immediate effect with further directions that his suspension w.e.f. 11/09/2004 vide Order of the Disciplinary Authority in the matter of Charge-sheet dt. 18/10/2004 is hereby lifted with immediate effect & he will not be entitled to draw any subsistence allowance further from the date of this Order

16. Petitioner, thereafter, preferred an appeal dated 29.04.2007 under Regulation 17 of UCO Bank Officers Employees (Discipline & Appeal) Regulations, 1976 (hereinafter referred to as Regulations, 1976) and it was dismissed vide order dated 10.05.2008. Subsequently, petitioner filed a review petition before Reviewing Authority, however, it was also dismissed vide order dated 30.03.2009. Accordingly, petitioner has filed present writ petition challenging orders dated 22.03.2007, 10.05.2008 and 30.03.2009.

17. Sri Arvind Srivastava, learned counsel for petitioner has argued at length and referred various documents annexed alongwith this writ petition as well as filed a written argument also. The crux of his arguments are as follows:

(A) The documents provided to petitioner during inquiry and documents submitted by Presenting Officer during inquiry were different and were not provided to petitioner during inquiry. Presenting Officer initially has not disclosed about any management witness though later on proposed to examine four management witnesses.

(B) It was a case of excessive delegation by Disciplinary Authority as he authorized Presenting Officer to submit any other document without presenting or providing it to petitioner and it was a violation of Regulation 6(5) of Regulations, 1976. The Enquiry Authority was not competent to conduct inquiry.

(C) The entire departmental inquiry was proceeded on basis of photocopies of Bank Guarantee and other documents. The photocopies were also incomplete and their original do not exist either at the record of Bank or at U.P. Rajkiya Nirman Nigam.

(D) The inquiry report as well as order of Disciplinary Authority has failed to take note that original Bank Guarantee Bond, if any, was handed over to Branch Manager of Bank, however, it was not specifically denied and despite it was an accepted case of management evidence that photocopies of alleged Bank Guarantee was incomplete, still petitioner was held guilty which was not correct.

(E) The Bank Guarantee was allegedly signed by petitioner and Sri H.C. Lamba, the Disbursing Officer, however, instead to take action against him also, he was produced as MW-1, which was a denial of fair trial.

(F) Management took almost 14 months to present their case, whereas petitioner was provided only six days to present his witnesses. He was not even provided personal hearing before Enquiry Authority or before Disciplinary Authority, Appellate Authority or Reviewing Authority. Proper opportunity of cross-examination of management witnesses was also denied. The Management has dropped two important witnesses. Punishment is also shockingly disproportionate.

18. In support of his argument, learned counsel for petitioner has placed reliance on the judgments passed by Supreme Court in Purshottam Lal and others vs. Union of India and another, AIR 1973 SC 1088; UCO Bank and another vs. Vijay Kumar Handa, 2025 INSC 442; and, a judgment passed by High Court of Punjab and Haryana at Chandigarh in Ujagar Singh Saini (through LRs) vs. State Bank of Patiala and others (CWP-16738-1999), decided on 09.01.2026.

19. Per contra, Sri Sanjay Singh, learned counsel for respondents, has supported the impugned orders that petitioner has committed fraud and prepared a Fake Bank Guarantee which has given pecuniary advantage to M/s Bhavya Credit & Investment Pvt. Ltd. In disciplinary proceeding repeated opportunities were granted to petitioner to cross-examine the management

witnesses but on one or other excuse, he has failed to examine MW-1 and 2 though he has examined MW-3 at very belated stage, as such, principle of natural justice was followed.

20. The examine-in-chief of management witnesses were conducted in presence of petitioner. Opportunity of oral hearing was equally granted. Learned counsel referred the outcome of inquiry report as well as Disciplinary Authority that each and every aspect of case was considered and on basis of proved charges major punishment of removal was imposed.

21. I have heard learned counsel for parties and perused the material on record.

22. It is well settled that in a case arising out of disciplinary proceeding, the High Court under writ jurisdiction has a very limited power to review an order of punishment and it can be interfered only on limited grounds and for that the Court takes note of broad parameters of exercising power under judicial review as elaborated in *Union of India v. P. Gunasekaran*, 2015 (2) SCC 610 and its paragraphs no. 12 and 13, being relevant, are reproduced hereinafter:

12. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, reappreciating even the evidence before the enquiry officer. The finding on Charge I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Articles 226/227 of the Constitution of India, shall not venture into reappreciation of the evidence. The High Court can only see whether:

- (a) the enquiry is held by a competent authority;
- (b) the enquiry is held according to the procedure prescribed in that behalf;
- (c) there is violation of the principles of natural justice in conducting the proceedings;
- (d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;
- (e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;
- (f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;
- (g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;
- (h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;

(i) the finding of fact is based on no evidence.

13. Under Articles 226/227 of the Constitution of India, the High Court shall not:

(i) reappreciate the evidence;

(ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;

(iii) go into the adequacy of the evidence;

(iv) go into the reliability of the evidence;

(v) interfere, if there be some legal evidence on which findings can be based.

(vi) correct the error of fact however grave it may appear to be;

(vii) go into the proportionality of punishment unless it shocks its conscience.

23. The Court also takes note of various judgments referred in another judgment passed by Supreme Court in *Union of India and other vs. Dalbir Singh*, 2021(11) SCC 321.

24. In the background of above referred legal position, the first issue is, whether inquiry was conducted by a Competent Authority or not?

25. The Disciplinary Authority has appointed Sri H.P. Varshney, an Ex-Scale-IV Officer of Bank, as an Enquiry Authority. In this regard, the Court takes note that it was under the powers of Disciplinary Authority and for that the Court takes note of a Circular dated 20.10.2001 whereby sub-regulation (2) of Regulation 6 of Regulations, 1976 were substituted in following manner:

"(2) Whenever the Disciplinary Authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct of misbehaviour against an officer employee, it may itself enquire into, or appoint any other person who is or has been, a public servant (hereinafter referred to as the inquiring authority) to inquire into the truth thereof."

26. In aforesaid circumstances, the Disciplinary Authority has a right to appoint any person who is or has been a public servant and since in present case the Enquiry Authority was an Ex-Scale-IV Officer of Bank, therefore, there was no illegality so far as appointment of Enquiry Authority is concerned.

27. The second issue is to consider, whether during disciplinary proceeding due procedure was followed or not?

28. As already referred above, the memorandum of charge was submitted to which petitioner submitted his reply. Petitioner has participated in inquiry. He was granted ample opportunity to

cross-examine management witnesses and when he repeatedly failed to do so, there was no illegality when opportunity was closed.

29. It is also on record that petitioner sought adjournments for number of months on medical grounds and despite examination-in-chief was conducted in his presence, still he failed to cross-examine the management witnesses as well as that petitioner was granted opportunity to examine documents as directed by this Court and he was confronted with all documents placed during inquiry. Therefore, any allegation that documents were not confronted, being contrary to record, cannot be accepted.

30. I have perused the inquiry report as well as the order passed by Disciplinary Authority. Every argument and objections were considered and only thereafter it was held that both charges were found proved. Therefore, it is not a case that conclusion, on very face of it, was wholly arbitrary and capricious that no reasonable person can arrive to such conclusion as well as it is not a case of no evidence.

31. Now the Court deals with other submissions as under:

(A) Petitioner has not denied that there was an established procedure to issue a Bank Guarantee and admittedly it was not followed.

(B) It was a case of Fake Bank Guarantee and it was acted upon on basis of its photocopy and only for a reason that original Bank Guarantee was not available, does not make present case, a case of no evidence rather absence of original Bank Guarantee and photocopy of Bank Guarantee having signature of petitioner makes a case much stronger against him.

(C) An argument that petitioner was denied to ask relevant questions to management witnesses has no legal basis since in disciplinary proceedings, charges are proved on basis of preponderance of probability and does not require to prove beyond reasonable doubt as in a criminal trial. From the record, it is evident that petitioner has multiple questions to MW-3 and Enquiry Authority has expunged very few questions being irrelevant. Petitioner has failed to show any prejudice.

(D) The concerned Company was earlier involved in a fake Solvency Certificate, where petitioner's involvement was not found, would not absolve petitioner from subsequent allegation of Fake Bank Guarantee and in the present case on basis of Fake Bank Guarantee a huge transaction was made in the account of M/s Bhavya Credit and Investment Pvt. Ltd. as well as Bank's reputation was also compromised.

(E) In a case where no action was taken against other signatory would not itself render disciplinary proceeding concluded against the petitioner bad in law. The petitioner has to place his case on it's own merit, which he failed to do so.

(F) When the inquiry was initiated management documents were marked from ME-1 to ME-12 and on same day ME-13 to ME-18 were included on request of Presenting Officer and

petitioner was accordingly informed, therefore, an argument that management documents were presented without confronting to petitioner and without information, was wrong. According to details of proceeding it was done in presence of defence and ME-13 to ME-18 were provided to CSOE and he inspected it on 29.03.2005 as recorded in enquiry proceedings. There is no denial on behalf of petitioner. Original record was also shown except few documents since certified copies of same were shown. Copies of ME-13 to ME-18 were also provided to CSOE on 29.03.2005. Therefore, said submission of petitioner has also no force.

32. So far as objection on report of handwriting expert is concerned, the expert report was part of investigation in criminal case and the same was though placed on record in disciplinary proceeding but not much relied on. So far as signature of petitioner on Fake Bank Guarantee is concerned, it was proved from deposition of MW-1, 2 and 3 as well as on basis of Bank record, which are also mentioned in inquiry report under the heading of Findings that document was signed by petitioner and had acknowledged the receipt which was also proved from document bearing No. ME-21/2, i.e., certified copy of letter dated 13.11.2002 of Construction and Design Service Unit 27, U.P. Jal Nigam seeking confirmation of BG No. 28/02 dated 09.11.2002 for Rs. 47 lacs of M/s Bhavya Credit and Investment Pvt. Ltd. which was received and acknowledged by CSOE.

33. In inquiry report not much reliance was placed on document No. ME-22, i.e., a certified copy of handwriting expert's report and it was used only for the purpose of corroboration and for that paragraph no. 15 of inquiry report under above referred heading is reproduced hereinafter:

15. The document ME-22 and its Annexures give the Handwriting Expert's findings that the documents ME-2, ME-4 and ME-21/2 do contain the signatures of the C.S.O.E. The evidence produced & circumstances shown in the enquiry proceedings independently lead to the same conclusion, that the documents ME-2, ME-4 and ME-21/2 bear the signatures of C.S.O.E., as mentioned above earlier in point No.5. Thus the findings of the enquiry and ME-22 are corroboratory but arrived at in independent manner.

34. The Court also takes note of copy of proceedings annexed alongwith counter affidavit that petitioner was given ample opportunity and he has cross-examined ME-3 at length and it was his default that cross-examination of ME-1 and ME-2 was closed since he has taken number of adjournments and has not taken any steps to cross-examine said witnesses when call for.

35. In aforesaid circumstances, Court is of the considered opinion that there is no irregularity in the process of disciplinary proceeding. The charges were found proved on basis of material as well as examination and cross-examination of management witnesses.

36. So far as submission that management took about 14 months to present its case and petitioner was granted only a week's time to put his defence, is also contrary to record since reason to took 14 months to conclude management's case was that petitioner has taken various adjournments and has not appeared on various dates. Effective dates were very few on which management's case was concluded and thereafter further opportunity was granted to petitioner to present his defence, if any.

37. After cross-examination of MW-3 was over on 02.11.2006, defence was advised to submit his final list of defence documents and witnesses to Enquiry Authority and he sought 15 days time and further take adjournment on ground of illness from 08.11.2006 to 28.11.2006, however the prayer was rejected by a reasoned order that petitioner despite having granted ample opportunity has not able to produce any defence witness. Defence documents were already on record, which were considered by Enquiry Authority and Disciplinary Authority.

38. Request to recall MW-2 for cross-examination was rightly rejected since there was no reason to recall him. The detail of days are also recorded in inquiry report that why request for further time was rejected. Court takes note that there was no illegality in not approaching further time to produce defence witness. The petitioner has made no averment or argument that how he has prejudiced. For reference the same is mentioned hereinafter:

- (1) Submission of brief by PO 15 days
- (2) Submission of brief by CSO 15 days
- (3) Submission of EAs report - 30 days
- (4) Calling for comments of CSO on EAs report - 15 days
- (5) The time taken in communication/transit of papers - min. 3x15-15 days.
- (6) Time already passed - 21 days.

Thus total 111 days are accounted as above and just 9 days are available out of total 120 days to conclude the hearings in the enquiry. So you will find that it will not be possible & practicable for you to allow the time as demanded by defence. You are requested to take a note of above citations & decide the matter as you deem fit.

39. The outcome of above discussion is that all arguments of petitioner has no legal force.

40. Now the only question is, whether punishment, i.e., removal from Bank service, was contrary to bipartite agreement that petitioner was denied pension.

41. Learned counsel for petitioner has placed reliance on a judgment passed by Supreme Court in the case of UCO Bank vs. Vijay Kumar Handa (supra) that in terms of bipartite settlement arrive between Indian Banks Association latest being on 10.04.2002 Clause 6(b) was inserted in earlier bipartite settlement providing for one of the penalties which may be imposed on delinquent employee found guilty of misconduct. Clause 6(b) reads as follows:

6. An employee found guilty of gross misconduct may:

(a)

(b) be removed from service with superannuation benefits i.e. pension and/ or provident fund and gratuity as would be due otherwise under the rules or regulations prevailing at the relevant time and without disqualification from future employment; or

42. On basis of above and its interpretation mentioned in UCO Bank vs. Vijay Kumar Handa (supra) learned counsel for petitioner submitted that even in proved gross misconduct as in present case petitioner though can be removed from service, however, it must be with superannuation benefits, still Respondent-Bank has not taken note of above referred clause of bipartite settlement.

43. In aforesaid background the Court takes note of paragraphs no. 21 to 23 of UCO Bank vs. Vijay Kumar Handa (supra) and for reference the same are reproduced hereinafter:

21. Interplay of Clause 6(b) of the Bipartite Settlement and Regulation 22 of the Regulations, 1995 was examined by this Court in S.K. Kool (supra) and after due consideration answered the same in the following manner:

13. From a plain reading of the aforesaid Regulation, it is evident that removal of an employee shall entail forfeiture of his entire past service and consequently such an employee shall not qualify for pensionary benefits. If we accept this submission, no employee removed from service in any event would be entitled for pensionary benefits. But the fact of the matter is that the Bipartite Settlement provides for removal from service with pensionary benefits "as would be due otherwise under the rules or regulations prevailing at the relevant time". The consequence of this construction would be that the words quoted above shall become a dead letter. Such a construction has to be avoided.

14. The Regulations do not entitle every employee to pensionary benefits. Its application and eligibility is provided under Chapter II of the Regulations whereas Chapter IV deals with qualifying service. An employee who has rendered a minimum of ten years of service and fulfils other conditions only can qualify for pension in terms of Regulation 14 of the Regulations. Therefore, the expression "as would be due otherwise" would mean only such employees who are eligible and have put in minimum number of years of service to qualify for pension. However, such of the employees who are not eligible and have not put in required number of years of qualifying service shall not be entitled to the superannuation benefits though removed from service in terms of Clause 6(b) of the Bipartite Settlement. Clause 6(b) came to be inserted as one of the punishments on account of the Bipartite Settlement. It provides for payment of superannuation benefits as would be due otherwise.

15. The Bipartite Settlement tends to provide a punishment which gives superannuation benefits otherwise due. The construction canvassed by the employer shall give nothing to the employees in any event. Will it not be a fraud Bipartite Settlement? Obviously it would be. From the conspectus of what we have observed we have no doubt that such of the employees who are otherwise eligible for superannuation benefit are removed from service in terms of Clause 6(b) of the Bipartite Settlement shall be entitled to superannuation benefits. This is the only construction which would harmonise the two provisions. It is well-settled rule of construction that in case of apparent conflict between the two provisions, they should be so interpreted that the effect is given to both. Hence, we are of the opinion that such of the employees who are otherwise entitled to superannuation benefits under the Regulations if visited with the penalty of removal

from service with superannuation benefits shall be entitled for those benefits and such of the employees though visited with the same penalty but are not eligible for superannuation benefits under the Regulations shall not be entitled to that.

22. Both the learned Single Judge and the Division Bench had followed the aforesaid decision of this Court. Learned Single Judge noted that respondent had submitted his option for pension on 05.10.2010. Learned Single Judge also held that objection of the appellant to the claim of pension by the respondent was without any basis in as much as the appellate authority had specifically held that respondent would be entitled to receive terminal benefits for the period of service he had rendered. This order of the appellate authority has attained finality. Therefore, it was held that respondent was entitled to receive pension in view of the order passed by the appellate authority. This view of the learned Single Judge has been endorsed by the Division Bench in the impugned judgment. The decision in S.K. Kool (supra) is binding on us. Therefore, we do not find any compelling reason to interfere with the concurrent findings of the learned Single Judge and the Division Bench while exercising our jurisdiction under Article 136 of the Constitution of India.

23. Accordingly, the civil appeal is dismissed. However, there shall be no order as to cost.

44. In aforesaid circumstances, Court finds that there is substance in the argument of learned counsel for petitioner so far as nature of punishment (removal from service) is concerned as well as that while passing impugned orders the appropriate authority of Respondent-Bank has not taken note of above referred clause of bipartite settlement.

45. Accordingly, without disturbing finding that both charges were found proved and petitioner has committed gross misconduct, the matter is remitted back only to the extent that a fresh order be passed on nature of punishment taking note of above referred clause of bipartite settlement as well as UCO Bank vs. Vijay Kumar Handa (supra). The aforesaid exercise shall be concluded within six weeks from the date a certified copy of this order is placed before concerned respondent.

46. The writ petition is accordingly disposed of.

(2026) 4 ILRA 1969
APPELLATE JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 23.04.2026

BEFORE

THE HON'BLE ARUN BHANSALI, C.J.
THE HON'BLE JASPREET SINGH, J.

Arbitration Appeal No. 53 of 2023

Laxmi Kant Pandey

...Appellant

Versus

Hindustan Petroleum Corporation Ltd., Lko. ...Respondent

Issues for Consideration

- (i) Whether the appointment of the Sole Arbitrator by the Chairman and Managing Director of the respondent-Corporation under the dealership agreement was invalid after the amendments to Section 12 of the Arbitration and Conciliation Act, 1996?
- (ii) Whether the appellant's letter dated 07.03.2018 amounted to an express written waiver contemplated under the proviso to Section 12(5) of the Arbitration and Conciliation Act, 1996?
- (iii) Whether the objection regarding the de jure ineligibility of the Arbitrator could be raised in proceedings under Section 37 of the Arbitration and Conciliation Act, 1996?
- (iv) Whether the arbitral award and the judgment of the Commercial Court affirming the award were liable to be set aside?

Headnotes

Arbitration and Conciliation Act, 1996 — Ss. 12(1), 12(5), 14, 34 and 37 — Appointment of Sole Arbitrator — Chairman and Managing Director of Corporation empowered under arbitration clause to act as Arbitrator or nominate another Arbitrator — Statutory ineligibility.

HELD: After the amendment to Section 12 of the Arbitration and Conciliation Act, 1996, the Chairman and Managing Director of the respondent-Corporation, being a person falling within the categories specified in the Fifth and Seventh Schedules, became ineligible to act as an Arbitrator. Once the named Arbitrator incurred statutory ineligibility, he equally lost the authority to nominate another Arbitrator. Consequently, the appointment of the Sole Arbitrator by the Chairman and Managing Director was void being contrary to Sections 12(5) and 14 of the Act. [Paras 75 to 77, 90(i) & (ii)]

Arbitration and Conciliation Act, 1996 — Proviso to S. 12(5) — Express agreement in writing — Waiver — Meaning and scope.

HELD: The correspondence exchanged between the parties did not amount to an express written agreement waiving the statutory disqualification under the proviso to Section 12(5). The appellant merely consented to the respondent appointing an Arbitrator and did not consciously and unequivocally waive his statutory right to object to the appointment of an ineligible Arbitrator. In the absence of a clear post-dispute written waiver, the statutory ineligibility remained unaffected. [Paras 78 to 85, 90(iii)]

Arbitration and Conciliation Act, 1996 — Ss. 12(5), 14, 34 and 37 — De jure ineligibility of Arbitrator — Jurisdictional objection — Can be raised at any stage.

HELD: An objection regarding the de jure ineligibility of an Arbitrator strikes at the root of the Arbitrator's jurisdiction. Such objection is not defeated merely because it was not elaborately pleaded before the Commercial Court. Since the issue concerns the inherent jurisdiction of the Arbitrator, it can validly be raised even in proceedings under Section 37 of the Act. [Paras 86, 87 and 90(iv)]

Arbitration and Conciliation Act, 1996 — Ss. 12, 34 and 37 — Award by ineligible Arbitrator — Validity.

HELD: As the Sole Arbitrator lacked jurisdiction by reason of statutory ineligibility and there was no valid waiver under Section 12(5), the arbitral award could not be sustained. Consequently, the judgment of the Commercial Court affirming the award was also liable to be set aside. Once the appointment itself was held illegal, examination of the appellant's challenge regarding procedural violations during arbitral proceedings became unnecessary. [Paras 88 to 91]

Arbitration and Conciliation Act, 1996 — Fresh arbitration — Liberty to parties.

HELD: Upon setting aside the award, liberty was granted to the parties to have a fresh Arbitrator appointed in accordance with law for adjudication of their disputes. [Para 91]

Appeal allowed. Judgment of the Commercial Court and arbitral award set aside. (E-14)

Case Law Cited

Voestalpine Schienen GmbH v. Delhi Metro Rail Corporation Ltd., (2017) 4 SCC 665 — relied on; HRD Corporation v. GAIL (India) Ltd., (2018) 12 SCC 471 — relied on; TRF Ltd. v. Energo Engineering Projects Ltd., (2017) 8 SCC 377 — relied on; Perkins Eastman Architects DPC v. HSCC (India) Ltd., (2020) 20 SCC 760 — relied on; Central Organisation for Railway Electrification v. ECI-SPIC-SMO-MCML (JV), (2025) 4 SCC 641 — relied on; Bhadra International (India) (P) Ltd. v. Airports Authority of India, 2026 SCC OnLine SC 7 — relied on; Central Organisation for Railway Electrification v. ECI-SPIC-SMO-MCML (JV), (2020) 14 SCC 712 — referred to; Union of India v. Tania Constructions Ltd., 2021 SCC OnLine SC 271 — referred to; State of Punjab v. Davinder Pal Singh Bhullar, (2011) 14 SCC 770 — referred to; M/s Truly Pest Solution Pvt. Ltd. v. Principal Chief Mechanical Engineer (PCME), Chief Railway, Arbitration Petition No. 43 of 2023 (Bombay High Court, decided on 11.11.2024) — held not applicable / no longer good law in view of Bhadra International (India) (P) Ltd. v. Airports Authority of India, 2026 SCC OnLine SC 7.

List of Acts/Statutes

Arbitration and Conciliation Act, 1996; Arbitration and Conciliation (Amendment) Act, 2015 (Act 3 of 2016).

List of Keywords

Arbitration; Appointment of Arbitrator; Sole Arbitrator; Ineligible Arbitrator; Express written waiver; Waiver after dispute; Fifth Schedule; Seventh Schedule; Equal treatment of parties; Party autonomy; De jure ineligibility; Jurisdiction of Arbitrator; Commercial Court; Dealership Agreement; Petroleum dealership.

Case Arising From

Appeal under Section 37 of the Arbitration and Conciliation Act, 1996 against the judgment and order dated **19.04.2023** passed by the Commercial Court-II, Lucknow in **Arbitration Case No. 766 of 2019**, affirming the arbitral award dated **26.04.2019** passed by the Sole Arbitrator arising out of termination of the appellant's petroleum dealership agreement dated **14.01.2013**

Appearance for Parties

For the Appellants: Sri Gaurav Mehrotra, Senior Advocate, assisted by Sri Anupam Mishra and Ms. Madhur Jhawar.

For the Respondents: Ms. Aprajita Bansal, Sri Anilesh Tewari, Ms. Gursimran Kaur and Ms. Shreya Pahwa.

(Delivered by Hon'ble Jaspreet Singh, J.)

1. The appellant has preferred the instant appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the Act of 1996") assailing the judgment and order passed by the Commercial Court-II, Lucknow dated 19.04.2023 in Arbitration Case No. 766 of 2019 whereby his petition under Section 34 of the Act of 1996 was dismissed and the arbitral award dated 26.04.2019 passed by the Sole Arbitrator was affirmed.

Factual Background:-

2. In order to appreciate the controversy involved in the instant appeal, it will be apt to take a brief glance at the facts leading up to this appeal.

3. The appellant was a dealer of the respondent-corporation for retail sales of petrol/diesel and other petroleum products. The said dealership agreement was entered between the parties on 14.01.2013 and in terms whereof the appellant was entitled to run his petrol pump under the name and style of "Pandey Filling Station" at Village Budawa, Pargana and Tehsil Attaara, District Banda.

4. On 14.06.2017, a Special Team under the supervision of the District Magistrate, Banda inspected the dealership outlet of the petitioner. During inspection, the seal affixed by the Weights and Measures Department relating to Nozzle No. (ii) of Gilbarco Dual Ms. Dispensing Unit with Serial no. 20152000858 was found broken.

5. Based on the aforesaid discrepancy, a show cause notice was issued by the respondent-corporation dated 21.06.2017 calling upon the appellant to show cause within 15 days as to why necessary action may not be taken against him.

6. The appellant submitted his reply dated 15.07.2017 and also by an undated letter, and both were received by the Corporation on 17.07.2017. The appellant stated that the aforesaid nozzle no. (ii) was not functioning properly and the appellant had already raised his complaint regarding the same on 03.06.2017. Despite the said complaint, the Corporation on its online portal indicated that the complaint had been resolved. This was again interjected by the appellant who raised a fresh complaint on 06.06.2017 and the Corporation was also informed of the incorrect functioning of the aforesaid nozzle, however, it was not physically resolved at the site rather the Corporation closed the complaint on its online portal. This was once again brought to the notice of the respondent-corporation by the appellant that the complaint raised by him had not been resolved.

7. The appellant further stated that even during the inspection upon measuring, no short dispensation of fuel was recorded from any of the dispensing units including from nozzle no. (ii) and moreover all other seals were found intact.

8. The Corporation, however, did not find the reply of the appellant satisfactory and vide its order dated 24.07.2017, the dealership agreement dated 14.01.2013 was terminated.

9. The appellant assailed the cancellation order dated 24.07.2017 by means of a writ petition bearing Writ-C No. 62809 of 2017 which was dismissed by a Division Bench of this Court at Allahabad leaving it open for the appellant to initiate arbitral proceedings in terms of the arbitration Clause No. 66 contained in the agreement.

10. Thereafter, the appellant invoked the arbitration clause by means of an undated letter. In response, the Corporation vide its reply dated 24.01.2018 acknowledged the receipt of the aforesaid undated letter of the appellant and the Corporation informed that as the Arbitration and Conciliation Act, 1996 had undergone an amendment which came in effect from 23.10.2015, hence, in view of the proviso appended to Section 12(5) of the Act of 1996, a written consent was required from the appellant to express his willingness and permit the Corporation to appoint its employee as a Sole Arbitrator.

11. The appellant responded to the aforesaid letter dated 24.01.2018 and informed the Corporation that the appellant had appointed Sri Anil Kumar Gupta, a Chartered Accountant as an Arbitrator and requested the Corporation to concur with the said appointment of the Sole Arbitrator.

12. The Corporation vide its letter dated 26.02.2018 turned down the appellant's request of concurring to the appointment of the appellant's nominated Arbitrator and further reiterated that the appellant must give his consent, as sought in its earlier letter dated 24.10.2018, so that the Corporation may appoint an Arbitrator, failing which the appellant may invoke the appropriate forum for appointment of an Arbitrator.

13. The appellant vide its letter dated 07.03.2018 addressed the respondent and conveyed his consent for the appointment of an Arbitrator by the Corporation and further requested that as he was differently abled and had difficulties in traveling, hence, an Arbitrator of a nearby place be appointed.

14. In furtherance of the aforesaid letter, the Corporation vide its letter dated 18.04.2018 appointed Sri Sanjay Verghese as a Sole Arbitrator to resolve the disputes between the appellant and the respondent-corporation.

15. The Sole Arbitrator entered into the reference and passed its first procedural order on 21.05.2018 fixing time lines to enable the parties to exchange the pleadings amongst themselves.

16. The appellant on 14.06.2018 furnished its statement of claim. The respondent filed its statement of defence on 05.07.2018. Thereafter the Sole Arbitrator fixed 29.10.2018 as the first effective date of hearing followed by another dated fixing 13.02.2019. Thereafter no further hearing was held and the Sole Arbitrator made his award on 26.04.2019, dismissing the claims of the appellant.

17. This award dated 26.04.2019 was challenged by the appellant before the Commercial Court by filing a petition under Section 34 of the Act of 1996 and the Commercial Court after hearing the parties vide its judgment and order dated 19.04.2023 dismissed the said petition and affirmed the award dated 26.04.2018.

18. In the aforesaid factual backdrop, the appellant has challenged the judgment of the Commercial Court and the award of the Sole Arbitrator by the instant appeal under Section 37 of the Act of 1996.

Submissions on behalf of the Appellant:-

19. Sri Gaurav Mehrotra, learned Senior Counsel assisted by Sri Anupam Mishra and Ms. Madhur Jhavar, learned counsel for the appellant attacked the award and the judgment of the Commercial Court on two counts.

(i) The first ground urged by the learned Senior Counsel for the appellant was that the appointment of the Sole Arbitrator by the Corporation was directly hit by the legislative embargo contained in Section 12(1) & (5) of the Act of 1996 read with the Fifth and Seventh Schedule.

20. Elaborating his submissions, learned Senior Counsel for the appellant laid emphasis that after the amendment of 2016 in the Act of 1996, any person who falls within the relationship as mentioned in the Fifth and Seventh Schedule appended to the Act of 1996 becomes ineligible to act as an Arbitrator.

21. It was further submitted that the proviso appended to Section 12(5) of the Act of 1996 is an exception to the general rule and for the said reason, it requires strict compliance. Even though the embargo contained in Section 12(1) & (5) of the Act of 1996 is mandatory yet in case if the parties agree to waive their right of raising an objection emerging from Section 12(5) of the Act of 1996 then the said waiver must be by way of an express agreement in writing and that too it must be done after the disputes had arisen between the parties.

22. It was also urged that in the instant case there was no express agreement in writing and the appellant did not waive his right as required in terms of Section 12(5) of the Act of 1996. In absence of any express waiver as contemplated in law, the Corporation was not justified in appointing an Arbitrator who was within the prohibited relationship in terms of the Fifth Schedule appended and relatable to Section 12 of the Act of 1996.

23. It was further urged that even the Sole Arbitrator did not give a clear declaration regarding his impartiality as required in terms of Section 12(1) of the Act of 1996 read with Fifth and Sixth Schedule.

24. In such circumstances, the appointment of the Sole Arbitrator was against the statutory conditions which rendered the appointment as void. Consequently, the proceedings held by the Sole Arbitrator were also void. As a fortiori, void proceedings could be challenged at any stage and while the appellant had raised this issue before the Commercial Court in its petition under Section 34 of the Act of 1996, but the court concerned turned down the said plea on the premise that the appellant had participated in the process of appointment of Arbitrator and had also given his consent, as indicated in his letter dated 07.03.2018, hence, the appellant was precluded from raising such a plea in proceedings under Section 34 of the Act of 1996.

25. The learned Senior Counsel further urged that there was no worthy consideration of the aforesaid objection rather it was turned down by the Commercial Court in a cursory manner which substantially and adversely affected the valuable rights of the appellant. For the said reason, it was submitted that the entire arbitral proceedings were vitiated so also the award which deserved to be set aside.

26. Sri Mehrotra, in support of his submissions, relied upon the decision of the Apex Court in **Central Organization for Railway Electrification v. ECI SPIC Smo MCML (JV) A Joint Venture Company**, (2025) 4 SCC 641 (hereinafter referred to as **Core-II**) and **Bhadra International (India) (P) Ltd. vs. Airports Authority of India: 2026 SCC Online SC 7**.

27. The other ground raised by Sri Mehrotra was (ii) that no adequate opportunity was afforded by the Sole Arbitrator. The award impugned was in complete violation of principles of natural justice. The Sole Arbitrator, after the exchange of pleadings, did not permit the contesting parties to record their admission and denial on the documents filed by the respective parties. The Sole Arbitrator did not frame any issues nor an opportunity to cross-examine the witness was allowed which rendered the entire arbitral proceedings, a mere farce.

28. It was further submitted that the entire arbitral proceedings were concluded on two effective dates. This indicated that the Sole Arbitrator decided the arbitral proceedings with undue haste and while doing so it ignored the admitted facts including that no short dispensation of fuel was found during inspection and though the appellant had demonstrated that one nozzle was malfunctioning much prior to the date of inspection and was also complained of to the Corporation but the Corporation did not rectify it and the appellant had been made a scapegoat for the negligence of the Corporation. In such circumstances, the appellant was denied of a reasonable opportunity to contest.

29. It was lastly submitted that though the aforesaid issues were raised before the Commercial Court, however, the said court did not advert to the aforesaid aspect of the matter and dismissed the petition under Section 34 of the Act of 1996 in a mechanical exercise of jurisdiction which rendered the judgment and order dated 19.04.2023 passed by the Commercial Court-II, Lucknow susceptible and vulnerable to judicial scrutiny under Section 37 of the Act of 1996 and it deserves to be set aside, after allowing the appeal.

Submissions of the learned counsel for the Respondent:-

30. Ms. Aprajita Bansal, learned counsel for the respondent-corporation vehemently opposed the submissions of the learned Senior Counsel for the appellant and urged that the appellant was not justified in attacking the award by invoking the provisions of Section 12 (5) of the Act of 1996 as the appellant had furnished his consent and he had expressly waived his right in writing to object to the appointment of the Sole Arbitrator and that too after the disputes had arisen.

31. It was urged that proviso appended to Section 12(5) of the Act of 1996 was clearly attracted in the instant case and the appellant who had consented to the appointment of the Sole Arbitrator and also participated in the arbitral proceedings, now cannot be permitted to raise a contradictory stand to assail the award.

32. Ms. Bansal while referring to the records endeavoured to demonstrate that as soon as the appellant had made a request for appointment of an Arbitrator, the Corporation vide its letter dated 24.01.2018 expressly referred to the amended Section 12(5) of the Act of 1996 and clearly sought the consent of the appellant in writing before proceeding to appoint any Arbitrator.

33. It was further submitted that the Corporation, on 26.02.2018 specifically informed the appellant that it did not agree to the proposed appointment of an Arbitrator made by the appellant. The Corporation further put the appellant to notice that he was required to furnish his written consent in terms of the earlier letter dated 24.01.2018 to enable the Corporation to appoint an

Arbitrator, failing which it was open for the appellant to approach the appropriate forum for getting an Arbitrator appointed.

34. It was further submitted that in this backdrop, the appellant submitted a consent letter dated 07.03.2018 specifically indicating therein that the appellant gives his consent to the Corporation to appoint an Arbitrator. Acting upon the said consent, the Corporation vide its letter dated 18.04.2018 appointed Sri Sanjay Verghese as the Sole Arbitrator. This indicates that the appellant was made fully aware of the legal provisions and the appellant after understanding it, had furnished his consent.

35. In the aforesaid circumstances, where the appellant had given his express consent in writing after the disputes had arisen permitting the respondent-corporation to appoint its employee as an Arbitrator, this was a clear case where the appellant had waived his right in terms of the proviso appended to Section 12(5) of the Act of 1996, hence, the appellant cannot challenge the award of the Arbitrator being in violation of Section 12(1) and (5) of the Act of 1996.

36. Ms. Bansal, further urged that while filing the petition under Section 34 of the Act of 1996, general grounds were raised but no specific ground regarding the appointment of the Arbitrator, being violative of Section 12 (1) and (5) of the Act of 1996, was raised by the appellant. It is only for the first time before this Court specific grounds had been raised in this appeal.

37. The learned counsel for the respondent-corporation further urged that the appellant had been put to clear notice and he was given an opportunity to re-consider whether he wanted the Corporation to appoint an Arbitrator. Now, after having given his written consent to the Corporation to appoint its employee as an Arbitrator, the appellant is now prevented from raising such an objection for the first time in appeal.

38. It was further submitted that the appellant participated in the entire arbitral proceedings before the Sole Arbitrator without any demur and with full awareness regarding the consent given to the Corporation. No objections were raised regarding the impartiality of the Arbitrator. Even after the claims were dismissed by means of the award dated 26.04.2019 and the appellant assailed the said award but even then no specific ground challenging the appointment of the Sole Arbitrator was taken in proceedings under Section 34 of the Act of 1996. The said ground of Section 12(5) has been taken in the instant appeal without there being any foundation for such a challenge in the earlier stage of the proceedings and this cannot be countenanced in law, at this stage.

39. The learned counsel for the respondent-corporation further submitted that as far as the principles laid down by the Apex Court in **Core-II (Supra)** judgment is concerned, it is not disputed nor the judgment of the Apex Court in **Bhadra International (Supra)** can be said to aid the appellant for the reason that both the decisions clearly preserve the party-autonomy and the right of the parties to get an Arbitrator appointed even though he may fall in any category enumerated in Fifth & Seventh Schedule provided there was scrupulous compliance of the proviso appended to Section 12(5) of the Act of 1996.

40. In the instant case, once the consent was submitted in writing by the appellant after the disputes had arisen, referring to the letters of the Corporation, thereafter there can be no doubt that the appellant knowingly had consented in the appointment of the Arbitrator and now is precluded to turn around to assail the appointment.

41. In such circumstances, if the appellant is permitted to resile from the consent then it would be against the public policy and it would amount to putting a premium to an unscrupulous act of a party. For the aforesaid reasons, the decisions of the Apex Court cited by the appellant do not come to his aid.

42. The learned counsel for the respondent-corporation also urged that in so far as the claims having been decided in haste is concerned, the same is not tenable as the appellant fully participated in the proceedings and the Sole Arbitrator recorded his statement that he did not wish to adduce any further evidence and it is only thereafter that the Arbitrator made his award.

43. It was further urged that during the entire arbitral proceedings, the appellant did not request nor made any prayer to the Sole Arbitrator to frame issues or to get an endorsement made on the documents for admission and denial. The appellant also did not make any request to cross-examine any witness, now, he is precluded from challenging the award on alleged ground of procedural error which does not touch the roots of the matter. Furthermore, the appellant could not demonstrate any prejudice which may have been caused for such procedural infractions and in absence thereof, the aforesaid ground is not sufficient to set aside an award. Thus, the appeal deserves to be dismissed.

44. In support of her submissions, Ms. Bansal has relied upon a decision of the Bombay High Court in **Arbitration Petition No. 43 of 2023 (M/s Truly Pest Solution Pvt. Ltd. v. Principal Chief Mechanic Engineer (PCME), Chief Railway**, decided on 11th November, 2024.

Record of Proceedings

45. Before making an analysis, it will be relevant to state that during the course of submissions, the appellant had furnished a supplementary affidavit with an advance copy to the learned counsel for the respondent-corporation. The said supplementary affidavit seeks to bring on record two letters issued by the Corporation dated 26.02.2018 and 18.04.2018.

46. The learned counsel for the respondent-corporation very fairly consented that the same be taken on record as it was part of the arbitral record, however, liberty was sought to refer to those letters during course of her submissions. With the aforesaid understanding, the said supplementary affidavit was taken on record.

Discussions and Analysis:-

47. The Court has heard the learned counsel for the parties and also perused the material available on record.

48. Before dealing with the submissions of the respective parties, it will be pertinent to take a birds eye view of the legislative background of the amending Act No. 3 of 2016 which came into effect from 23.10.2015 by which the Act of 1996 was amended and the leading pronouncement on the subject.

49. The 246th report of the Law Commission was a prelude to the legislative amendment, introduced in the Arbitration and Conciliation Act, 1996. The proposed amendment of 2016 aimed to reduce judicial intervention, ensuring Arbitrator's neutrality and implementing time lines to expedite arbitral proceedings.

50. The said amendment of 2016 came into effect on 23.10.2015 and it inter-alia amended Section 12 of the Act of 1996 to disqualify such individuals who had some relationship with the party, counsel, or with the subject matter of dispute, as it could give rise to a direct conflict of interest. The said amendment also endeavoured to prevent a party to a dispute to unilaterally appoint an Arbitrator, often of their own choice or an employee or an affiliated person, who could be inclined to favour such a party who had the right to appoint. The relationship which was considered as offending were identified and it found expression in the Fifth and Seventh Schedule which were incorporated in the Act. For better appreciation, the amended Section 12 of the Act of 1996 is being reproduced hereinafter:-

"12. Grounds for challenge.- [(1) When a person is approached in connection with his possible appointment as an arbitrator, he shall disclose in writing any circumstances,"

(a) such as the existence either direct or indirect, of any past or present relationship with or interest in any of the parties or in relation to the subject-matter in dispute, whether financial, business, professional or other kind, which is likely to give rise to justifiable doubts as to his independence or impartiality; and

(b) which are likely to affect his ability to devote sufficient time to the arbitration and in particular his ability to complete the entire arbitration within a period of twelve months.

Explanation 1.-The grounds stated in the Fifth Schedule shall guide in determining whether circumstances exist which give rise to justifiable doubts as to the independence or impartiality of an arbitrator.

Explanation 2.-The disclosure shall be made by such person in the form specified in the Sixth Schedule.]

(2) An arbitrator, from the time of his appointment and throughout the arbitral proceedings, shall, without delay, disclose to the parties in writing any circumstances referred to in sub-section (1) unless they have already been informed of them by him.

(3) An arbitrator may be challenged only if-

(a) circumstances exist that give rise to justifiable doubts as to his independence or impartiality, or

(b) he does not possess the qualifications agreed to by the parties.

(4) A party may challenge an arbitrator appointed by him, or in whose appointment he has participated, only for reasons of which he becomes aware after the appointment has been made.

[(5) Notwithstanding any prior agreement to the contrary, any person whose relationship, with the parties or counsel or the subject-matter of the dispute, falls under any of the categories specified in the Seventh Schedule shall be ineligible to be appointed as an arbitrator:

Provided that parties may, subsequent to disputes having arisen between them, waive the applicability of this sub-section by an express agreement in writing."

51. The purpose and rationale behind the Amending Act No. 3 of 2016 which came in force on 23.10.2025 was noticed by the Apex Court in **Voestalpine Schienen GmbH v. DMRC: (2017) 4 SCC 665** and the relevant paragraphs read as under:-

"17. We may put a note of clarification here. Though, the Law Commission discussed the aforesaid aspect under the heading "Neutrality of Arbitrators", the focus of discussion was on impartiality and independence of the arbitrators which has relation to or bias towards one of the parties. In the field of international arbitration, neutrality is generally related to the nationality of the arbitrator. In international sphere, the "appearance of neutrality" is considered equally important, which means that an arbitrator is neutral if his nationality is different from that of the parties. However, that is not the aspect which is being considered and the term "neutrality" used is relatable to impartiality and independence of the arbitrators, without any bias towards any of the parties. In fact, the term "neutrality of arbitrators" is commonly used in this context as well.

18. Keeping in mind the aforequoted recommendation of the Law Commission, with which spirit, Section 12 has been amended by the Amendment Act, 2015, it is manifest that the main purpose for amending the provision was to provide for neutrality of arbitrators. In order to achieve this, sub-section (5) of Section 12 lays down that notwithstanding any prior agreement to the contrary, any person whose relationship with the parties or counsel or the subject-matter of the dispute falls under any of the categories specified in the Seventh Schedule, he shall be ineligible to be appointed as an arbitrator. In such an eventuality i.e. when the arbitration clause finds foul with the amended provisions extracted above, the appointment of an arbitrator would be beyond pale of the arbitration agreement, empowering the court to appoint such arbitrator(s) as may be permissible. That would be the effect of non obstante clause contained in sub-section (5) of Section 12 and the other party cannot insist on appointment of the arbitrator in terms of the arbitration agreement.

* * *

20. Independence and impartiality of the arbitrator are the hallmarks of any arbitration proceedings. Rule against bias is one of the fundamental principles of natural justice which applied to all judicial and quasi-judicial proceedings. It is for this reason that notwithstanding the fact that relationship between the parties to the arbitration and the arbitrators themselves are contractual in nature and the source of an arbitrator's appointment is deduced from the agreement entered into between the parties, notwithstanding the same non-independence and non-impartiality of such arbitrator (though contractually agreed upon) would render him ineligible to conduct the arbitration. The genesis behind this rational is that even when an arbitrator is appointed in terms of contract and by the parties to the contract, he is independent of the parties. Functions and duties require him to rise above the partisan interest of the parties and not to act in, or so as to further, the particular interest of either parties. After all, the arbitrator has adjudicatory role to perform and, therefore, he must be independent of parties as well as impartial. The United Kingdom

Supreme Court has beautifully highlighted this aspect in Hashwani v. Jivraj [Hashwani v. Jivraj, (2011) 1 WLR 1872 : 2011 UKSC 40] in the following words : (WLR p. 1889, para 45)

"45. - the dominant purpose of appointing an arbitrator or arbitrators is the impartial resolution of the dispute between the parties in accordance with the terms of the agreement and, although the contract between the parties and the arbitrators would be a contract for the provision of personal services, they were not personal services under the direction of the parties."

52. From a close reading of Section 12 and the Fifth and Seventh Schedule, it would reveal that the Fifth Schedule contains 34 entries while the Seventh Schedule contains 19 entries. Moreover, the first 19 entries in the Fifth Schedule are replicated in the Seventh Schedule. The Fifth Schedule is referable to Section 12(1) (b) while the Seventh Schedule is referable to Section 12(5) of the Act of 1996.

53. The category of relationship which gives justiciable grounds of doubt as to the independence or impartiality of an Arbitrator is in Fifth Schedule. In so far as the Seventh Schedule is concerned, it relates to situation where a person would be ineligible for being appointed as an Arbitrator, unless the parties to the disputes enter into an agreement in writing, after the disputes have arisen, expressly waiving the right to challenge such appointment.

54. Sections 12 (1) and (2) requires a prospective Arbitrator to disclose in writing any circumstances which is likely to give rise to justifiable doubt as to his independence or impartiality to act as an Arbitrator. Explanation 1 states that the grounds mentioned in the Fifth Schedule shall guide so as to determine what would be such justifiable doubts and Explanation 2 mandates such disclosure by the Arbitrator in the form mentioned in the Sixth Schedule.

55. On the other hand, Section 12(5) provides that notwithstanding any prior agreement to the contrary, any person whose relationship with the parties, counsel or the dispute falls under any of the categories specified in the Seventh Schedule shall make such person ineligible to be appointed as an Arbitrator subject to the post dispute express written waiver as mentioned in the proviso.

56. Illustratively, upon considering the Fifth and the Seventh Schedule, it would reveal that in a given factual scenario such as an Arbitrator being an employee of a party, it will have distinct consequences depending on whether it is invoked for the purposes of the Fifth or the Seventh Schedule.

57. In case if the said disability is invoked for the purposes of the Fifth Schedule then it has to be considered in terms of Section 12(1) and (4) and Section 13 of the Act of 1996. The circumstances, as mentioned in the Fifth Schedule will act as a guide to ascertain justifiable doubts and it would trigger the mandatory disclosure for an Arbitrator in terms of the Sixth Schedule. In case if a party is so aggrieved then it would lead such an aggrieved party to invoke the challenge procedure before the Tribunal under Section 13 of the Act of 1996. In case if the challenge fails then the issue can be raised after the award is made by filing a petition under Section 34 of the Act of 1996 to set aside the award on the said ground. Needless to say that the disclosure as required in terms of Section 12(1) read with the Sixth Schedule is mandatory.

58. However, in case the said objection is raised for the purposes of the Seventh Schedule then it has to be seen in context with Section 12(5) and Section 14 of the Act of 1996. In such circumstances, where a proposed Arbitrator or an Arbitrator appointed falls within any of the entries mentioned in the Seventh Schedule, he runs the risk of de jure-ineligibility and his mandate automatically terminates and a party can directly go to the Court under Section 14 and may not have to first raise a challenge in terms of Section 13 which has been noticed in the preceding paragraph. This disability which is incurred can only be cured by, a post dispute, express written waiver under the proviso to Section 12(5) of the Act of 1996.

59. Considering the aforesaid doctrinal aspect of the matter in light of the report of the Law Commission and noticing the decision of the Apex Court, the rationale for duplication of the entries in the Fifth and the Seventh Schedule can be understood as:-

(a) a single list covering serious conflicts; and

(b) two levels of legal recourse to the same conflict as explained in the preceding paragraphs. In other words disclosure and justifiable doubts arising out of the Fifth Schedule leads to a challenge in terms of Section 13 and later in terms of a ground raised under Section 34 of the Act of 1996 whereas the disability as per the Seventh Schedule is automatic and by replicating entries 1 to 19 of the Fifth Schedule, in the Seventh Schedule, it reflects the legislative intent to elevate such entries to such a degree which makes it a non-derogable ineligibility and the same can only be removed by an express waiver in writing after the disputes have arisen.

60. The Apex Court in **HRD Corpn. v. GAIL (India) Ltd., (2018) 12 SCC 471** explained the scope and purpose of the duplication of the entries in the Fifth and Seventh Schedule with the scheme of challenge to the appointment of an Arbitrator in terms of Section 12 to 15 of the Act of 1996 and the relevant paras 12 to 15 read as under:-

12. After the 2016 Amendment Act, a dichotomy is made by the Act between persons who become "ineligible" to be appointed as arbitrators, and persons about whom justifiable doubts exist as to their independence or impartiality. Since ineligibility goes to the root of the appointment, Section 12(5) read with the Seventh Schedule makes it clear that if the arbitrator falls in any one of the categories specified in the Seventh Schedule, he becomes "ineligible" to act as arbitrator. Once he becomes ineligible, it is clear that, under Section 14(1)(a), he then becomes de jure unable to perform his functions inasmuch as, in law, he is regarded as "ineligible". In order to determine whether an arbitrator is de jure unable to perform his functions, it is not necessary to go to the Arbitral Tribunal under Section 13. Since such a person would lack inherent jurisdiction to proceed any further, an application may be filed under Section 14(2) to the Court to decide on the termination of his/her mandate on this ground. As opposed to this, in a challenge where grounds stated in the Fifth Schedule are disclosed, which give rise to justifiable doubts as to the arbitrator's independence or impartiality, such doubts as to independence or impartiality have to be determined as a matter of fact in the facts of the particular challenge by the Arbitral Tribunal under Section 13. If a challenge is not successful, and the Arbitral Tribunal decides that there are no justifiable doubts as to the independence or impartiality of the arbitrator/arbitrators, the Tribunal must then continue the arbitral proceedings under Section 13(4) and make an award. It is only after such award is made, that the party challenging the arbitrator's appointment on grounds

contained in the Fifth Schedule may make an application for setting aside the arbitral award in accordance with Section 34 on the aforesaid grounds. It is clear, therefore, that any challenge contained in the Fifth Schedule against the appointment of Justice Doabia and Justice Lahoti cannot be gone into at this stage, but will be gone into only after the Arbitral Tribunal has given an award. Therefore, we express no opinion on items contained in the Fifth Schedule under which the appellant may challenge the appointment of either arbitrator. They will be free to do so only after an award is rendered by the Tribunal.

13. Confining ourselves to ineligibility, it is important to note that the Law Commission by its 246th Report of August 2014 had this to say in relation to the amendments made to Section 12 and the insertion of the Fifth and Seventh Schedules:

"59. The Commission has proposed the requirement of having specific disclosures by the arbitrator, at the stage of his possible appointment, regarding existence of any relationship or interest of any kind which is likely to give rise to justifiable doubts. The Commission has proposed the incorporation of the Fourth Schedule, which has drawn from the red and orange lists of the IBA Guidelines on Conflicts of Interest in International Arbitration, and which would be treated as a "guide" to determine whether circumstances exist which give rise to such justifiable doubts. On the other hand, in terms of the proposed Section 12(5) of the Act and the Fifth Schedule which incorporates the categories from the red list of the IBA Guidelines (as above), the person proposed to be appointed as an arbitrator shall be ineligible to be so appointed, notwithstanding any prior agreement to the contrary. In the event such an ineligible person is purported to be appointed as an arbitrator, he shall be *de jure* deemed to be unable to perform his functions, in terms of the proposed Explanation to Section 14. Therefore, while the disclosure is required with respect to a broader list of categories (as set out in the Fourth Schedule, and as based on the red and orange lists of the IBA Guidelines), the ineligibility to be appointed as an arbitrator (and the consequent *de jure* inability to so act) follows from a smaller and more serious sub-set of situations (as set out in the Fifth Schedule, and as based on the red list of the IBA Guidelines).

60. The Commission, however, feels that real and genuine party autonomy must be respected, and, in certain situations, parties should be allowed to waive even the categories of ineligibility as set in the proposed Fifth Schedule. This could be in situations of family arbitrations or other arbitrations where a person commands the blind faith and trust of the parties to the dispute, despite the existence of objective "justifiable doubts" regarding his independence and impartiality. To deal with such situations, the Commission has proposed the proviso to Section 12(5), where parties may, subsequent to disputes having arisen between them, waive the applicability of the proposed Section 12(5) by an express agreement in writing. In all other cases, the general rule in the proposed Section 12(5) must be followed. In the event the High Court is approached in connection with appointment of an arbitrator, the Commission has proposed seeking the disclosure in terms of Section 12(1) and in which context the High Court or the designate is to have "due regard" to the contents of such disclosure in appointing the arbitrator."

(emphasis in original)

14. The enumeration of grounds given in the Fifth and Seventh Schedules have been taken from the IBA Guidelines, particularly from the Red and Orange Lists thereof. The aforesaid guidelines consist of three lists. The Red List, consisting of non-waivable and waivable guidelines, covers situations which are "more serious" and "serious", the "more serious" objections being non-waivable. The Orange List, on the other hand, is a list of situations that may give rise to doubts as to the arbitrator's impartiality or independence, as a consequence of which the arbitrator has a

duty to disclose such situations. The Green List is a list of situations where no actual conflict of interest exists from an objective point of view, as a result of which the arbitrator has no duty of disclosure. These Guidelines were first introduced in the year 2004 and have thereafter been amended, after seeing the experience of arbitration worldwide. In Part 1 thereof, general standards regarding impartiality, independence and disclosure are set out.

15. General Principle 1 reads as follows:

"IBA Guidelines on Conflicts of Interest in International Arbitration:-

(1) General Principle:-

Every arbitrator shall be impartial and independent of the parties at the time of accepting an appointment to serve and shall remain so until the final award has been rendered or the proceedings have otherwise finally terminated."

On "conflicts of interest", Guidelines laid down are as follows:

"(2) Conflicts of Interest

(a) An arbitrator shall decline to accept an appointment or, if the arbitration has already been commenced, refuse to continue to act as an arbitrator, if he or she has any doubt as to his or her ability to be impartial or independent.

(b) The same principle applies if facts or circumstances exist, or have arisen since the appointment, which, from the point of view of a reasonable third person having knowledge of the relevant facts and circumstances, would give rise to justifiable doubts as to the arbitrator's impartiality or independence, unless the parties have accepted the arbitrator in accordance with the requirements set out in General Standard 4.

(c) Doubts are justifiable if a reasonable third person, having knowledge of the relevant facts and circumstances, would reach the conclusion that there is a likelihood that the arbitrator may be influenced by factors other than the merits of the case as presented by the parties in reaching his or her decision.

(d) Justifiable doubts necessarily exist as to the arbitrator's impartiality or independence in any of the situations described in the Non-Waivable Red List."

61. In this very context, the Apex Court in **TRF Ltd. v. Energo Engg. Projects Ltd. (2017) 8 SCC 377** considered the eligibility of appointment of an Arbitrator, taking note of Section 12(1) and (5) of the Act of 1996 along with the Fifth & Seventh Schedule and the relevant paras read, as under:-

"50. First, we shall deal with Clause (d). There is no quarrel that by virtue of Section 12(5) of the Act, if any person who falls under any of the categories specified in the Seventh Schedule shall be ineligible to be appointed as the arbitrator. There is no doubt and cannot be, for the language employed in the Seventh Schedule, the Managing Director of the Corporation has become ineligible by operation of law. It is the stand of the learned Senior Counsel for the appellant that once the Managing Director becomes ineligible, he also becomes ineligible to nominate. Refuting the said stand, it is canvassed by the learned Senior Counsel for the respondent that the ineligibility cannot extend to a nominee if he is not from the Corporation and more so when there is apposite and requisite disclosure. We think it appropriate to make it clear that in the case at hand we are neither concerned with the disclosure nor objectivity nor impartiality nor any such other circumstance. We are singularly concerned with the issue, whether the Managing Director, after becoming ineligible by operation of law, is he still eligible to nominate an

arbitrator. At the cost of repetition, we may state that when there are two parties, one may nominate an arbitrator and the other may appoint another. That is altogether a different situation. If there is a clause requiring the parties to nominate their respective arbitrator, their authority to nominate cannot be questioned. What really in that circumstance can be called in question is the procedural compliance and the eligibility of their arbitrator depending upon the norms provided under the Act and the Schedules appended thereto. But, here is a case where the Managing Director is the "named sole arbitrator" and he has also been conferred with the power to nominate one who can be the arbitrator in his place. Thus, there is subtle distinction...

* * *

53. The aforesaid authorities have been commended to us to establish the proposition that if the nomination of an arbitrator by an ineligible arbitrator is allowed, it would tantamount to carrying on the proceeding of arbitration by himself. According to the learned counsel for the appellant, ineligibility strikes at the root of his power to arbitrate or get it arbitrated upon by a nominee.

54. In such a context, the fulcrum of the controversy would be, can an ineligible arbitrator, like the Managing Director, nominate an arbitrator, who may be otherwise eligible and a respectable person. As stated earlier, we are neither concerned with the objectivity nor the individual respectability. We are only concerned with the authority or the power of the Managing Director. By our analysis, we are obligated to arrive at the conclusion that once the arbitrator has become ineligible by operation of law, he cannot nominate another as an arbitrator. The arbitrator becomes ineligible as per prescription contained in Section 12(5) of the Act. It is inconceivable in law that person who is statutorily ineligible can nominate a person. Needless to say, once the infrastructure collapses, the superstructure is bound to collapse. One cannot have a building without the plinth. Or to put it differently, once the identity of the Managing Director as the sole arbitrator is lost, the power to nominate someone else as an arbitrator is obliterated. Therefore, the view expressed by the High Court is not sustainable and we say so.....

62. The aforesaid issue was again considered by the Apex Court in **Perkins Eastman Architects DPC v. HSCC (India) Ltd. (2020) 20 SCC 760** wherein the Apex Court held as under:-

"20. We thus have two categories of cases. The first, similar to the one dealt with in *TRF Ltd. v. Energo Engg. Projects Ltd.*, (2017) 8 SCC 377 : (2017) 4 SCC (Civ) 72] where the Managing Director himself is named as an arbitrator with an additional power to appoint any other person as an arbitrator. In the second category, the Managing Director is not to act as an arbitrator himself but is empowered or authorised to appoint any other person of his choice or discretion as an arbitrator. If, in the first category of cases, the Managing Director was found incompetent, it was because of the interest that he would be said to be having in the outcome or result of the dispute. The element of invalidity would thus be directly relatable to and arise from the interest that he would be having in such outcome or decision. If that be the test, similar invalidity would always arise and spring even in the second category of cases. If the interest that he has in the outcome of the dispute, is taken to be the basis for the possibility of bias, it will always be present irrespective of whether the matter stands under the first or second category of cases. We are conscious that if such deduction is drawn from the decision of this Court in *TRF Ltd. v. Energo Engg. Projects Ltd.*, (2017) 8 SCC 377 : (2017) 4 SCC (Civ) 72] , all cases having

clauses similar to that with which we are presently concerned, a party to the agreement would be disentitled to make any appointment of an arbitrator on its own and it would always be available to argue that a party or an official or an authority having interest in the dispute would be disentitled to make appointment of an arbitrator.

21. *But, in our view that has to be the logical deduction from TRF Ltd. [TRF Ltd. v. Energo Engg. Projects Ltd., (2017) 8 SCC 377 : (2017) 4 SCC (Civ) 72] Para 50 of the decision shows that this Court was concerned with the issue, "whether the Managing Director, after becoming ineligible by operation of law, is he still eligible to nominate an arbitrator" The ineligibility referred to therein, was as a result of operation of law, in that a person having an interest in the dispute or in the outcome or decision thereof, must not only be ineligible to act as an arbitrator but must also not be eligible to appoint anyone else as an arbitrator and that such person cannot and should not have any role in charting out any course to the dispute resolution by having the power to appoint an arbitrator. The next sentences in the paragraph, further show that cases where both the parties could nominate respective arbitrators of their choice were found to be completely a different situation. The reason is clear that whatever advantage a party may derive by nominating an arbitrator of its choice would get counter-balanced by equal power with the other party. But, in a case where only one party has a right to appoint a sole arbitrator, its choice will always have an element of exclusivity in determining or charting the course for dispute resolution. Naturally, the person who has an interest in the outcome or decision of the dispute must not have the power to appoint a sole arbitrator. That has to be taken as the essence of the amendments brought in by the Arbitration and Conciliation (Amendment) Act, 2015 (3 of 2016) and recognised by the decision of this Court in TRF Ltd. [TRF Ltd. v. Energo Engg. Projects Ltd., (2017) 8 SCC 377 : (2017) 4 SCC (Civ) 72]"*

63. However, The Apex Court expressed a non-conformist view in **Central Organization for Railway Electrification v. ECI-SPIC-SMO-MCML (JV) a Joint Venture Company Core-I (2020) 14 SCC 712** (hereinafter referred to as **Core-I** and held that the decisions in **TRF (supra)** and **Perkins Eastman (supra)** were not applicable and further noticed that Section 12(5) of the Act of 1996 did not bar the retired officers to be appointed as an Arbitrator nor such appointment was hit by Section 12(5) of the Act of 1996.

64. Soon thereafter, In **Union of India v. Tantia Constructions Limited, 2021 SCC OnLine SC 271**, the Apex Court expressed a discordant note and doubted the correctness of the decision in **Core-I (supra)** and referred the matter to a Larger Bench. A Constitution Bench in **Core-II (supra)** was faced with the following questions to be answered, which are being noticed hereinunder:-

" 14. The following issues fall for the determination of this Court:

14.1. (a) Whether an appointment process which allows a party who has an interest in the dispute to unilaterally appoint a sole arbitrator, or curate a panel of arbitrators and mandate that the other party select their arbitrator from the panel is valid in law;

14.2. (b) Whether the principle of equal treatment of parties applies at the stage of the appointment of arbitrators; and

14.3. (c) Whether an appointment process in a public-private contract which allows a government entity to unilaterally appoint a sole arbitrator or majority of the arbitrators of the Arbitral Tribunal is violative of Article 14 of the Constitution."

65. The Apex Court in context of the aforesaid questions vide its majority opinion held that all such arbitration agreements which enable one party to unilaterally constitute an Arbitral Tribunal would be void per se keeping in mind the principle of equal treatment of parties which apply to all stages of arbitral proceedings including the stage of appointment of Arbitrators. It also held that the Arbitration Act did not prohibit Public Sector Corporation from empanelling potential Arbitrators, however, an arbitration clause could not mandate the other party to select its Arbitrators from the panel created by such Corporations. It is also held that a clause allowing one party to unilaterally appoint an Arbitrator gives rise to justifiable doubts as to the independence and impartiality of such an Arbitrator. After a detailed discussion the Apex Court in **Core-II (Supra)**, went on to record its conclusions, as per the majority opinion, as under:-

"J. Conclusion

170. In view of the above discussion, we conclude that:

170.1. The principle of equal treatment of parties applies at all stages of arbitration proceedings, including the stage of appointment of arbitrators;

170.2. The Arbitration Act does not prohibit PSUs from empanelling potential arbitrators. However, an arbitration clause cannot mandate the other party to select its arbitrator from the panel curated by PSUs;

170.3. A clause that allows one party to unilaterally appoint a sole arbitrator gives rise to justifiable doubts as to the independence and impartiality of the arbitrator. Further, such a unilateral clause is exclusive and hinders equal participation of the other party in the appointment process of arbitrators;

170.4. In the appointment of a three-member panel, mandating the other party to select its arbitrator from a curated panel of potential arbitrators is against the principle of equal treatment of parties. In this situation, there is no effective counterbalance because parties do not participate equally in the process of appointing arbitrators. The process of appointing arbitrators in CORE [Central Organisation for Railway Electrification v. ECI-SPIC-SMO-MCML (JV), (2020) 14 SCC 712] is unequal and prejudiced in favour of the Railways;

170.5. Unilateral appointment clauses in public-private contracts are violative of Article 14 of the Constitution;

170.6. The principle of express waiver contained under the proviso to Section 12(5) also applies to situations where the parties seek to waive the allegation of bias against an arbitrator appointed unilaterally by one of the parties. After the disputes have arisen, the parties can determine whether there is a necessity to waive the nemo judex rule; and

170.7. The law laid down in the present reference will apply prospectively to arbitrator appointments to be made after the date of this judgment. This direction applies to three-member tribunals."

66. The Apex Court recently in **Bhadra International (Supra)**, had the occasion to consider the issue of waiver in context of proviso appended to Section 12(5) of the Act with certain other ancillary questions, which were delineated in para 29 and the conclusions in para 123, as under:-

"i. Whether the sole arbitrator could be said to have become "ineligible to be appointed as an arbitrator" by virtue of sub-section (5) of Section 12 of the Act, 1996?

ii. Whether the parties could be said to have waived the applicability of sub-section (5) of Section 12 of the Act, 1996, by way of their conduct, either expressed or implied?

iii. Whether the appellants could have raised an objection to the appointment of the sole arbitrator for the first time in an application under Section 34 of the Act, 1996?"

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"VIII. CONCLUSION

123. A conspectus of the aforesaid detailed discussion on the position of law as regards Section 12 of the Act, 1996, is as follows:"

i. The principle of equal treatment of parties provided in Section 18 of the Act, 1996, applies not only to the arbitral proceedings but also to the procedure for appointment of arbitrators. Equal treatment of the parties entails that the parties must have an equal say in the constitution of the arbitral tribunal.

ii. Sub-section (5) of Section 12 provides that any person whose relationship with the parties or counsel, or the dispute, whether direct or indirect, falls within any of the categories specified in the Seventh Schedule would be ineligible to be appointed as an arbitrator. Since, the ineligibility stems from the operation of law, not only is a person having an interest in the dispute or its outcome ineligible to act as an arbitrator, but appointment by such a person would be ex facie invalid.

iii. The words "an express agreement in writing" in the proviso to Section 12(5) means that the right to object to the appointment of an ineligible arbitrator cannot be taken away by mere implication. The agreement referred to in the proviso must be a clear, unequivocal written agreement.

iv. When an arbitrator is found to be ineligible by virtue of Section 12(5) read with the Seventh Schedule, his mandate is automatically terminated. In such circumstance, an aggrieved party may approach the court under Section 14 read with Section 15 for appointment of a substitute arbitrator. Whereas, when an award has been passed by such an arbitrator, an aggrieved party may approach the court under Section 34 for setting aside the award.

v. In arbitration, the parties vest jurisdiction in the tribunal by exercising their consent in furtherance of a valid arbitration agreement. An arbitrator who lacks jurisdiction cannot make an award on the merits. Hence, an objection to the inherent lack of jurisdiction can be taken at any stage of the proceedings."

67. Having waded through the thicket of the exposition of law as adumbrated by the Apex Court in the aforesaid noted decisions, now the stage is set to extract the undisputed facts between the parties, as follows:-

(i) It is not disputed that a dealership agreement was entered between the parties which inter-alia contained an arbitration clause. It is also not disputed that the appellant invoked the arbitration clause and required the respondent-corporation to appoint an Arbitrator.

(ii) It is also not disputed that the respondent-corporation vide its letter dated 24.01.2018 had required the appellant to give his consent in writing for permitting the Corporation to appoint its employee as the Sole Arbitrator. It is also not disputed that the Corporation vide its letter dated

26.02.2018 had turned down the request of the appellant whereby he had appointed a Chartered Accountant as an Arbitrator and required the Corporation to concur to such appointment.

(iii) It is also not disputed that the Corporation informed the appellant that the Corporation did not recognize the appointment suggested by the appellant and further required the appellant to either give his consent as required in terms of the earlier letter dated 24.01.2018 of the Corporation or the appellant may approach the appropriate forum for appointment of an Arbitrator. It is also not disputed that thereafter the appellant gave his consent to the Corporation for appointment of an Arbitrator.

68. In the aforesaid backdrop of undisputed facts and considering the submissions advanced by the learned counsel for the respective parties, two issues arise for consideration of this Court (i) whether the consent given by the appellant vide its letter dated 07.03.2018 amounts to an agreement in writing expressly waiving the right to object in terms of Section 12(5) of the Act of 1996; (ii) whether an objection regarding the ineligibility of the Arbitrator can be raised in the appeal for the first time or it requires to be taken necessarily first, before the Tribunal and the Court under Section 34 of the Act of 1996.

Issue No. 1

69. The first issue noticed above, would require this Court to consider the Arbitration Clause and the following letters exchanged between the parties i.e. (i) dated 24.01.2018 (ii) its reply by the appellant dated 15.02.2018, (iii) the response of the Corporation dated 26.0.2018 and (iv) the letter of the appellant dated 07.03.2018.

70. The arbitration clause No. 66 of the agreement reads as under:-

"66. ANY DISPUTE OR DIFFERENCE OF ANY NATURE WHATSOEVER REGARDING ANY RIGHT, LIABILITY, ACT, OMISSION OR ACCOUNT OF ANY OF THE PARTIES HERETO ARISING OUT OF OR IN RELATION TO THIS AGREEMENT (OTHER THAN THOSE IN RESPECT OF WHICH THE DECISION OF ANY PERSON, IS BY THE AGREEMENT EXPRESSED TO BE FINAL AND BINDING) SHALL BE REFERRED TO THE SOLE ARBITRATION OF THE CHAIRMAN AND MANAGING DIRECTOR OF THE CORPORATION OR OF SOME OFFICER/RETIRED OFFICER OF THE CORPORATION OR RETIRED OFFICER OF OTHER OIL PSUS OR RETIRED SENIOR CENTRAL GOVT. OFFICER WHO MAY BE NOMINATED BY THE CHAIRMAN AND MANAGING DIRECTOR. THE DEALER WILL NOT BE ENTITLED TO RAISE ANY OBJECTION TO ANY SUCH ARBITRATOR ON THE GROUND THAT THE ARBITRATOR IS OR WAS AN OFFICER AND/OR SHARE HOLDER OF THE CORPORATION OR THAT HE HAS TO DEAL WITH OR DEALT WITH THE MATTERS TO WHICH THE CONTRACT RELATES OR THAT IN THE COURSE OF HIS DUTIES AS AN OFFICER OF THE CORPORATION HE HAD EXPRESSED VIEWS ON ALL OR ANY OF THE MATTERS IN DISPUTE OR DIFFERENCE. IN THE EVENT OF THE ARBITRATOR TO WHOM THE MATTER IS ORIGINALLY REFERRED VACATING HIS OFFICE OR BEING UNABLE TO ACT FOR ANY REASON THE CHAIRMAN AND MANAGING DIRECTOR AS AFORESAID AT THE TIME OF SUCH VACATION OF OFFICE OR INABILITY TO ACT, SHALL DESIGNATE

ANOTHER PERSON TO ACT AS ARBITRATOR. IN ACCORDANCE WITH THE TERMS OF THE AGREEMENT SUCH PERSON SHALL BE ENTITLED TO PROCEED WITH THE REFERENCE FROM THE POINT AT WHICH IT WAS LEFT BY HIS PREDECESSOR. IT IS ALSO A TERM OF THIS CONTRACT THAT NO PERSON OTHER THAN THE CHAIRMAN AND MANAGING DIRECTOR OR A PERSON NOMINATED BY SUCH CHAIRMAN AND MANAGING DIRECTOR OF THE CORPORATION AS AFORESAID SHALL ACT AS ARBITRATOR HEREUNDER THE COST OF ARBITRATION SHALL BE SHARED EQUALLY BY THE PARTIES THE AWARD OF THE ARBITRATOR SO APPOINTED SHALL BE FINAL, CONCLUSIVE AND BINDING ON ALL PARTIES TO THE AGREEMENT, SUBJECT TO THE PROVISIONS OF THE ARBITRATION AND CONCILIATION ACT, 1996 OR ANY STATUTORY MODIFICATION OF OR RE-ENACTMENT THEREOF AND RULES MADE THEREUNDER AND FOR THE TIME BEING IN FORCE SHALL APPLY TO THE ARBITRATION PROCEEDINGS UNDER THIS CLAUSE.

THE AWARD SHALL BE MADE IN WRITING WITHIN SIX MONTHS AFTER ENTERING UPON THE REFERENCE OR WITHIN SUCH EXTENDED TIME NOT EXCEEDING FURTHER FOUR MONTHS AS SOLE ARBITRATOR SHALL BY A WRITING UNDER HIS OWN HANDS APPOINT."

71. The letter dated 24.01.2018 of the Corporation reads as under:-

"Ref: KRR/RET/Arbi

Date: 24.01.2018

To,

Laxmikant Pandey

20,21/7, Bajpai Ka Purwa,

Badausa Road Attara,

District-Banda, U.P. 210201

Sub: Appointment of Sole Arbitrator in respect of disputes and differences pertaining to Petrol/Diesel Agreement dated 14.01.2013

Dear Sir,

This is in reference to your communication dated Nil addressed to Corporation wherein you have given reference of clause 66 of the terminated Dealership Agreement dated 14.01.2013 which provides for appointment of arbitrator.

However, before considering your request for appointment of Arbitrator, with the coming into force of the Arbitration and Conciliation (Amendment) Act, 2015 with effect from 23.10.2015, your prior written consent is required for appointment of Arbitrator by Corporation in view of Section 12(5) as inserted by the Amendment, which states that:-

"Notwithstanding any prior agreement to the contrary, any person whose relationship, with the parties or counsel or the subject matter of dispute, falls under any of the categories specified in the Seventh Schedule shall be ineligible to be appointed as an arbitrator:

Provided that parties may, subsequent to disputes having arisen between them, waive the applicability of this sub-section by an express agreement in writing..."

In view of the above change in law, we would like your confirmation as to whether you are ready and willing to waive the applicability of the aforementioned section 12 (5) as inserted by the recent amendment in 2015 and whether you are willing to give your consent for appointment of an employee of Hindustan Petroleum Corporation Limited as a Sole Arbitrator to adjudicate the difference and disputes between yourself and HPCL.

Kindly convey your written response (i.e. giving consent or not giving consent) within 15 days from the date of this letter to enable us to take further necessary action in the matter.

Thanking you.

Very truly yours.
Awadhesh Kumar Pandey
Deputy General Manager"

72. This was responded by the appellant by means of its letter dated 15.02.2018 and the contents of the said letter is being reproduced hereinafter:-

"सेवा में,
श्री अवधेश कुमार पाण्डेय
उप सामान्य प्रबंधक
हिन्दुस्तान पेट्रोलियम कार्पोरेशन लि०
भूतल 88ए गोवर्धन पुरवा,
साकेतनगर हमीरपुर रोड, कानपुर।
विषय-आर्बीट्रेटर नियुक्त करने के सम्बन्ध में।
महोदय,

आपके पत्र पत्रांक KRR/RFT/Arbi दिनांक 24.01.2018 का संदर्भ लें। पाण्डेय फिलिंग स्टेशन बदौसा बाँदा उ०प्र० के डीजल /पेट्रोल एग्रीमेन्ट के निरस्त होने से उत्पन्न विवाद के निपटारा हेतु हम श्री अनिल कुमार गुप्ता चार्टर्ड एकाउन्टेन्ट पार्टनर गुप्ता अनिल शिवांग एण्ड कम्पनी 37/110 हाउस नं० 17 कृष्णा ऑयल कम्पाउण्ड बनाना पुरवा संगीत सिनेमा के पास कानपुर उ०प्र० को अपनी तरफ से सोल आर्बीट्रेटर नियुक्त करते हैं।

श्री गुप्ता हमारे कभी भी सलाहकार अथवा चार्टर्ड एकाउन्टेन्ट नहीं रहे, न ही किसी प्रकार के सम्बन्ध हैं तदनुसार कार्यवाही प्रारम्भ करना सुनिश्चित करें।

दिनांक-15.02.2018

भवदीय,

(लक्ष्मीकान्त पाण्डेय)
पुत्र श्री रामकिशोर पाण्डेय
नि० बाजपेई पुरवा बदौसा रोड
पेट्रोल पम्प के सामने, अतर्रा
(बाँदा) उ०प्र०
मो०-9415556326"

73. The Corporation further by its letter dated 26.02.2018 gave its response as under:-

“संदर्भ कान/नीरज-एसपी/रिटेल दिनांक 26.02.2018

"सेवा में,

श्री लक्ष्मीकान्त पाण्डेय पुत्र रामकिशोर पाण्डेय

निवासी बाजपेयी पुरवा, बडौसा रोड,

पेट्रोल पंप के सामने, अतर्रा,

(बांदा) उ. प्र.

विषय: आर्बिटर नियुक्त करने के संबंध में।

प्रिय महोदय,

उपरोक्त सम्बंध में आप अपने पत्रांक शून्य दिनांक 15.02.2018 का संदर्भ लें। अपने इस संदर्भित पत्र में आपने स्वतः ही सोल आर्बिटर नियुक्त करके कार्यवाही प्रारम्भ करने का अनुरोध किया है।

हमारा आपसे अनुरोध है कि हमारे पत्रांक KRR/RET/Arbi दिनांक 24.10.2018 का संदर्भ लें, जिसमें आपसे कॉर्पोरेशन के किसी कर्मचारी को सोल आर्बिटर नियुक्त करने के संबंध में सहमति मांगी गई थी। इसी पत्र में आपसे यह भी कहा गया था कि इस संबंध में अपनी लिखित सहमति / असहमति से 15 दिन के अंदर सूचित करें।

हम आपको यह भी अवगत कराना चाहते हैं कि कोर्पोरेशन आप द्वारा नियुक्त किए गए किसी भी आर्बिटर को स्वीकार नहीं करती है। आप, आर्बिटर को नियुक्त करने के लिए या तो कॉर्पोरेशन को सहमति प्रदान करें या फिर आर्बिटर की नियुक्ति हेतु समुचित सक्षम प्राधिकारी को एप्रोच करें।

भवदीय

अवधेश कुमार पांडेय

उप महाप्रबंधक"

74. Lastly, the appellant vide his reply dated 07.03.2018 gave his consent and the contents of the said reply is being reproduced hereinafter:-

"अवधेश कुमार पांडेय

उप महाप्रबंधक

हिन्दुस्तान पेट्रोलियम कॉर्पोरेशन लि०

भूतल 88ए गोवर्धन पुरवा, साकेत नगर,

हमीरपुर रोड, कानपुर- 208014

विषय-आर्बिटर नियुक्त करने के सम्बन्ध में।

महोदय,

कृपया अपने पत्र दिनांक 24.10.2018 KRR/RET/Arbi व पत्र दिनांक 26.02.2018 का संदर्भ ले, जिसके द्वारा आर्बिटर नियुक्ति की सहमति चाही गई है।

मैं कॉर्पोरेशन को आर्बिटर नियुक्त करने की सहमति देता हूँ। साथ ही अनुरोध है कि मैं विकलांग हूँ ज्यादा दूर आने-जाने में दिक्कत है इसलिए उ०प्र० के किती नजदीक शहर का आर्बिटर ही नियुक्त किया जाय।

दिनांक-07.03.2018

प्रार्थी

(लक्ष्मीकान्त पाण्डेय)

पुत्र रामकिशोर पाण्डेय
निवासी बाजपेयी पुरवा, बदौसा रोड,
पेट्रोल पम्प के सामने, अतर्रा
जिला-बाँदा (उ०प्र०)
मो0-9415556326 "

75. In the instant case, from the perusal of the arbitration clause as reproduced hereinabove, it reveals that the arbitration clause contemplated the disputes to be referred to the Sole Arbitration of the Chairman and Managing Director of the Corporation who had an additional power to appoint some other person as an Arbitrator. Apparently, the Chairman and the Managing Director of the Corporation clearly falls within the category mentioned in the Fifth and the Seventh Schedule appended to the Act of 1996. Thus, post the amendment in the Act i.e. w.e.f. 23.10.2015 the Chairman and the Managing Director of the Corporation was ineligible to act as an Arbitrator.

76. It is not a case where the Corporation had prepared a panel of potential Arbitrators and the appellant was required to select from amongst the said curated panel. Here, in the case at hand, the Chairman and the Managing Director of the Corporation was named as the Arbitrator with additional power to appoint some other person as Arbitrator. Once the Chairman and the Managing Director of the Corporation was ineligible to act as an Arbitrator then for the very same reason, he was not competent to appoint any other person to arbitrate. Thus, on this count, it is clear that the appointment of the Arbitrator made by the Chairman and the Managing Director of the Corporation was squarely hit by the decision of the Apex Court in **TRF (Supra)** and **Core-II (Supra)** and such a person was not eligible to act as an Arbitrator as he lacked inherent jurisdiction and could not have made the award.

77. Additionally, the Arbitrator so appointed by the Chairman and Managing Director of the Corporation also did not furnish a declaration as required in terms of Section 12(1) read with Fifth and Sixth Schedule appended to the Act of 1996. This assumes significance for the reason that the exchange of letters between the parties would indicate that the letter of the appellant dated 07.03.2018 which has been quoted above, at best can be treated as consent only permitting the Corporation to appoint an Arbitrator and not a waiver of his right in terms of provisions to Section 12 (5) of the Act of 1996.

78. The letters quoted above would clearly indicate that by the first letter issued by the Corporation it sought consent of the appellant for appointment of a serving officer of the Corporation to act as an Arbitrator which was turned down by the appellant by his letter dated 15.02.2018. Now, if the letter of the Corporation dated 26.02.2018 is seen, then it will reveal that the appellant was required to furnish his consent to enable the Chairman and the Managing Director of the Corporation to appoint an Arbitrator and it did not say that the Chairman and the Managing Director of the Corporation would appoint only a serving officer of the Corporation.

79. Section 12(5) and its proviso uses the words "by an express agreement in writing" whereas an agreement postulates manifestation of mutual assent by two or more persons to one another. In other words it is meeting of minds with a common intention made through offer and acceptance.

80. In this background, it would be seen that the letter of the Corporation dated 24.01.2018 was an offer made by the Corporation requiring the appellant to give his consent.

81. The appellant by his reply dated 15.02.2018 appointed a Chartered Accountant as the Arbitrator and required the concurrence of the Corporation. This clearly was not an acceptance of the offer of the Corporation made in its letter dated 24.01.2018, rather this was a counter offer by the appellant.

82. Again the Corporation turned down the counter offer of the appellant vide its reply dated 26.02.2018. This was then followed by making another offer which was replied by the appellant on 07.03.2018 and this would reveal that as far as the issue of seeking waiver in terms of Section 12(5) Proviso is concerned, there was no visible meeting of minds (consensus ad idem) between the appellant and the respondent.

83. In this context at best, the appellant's consent can only be treated for the purposes of appointment of an Arbitrator who even could be a retired officer of the Corporation or of some other Oil Company or some retired Senior Central Government employee and the consent was not for the purposes of appointing a serving officer of the Corporation and certainly it was not a waiver of his right to raise objections in terms of the proviso appended to Section 12(5) of the Act of 1996.

84. In order to ascertain what could be construed as an "express waiver" and its facets, was considered by the Apex Court in **Bhadra International (Supra)** and in paragraph 77 to 86, 89 to 90 and paragraphs 96 to 98, it held as under:-

"77. Waiver means the intentional giving up of a right. It involves a conscious decision to abandon an existing legal right, benefit, claim, or privilege that a party would otherwise have been entitled to. It amounts to an agreement not to enforce that right. A waiver can occur only when the person making it is fully aware of the right in question and, with complete knowledge, chooses to give it up. [See : State of Punjab v. Davinder Pal Singh Bhullar, (2011) 14 SCC 770]

78. What flows from the aforesaid is when a right exists, i.e., the right to object to the appointment of an ineligible arbitrator in terms of Section 12(5), such a right cannot be taken away by mere implication. For a party to be deprived of this right by way of waiver, there must be a conscious and unequivocal expression of intent to relinquish it. Needless to say, for a waiver to be valid, it is necessary that the actor demonstrates the intention to act, and for an act to be intentional, the actor must understand the act and its consequences.

79. The expression "express agreement in writing" demonstrates a deliberate and informed act that although a party is fully aware of the arbitrator's ineligibility, yet it chooses to forego the right to object against the appointment of such an arbitrator. The requirement of an express agreement in writing has been introduced as it reflects awareness and a conscious intention to waive the right to object under sub-section (5) of Section 12. A clear manifestation of the expression of waiver assumes greater importance in light of the fact that the parties are overcoming a restriction imposed by law.

80. It is in the same breath we say that appointment of an arbitrator with the consent of both parties is the general rule, while unilateral appointment is an exception. When one party

appoints an arbitrator unilaterally, even if its own consent is implicit, the consent of the opposite party stands compromised, and the choice of the former is effectively imposed upon the latter.

81. It is only through an express agreement in writing, waiving the bar under sub-section (5) of Section 12, that the other party can be said to have voluntarily consented to the unilateral appointment of such an arbitrator. The proviso conveys that the arbitrator, although ineligible to be appointed, yet can continue to perform his functions, as it is oriented towards facilitating party autonomy. Thus, the proviso reinforces party autonomy and equal treatment of parties in arbitration.

82. In other words, even though the appointment had been made by one of the parties, by the act of entering into an agreement in writing, the other party expresses its consent. The manner of the agreement prescribed by the statute demonstrates voluntariness by the parties.

83. In a case of unilateral appointment, the waiver mentioned in the proviso is an indication of party autonomy in two ways : first, that the parties, by entering into an agreement, are waiving the bar under Section 12(5). Secondly, by the act of entering into an agreement, the parties, more particularly, the non-consenting party, are expressing their consent for appointment of the proposed arbitrator.

84. Undoubtedly, the statute does not prescribe a format for the agreement. However, the absence of a prescribed format cannot be construed to mean that the waiver may be inferred impliedly or through conduct. We say so because the legislature has consciously prefaced the term "agreement" with the word "express" and followed it with the phrase "in writing". This semantics denote the intention of the legislature that the waiver under the proviso to Section 12(5) must be made only through an express and written manifestation of intention.

85. The conscious use of the prefatory expression also serves to differentiate such waiver from "deemed waiver" as stipulated under Section 4 of the Act, 1996. We must be mindful of the fact that if the legislature intended that waiver under Section 12(5) could similarly arise by implication or conduct as mentioned under Section 4, it would have refrained from introducing a heightened and mandatory requirement, more particularly, in light of the rigours of the Seventh Schedule. The statutory design therefore makes it evident that the bar under Section 12(5) can be removed only by a clear, unequivocal, and written agreement executed after the dispute has arisen, and not by any form of tacit acceptance or procedural participation.

86. The mandate of an express agreement in writing in the present case may looked at from one another angle. The unilateral appointment of an arbitrator is assessed from the viewpoint of the parties. However, when the parties later execute an express written agreement waiving the ineligibility of the proposed arbitrator, the position gets altered. Such written waiver supplies the very consent that was previously missing, thereby placing the appointment on the same footing as a mutually agreed appointment and addresses concerns regarding neutrality and fairness.

* * *

89. What can be discerned from the above discussion is that the ineligibility of an arbitrator can be waived only by an express agreement in writing. In the present case, there is no agreement in writing, after the disputes arose, waiving the ineligibility of the sole arbitrator or the right to object under Section 12(5) of the Act, 1996.

90. The conduct of the parties is inconsequential and does not constitute a valid waiver under the proviso. The requirement of the waiver to be made expressly in the form of agreement in writing ensures that parties are not divested of their right to object inadvertently or by procedural happenstance."

* * *

" 96. The net effect of the aforesaid is that a notice invoking the arbitration clause under Section 21 of the Act, 1996, a procedural order, submission of statement of claim by the appellants, the filing an application seeking interim relief, or a reply to an application under Section 33 of the Act, 1996, cannot be countenanced to mean "an express agreement in writing" within the meaning of the proviso to sub-section (5) of Section 12 of the Act, 1996.

97. One could argue that a miscreant party may participate in the arbitral proceedings up to the passing of the award, despite having full knowledge of the arbitrator's ineligibility. While after an adverse award is rendered, such a party may then seek to challenge it with a view to having it set aside. Such an apprehension is reasonable, however, to obviate the possibility of such misuse, the party making unilateral appointment must endeavour to enter into an express written agreement as stipulated in the proviso to Section 12(5), so as to safeguard the proceedings from being rendered futile.

98. Thus, all the High Court decisions taking a contrary view to the present judgment would stand overruled."

85. In light of the aforesaid discussions, this Court finds that the appellant did not expressly waive his right to object in writing in terms of Section 12(5) of the Act of 1996 and its proviso. Thus, the first issue is answered accordingly.

Issue No. II

86. Now, whether the appellant could have raised this objection for the first time in an appeal under Section 37 of the Act of 1996. This issue was considered by the Apex Court in **Bhadra International (Supra)** and in paragraph nos. 112, 113, 120, it held as under:-

"112. What emerges from the foregoing is that the appellants were well within their right to challenge the ineligibility of the sole arbitrator in an application under Section 34 of the Act, 1996.

c. Challenge to the ineligibility of the arbitrator at any stage of the proceedings

113. A challenge to an arbitrator's ineligibility could be raised at any stage because an award passed in such circumstance is non-est, i.e., it carries no enforceability or recognition in law. We say so because an arbitrator does not possess the jurisdiction to pass an award. In arbitration, the parties vest the jurisdiction in the tribunal by virtue of a valid arbitration agreement and an appointment made in accordance with the provisions of the Act, 1996. This jurisdiction is grounded in the consent of the parties as explained in the foregoing paragraphs of this judgment.

* * *

120. All that we are trying to convey is that, in civil law, the law itself confers subject-matter jurisdiction on specific courts. For instance, a suit seeking a declaration on the validity of marriage before the Civil Court is not maintainable, as such disputes fall within the exclusive jurisdiction of the Family Court. Similarly, in arbitration, the consent of parties confers subject-matter jurisdiction, i.e., the authority to decide the dispute. When an arbitral tribunal is unilaterally constituted, such consent is absent, thereby divesting the tribunal of subject-matter jurisdiction. The Act, 1996, does not recognize the conferral of jurisdiction on an arbitral tribunal

without the consent of the parties. By entering into an express agreement in writing as per the proviso to Section 12(5), the parties not only waive the ineligibility of the proposed arbitrator but also consent to his appointment.

121. Before we part, we deem it fit to observe that an arbitrator is better equipped with the position of law on appointments, more particularly, unilateral appointments. Therefore, it becomes incumbent upon the arbitrator that upon entering reference and at the very first hearing, to ensure from the parties that they are willing to participate in the proceedings and to insist upon a written agreement waiving the requirement of Section 12(5) of the Act, 1996."

87. In light of the observations made by the Apex Court as noticed above, it would be clear that such objections can be taken at any stage of the proceedings. In the case at hand, the appellant did raise an objection in his petition under Section 34 of the Act of 1996, though not very precisely but nevertheless it was an issue which was dealt with by the Commercial Court by holding that the appellant gave his consent in the appointment of the Arbitrator. This finding is also under challenge in this appeal and clear grounds have been taken in the memo of appeal. Hence, the appellant cannot be non-suited for not taking a precise ground in its petition under Section 34 of the Act of 1996 as the ground of illegibility could be raised at any stage and having done so and examined by this Court, it is found that the appointment of the Arbitrator was not valid nor the waiver as per Section 12(5) of the Act was express, thus rendering the appointment legally invalid and even the award made by such an Arbitrator is rendered invalid. Thus, the second issue is answered accordingly.

88. Since the appointment of the Arbitrator is found to be without jurisdiction and for the said reason, the award cannot be sustained, hence, there is no need for this Court to enter into the second question raised by the appellant to challenge the award on grounds of procedural infractions.

89. As far as the dictum of the Bombay High Court in **Truly Pest Solution (Supra)** is concerned, it does not help the respondent as the Apex Court in para 98 of **Bhadra International (Supra)** has overruled the said decision and it loses its binding substratum.

Conclusion:-

90. In light of detailed discussions, this Court concludes:-

(i) The appointment of the Sole Arbitrator by the Chairman and Managing Director of the Corporation was violative of the principles of equal treatment of parties;

(ii) The appointment of the Sole Arbitrator by the Chairman & Managing Director of the Corporation was bad since as per the Clause 66 of the Agreement, the disputes were to be referred to the Chairman & Managing Director of the Corporation who was ineligible to act as an Arbitrator, hence, he could not even appoint an Arbitrator;

(iii) The letter exchanged between the parties, does not indicate that the appellant had agreed to expressly waive his right in writing to raise objections after the disputes had occurred, in terms of the proviso appended to Section 12 (5) of the Act of 1996. Thus, in absence of a express waiver, the Sole Arbitrator incurred de jure ineligibility and he could not act as an Arbitrator nor could he make the award.

(iv) The appellant had a right to raise an objection regarding the legality of the appointment of the Arbitrator even in an appeal under Section 37 of the Arbitration and Conciliation Act, 1996, as it is a matter which goes to the roots of the jurisdiction of the Arbitrator to make an award.

91. For the reasons aforesaid, the present appeal is **allowed**. The judgment passed by the Commercial Court-II, Lucknow dated 19.04.2023 passed in Arbitration Case No. 766 of 2019 is set aside, so also the award dated 26.04.2019 is set aside. It will be open for the parties to get a fresh Arbitrator appointed in accordance with law for settlement of their disputes. In the facts and circumstances, there shall be no order as to costs.

(2026) 4 ILRA 1997
REVISIONAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 01.04.2026

BEFORE

THE HON'BLE MANOJ BAJAJ, J.

Criminal Revision No. 711 of 2026

Jalil Ahmad

...Revisionist

Versus

State of U.P. & Ors.

...Opposite Parties

Issues for Consideration

- (i) Whether the trial court was justified in rejecting the application under Section 319 Cr.P.C. seeking summoning of Kallu and Chandani as additional accused after they had been exonerated during investigation?
- (ii) Whether the depositions of P.W.-1, P.W.-2 and P.W.-3 disclosed strong and cogent evidence warranting exercise of the extraordinary power under Section 319 Cr.P.C.?
- (iii) Whether vague and omnibus allegations in the F.I.R. and prosecution evidence, unsupported by specific overt acts, constitute sufficient material for summoning additional accused under Section 319 Cr.P.C.?

Headnotes

Code of Criminal Procedure, 1973 — S. 319 — Summoning of additional accused — Extraordinary power — Nature and scope.

HELD: The power under Section 319 Cr.P.C. is extraordinary in nature and is to be exercised only where strong and cogent evidence emerges during trial indicating involvement of a person not facing trial in the commission of the offence. Mere naming of a person in the F.I.R. or existence of suspicion is insufficient to justify summoning as an additional accused. The evidence must satisfy the higher degree of satisfaction contemplated under Section 319 Cr.P.C. [Para 9]

Code of Criminal Procedure, 1973 — S. 319 — Persons exonerated during investigation — General and omnibus allegations — Absence of specific role — Summoning declined.

HELD: Though Kallu and Chandani were named in the F.I.R., the allegations against them were vague and lacked any specific attribution regarding demand of dowry or participation in the alleged offence. The F.I.R. merely alleged that Kallu informed the complainant about the death of his daughter, while no specific instance

of cruelty or harassment was attributed to Chandani. Such omnibus allegations did not constitute sufficient material for invoking the extraordinary jurisdiction under Section 319 Cr.P.C. [Paras 6 and 7]

Code of Criminal Procedure, 1973 — S. 319 — Evidence recorded during trial — Improvements over F.I.R. — Material omissions — Effect.

HELD: The deposition of P.W.-1 contained material improvements over the version disclosed in the F.I.R. The allegation that the deceased had narrated incidents of cruelty to her mother during her visit to the parental home was absent from the F.I.R., and the mother herself was not examined as a prosecution witness. Further, the testimony of P.W.-1 did not disclose that P.W.-2 and P.W.-3 possessed any direct knowledge of the occurrence or of the alleged acts of the proposed accused. Consequently, the evidence of P.W.-2 and P.W.-3 did not materially strengthen the prosecution case against Kallu and Chandani. [Paras 7 and 8]

Code of Criminal Procedure, 1973 — S. 319 — Additional accused — Relative not residing in matrimonial home — Absence of evidence connecting him with offence.

HELD: During the course of hearing, it was fairly admitted that Kallu was merely the cousin of the father-in-law of the deceased and was not residing in the matrimonial home. In the absence of specific evidence establishing his participation in the alleged acts of cruelty or dowry demand, no case for summoning him as an additional accused under Section 319 Cr.P.C. was made out. [Para 9]

Code of Criminal Procedure, 1973 — Ss. 397 and 401 — Revision — Order rejecting application under Section 319 Cr.P.C. — Interference.

HELD: The trial court assigned cogent reasons for declining to summon Kallu and Chandani as additional accused and correctly held that the evidence on record did not satisfy the standard required for exercise of powers under Section 319 Cr.P.C. The impugned order did not suffer from any illegality, perversity or jurisdictional error warranting interference in revisional jurisdiction. [Paras 9 and 10]

Revision dismissed. Clarified that the observations made in the order shall remain confined to adjudication of the application under Section 319 Cr.P.C. (E-14)

Case Law Cited

Nil

List of Acts / Statutes

Code of Criminal Procedure, 1973; Indian Penal Code, 1860; Dowry Prohibition Act, 1961.

List of Keywords

Additional accused; Dowry death; Exoneration during investigation; General allegations; Omnibus allegations; Specific role; Strong evidence; Revisional jurisdiction; Dowry demand; Matrimonial cruelty.

Case Arising From

Order dated **06.11.2025** passed by the Additional District and Sessions Judge/Special Judge (E.C. Act), Banda in Sessions Trial No. 341 of 2023, **State v. Taufiq and Others**, arising out of Case Crime No. 15 of 2023, under Sections 498-A and 304-B IPC and Sections 3/4 of the Dowry Prohibition Act, 1961, Police Station Marka, District Banda.

Appearance for Parties

For the Appellants: Sri Hari Bans Singh.

For the Respondents: Learned G.A.; Sri Kameshwar Singh; and Sri Sudhanshu Kumar Singh.

(Delivered by Hon'ble Manoj Bajaj, J.)

1. Petitioner-Complainant is aggrieved against the order dated 06.11.2025 passed by Additional District and Session Judge/Special Judge (E.C.Act), Banda in Session Trial No.341 of 2023, State Vs. Taufiq and others, arising out of Case Crime No.15 of 2023, under Sections 498-A, 304-B I.P.C. and Section 3/4 Dowry Prohibition Act, 1961, Police Station Marka, district Banda, whereby his application under Section 319 Cr.P.C. for summoning Chandani and Kallu as an additional accused has been dismissed.

2. The facts in brief leading to the revision petition are that the complainant gave a written complaint to the police wherein it is alleged that his daughter-Sifa was married on 12.05.2022 as per Muslim rites and rituals with Taufiq, son of Sarvar Ali and sufficient dowry was given by him, but Taufiq, his parents-Sarvar Ali and Safeena, his uncle-Kallu and sister-Chandani harassed his daughter and continuously demanded Rs.1 lac as well as a motor-cycle. On 15.01.2023 there was some altercation between the couple and he got this information on mobile phone, and his attempt to meet his daughter failed as the accused were adamant on their demand of dowry. On 26.01.2023 at about 1:10 p.m. the complainant talked to Taufiq on his mobile phone and his daughter was also online when she informed him to take her back, otherwise she would be killed by all the accused persons. The conversation went on for twenty minutes and finally after sometime Kallu informed the complainant that his daughter is no more who died of hanging. The complainant reached there and found that the feet of the dead-body were touching the ground, who in his complaint to police requested for necessary action against the accused persons. Broadly on these allegations F.I.R. was registered on 28.01.2023 against five persons, namely, Taufiq, Sarvar Ali, Safeena, Kallu and Chandani.

3. Thereafter, the investigation in the crime was conducted and charge-sheet was filed against three persons, namely, Taufiq-husband, Sarvar Ali-father-in-law, Safeena-Mother-in-law of the deceased, whereas Kallu and Chandani were declared innocent.

4. After commencement of trial proceedings, the prosecution examined three witnesses, namely, Jalil Ahmad (PW-1), Barkat Ali (PW-2) and Shakun (PW-3), and thereafter, an application under Section 319 Cr.P.C. was moved by the complainant for summoning Chandani and Kallu as an additional accused to face the trial, which has been dismissed through impugned order 06.11.2025. Hence this revision petition.

5. Sri Hari Bans Singh, learned counsel appearing on behalf of the complainant-petitioner has argued that Sifa, daughter of the complainant got married to Taufiq on 12.05.202, and she met her unnatural death on 26.01.2023 in her matrimonial home and from the very beginning the complainant had levelled allegations of demand of dowry against all five accused persons but during investigation, Chandani and Kallu were declared innocent. Learned counsel has drawn the attention of the Court to the F.I.R. (Annexure-1) to point out that the allegations against Chandani also reveal her participation in commission of crime, therefore, exoneration of these two persons by police is unjustified. He referred to the testimony of PW-1 recorded during trial to point out that specific allegations were levelled by the complainant against all the accused persons regarding cruelty meted out to his daughter resulting in her death, therefore, application under Section 319

Cr.P.C. was moved to summon these two persons as an additional accused, and the trial court has not considered the facts and circumstances of the case carefully while rejecting the application. The reference is also made to the evidence/testimonies of PW-2-Barkat Ali and PW-3-Shakun to contend that these two witnesses also supported the stand of PW-1, despite that the trial court has proceeded to reject the application thereby causing miscarriage of justice to the complainant. He prays that the impugned order be set aside and opposite party nos.2 and 3 be summoned.

6. After hearing learned counsel for the parties and considering the submissions, this Court finds that the initial version given by the complainant is recorded in the F.I.R. and it only narrates about the date of marriage and alleged cruelty meted out to his daughter who later met an unnatural death and the allegations are not specific much less against Kallu, cousin of Sarvar Ali, who as per F.I.R. only informed the complainant about demise of his daughter. Similarly the allegations against Chandani are vague and do not attribute any specific instance of maltreating his daughter.

7. Further a perusal of the deposition of the complainant recorded as PW-1 during trial would show that on 15.01.2023 when there was an altercation between the couple he in fact met his daughter, but only narrated about his inability to meet the alleged demand of dowry, and in the said statement no specific attribution is against Chandani and Kallu. Though in the version contained in the F.I.R., it is the stand of the complainant that despite his attempts to meet his daughter he was not allowed to meet her.

8. That apart, the deposition of the complainant is based on the alleged disclosure made by his daughter to his wife when she visited her parental home after marriage but this version is completely missing in the F.I.R. and the mother has not been examined as a prosecution witness. The entire evidence of PW-1 does not mention about the knowledge of the alleged crime to PW-2 and PW-3 much less their involvement in talking to the daughter of the complainant. The evidence of PW-2 and PW-3 does not at all stand at a better footing than the deposition of PW-1.

9. By now it is a well settled law that the power vested with the trial court to summon any person as an additional accused who has not been sent to face trial is extraordinary in nature and has to be invoked in cases where during trial strong evidence emerges to point out the involvement of some other person as well in commission of crime. During the course of the hearing it is fairly stated by learned counsel for the petitioner that Kallu, son of Gulab Ali is cousin of Sarvar Ali and he was not residing in the matrimonial home of the complainant's daughter.

10. Thus, considering the material on record, this Court has no hesitation in holding that the evidence on record is not enough for exercising the power under Section 319 Cr.P.C. and trial court has rightly proceeded to reject the application vide order dated 06.11.2025. A perusal of the impugned order would show that the trial court has given valid reasons in refusing to summon Chandani and Kallu as an additional accused and, therefore, the order does not call for any interference i.e. to exercise the revisional jurisdiction.

11. Resultantly, the revision petition is dismissed. However, it is clarified that the observations made in the order are only in respect of the adjudication relating to the impugned order dated 06.11.2025.

(2026) 4 ILRA 2001
REVISIONAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 06.04.2026

BEFORE

THE HON'BLE MANOJ BAJAJ, J.

Criminal Revision No. 4150 of 2024 & other connected cases

Neeru
...Revisionist
Versus
State of U.P. & Ors.
...Opposite Parties

Issues for Consideration

- (i) Whether the ex parte order granting maintenance under Section 125 Cr.P.C. was liable to be set aside under Section 126 Cr.P.C. on the plea that the husband had not been effectively served?
- (ii) Whether grant of maintenance under the Protection of Women from Domestic Violence Act, 2005 was impermissible where maintenance had already been awarded under Section 125 Cr.P.C.?
- (iii) Whether enhancement of maintenance awarded under the Domestic Violence Act was justified having regard to the husband's income, the growing needs of the minor son and the prevailing cost of living?
- (iv) Whether the recovery warrants issued for enforcement of the maintenance order under Section 125 Cr.P.C. called for interference?

Headnotes

Code of Criminal Procedure, 1973 — Ss. 125 and 126 — Maintenance — Ex parte order — Application for setting aside ex parte proceedings — Knowledge of proceedings admitted by husband — Failure to contest proceedings on legal advice — Effect.

HELD: The husband admitted in his application under Section 126 Cr.P.C. that he had knowledge of the proceedings under Section 125 Cr.P.C. and had consciously chosen not to contest the claim on the advice of his counsel. A Government employee, having knowledge of pending proceedings, cannot subsequently seek recall of an ex parte maintenance order merely by pleading ineffective service. The Family Court rightly dismissed the application under Section 126 Cr.P.C., as the husband failed to establish any sufficient cause for his absence. [Paras 8 and 9]

Code of Criminal Procedure, 1973 — Ss. 125 and 126 — Maintenance — Suppression of income by husband — Assessment of maintenance.

HELD: The husband neither contested the proceedings under Section 125 Cr.P.C. nor disclosed his actual income despite being employed in the State Roadways Department. Even before the High Court he failed to disclose his total income from all sources. The Court held that the conduct of the husband clearly indicated an attempt to avoid disclosure of his true financial capacity and thereby evade his statutory obligation to maintain his wife and minor son. [Paras 8 and 9]

Protection of Women from Domestic Violence Act, 2005 — Maintenance — Maintenance already awarded under Section 125 Cr.P.C. — Subsequent award under Domestic Violence Act — Maintainability.

HELD: Merely because maintenance had already been awarded under Section 125 Cr.P.C., the claim under the Protection of Women from Domestic Violence Act, 2005 did not become non-maintainable. The Magistrate while deciding the application under the Domestic Violence Act had specifically taken into consideration the maintenance already awarded under Section 125 Cr.P.C. and granted only an additional amount. Therefore, there was no duplication of maintenance and the challenge to the award under the Domestic Violence Act was devoid of merit. [Paras 10 and 11]

Protection of Women from Domestic Violence Act, 2005 — Appeal — Enhancement of maintenance — Salary and other sources of income of husband — Growing educational needs of minor child — Rising cost of living.

HELD: The appellate court rightly enhanced the additional maintenance payable under the Domestic Violence Act from Rs.4,000/- to Rs.8,000/- per month after considering the documentary evidence regarding the husband's salary as well as his other sources of income. The collective maintenance of Rs.16,000/- per month payable under Section 125 Cr.P.C. and the Domestic Violence Act was held to be just, fair and reasonable having regard to the educational needs of the thirteen-year-old son and the prevailing cost of living. [Paras 11 and 12]

Code of Criminal Procedure, 1973 — S. 125 — Recovery proceedings — Recovery warrants — Validity.

HELD: Since the ex parte maintenance order dated 16.12.2020 and the order rejecting the husband's application under Section 126 Cr.P.C. were found to be valid, no interference was warranted with the recovery warrants issued for execution of the maintenance order. [Paras 9 and 13]

Maintenance — Wife and minor son — Quantum — Adequacy.

HELD: The maintenance awarded collectively under Section 125 Cr.P.C. and the Protection of Women from Domestic Violence Act, 2005 adequately balanced the financial capacity of the husband with the needs of the wife and minor son and did not warrant either enhancement or reduction. [Para 12]

All the petitions dismissed. (E-14)

Case Law Cited

Nil

List of Acts / Statutes

Code of Criminal Procedure, 1973; Protection of Women from Domestic Violence Act, 2005; Constitution of India.

List of Keywords

Maintenance; Ex parte maintenance; Domestic Violence Act; Additional maintenance; Enhancement of maintenance; Recovery warrants; Suppression of income; Maintenance to wife and child; Cost of living; Educational expenses.

Case Arising From

Judgment dated **13.05.2024** passed by the Sessions Judge, Mainpuri in Criminal Appeal No. 73 of 2023, **Smt. Neeru v. State of U.P. and Others**, enhancing the maintenance awarded under the Protection of Women from Domestic Violence Act, 2005.

Order dated **10.05.2022** passed by the Principal Judge, Family Court, Mainpuri in Case No. 596 of 2018, **Smt. Neeru and Another v. Sunil Kumar**, rejecting the husband's application under Section 126 Cr.P.C. for setting aside the ex parte maintenance order dated 16.12.2020.

Order dated **14.03.2023** passed in the aforesaid proceedings issuing recovery warrants for enforcement of the maintenance order under Section 125 Cr.P.C..

Appearance for Parties

For the Appellants: Sri Salilendu Kumar Upadhyay and Sri Vineet Kumar Dubey.

For the Respondents: Sri Anjani Kumar Shahwal and learned G.A..

(Delivered by Hon'ble Manoj Bajaj, J.)

1. Matrimonial dispute between the rival parties has led to filing the above separate petitions against each other, wherein issue of maintenance by wife and son of Sunil Kumar has been adjudicated through impugned order dated 13.5.2024 passed in Criminal Appeal No. 73 of 2023, titled Smt. Neeru Vs. State of U.P. and others, by Sessions Judge, Mainpuri thereby enhancing the maintenance awarded to claimants under D.V. Act vide order dated 2.8.2023 by Additional Civil Judge (S.D.), Court No.2, Mainpuri. The claimants have prayed for further enhancement of the maintenance, whereas husband-Sunil Kumar has also challenged the order dated 13.5.2024 by invoking Article 227 Constitution of India.

2. Besides, Sunil Kumar-husband has also challenged the order dated 10.5.2022 ad 14.3.2023 passed by Principal Judge, Family Court, Mainpuri in Case No. 596 of 2018, titled Smt. Neeru and another Vs. Sunil Kumar, whereby his application under Section 126 Cr.P.C. for setting aside the ex parte proceedings/ order granting maintenance under Section 125 Cr.P.C. was dismissed, and subsequently, the recovery warrants were issued against him for execution of order dated 16.12.2020.

3. Mr. Sailendu Kumar Upadhyay, learned counsel for the claimants has argued that the marriage between Neeru and Sunil Kumar was solemnized on 11.12.2009, and from this wedlock one son was born, who had attained the age of 4 years when the couple separated on 16.2.2017, and after separation, dependent wife alongwith son is residing with her parents. Learned counsel submits that husband-Sunil Kumar is employed with State Roadways Department and is drawing a monthly salary of Rs.45000/-, besides he also owns agricultural land and immovable property. According to learned counsel, the husband has an extra monthly rental income, but he did not discharge his obligations to maintain his wife and son, therefore, an application under Section 125 Cr.P.C. was filed by the claimants on 21.12.2018, and it was decided in favour of the claimants vide ex-parte order dated 16.12.2020, thereby awarding monthly maintenance of Rs.5,000/- and Rs.3,000/- respectively. Learned counsel submits that as the amount was not being paid, therefore, the wife was compelled to initiate recovery proceedings against her husband-Sunil Kumar, wherein recovery warrants were issued against him vide impugned order dated 14.3.2023 and the said order is under challenge in petition bearing Application U/S 482 No.13274 of 2023 filed by husband-Sunil Kumar.

4. Learned counsel for the claimants has further argued that as the destitute wife and son were not getting any maintenance from the opposite party no.2-Sunil Kumar, therefore, another claim of maintenance was preferred under Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as 'D.V. Act') and vide order dated 2.8.2023 passed by Additional Civil Judge (S.D.), Court No.2, Mainpuri an amount of Rs.4,000/- per month was awarded, which has

been enhanced to Rs.8,000/- per month by the appellate court through the impugned order dated 13.5.2024. Learned counsel submits that the amount of maintenance awarded in favour of wife and son is on lower side, particularly, in the light of the monthly income of husband-Sunil Kumar, who apart from of his salary is having other source of income as well, therefore, he prays for enhancement.

5. Mr. Ram Sajeevan Prajapati, learned counsel for the husband has argued that the first claim by wife was moved under Section 125 Cr.P.C., wherein the husband being employed with the State Roadways Department was not served effectively and the ex-parte order dated 16.12.2020 was passed against him, and the wife never filed any petition to seek enhancement of the said maintenance. Learned counsel has pointed out that being aggrieved against the ex-parte adjudication of the claim by wife, an application dated 15.3.2023 was filed by him under Section 126 Cr.P.C, which has been dismissed vide order dated 10.5.2022 and against this a petition bearing Criminal Revision Defective No. 638 of 2022 is pending before this Court. Learned counsel submits that the maintenance awarded under Section 125 Cr.P.C. in the absence of the contest by the husband calls for interference by this Court, therefore, the recovery warrants issued vide order dated 14.3.2023 would also call for interference. He prays that the order dated 10.5.2022 dismissing the application under Section 126 Cr.P.C. be set aside and the husband be allowed to contest the case. Learned counsel also prays for setting aside the recovery warrants issued against him on 14.3.2023

6. Learned counsel for the husband has further argued that the amount of maintenance of Rs.8,000/- per month, if, is to the satisfaction of the wife and son, the award of maintenance under D.V. Act vide order dated 2.8.2023 is not justified. Similarly, according to learned counsel, the enhancement order by appellate court passed on 13.5.2025 is also not sustainable.

7. However, during the course of hearing, it is fairly conceded by learned counsel for the husband that in none of the cases, any written response was ever filed by the husband and even in his revision petition challenging the order of enhancement dated 13.5.2024 he has not chosen to reveal his monthly income from all sources. Lastly, it is stated by learned counsel that if, the original order dated 16.12.2020 passed by the Family Court granting monthly maintenance of Rs.8,000/- to the wife and son is maintained, his grievance would be redressed.

8. After hearing the learned counsel for the parties and considering their submissions, this Court finds that the couple resided together for a period of eight years after their marriage in the year 2009 and the wife and son were dependent on Sunil Kumar. A perusal of the application dated 21.12.2018 would show that the wife initially made an attempt for reunion, but all efforts went in vain, therefore, she was compelled to claim maintenance from her husband and the claim was not contested by Sunil Kumar. Though, it is claimed by husband-Sunil Kumar that he was not served, but in application under Section 126 Cr.P.C. he admitted the knowledge of the pending proceedings, who chose not to contest by following the advice of his advocate, who informed Sunil Kumar that as and when his presence is required, he would be intimidated. Thus, it is clear that believing the legal advice, he continued with his job and when he came to learn that proceedings have been decided against him, he swung in action. It does not appeal to prudence that a litigant who is employed in government service would not even bother to file his reply, therefore, it becomes clear that he never wanted to reveal his true income, perhaps to avoid his liability.

9. A perusal of the order dated 16.12.2020 would show that the trial court has carefully analyzed the facts and circumstances of the case while awarding monthly maintenance of Rs.8,000/- collectively to the wife and son, and the application filed by husband-Sunil Kumar under Section 126 Cr.P.C. has been rightly dismissed by delivering valid reasons vide order dated 10.5.2022. Thus, the order dated 10.5.2022 does not call for any interference in exercise of revisional jurisdiction.

10. Learned counsel for the husband-opposite party no.2 had vehemently argued that once the maintenance awarded under Section 125 Cr.P.C. by the Family Court was accepted, the similar claim under D.V. Act could not have been allowed, much less without adjusting the amount of maintenance earlier awarded vide order dated 16.12.2020.

11. The argument appears impressive, but is without any merit as a perusal of the order dated 2.8.2023 would show that Additional Civil Judge, Manipuri has specifically noticed the maintenance of Rs.8,000/- per month already awarded under Section 125 Cr.P.C. in favour of the claimants by the Family Court, and considering that amount it only awarded additional maintenance of Rs.4,000/- per month. Most importantly, the order dated 2.8.2023 was accepted by husband-Sunil Kumar, who never challenged it by way of an appeal, and it also becomes abundantly clear that with enhancement the total maintenance of Rs.12,000/- per month in favour of the claimants stood accepted by him.

12. Of course, the appellate court vide impugned order dated 13.5.2024 has also added an amount of Rs.4,000/- per month to the wife and son, therefore, the collective amount comes to Rs.16,000/- per month, but a perusal of the order dated 13.5.2024 by appellate court would show that the salary drawn by husband-Sunil Kumar is clearly noticed by relying upon the documentary evidence. Further considering the other source of income., the appellate court modified the order dated 2.8.2023 by raising the amount of maintenance of Rs.4,000/- per month to Rs.8,000/- per month. Thus, considering the growing age of the son, who is presently 13 years old and is pursuing his education as well as the cost of living, which is higher in the present days, the collective maintenance awarded to the claimants i.e. Rs.16,000/- per month under Section 125 Cr.P.C. and D.V. Act is just, fair and adequate.

13. Resultantly, no ground is made out for interfering with the impugned orders as the orders do not suffer from any illegality, and the petitions are hereby dismissed.

(2026) 4 ILRA 2005
APPELLATE JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 15.04.2026

BEFORE

THE HON'BLE SANDEEP JAIN, J.

First Appeal No. 17 of 2024

Raviprakash

Dalip Singh & Ors.

...Appellant

Versus

...Respondents

Issues for Consideration

- (i) Whether a plaint seeking only a decree of permanent injunction on the basis of alleged title acquired by adverse possession, without seeking declaration of title or cancellation of a subsequent gift deed, discloses a cause of action and is maintainable?
- (ii) Whether the plaint and the documents relied upon by the plaintiff prima facie established the essential ingredients of adverse possession so as to survive rejection under Order VII Rule 11 CPC?
- (iii) Whether the suit was barred under Order VII Rule 11(a) and (d) CPC on account of absence of cause of action and omission to seek necessary declaratory reliefs?
- (iv) Whether the Trial Court was justified in rejecting the plaint under Order VII Rule 11 CPC?

Headnotes

Code of Civil Procedure, 1908 — O. VII R. 11(a) & (d) — Rejection of plaint — Scope of enquiry — Court to examine only plaint averments and documents relied upon by plaintiff — Written statement and defence irrelevant.

HELD: While deciding an application under Order VII Rule 11 CPC, the Court is confined to the averments contained in the plaint together with the documents filed by the plaintiff. The defence of the defendants or documents relied upon by them cannot be considered. The Court is, however, required to undertake a meaningful reading of the plaint to ascertain whether it discloses a real cause of action or whether clever drafting has merely created an illusion of one. If the suit is manifestly vexatious, barred by law or does not disclose a right to sue, the plaint is liable to be rejected at the threshold. [Paras 33 to 39]

Adverse Possession — Essential ingredients — Hostile possession — Knowledge of true owner — Animus possidendi — Burden of proof.

HELD: A person claiming ownership by adverse possession must specifically plead and establish when and how possession commenced, the nature of possession, the identity of the true owner, that such possession was open, continuous, hostile and uninterrupted for the statutory period, and that it was to the knowledge of the true owner. Mere long possession does not mature into title. Animus possidendi is an indispensable requirement and the burden lies entirely upon the person asserting adverse possession. [Paras 40 to 43]

Adverse Possession — Knowledge of true owner — Bald assertion in plaint — Insufficiency.

HELD: Although the plaintiff asserted continuous possession of the property since 01.01.1996, the plaint nowhere disclosed how the true owner had knowledge of such allegedly hostile possession. No material facts or documentary evidence were pleaded to establish that the owner, residing at another place, was aware of the plaintiff's hostile claim. Mere assertion of such knowledge without supporting facts did not satisfy the foundational requirement of adverse possession. [Paras 44 and 45]

Adverse Possession — Government records showing disputed property as residential address — Effect.

HELD: Documents such as revolver licence, voter identity card, company records, income-tax records, trade-tax registration, insurance policies, vehicle registration, export-import licence, educational records of children and other official documents merely establish the address furnished by the applicant. Such documents neither establish ownership nor prove hostile possession against the true owner. Their existence does not imply that governmental authorities or the true owner acknowledged the claimant's title by adverse possession. [Para 46]

Adverse Possession — Electricity bills and municipal taxes continued in name of previous owner — Acknowledgement of title of true owner — Effect.

HELD: The plaintiff himself pleaded that electricity bills continued to be paid in the name of the previous owner and municipal taxes were also deposited in his name without seeking mutation or transfer of the records. Such conduct constituted acknowledgement of the title of the recorded owner and was wholly inconsistent with a hostile assertion of ownership. These pleadings themselves demolished the plaintiff's claim of adverse possession. [Paras 47 and 48]

Adverse Possession — Calculation of statutory period — Incorrect pleading.

HELD: The plaintiff claimed to have entered possession on 01.01.1996 but pleaded that title matured on 31.12.2008 after expiry of twelve years. The Court noticed that even this computation was erroneous, since twelve years from 01.01.1996 would expire on 01.01.2008. The incorrect pleading further reflected the infirmity in the plaintiff's claim. [Para 49]

Specific Relief Act, 1963 — Permanent injunction — Title disputed — Necessity of declaration.

HELD: Where the plaintiff claims title by adverse possession and such title is disputed or clouded by the defendant's title documents, a suit seeking merely permanent injunction is not maintainable. The plaintiff must seek declaration of title and, wherever necessary, consequential relief. A person claiming adverse possession cannot obtain injunction against the true owner without first establishing his title through an appropriate declaratory decree. [Paras 50 to 54]

Gift Deed — Subsequent transfer in favour of defendants — Failure to seek declaration or cancellation — Maintainability of suit.

HELD: The plaintiff admitted execution of the registered gift deed dated 18.01.2019 in favour of defendant Nos. 2 and 3 but neither sought its cancellation nor prayed for a declaration that it was void or not binding. Since the gift deed constituted a cloud upon the plaintiff's alleged title, omission to seek appropriate declaratory relief rendered the suit for bare injunction legally incompetent. [Paras 55 to 57]

Code of Civil Procedure, 1908 — O. VII R. 11(a) & (d) — Cause of action — Bar of law.

HELD: The plaintiff failed to disclose the essential ingredients of adverse possession and omitted to seek indispensable reliefs of declaration of title and cancellation of the gift deed. Consequently, the plaintiff had no enforceable cause of action and the suit was barred in law. The Trial Court rightly rejected the plaintiff under Order VII Rule 11(a) and (d) CPC. [Paras 60 to 62]

Civil Procedure — Appeal — Rejection of plaintiff — Affirmation.

HELD: The judgment rejecting the plaintiff under Order VII Rule 11 CPC suffered from no legal infirmity. The appeal was devoid of merit and was dismissed with costs while affirming the judgment and decree of the Trial Court. [Paras 62 to 64]

Appeal dismissed with costs. (E-14)

Case Law Cited

Correspondent, R.B.A.N.M.S. Educational Institution v. B. Gunashekar and Another, 2025 SCC OnLine SC 793 — relied on; Raghwendra Sharan Singh v. Ram Prasanna Singh (Dead) through LRs, (2020) 16 SCC 601 — relied on; Shri Mukund Bhavan Trust and Others v. Shrimant Chhatrapati Udayan Raje Pratapsinh Maharaj Bhonsle and Another, (2024) 15 SCC 675 — relied on; Uttam Chand (Dead) through LRs v. Nathu Ram (Dead) through LRs and Others, (2020) 11 SCC 263 — relied on; M.Radheshyamlal vs. V. Sandhya and Anr. (2024) 13 SCC 275; Anathula Sudhakar vs. P. Buchi Reddy(Dead) by Lrs. and others (2008)4 SCC 594; T.V.Ramakrishna Reddy vs. M.Mallappa & Anr. (2021) 13 SCC 135; Padhiyar Prahladiji Chenaji (Deceased) Thr. LRS. vs. Maniben Jagmalbhai (Deceased) Thr. LRS. And others (2022) 12 SCC 128.

List of Acts / Statutes/Books

Code of Civil Procedure, 1908; Specific Relief Act, 1963; Limitation Act, 1963.

List of Keywords

Adverse possession; Rejection of plaint; Cause of action; Permanent injunction; Declaratory relief; Cloud on title; Gift deed; Limitation; Hostile possession; *Animus possidendi*; True owner; Simpliciter injunction; Section 34 Specific Relief Act.

Case Arising From

Judgment and decree dated **30.10.2023** passed by the Civil Judge (Senior Division)/F.T.C., Ghaziabad in **Original Suit No. 876 of 2021, Ravi Prakash v. Dalip and Others.**

Appearance for Parties

For the Appellants: Sri Jyoti Agrawal and Sri Nitin Kumar Agrawal.

For the Respondents: Ms. Akanksha Sharma.

(Delivered by Hon'ble Sandeep Jain, J.)

1. The instant appeal has been filed by the plaintiff under Section 96 CPC against the impugned judgment and decree dated 30.10.2023 passed by the Civil Judge(Senior Division)/FTC, Ghaziabad in O.S.no. 876 of 2021 Ravi Prakash vs. Dalip and others, whereby defendants application no. 41-C2 under Order VII Rule 11 CPC has been allowed and consequently, the plaint has been rejected.

Plaint case

2. The plaintiff appellant filed O.S. no. 876 of 2021 with the averments that on the basis of adverse possession he is the actual and physical owner of house no. KH - 11, area 1413.31 square yards i.e. 1181.668 m² situated in Block -H, Sector 18, GMP residential colony, Kavinagar, Ghaziabad, tehsil and District Ghaziabad, the boundaries of which have been mentioned at the end of the plaint, which is hereinafter referred to as the disputed property.

3. It was further averred that the disputed property was purchased by defendant no.1 on 20.4.1987, which comprises of 3 rooms, kitchen, 3 toilet, servant room, lobby, store, etc. which are constructed in an area of 92.90 m². There is also boundary wall which is 7 feet high and the main gate is of iron, which is used for egress and ingress, which is locked. The property has been continuously in the occupation of plaintiff from 1.1.1996, in which his family members are also residing with him, since then, he is in the actual and physical possession of the disputed property. Since then, he has fixed his name plate on the main gate, which is known to all residents and also defendant no.1.

4. It was further averred that since plaintiff and his family members are residing in the disputed property as such, the District Magistrate Ghaziabad on 26.7.1997 issued him revolver license no. 262/97 on which he purchased the revolver of 32 bore 0619(IOF). He also established his watch manufacturing factory in the year 1997 in the name of S.D. Watches India Ltd, in which he is director and he has shown his address as the disputed property. The trade tax number was obtained on the address of the disputed property by him in the year 1997, on the basis of which he

is doing his watch business. On 30.4.2002 he obtained loan from Ford Credit Kotak Mahindra Ltd through agreement no. 41803313 for purchasing a car. On 17.2.1996 an agreement was executed between him and HMT Ltd in which he has shown his address as the disputed property. He also obtained a loan from Punjab National Bank ,Shastri Nagar, Ghaziabad in which security bond was registered in which he has disclosed his address as the disputed property, in which an agreement of guarantee was executed on 18.8.1998 and further, in the year 1998, he applied for obtaining a loan of ₹ 35 lakhs for his firm S.D Watches India Ltd from Punjab National Bank Ghaziabad, which was sanctioned on 7.8.1998 and in this loan also he has shown his address as the disputed property.

5. It was further averred that he applied on behalf of Delta Watch Private Limited to the Registrar of Companies, in which a show cause notice was issued under Section 75(4) of the Companies Act on 26.3.2004, to his wife Shashikala at her address as the disputed property. In the year 2004, he applied on behalf of his company to the Registrar of Companies, regarding which a confirmation was received on 23.1.2004, which was sent to his wife Shashikala on her address as the disputed property. He also submitted the annual return of his firm Delta Watches Private Ltd on 28.9.1999 disclosing his address as the disputed property. In the 1997, he also applied for the export import of components for his firm M/S S.D.Watch India Ltd for allotting IC number in which he also disclosed his address as the disputed property.

6. In the year 1996 he also obtained landline telephone no. 2701383 from BSNL which was installed on his address as disputed property. He started manufacturing Delta Watches from 20.1.2004 and for obtaining the trademark he disclosed his address as the disputed property, its receipt no. 241797 was issued on 20.1.2004. On 15.10.2005 for obtaining the trade mark of the watch in the name of Swiz Delta he applied to the Government of India disclosing his address as the disputed property. On 1.1.2007 the Election Commission of India issued voter card to him and his wife Shashikala on their address as the disputed property.

7. It was further averred that the house tax of the disputed property is being paid in the name of Major Vinod Kumar, who was the owner prior to defendant no.1. Since he and his family members are continuously residing in the disputed property hence they are regularly depositing the house tax of the disputed property, its receipts dated 15.3.2008, 31.3.2009, 26.3.2011 and 29.3.2012 are in his possession, which proves that his occupation of the disputed property is open, peaceful and without any interference.

8. It was further averred that on 11.3.2005 he purchased a Honda City car no.UP-14 X- 8823 in which his address as the disputed property was shown and the car was insured on the same address having policy number HNC/00003472. His daughter Mahima and son Shyam were born in the disputed property on 16.10.2011 and 2.9.2019, respectively. His daughter Mahima was studying in class V in Holy Child School, Ghaziabad, and in the school record her address is of the disputed property. In the disputed property he, his wife and family members are continuously residing, the possession of which is also with him and due to this reason, his wife Shashikala on 13.7.2011 executed a power-of-attorney in his favour regarding khatauni no. 70 in which their address is of the disputed property.

9. It was further averred that he is the director of his company Dayal and Sons Electronics Private Limited in which his residential address is of the disputed property, which has also been confirmed by the income tax department of the Government of India. He has also obtained a gas connection on the disputed property from IGL on 28.4.2015 having connection no. BP 7000076153, from which he is continuously receiving gas, which is being used for cooking meals. His revolver license no. 262/97 was unfortunately lost regarding which he registered a FIR on 11.7.2015 at police station, Kavi Nagar Ghaziabad showing his address as the disputed property.

10. It was further averred that in the disputed property electrical connection no. 004/006851 is in the name of previous owner Capt. Vinod Kumar, but the payment is being made by him. Some of the electricity bills were paid by him through cheque and in the receipts dated 16.11.2010, 15.7.2009 and 5.7.2010 cheque no. 592245 drawn on SBI is mentioned. He also purchased a Creta car no. UP-14-DF 1607 in the year 2017 on his address as the disputed property, which was insured by policy no. HAX/S 6743753. A false FIR was registered by some anti-social elements against him at police station Mohanlalganj, Lucknow regarding which notice under Section 91/160 CrPC was issued by the above police station on his address as the disputed property. He has also obtained along with his family members, medical policy no. 254003/48/2010/536 in the year 2016, which is continuing till date, regarding which an enquiry was conducted by the Oriental Insurance Co. and on ascertaining that he is residing in the disputed property, policy was issued.

11. It was further averred that on 26.2.2020 he deposited the house tax, water tax & sewer tax with the Nagar Nigam Ghaziabad through cheque no. 006277/26.2.2020 for ₹ 20,472/- which was drawn on Federal Bank. He further deposited bills for the electric connection no. 8824355000 dated 1.12.2018 and 29.7.2020 through cheque no. 004342 for ₹ 4,133/- and cheque no. 006288 for ₹ 50,558/-, respectively, which also proved his possession of the disputed property.

12. It was further averred that since 1.1.1996 he is in continuous possession of the disputed property, he has shown his address of the disputed property in his business concerns, the defendant no.1 and others are fully aware of his actual, hostile and continuous possession of the disputed property. He is residing in the disputed property as owner for the last 25 years, which is in the knowledge of defendant no.1, which has not been objected by defendant no.1, and he has deprived the defendant no.1 from the use and occupation of the disputed property. The defendant no.1 was always aware of his ownership and possession of the disputed property, but the defendant no.1 never took any steps for dispossessing him from the disputed property, neither filed any case against him in any competent Court nor obtained any order or decree against him. No suit, appeal and execution proceeding for his ejectment are pending in any competent Court.

13. It was further averred that since he was in continuous possession of the disputed property from 1.1.1996 as such, the limitation for filing the suit for dispossessing him from the disputed property has ended on 31.12.2008, and hence his possession of the disputed property has matured into ownership, and since 31.12.2008 he is the owner in possession of the disputed property and since then the defendant no.1 has lost his right to dispossess him, interfere in his ownership and possession of the disputed property and has also lost his right to alienate, mortgage, etc. the disputed property. The defendant no.1 has got no right, title and interest whatsoever, in the disputed

property and in accordance with Section 27, Article 65 and 136 of the Limitation Act, all the rights of the defendant no.1 in the disputed property have ended.

14. It was further averred that the defendant no.1 has lost his right to dispossess him from the disputed property since his right has become time barred. Otherwise also, the defendant no.1 was incapable of dispossessing him but was in contact of land mafia for selling the disputed property, who was intending to dispossess him with their assistance.

15. It was further averred that defendant no.1 was in collusion with some land mafia and Sandeep (defendant no. 3), and for usurping the disputed property, constituted a trust in the name of Dayal Educational Trust (defendant no. 2) and the defendant no. 3 was the chairman of the trust. It was averred that when the plaintiff became aware that the defendant no.1 was ready to transfer the disputed property in favour of defendant no. 2 and 3 in the month of January 2019, then he made a request to defendant no. 3 that by adverse possession from 1.1.1996 he has acquired ownership of the disputed property on 31.12.2008, hence defendant no. 3 should not get the property transferred in his name. It was further averred that the defendant no. 3 was well aware that the plaintiff and his family members are in continuous possession of the disputed property since 1.1.1996 and they have acquired ownership of the disputed property by adverse possession on 31.12.2008.

16. It was further averred that inspite of the above facts, defendant no.1 in collusion with some antisocial elements executed the gift deed of the disputed property in favour of defendant no. 2 and 3 on 18.1.2019, which was not shown to the plaintiff. It was further averred that defendant no. 2 and 3 are also well aware of his possession and ownership of the disputed property but they have also not taken any steps for his dispossession from the disputed property by filing any suit before the competent Court. It was further averred that defendant no.1 was a resident of Mohalla Patwarian Post Office Mandawar District Bijnor and the defendant no. 3 was a resident of 9/30 Sarvodaya Colony, Rana Pratap Marg, Lucknow, who never had any concern with the disputed property.

17. It was further averred that on 17.9.2021 the defendants no.1 and 3 along with some antisocial elements came to the disputed property and defendant no. 3 showed him a gift deed of the disputed property dated 18.1.2019, then the plaintiff became aware for the 1st time that the defendant no.1 has executed an illegal gift deed of the disputed property in favour of defendant no. 2, whereas, the ownership of the plaintiff in disputed property has matured on the basis of adverse possession on 31.12.2008. It was further averred that the defendant no.1 had no right to execute the above gift deed in favour of defendant no. 2, which was void and illegal, which neither affects the plaintiff's right in the disputed property nor any right, title and interest has vested in defendant no. 2 and 3 on its basis.

18. It was further averred that on 17.9.2021 the defendants made an unsuccessful attempt to dispossess him from the disputed property but due to the intervention of some influential people, the defendants could not succeed, but in future the defendants may again try to dispossess him and hence if, an injunction was not passed against the defendants then they will certainly dispossess the plaintiff from the disputed property and if they succeed in doing so, then irreparable injury will be caused to the plaintiffs, hence, the necessity of filing the suit.

19. In the above backdrop, the plaintiff claimed the following reliefs:-

(i) By decree of permanent injunction granted in favour of the plaintiff against the defendants, the defendants be restrained from interfering in the peaceful possession, ownership, usage and in any other manner whatsoever, and from dispossessing the plaintiff from the disputed property, and be also restrained from creating mortgage, obtaining loan and alienating in any other manner.

(ii) The plaintiff be also awarded the costs of the suit against the defendants.

(iii) Any other relief which the Court deems appropriate be also granted.

Defendants application 41-C2 under Order VII Rule 11 CPC

20. During the pendency of the suit the defendants no.2 & 3 moved an application 41-C2 under Order VII Rule 11 CPC on the ground that no cause of action has arisen to the plaintiff for filing permanent injunction suit against true owner defendant no.1 and after executing gift deed dated 18.1.2019 in favour of defendant no. 2, whatever cause of action has been shown in paragraph 44 of the plaint is only fabricated and false cause of action. The plaintiff has accepted that the defendant no.1 purchased the disputed house on 20.4.1987 from Capt. Vinod Kumar, whose name was still recorded in the Nagar Nigam, Ghaziabad and electric connection was also in the name of Capt. Vinod Kumar, but he has not been arrayed as a party.

21. The plaintiff cannot claim ownership by adverse possession over residential house situated in abadi land. Under Article 25 of the Limitation Act the possession over house must be of 20 years for claiming ownership by adverse possession, but the plaintiff has only claimed ownership on the basis of only 12 years possession over residential house, which cannot be claimed by the plaintiff. The relief of permanent injunction is not available to a trespasser against true owner as such, no cause of action existed for the relief of permanent injunction. The plaintiff has not claimed relief of declaration hence, the relief of permanent injunction cannot be granted to him. The suit is barred under Section 34 of the Specific Relief Act since the relief of declaration was not claimed by the plaintiff. With these averments, it was prayed that the plaint be rejected.

Objections of the plaintiff against the defendants application

22. The plaintiff filed his objection paper no.46-C2 in which the averments of the defendants were denied. It was averred that no cause of action has arisen to the plaintiff against Capt. Vinod Kumar, since at the time of filing of the suit, he was not having any right title and interest in the disputed property, since he had sold the disputed property. It was further averred that in respect of residential house, ownership on the basis of adverse possession can be claimed. It was further averred that the plaintiff was in possession of the disputed house since 1.1.1996 whereas, the suit was filed on 20.9.2021 after a duration of 25 years 8 months and 19 days, during this period, the plaintiff's possession of the disputed property has remained continuous. Article 25 of the Limitation Act is related to easementary rights, not to adverse possession. For claiming ownership on the basis of adverse possession only 12 years open, continuous and hostile possession, which must be in the knowledge of the owner, is required, hence the plaintiff's suit for the relief of permanent injunction was maintainable. The plaintiff was not a trespasser. The cause of action for filing the suit has

arisen on 17.9.2021 since the defendants attempted to dispossess the plaintiff from the disputed property and also tried to mortgage the disputed property for obtaining loan and also tried to alienate it. The suit was not barred by Section 34 of the Specific Relief Act. With these averments it was prayed that the defendants application be rejected.

Reasoning of the trial court

23. The trial court opined that the plaint discloses that the electricity bill and the house tax of the disputed property was being deposited by the plaintiff in the name of Vinod Kumar, from whom the defendant no.1 Dalip Singh has purchased the disputed property, through sale deed. It was further opined that the plaint discloses that on 18.1.2019 the disputed property has been gifted by defendant no.1 to defendant no. 2 and 3, which proves that the plaintiff 's possession of the disputed property has not remained continuous and without hindrance till 18.1.2019, whereas the suit was filed on 20.9.2021. The trial court opined that for claiming ownership on the basis of adverse possession, 12 years continuous possession was required, which was not proved from the plaint averments, hence the plaintiff has got no cause of action to file the suit. With this reasoning, the defendants application 41-C2 was allowed and consequently, the plaint was rejected under Order VII Rule 11 CPC, aggrieved against which, the plaintiff has filed the instant appeal under Section 96 CPC.

Submissions of the learned counsel of the parties

24. Learned counsel for the plaintiff appellant submitted that the plaintiff was in continuous possession of the disputed property since 1.1.1996, which was proved from the plaint averments. The plaintiff has disclosed that he has obtained the telephone connection, gas connection, revolver license, car registration, insurance policies, medical policy, showing the address of the disputed property. It was further submitted that the plaintiff is also director of several companies and in the records of the Registrar of Companies, the plaintiffs address is of the disputed property. In the income tax and trade tax the plaintiffs address of the disputed property is recorded. Learned counsel further submitted that plaintiff 's children were also born in the disputed house, the plaintiffs wife has also mentioned the address of the disputed property, in her documents. It was further submitted that the voter card has also been issued on the address of the disputed property.

25. It was further submitted that the defendant no.1 was the owner of the property, who was well aware that the plaintiff was residing in the disputed property since 1.1.1996, but he took no steps for evicting the plaintiff from the disputed property. It was further submitted that since 1.1.1996 the possession of the plaintiff on the disputed property has remained open, hostile and continuous against the owner defendant no.1, as such, after the expiry of 12 years on 31.12.2008, the plaintiff has become the owner of the disputed property on the basis of adverse possession.

26. It was further submitted that the defendants application under Order VII Rule 11 CPC is to be decided only on the basis of plaint averments and documents of the plaintiff, and the written statement as well as the documents of the defendants are not to be considered at this stage. It was further submitted that the Court can also not examine the veracity of the plaint averments and is bound to accept them as true. It was further submitted that from the plaint averments it was prima

facie proved that the plaintiff was residing in the disputed property as an owner since 1.1.1996, who has perfected his legal ownership in the disputed property on the basis of adverse possession on 31.12.2008, as such, the plaint could not have been rejected by the trial court. With these submissions, it was prayed that the appeal be allowed and the matter be remanded back for deciding it on merits. In support of his contention learned counsel has relied upon the following case law:-

- (i) *Karam Singh vs. Amarjit Singh and ors.* 2025 INSC 1238.
- (ii) *Bhau Ram vs. Janak Singh and ors.* (2012) 8 SCC 701.
- (iii) *Sunil Kumar Dublith vs. Sri Ramesh Chandra Dublith (Since Dead)* and
ors. 2026 (1) ARC 435.

27. Sri Manish Goyal learned Senior Counsel for the respondents submitted that it is true that only the plaint averments and the documents submitted by the plaintiff are to be considered only at the time of deciding the defendants application under Order VII Rule 11 CPC. It was further submitted that the plaintiff has to prima facie prove that the true owner defendant no.1 was aware that the plaintiff was residing in the disputed property since 1.1.1996. Learned counsel further submitted that if this fact was not in the knowledge of defendant no.1, then the plaintiff cannot claim adverse possession against the above defendant.

28. It was further submitted that for obtaining the revolver license, for getting the car registered with RTO, for obtaining the insurance policy, for filing income tax return, for getting children admitted to a school, for establishing the company, for getting registered the directorship of the company with the Registrar of Companies, for obtaining export import licence, for getting the firm registered with trade tax, sales tax Department, for obtaining trademark - it is not required, that the address shown must be of the property, which is owned by the applicant. If a person is living in a rented/leased accommodation, even then, he can obtain the above mentioned documents and get his name entered in the official records.

29. It was further submitted that for obtaining the electricity connection in an accommodation and for mutation in the records of the municipality, the applicant is required to prove his ownership of the property, failing which, he can neither obtain the electricity connection nor can get his name mutated. Learned counsel submitted that the plaintiff has admitted that he's continuously depositing the house tax and other taxes attached to the property and the electricity bill of the electric connection installed in the disputed property, in the name of previous owner Capt. Vinod Kumar, which itself proves, that the plaintiff has never made any effort to deposit the above amounts in his name and has acknowledged Capt. Vinod Kumar, as the true owner of the disputed property, otherwise the plaintiff would not have deposited the electricity bill and other taxes in the name of previous owner Capt. Vinod Kumar.

30. Learned counsel further submitted that the plaintiff has nowhere mentioned how defendant no.1 was aware that he was residing in the disputed property since 1.1.1996, no documentary evidence regarding this fact has been submitted by the plaintiff before the court. It was further submitted that the plaintiff should have given legal notice to the defendant no.1 that he is residing in the disputed property since 1.1.1996 to prove his intention but no such action was taken by the

plaintiff. Learned counsel submitted that it was necessary for the plaintiff to prove his hostile intention to claim ownership of the disputed property and mere possession of the disputed property, without hostile intention, is not sufficient for claiming ownership on the basis of adverse possession. Learned counsel further submitted that the plaintiff never proved his hostile intention against the real owner i.e. defendant no.1, hence, the plaintiff has got no cause of action for filing the instant suit.

31. It was further submitted that the plaintiff has accepted that the defendant no.1 as owner has executed the gift deed of the disputed property in favour of defendant no. 2 and 3 on 18.1.2019, but no relief of cancellation of the disputed gift deed has been claimed by the plaintiff. The plaintiff has also not claimed relief of declaration that he be declared the owner of the disputed property on the basis of adverse possession, as such, the plaintiff's suit was barred by Section 34 of the Specific Relief Act. With these submissions, it was prayed that the appeal is meritless and be rejected.

32. The following issues arise for determination in this appeal:-

(i) What are the essential ingredients of claiming ownership on the basis of adverse possession ?

(ii) Whether the plaintiff has prima facie proved from the plaint averments and documents submitted, that he has acquired ownership of the disputed property on the basis of adverse possession ?

Interpretation of Order VII Rule 11 CPC

33. The Apex Court in the case of ***Correspondence, RBANMS Educational Institution vs. B. Gunashekar and anr. 2025 SCC OnLine SC 793***, while considering the scope and purpose of Order VII Rule 11 CPC, has held as under:-

“14. Let us first examine the scope and purpose of Order VII Rule 11 CPC. This Court in Dahiben v. Arvindbhai Kalyanji Bhanusali (Gajra) dead through legal representatives (2020) 7 SCC 366, explained in detail the applicable law for deciding the application for rejection of the plaint. The relevant paragraphs of the said decision are reproduced below:

23.1 ...

23.2. The remedy under Order VII Rule 11 is an independent and special remedy, wherein the Court is empowered to summarily dismiss a suit at the threshold, without proceeding to record evidence, and conducting a trial, on the basis of the evidence adduced, if it is satisfied that the action should be terminated on any of the grounds contained in this provision.

23.3. The underlying object of Order VII Rule 11 (a) is that if in a suit, no cause of action is disclosed, or the suit is barred by limitation under Rule 11 (d), the Court would not permit the plaintiff to unnecessarily protract the proceedings in the suit. In such a case, it would be necessary to put an end to the sham litigation, so that further judicial time is not wasted.

23.4. In Azhar Hussain v. Rajiv Gandhi 1986 Supp SCC 315 this Court held that the whole purpose of conferment of powers under this provision is to ensure that a litigation which is meaningless, and bound to prove abortive, should not be permitted to waste judicial time of the court, in the following words : (SCC p.324, para 12)

"12. The whole purpose of conferment of such power is to ensure that a litigation which is meaningless, and bound to prove abortive should not be permitted to occupy the time of the Court, and exercise the mind of the respondent. The sword of Damocles need not be kept hanging over his head unnecessarily without point or purpose. Even in an ordinary civil litigation, the Court readily exercises the power to reject a plaint, if it does not disclose any cause of action."

23.5. The power conferred on the court to terminate a civil action is, however, a drastic one, and the conditions enumerated in Order VII Rule 11 are required to be strictly adhered to.

23.6. **Under Order VII Rule 11, a duty is cast on the Court to determine whether the plaint discloses a cause of action by scrutinizing the averments in the plaint read in conjunction with the documents relied upon, or whether the suit is barred by any law.**

23.7. Order VII Rule 14(1) provides for production of documents, on which the plaintiff places reliance in his suit, which reads as under:

"14. Production of document on which plaintiff sues or relies.-(1) Where a plaintiff sues upon a document or relies upon document in his possession or power in support of his claim, he shall enter such documents in a list, and shall produce it in Court when the plaint is presented by him and shall, at the same time deliver the document and a copy thereof, to be filed with the plaint.

(2) Where any such document is not in the possession or power of the plaintiff, he shall, wherever possible, state in whose possession or power it is.

(3) A document which ought to be produced in Court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint but is not produced or entered accordingly, shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.

(4) Nothing in this rule shall apply to document produced for the cross examination of the plaintiff's witnesses, or, handed over to a witness merely to refresh his memory."

23.8. **Having regard to Order VII Rule 14 CPC, the documents filed alongwith the plaint, are required to be taken into consideration for deciding the application under Order VII Rule 11(a). When a document referred to in the plaint, forms the basis of the plaint, it should be treated as a part of the plaint.**

23.9. In exercise of power under this provision, the Court would determine if the assertions made in the plaint are contrary to statutory law, or judicial dicta, for deciding whether a case for rejecting the plaint at the threshold is made out.

23.10. At this stage, the pleas taken by the defendant in the written statement and application for rejection of the plaint on the merits, would be irrelevant, and cannot be adverted to, or taken into consideration (2004) 3 SCC 137.

23.11. **The test for exercising the power under Order VII Rule 11 is that if the averments made in the plaint are taken in entirety, in conjunction with the documents relied upon, would the same result in a decree being passed. This test was laid down in Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success which reads as : (SCC p.562, para 139)**

139. Whether a plaint discloses a cause of action or not is essentially a question of fact. But whether it does or does not must be found out from reading the plaint itself. For the said purpose, the averments made in the plaint in their entirety must be held to be correct. The test is as to whether if the averments made in the plaint are taken to be correct in their entirety, a decree would be passed."

23.12. In *Hardesh Ores (P.) Ltd. v. Hede & Co.* (2007) 5 SCC 614 the Court further held that it is not permissible to cull out a sentence or a passage, and to read it in isolation. It is the

substance, and not merely the form, which has to be looked into. The plaint has to be construed as it stands, without addition or subtraction of words. If the allegations in the plaint prima facie show a cause of action, the court cannot embark upon an enquiry whether the allegations are true in fact. D. Ramachandran v. R.V. Janakiraman (1999) 3 SCC 267.

23.13. *If on a meaningful reading of the plaint, it is found that the suit is manifestly vexatious and without any merit, and does not disclose a right to sue, the court would be justified in exercising the power under Order VII Rule 11 CPC.*

23.14. *The power under Order VII Rule 11 CPC may be exercised by the Court at any stage of the suit, either before registering the plaint, or after issuing summons to the defendant, or before conclusion of the trial, as held by this Court in the judgment of Saleem Bhai v. State of Maharashtra (2003) 1 SCC 557. The plea that once issues are framed, the matter must necessarily go to trial was repelled by this Court in Azhar Hussain (supra).*

23.15. *The provision of Order VII Rule 11 is mandatory in nature. It states that the plaint "shall" be rejected if any of the grounds specified in clause (a) to (e) are made out. If the Court finds that the plaint does not disclose a cause of action, or that the suit is barred by any law, the Court has no option, but to reject the plaint.*

24. *"Cause of action" means every fact which would be necessary for the plaintiff to prove, if traversed, in order to support his right to judgment. It consists of a bundle of material facts, which are necessary for the plaintiff to prove in order to entitle him to the reliefs claimed in the suit.*

24.1. *In Swamy Atmanand v. Sri Ramakrishna Tapovanam (2005) 10 SCC 51 this Court held:*

"24. A cause of action, thus, means every fact, which if traversed, it would be necessary for the plaintiff to prove an order to support his right to a judgment of the court. In other words, it is a bundle of facts, which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act, no cause of action can possibly accrue. It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded"

24.2. *In T. Arivandandam v. T.V. Satyapal (1977) 4 SCC 467 this Court held that while considering an application under Order VII Rule 11 CPC what is required to be decided is whether the plaint discloses a real cause of action, or something purely illusory, in the following words : (SCC p. 470, para 5)*

"5. The learned Munsif must remember that if on a meaningful - not formal - reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order VII, Rule 11 CPC taking care to see that the ground mentioned therein is fulfilled. And, if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing"

24.3. *Subsequently, in I.T.C. Ltd. v. Debt Recovery Appellate Tribunal (1998) 2 SCC 70 this Court held that law cannot permit clever drafting which creates illusions of a cause of action. What is required is that a clear right must be made out in the plaint.*

24.4. *If, however, by clever drafting of the plaint, it has created the illusion of a cause of action, this Court in Madanuri Sri Ramachandra Murthy v. Syed Jalal (2017) 13 SCC 174 held that it should be nipped in the bud, so that bogus litigation will end at the earliest stage. The Court must be vigilant against any camouflage or suppression, and determine whether the litigation is utterly vexatious, and an abuse of the process of the court.*

.....
 28. *A three-Judge Bench of this Court in State of Punjab v. Gurdev Singh (1991) 4 SCC 1 held that the Court must examine the plaint and determine when the right to sue first accrued to the plaintiff, and whether on the assumed facts, the plaint is within time. The words "right to sue" means the right to seek relief by means of legal proceedings. The right to sue accrues only when the cause of action arises. The suit must be instituted when the right asserted in the suit is infringed, or when there is a clear and unequivocal threat to infringe such right by the defendant against whom the suit is instituted. Order VII Rule 11(d) provides that where a suit appears from the averments in the plaint to be barred by any law, the plaint shall be rejected."*

14.1. Thus, it is clear that the above provision viz., Order VII Rule 11 CPC serves as a crucial filter in civil litigation, enabling courts to terminate proceedings at the threshold where the plaintiff's case, even if accepted in its entirety, fails to disclose any cause of action or is barred by law, either express or by implication. The scope of Order VII Rule 11 CPC and the authority of the courts is well settled in law. There is a bounden duty on the Court to discern and identify fictitious suit, which on the face of it would be barred, but for the clever pleadings disclosing a cause of action, that is surreal. Generally, sub-clauses (a) and (d) are stand alone grounds, that can be raised by the defendant in a suit. However, it cannot be ruled out that under certain circumstances, clauses (a) and (d) can be mutually inclusive. For instances, when clever drafting veils the implied bar to disclose the cause of action; it then becomes the duty of the Court to lift the veil and expose the bar to reject the suit at the threshold. The power to reject a plaint under this provision is not merely procedural but substantive, aimed at preventing abuse of the judicial process and ensuring that court time is not wasted on fictitious claims failing to disclose any cause of action to sustain the suit or barred by law. Therefore, the appeal before us requires careful consideration of the scope of rejection of the plaint under Order VII Rule 11 CPC, particularly, in the context of the suit filed based on an agreement to sell against third parties in possession.

15. Order VII Rule 11(a) CPC mandates rejection of the plaint where it does not disclose a cause of action. In *Om Prakash Srivastava v. Union of India (2006) 6 SCC 207*, this Court pointed out that cause of action means every fact which, if traversed, would be necessary for the plaintiff to prove in order to support their right to judgment. It consists of bundle of facts which narrate the circumstances and the reasons for filing such suit. It is the foundation on which the entire suit would rest. Therefore, it goes without saying that merely including a paragraph on cause of action is not sufficient but rather, on a meaningful reading of the plaint and the documents, it must disclose a cause of action. The plaint should contain such cause of action that discloses all the necessary facts required in law to sustain the suit and not mere statements of fact which fail to disclose a legal right of the plaintiff to sue and breach or violation by the defendant(s). It is pertinent to note here that even if a right is found, unless there is a violation or breach of that right by the defendant, the cause of action should be deemed to be unreal....

17. At the same time, we are conscious of principle that only averments in the plaint are to be considered under Order VII Rule 11 CPC. While it is true that the defendant's defense is not to be considered at this stage, this does not mean that the court must accept patently untenable claims or shut its eyes to settled principles of law and put the parties to trial, even in cases which

are barred and the cause of action is fictitious. In T. Arivandandam (supra), this Court emphasized that where the plaint is manifestly vexatious and meritless, courts should exercise their power under Order VII Rule 11 CPC and not waste judicial time on matters that are legally barred and frivolous."

(emphasis supplied)

34. The Apex Court in the case of **Raghwendra Sharan Singh vs. Ram Prasanna Singh (Dead) By Lrs. (2020)16 SCC 601**, while considering whether the suit was barred by limitation for the purpose of Order VII Rule 11 CPC, held as under:-

"7. Applying the law laid down by this Court in the aforesaid decisions on exercise of powers under Order 7 Rule 11 CPC to the facts of the case in hand and the averments in the plaint, we are of the opinion that both the courts below have materially erred in not rejecting the plaint in exercise of powers under Order 7 Rule 11 CPC. It is required to be noted that it is not in dispute that the gift deed was executed by the original plaintiff himself along with his brother. The deed of gift was a registered gift deed. The execution of the gift deed is not disputed by the plaintiff. It is the case of the plaintiff that the gift deed was a showy deed of gift and therefore the same is not binding on him. However, it is required to be noted that for approximately 22 years, neither the plaintiff nor his brother (who died on 15-12-2002) claimed at any point of time that the gift deed was showy deed of gift. One of the executants of the gift deed, brother of the plaintiff during his lifetime never claimed that the gift deed was a showy deed of gift. It was the appellant herein-original defendant who filed the suit in the year 2001 for partition and the said suit was filed against his brothers to which the plaintiff was joined as Defendant 10. It appears that the summon of the suit filed by the defendant being TS (Partition) Suit No. 203 of 2001 was served upon Defendant 10-plaintiff herein in the year 2001 itself. Despite the same, he instituted the present suit in the year 2003. Even from the averments in the plaint, it appears that during these 22 years i.e. the period from 1981 till 2001/2003, the suit property was mortgaged by the appellant herein-original defendant and the mortgage deed was executed by the defendant. Therefore, considering the averments in the plaint and the bundle of facts stated in the plaint, we are of the opinion that by clever drafting the plaintiff has tried to bring the suit within the period of limitation which, otherwise, is barred by law of limitation. Therefore, considering the decisions of this Court in T. Arivandandam [T. Arivandandam v. T.V. Satyapal, (1977) 4 SCC 467] and others, as stated above, and as the suit is clearly barred by law of limitation, the plaint is required to be rejected in exercise of powers under Order 7 Rule 11 CPC.

8. At this stage, it is required to be noted that, as such, the plaintiff has never prayed for any declaration to set aside the gift deed. We are of the opinion that such a prayer is not asked cleverly. If such a prayer would have been asked, in that case, the suit can be said to be clearly barred by limitation considering Article 59 of the Limitation Act and, therefore, only a declaration is sought to get out of the provisions of the Limitation Act, more particularly, Article 59 of the Limitation Act. The aforesaid aspect has also not been considered by the High Court as well as the learned trial court.

9. Now, so far as the application on behalf of the original plaintiff and even the observations made by the learned trial court as well as the High Court that the question with respect to the limitation is a mixed question of law and facts, which can be decided only after the

parties lead the evidence, is concerned, as observed and held by this Court in Sham Lal [Sham Lal v. Sanjeev Kumar, (2009) 12 SCC 454 : (2009) 4 SCC (Civ) 741] ; N.V. Srinivasa Murthy [N.V. Srinivasa Murthy v. Mariyamma, (2005) 5 SCC 548 : AIR 2005 SC 2897] as well as in Ram Prakash Gupta [Ram Prakash Gupta v. Rajiv Kumar Gupta, (2007) 10 SCC 59] , considering the averments in the plaint if it is found that the suit is clearly barred by law of limitation, the same can be rejected in exercise of powers under Order 7 Rule 11(d) CPC.”

(emphasis supplied)

35. The Apex Court in the case of *Shri Mukund Bhavan Trust and others vs. Shrimant Chhatrapati Udayan Raje Pratapsinh Maharaj Bhonsle and another* (2024)15 SCC 675, was considering whether the suit was barred by limitation while deciding application under Order VII Rule 11 CPC. It was held as under:-

*“13. As settled in law, when an application to reject the plaint is filed, **the averments in the plaint and the documents annexed therewith alone are germane.** The averments in the application can be taken into account only to consider whether the case falls within any of the sub-rules of Order 7 Rule 11 by considering the averments in the plaint. The court cannot look into the written statement or the documents filed by the defendants. The civil courts including this Court cannot go into the rival contentions at that stage....*

25. Continuing further with the plea of limitation, the courts below have held that the question of the suit being barred by limitation can be decided at the time of trial as the question of limitation is a mixed question of law and facts. Though the question of limitation generally is mixed question of law and facts, when upon meaningful reading of the plaint, the court can come to a conclusion that under the given circumstances, after dissecting the vices of clever drafting creating an illusion of cause of action, the suit is hopelessly barred and the plaint can be rejected under Order 7 Rule 11....

40. At this juncture, we wish to observe that we are not unmindful of the position of law that limitation is a mixed question of fact and law and the question of rejecting the plaint on that score has to be decided after weighing the evidence on record. However, in cases like this, where it is glaring from the plaint averments that the suit is hopelessly barred by limitation, the courts should not be hesitant in granting the relief and drive the parties back to the trial court. We again place it on record that this is not a case where any forgery or fabrication is committed which had recently come to the knowledge of the plaintiff. Rather, the plaintiff and his predecessors did not take any steps to assert their title and rights in time. The alleged cause of action is also found to be creation of fiction.”

(emphasis supplied)

36. It is apparent from the above law laid down by the Apex Court in the case of **Correspondence, RBANMS Educational Institution** (supra) that at the time of deciding Order VII Rule 11 CPC application, the court has to look into only the averments made in the plaint and the documents submitted by the plaintiff. The court has not to examine the written statement of the defendant or the documents submitted by it.

37. It is also apparent that the test for exercising the power under Order VII Rule 11 CPC is if the averments made in the plaint are taken in entirety, in conjunction with the documents relied upon, would the same result in a decree being passed. The plaint should also disclose a real cause of action and if clever drafting has created the illusion of a cause of action, then it should be nipped in the bud at the 1st hearing, so that bogus litigation will end at the earliest stage. The court should also be vigilant against any camouflage or suppression, and determine whether the litigation is utterly vexatious, and an abuse of the process of the court.

38. It is also apparent that the court is not bound to accept patently untenable claims or shut its eyes to settled principles of law and put the parties to trial, even in cases which are barred and the cause of action is fictitious. In such situation the courts should not waste judicial time on matters that are legally barred and frivolous.

39. It is also apparent from the law laid down by the Apex Court in **Raghwendra Sharan Singh** (supra) and **Shri Mukund Bhavan Trust** (supra) that if from the plaint averments it is found that the suit was hopelessly barred by law of limitation then the same can be rejected in exercise of powers under Order VII Rule 11 CPC.

Case law on adverse possession

40. The Apex Court in the case of **Uttam Chand (Deceased) through Lrs. vs. Nathu Ram(Dead) through Lrs. and others (2020) 11 SCC 263**, while examining the concept of adverse possession, held as under :-

“11. In T. Anjanappa [T. Anjanappa v. Somalingappa, (2006) 7 SCC 570] , this Court has set aside the finding of the High Court that the defendants claiming adverse possession do not have to prove who is the true owner. If the defendants are not sure who the true owner is, the question of them being in hostile possession as well as of denying the title of the true owner does not arise. The Court held as under: (SCC pp. 574-75, paras 12-14)

“12. The concept of adverse possession contemplates a hostile possession i.e. a possession which is expressly or impliedly in denial of the title of the true owner. Possession to be adverse must be possession by a person who does not acknowledge the other's rights but denies them. The principle of law is firmly established that a person who bases his title on adverse possession must show by clear and unequivocal evidence that his possession was hostile to the real owner and amounted to denial of his title to the property claimed. For deciding whether the alleged acts of a person constituted adverse possession, the animus of the person doing those acts is the most crucial factor. Adverse possession is commenced in wrong and is aimed against right. A person is said to hold the property adversely to the real owner when that person in denial of the owner's right excluded him from the enjoyment of his property.

13. Possession to be adverse must be possession by a person who does not acknowledge the other's rights but denies them:

"24. It is a matter of fundamental principle of law that where possession can be referred to a lawful title, it will not be considered to be adverse. It is on the basis of this principle that it has been laid down that since the possession of one co-owner can be referred to his status as co-owner, it cannot be considered adverse to other co-owners." (See Vidya Devi v. Prem Prakash [(1995) 4 SCC 496] , SCC p. 504, para 24.)

14. Adverse possession is that form of possession or occupancy of land which is inconsistent with the title of the rightful owner and tends to extinguish that person's title. Possession is not held to be adverse if it can be referred to a lawful title. The person setting up adverse possession may have been holding under the rightful owner's title e.g. trustees, guardians, bailiffs or agents. Such persons cannot set up adverse possession:

'14. Adverse possession means a [hostile possession] which is expressly or impliedly in denial of title of the true owner. Under Article 65 [of the Limitation Act] burden is on the defendants to prove affirmatively. A person who bases his title on adverse possession must show by clear and unequivocal evidence i.e. possession was hostile to the real owner and amounted to a denial of his title to the property claimed. In deciding whether the acts, alleged by a person, constitute adverse possession, regard must be had to the animus of the person doing those acts which must be ascertained from the facts and circumstances of each case. The person who bases his title on adverse possession, therefore, must show by clear and unequivocal evidence i.e. possession was hostile to the real owner and amounted to a denial of his title to the property claimed.

15. Where possession can be referred to a lawful title, it will not be considered to be adverse. The reason being that a person whose possession can be referred to a lawful title will not be permitted to show that his possession was hostile to another's title. One who holds possession on behalf of another, does not by mere denial of that other's title make his possession adverse so as to give himself the benefit of the statute of limitation. Therefore, a person who enters into possession having a lawful title, cannot divest another of that title by pretending that he had no title at all. (See Annasaheb Bapusaheb Patil v. Balwant [(1995) 2 SCC 543] , SCC p. 554, paras 14-15.) "'

12. In Kurella Naga Druva Vudaya Bhaskara Rao [(2008) 15 SCC 150] , the payment of tax receipts and mere possession for some years was found insufficient to claim adverse possession. It was held that if according to the defendant, the plaintiff was not the true owner, his possession hostile to the plaintiff's title will not be sufficient. The Court held as under: (SCC p. 158, para 19)

"19. The defendant claimed that he had perfected his title by adverse possession by being in open, continuous and hostile possession of the suit property from 1957. He also produced some tax receipts showing that he has paid the taxes in regard to the suit land. Some tax receipts also showed that he paid the tax on behalf of someone else. After considering the oral and documentary evidence, both the courts have entered a concurrent finding that the defendant did not establish adverse possession, and that mere possession for some years was not sufficient to claim adverse possession, unless such possession was hostile possession, denying the title of the true owner. The courts have pointed out that if according to the defendant, the plaintiff was not the true owner, his possession hostile to the plaintiff's title will not be sufficient and he had to show that his possession was also hostile to the title and possession of the true owner. After detailed analysis of the oral and documentary evidence, the trial court and the High Court also held [Kurella Naga Druva Vudaya

Bhaskara Rao v. Galla Janikamma, 2006 SCC OnLine AP 842 : (2009) 3 ALD 416] that the appellant was only managing the properties on behalf of the plaintiff and his occupation was not hostile possession."

13. In *Brijesh Kumar v. Shardabai* [(2019) 9 SCC 369 : (2019) 4 SCC (Civ) 509], the Court held as under: (SCC p. 374, para 13)

"13. Adverse possession is hostile possession by assertion of a hostile title in denial of the title of the true owner as held in *M. Venkatesh* [(2015) 17 SCC 1 : (2017) 5 SCC (Civ) 387]. The respondent had failed to establish peaceful, open and continuous possession demonstrating a wrongful ouster of the rightful owner. It thus involved question of facts and law. **The onus lay on the respondent to establish when and how he came into possession, the nature of his possession, the factum of possession known and hostile to the other parties, continuous possession over 12 years which was open and undisturbed. The respondent was seeking to deny the rights of the true owner. The onus therefore lay upon the respondent to establish possession as a fact coupled with that it was open, hostile and continuous to the knowledge of the true owner. The respondent-plaintiff failed to discharge the onus.** Reference may also be made to *Chatti Konati Rao v. Palle Venkata Subba Rao* [(2010) 14 SCC 316 : (2012) 1 SCC (Civ) 452], on adverse possession observing as follows: (SCC p. 322, para 15)

"15. *Animus possidendi* as is well known is a requisite ingredient of adverse possession. Mere possession does not ripen into possessory title until the possessor holds the property adverse to the title of the true owner for the said purpose. The person who claims adverse possession is required to establish the date on which he came in possession, nature of possession, the factum of possession, knowledge to the true owner, duration of possession and that possession was open and undisturbed. A person pleading adverse possession has no equities in his favour as he is trying to defeat the rights of the true owner and, hence, it is for him to clearly plead and establish all facts necessary to establish adverse possession. The courts always take unkind view towards statutes of limitation overriding property rights. The plea of adverse possession is not a pure question of law but a blended one of fact and law."

14. As to whether the plaintiff can claim title on the basis of adverse possession, this Court in a judgment *Ravinder Kaur Grewal v. Manjit Kaur* [(2019) 8 SCC 729 : (2019) 4 SCC (Civ) 453] has held as under: (SCC p. 777, para 60)

"60. The adverse possession requires all the three classic requirements to co-exist at the same time, namely, *nec vi* i.e. adequate in continuity, *nec clam* i.e. adequate in publicity and *nec precario* i.e. **adverse to a competitor, in denial of title and his knowledge.** Visible, notorious and peaceful so that if the owner does not take care to know notorious facts, knowledge is attributed to him on the basis that but for due diligence he would have known it. Adverse possession cannot be decreed on a title which is not pleaded. *Animus possidendi* under hostile colour of title is required. **Trespasser's long possession is not synonymous with adverse possession.** Trespasser's possession is construed to be on behalf of the owner, the casual user does not constitute adverse possession. The owner can take possession from a trespasser at any point in time. Possessor looks after the property, protects it and in case of agricultural property by and large the concept is that actual tiller should own the land who works by dint of his hard labour and makes the land cultivable. The legislature in various States confers rights based on possession."

15. The matter has been examined by a Constitution Bench in *M. Siddiq (Ram Janmabhumi Temple-5 J.) v. Suresh Das* [(2020) 1 SCC 1] wherein, it has been held that a plea of adverse possession is founded on the acceptance that ownership of the property vests in another,

against whom the claimant asserts possession adverse to the title of the other. The Court held as under: (SCC pp. 703-706, paras 1142-1143 & 1147-1150)

"1142. A plea of adverse possession is founded on the acceptance that ownership of the property vests in another against whom the claimant asserts a possession adverse to the title of the other. Possession is adverse in the sense that it is contrary to the acknowledged title in the other person against whom it is claimed. Evidently, therefore, the plaintiffs in Suit 4 ought to be cognizant of the fact that any claim of adverse possession against the Hindus or the temple would amount to an acceptance of a title in the latter. Dr Dhavan has submitted that this plea is a subsidiary or alternate plea upon which it is not necessary for the plaintiffs to stand in the event that their main plea on title is held to be established on evidence. It becomes then necessary to assess as to whether the claim of adverse possession has been established.

1143. A person who sets up a plea of adverse possession must establish both possession which is peaceful, open and continuous possession which meets the requirement of being *nec vi nec claim* and *nec precario*. **To substantiate a plea of adverse possession, the character of the possession must be adequate in continuity and in the public because the possession has to be to the knowledge of the true owner in order for it to be adverse.** These requirements have to be duly established first by adequate pleadings and second by leading sufficient evidence. Evidence, it is well settled, can only be adduced with reference to matters which are pleaded in a civil suit and in the absence of an adequate pleading, evidence by itself cannot supply the deficiency of a pleaded case. Reading Para 11(a), it becomes evident that beyond stating that the Muslims have been in long, exclusive and continuous possession beginning from the time when the Mosque was built and until it was desecrated, no factual basis has been furnished. This is not merely a matter of details or evidence. A plea of adverse possession seeks to defeat the rights of the true owner and the law is not readily accepting of such a case unless a clear and cogent basis has been made out in the pleadings and established in the evidence.

1147. In *Supt. & Remembrancer of Legal Affairs v. Anil Kumar Bhunja* [(1979) 4 SCC 274 : 1979 SCC (Cri) 1038] , R.S. Sarkaria, J. speaking for a three-Judge Bench of this Court noted that the concept of possession is "polymorphous" embodying both a right (the right to enjoy) and a fact (the real intention). The learned Judge held: (SCC p. 278, para 13)

"13. ... It is impossible to work out a completely logical and precise definition of "possession" uniformly applicable to all situations in the contexts of all statutes. Dias and Hughes in their book on Jurisprudence say that if a topic ever suffered from too much theorising it is that of "possession". Much of this difficulty and confusion is (as pointed out in Salmond's Jurisprudence, 12th Edn., 1966) caused by the fact that possession is not purely a legal concept. "Possession", implies a right and a fact; the right to enjoy annexed to the right of property and the fact of the real intention. It involves power of control and intent to control. (See Dias and Hughes, *ibid.*) "

These observations were made in the context of possession in Section 29(b) of the Arms Act, 1959.

1148. In *P. Lakshmi Reddy v. L. Lakshmi Reddy* [1957 SCR 195 : AIR 1957 SC 314] , Jagannadhadas, J. speaking for a three-Judge Bench of this Court dwelt on the "classical requirement" of adverse possession: (AIR pp. 317-18, para 4)

'4. Now, the ordinary classical requirement of adverse possession is that it should be *nec vi nec clam nec precario*. (See *Secy. of State for India in Council v. Debendra Lal Khan* [1933 SCC OnLine PC 65 : (1933-34) 61 IA 78] IA at p. 82.) The possession required must be adequate in continuity, in publicity and in extent to show that it is possession adverse to the competitor. "

The Court cited the following extract from U.N. Mitra's *Tagore Law Lectures on the Law of Limitation and Prescription*: (AIR p. 319, para 7)

'7. ... "An adverse holding is an actual and exclusive appropriation of land commenced and continued under a claim of right, either under an openly avowed claim, or under a constructive claim (arising from the acts and circumstances attending the appropriation), to hold the land against him (sic) who was in possession. (Angell, Sections 390 and 398). It is the intention to claim adversely accompanied by such an invasion of the rights of the opposite party as gives him a cause of action which constitutes adverse possession. "'[6th Edn., Vol. I, Lecture VI, at p. 159]

This Court held: (AIR p. 319, para 7)

'7. Consonant with this principle the commencement of adverse possession, in favour of a person implies that the person is in actual possession, at the time, with a notorious hostile claim of exclusive title, to repel which, the true owner would then be in a position to maintain an action. It would follow that whatever may be the animus or intention of a person wanting to acquire title by adverse possession his adverse possession cannot commence until he obtains actual possession with the requisite animus. '

1149. In *Karnataka Board of Wakf v. Union of India* [(2004) 10 SCC 779] , S. Rajendra Babu, J. speaking for a two-Judge Bench held that: (SCC p. 785, para 11)

'11. ... Physical fact of exclusive possession and the animus possidendi to hold as owner in exclusion to the actual owner are the most important factors that are to be accounted in cases of this nature. Plea of adverse possession is not a pure question of law but a blended one of fact and law. **Therefore, a person who claims adverse possession should show: (a) on what date he came into possession, (b) what was the nature of his possession, (c) whether the factum of possession was known to the other party, (d) how long his possession has continued, and (e) his possession was open and undisturbed.** '

The ingredients must be set up in the pleadings and proved in evidence. There can be no proof sans pleadings and pleadings without evidence will not establish a case in law.

1150. In *Annakili v. A. Vedanayagam* [(2007) 14 SCC 308] , this Court emphasised that mere possession of land would not ripen into a possessory title. The possessor must have animus possidendi and hold the land adverse to the title of the true owner. Moreover, he must continue in that capacity for the period prescribed under the Limitation Act. "

(emphasis supplied)

41. Similarly, the Apex Court in the case of ***M.Radheshyamlal vs. V. Sandhya and Anr.*** (2024) 13 SCC 275 has elucidated the essential principles governing adverse possession. It was held as under:-

"15. Therefore, to prove the plea of adverse possession:

(a) The plaintiff must plead and prove that he was claiming possession adverse to the true owner;

(b) The plaintiff must plead and establish that the factum of his long and continuous possession was known to the true owner;

(c) The plaintiff must also plead and establish when he came into possession; and

(d) The plaintiff must establish that his possession was open and undisturbed.

It is a settled law that by pleading adverse possession, a party seeks to defeat the rights of the true owner, and therefore, there is no equity in his favour. After all, the plea is based on continuous wrongful possession for a period of more than 12 years. Therefore, the facts constituting the ingredients of adverse possession must be pleaded and proved by the plaintiff.

18. When a party claims adverse possession, he must know who the actual owner of the property is. Secondly, he must plead that he was in open and uninterrupted possession for more than 12 years to the original owner's knowledge.... "

42. From the above law laid down by the Apex Court it is apparent that the person claiming ownership on the basis of adverse possession must establish when and how he came into possession, the nature of his possession, the factum of possession known and hostile to the other parties, continuous possession over 12 years which was open and undisturbed. The onus is also on such person to establish that his possession was open, hostile and continuous to the knowledge of the true owner.

43. It is also apparent that mere possession does not ripen into possessory title. Long possession is not synonymous with adverse possession. The possessor must have animus possidendi and hold the land adverse to the title of the true owner. The party claiming adverse possession must also know, who is the actual owner of the property and must plead that he was in open and uninterrupted possession for more than 12 years to the original owner's knowledge.

Conclusion by this Court

44. It is the case of the plaintiff that he is in possession of the disputed property from 1.1.1996, but the plaintiff has nowhere mentioned in his plaint, how he came in possession of the disputed property. It is apparent that the plaintiff has to plead and prove, how the disputed property came in his possession, but the plaint is silent on this material fact.

45. The plaintiff has averred that after entering the disputed property on 1.1.1996, he remained in its continuous possession, which was in the knowledge of the owner/defendant no.1, but it is not mentioned how his possession of the disputed property was in the knowledge of defendant no.1. Except a bald assertion in the plaint, no documentary evidence was submitted by the plaintiff to prove this fact. It is apparent that the disputed property is in Ghaziabad and the defendant no.1 resides in Bijnor, which is at a distance of about 150 kms from Ghaziabad. It is not a case where the true owner was residing nearby, who used to regularly visit the disputed property, who knowingly did not initiate any proceedings for eviction of the plaintiff. It is also not a case where the plaintiff gave a legal notice to the defendant no.1, intimating his intention of forcibly occupying

the disputed property, by denying the ownership of defendant no.1 and even then, the true owner did not take any step for eviction of the plaintiff.

46. It was further apparent that for obtaining the revolver license, for getting the car registered with RTO, for obtaining the insurance policy, for filing income tax return, for getting children admitted to a school, for establishing the company, for getting registered the directorship of the company with the Registrar of Companies, for obtaining export import licence, for getting the firm registered with trade tax, sales tax Department, for obtaining trademark - it is not required, that the address shown by the applicant must be of the property, which is owned by him. If a person is living in a rented/leased accommodation, or with a relative as a licensee, even then, he can obtain the above mentioned documents and get his name entered in the official records by mentioning the address of the rented/leased accommodation or the address where he is residing as a licensee, as his residential address. Hence, if the plaintiff has obtained the above documents from the State and Central Government it does not imply that his ownership of the disputed property has been accepted by them or the above documents were in the knowledge of the defendant no.1.

47. From the plaint averments it is prima facie proved that the plaintiff is in possession of the disputed property from 1.1.1996. But the plaintiff has himself admitted that the electricity connection in the disputed property is in the name of previous owner Capt. Vinod Kumar and he is continuously depositing electricity bills in the previous owners name, which proves that the plaintiff never asserted with the electricity department that he is the true owner of the disputed property. The plaintiff has similarly disclosed in the plaint that even in the records of the Nagar Nigam Ghaziabad, the name of previous owner Capt. Vinod Kumar is recorded and the plaintiff is depositing the house tax, water tax and sewer tax in the name of previous owner Capt. Vinod Kumar. This fact also proves that the plaintiff has made no effort to get his name mutated in the records of the Nagar Nigam Ghaziabad. Both the above facts, prove that plaintiff has acknowledged by depositing the electricity bill and property tax that the owner of the disputed property is Capt. Vinod Kumar, as such, the plaintiffs case of ownership by adverse possession is demolished. It is very surprising that why plaintiff failed to get the electricity connection transferred in his name and also failed to get his name mutated in the records of the Nagar Nigam, Ghaziabad, if he was the owner of the disputed property.

48. The plaintiff has also disclosed in the plaint that he has obtained loan from Punjab National Bank, Ghaziabad and has also submitted a security bond with the above Bank, a copy of which has been filed by the plaintiff which discloses that the plaintiff has mortgaged his property situated in village, Pargana and tehsil Hapur, District Ghaziabad. The plaintiff has not mortgaged the disputed property with the above Bank, because for mortgaging the disputed property, title deeds of the property were required, which were not available with the plaintiff, as such, this document does not support the plaintiff's case, insofar as the ownership of the disputed property is concerned.

49. It is also apparent that the plaintiff has claimed ownership of the disputed property from 31.12.2008, i.e. after the expiry of 12 years from 1.1.1996. It is apparent that there is a calculation error on the part of the plaintiff, because if calculation of 12 years is made from 1.1.1996, then the

plaintiff becomes owner of the disputed property by adverse possession on 1.1.2008, but the plaintiff has claimed that he became owner by adverse possession on 31.12.2008.

50. The Apex Court in the case of *Anathula Sudhakar vs. P. Buchi Reddy(Dead) by Lrs. and others (2008)4 SCC 594*, while discussing the general principles as to when a mere suit for permanent injunction will lie, and when it is necessary to file a suit for declaration and /or possession with injunction as a consequential relief, held as under:-

“13. The general principles as to when a mere suit for permanent injunction will lie, and when it is necessary to file a suit for declaration and/or possession with injunction as a consequential relief, are well settled. We may refer to them briefly.

13.1. Where a plaintiff is in lawful or peaceful possession of a property and such possession is interfered or threatened by the defendant, a suit for an injunction simpliciter will lie. A person has a right to protect his possession against any person who does not prove a better title by seeking a prohibitory injunction. But a person in wrongful possession is not entitled to an injunction against the rightful owner.

13.2. Where the title of the plaintiff is not disputed, but he is not in possession, his remedy is to file a suit for possession and seek in addition, if necessary, an injunction. A person out of possession, cannot seek the relief of injunction simpliciter, without claiming the relief of possession.

13.3. Where the plaintiff is in possession, but his title to the property is in dispute, or under a cloud, or where the defendant asserts title thereto and there is also a threat of dispossession from the defendant, the plaintiff will have to sue for declaration of title and the consequential relief of injunction. Where the title of the plaintiff is under a cloud or in dispute and he is not in possession or not able to establish possession, necessarily the plaintiff will have to file a suit for declaration, possession and injunction.

14. We may, however, clarify that a prayer for declaration will be necessary only if the denial of title by the defendant or challenge to the plaintiff's title raises a cloud on the title of the plaintiff to the property. A cloud is said to raise over a person's title, when some apparent defect in his title to a property, or when some prima facie right of a third party over it, is made out or shown. An action for declaration, is the remedy to remove the cloud on the title to the property. On the other hand, where the plaintiff has clear title supported by documents, if a trespasser without any claim to title or an interloper without any apparent title, merely denies the plaintiff's title, it does not amount to raising a cloud over the title of the plaintiff and it will not be necessary for the plaintiff to sue for declaration and a suit for injunction may be sufficient. Where the plaintiff, believing that the defendant is only a trespasser or a wrongful claimant without title, files a mere suit for injunction, and in such a suit, the defendant discloses in his defence the details of the right or title claimed by him, which raise a serious dispute or cloud over the plaintiff's title, then there is a need for the plaintiff, to amend the plaint and convert the suit into one for declaration. Alternatively, he may withdraw the suit for bare injunction, with permission of the court to file a comprehensive suit for declaration and injunction. He may file the suit for declaration with consequential relief, even after the suit for injunction is dismissed, where the suit raised only the issue of possession and not any issue of title.

15. In a suit for permanent injunction to restrain the defendant from interfering with the plaintiff's possession, the plaintiff will have to establish that as on the date of the suit he was in

lawful possession of the suit property and the defendant tried to interfere or disturb such lawful possession. Where the property is a building or building with appurtenant land, there may not be much difficulty in establishing possession. The plaintiff may prove physical or lawful possession, either of himself or by him through his family members or agents or lessees/licensees. Even in respect of a land without structures, as for example an agricultural land, possession may be established with reference to the actual use and cultivation. The question of title is not in issue in such a suit, though it may arise incidentally or collaterally.

16. But what if the property is a vacant site, which is not physically possessed, used or enjoyed? In such cases the principle is that possession follows title. If two persons claim to be in possession of a vacant site, one who is able to establish title thereto will be considered to be in possession, as against the person who is not able to establish title. This means that even though a suit relating to a vacant site is for a mere injunction and the issue is one of possession, it will be necessary to examine and determine the title as a prelude for deciding the de jure possession. In such a situation, where the title is clear and simple, the court may venture a decision on the issue of title, so as to decide the question of de jure possession even though the suit is for a mere injunction. But where the issue of title involves complicated or complex questions of fact and law, or where court feels that parties had not proceeded on the basis that title was at issue, the court should not decide the issue of title in a suit for injunction. The proper course is to relegate the plaintiff to the remedy of a full-fledged suit for declaration and consequential reliefs. "

51. The Apex Court in the case of **T.V.Ramakrishna Reddy vs. M.Mallappa & Anr. (2021) 13 SCC 135** has held that whenever title is disputed, suit for injunction must be accompanied by a prayer for declaration of title. It is quoted as under:-

"15. It could thus be seen that this Court in unequivocal terms has held that where the plaintiff's title is not in dispute or under a cloud, a suit for injunction could be decided with reference to the finding on possession. It has been clearly held that if the matter involves complicated questions of fact and law relating to title, the court will relegate the parties to the remedy by way of comprehensive suit for declaration of title, instead of deciding the issue in a suit for mere injunction.

16. No doubt, this Court has held that where there are necessary pleadings regarding title and appropriate issue relating to title on which parties lead evidence, if the matter involved is simple and straightforward, the court may decide upon the issue regarding title, even in a suit for injunction. However, it has been held that such cases are the exception to the normal rule that question of title will not be decided in suits for injunction. "

52. The Apex Court in the case of **Annamalai vs. Vasanthi and others 2025 INSC 1267**, held as under:-

"When a declaratory relief is essential:-

25. A declaratory relief seeks to clear what is doubtful, and which is necessary to make it clear. If there is a doubt on the right of a plaintiff, and without the doubt being cleared no further relief can be granted, a declaratory relief becomes essential because without such a declaration the consequential relief may not be available to the plaintiff. For example, a doubt as to plaintiff's title to a property may arise because of existence of an instrument relating to that property. If plaintiff

is privy to that instrument, Section 31 of Specific Relief Act, 1963 enables him to institute a suit for cancellation of the instrument which may be void or voidable qua him. If plaintiff is not privy to the instrument, he may seek a declaration that the same is void or does not affect his rights. When a document is void ab initio, a decree for setting aside the same is not necessary as the same is non est in the eye of law, being a nullity. Therefore, in such a case, if plaintiff is in possession of the property which is subject matter of such a void instrument, he may seek a declaration that the instrument is not binding on him. However, if he is not in possession, he may sue for possession and the limitation period applicable would be that as applicable under Article 65 of the Limitation Act, 1963 on a suit for possession. Rationale of the aforesaid principle is that a void instrument /transaction can be ignored by a court while granting the main relief based on a subsisting right. But, where the plaintiff's right falls under a cloud, then a declaration affirming the right of the plaintiff may be necessary for grant of a consequential relief. However, whether such a declaration is required for the consequential relief sought is to be assessed on a case-to-case basis, dependent on its facts."

53. The Apex Court in the case of **Padhiyar Prahladi Chenaji (Deceased) Thr. LRS. vs. Maniben Jagmalbhai (Deceased) Thr. LRS And others (2022) 12 SCC 128**, while considering whether injunction can be granted against true owner, held as under:-

"18. Even otherwise on merits also, the courts below have erred in passing the decree of permanent injunction restraining Defendant 1 from disturbing the alleged possession of the plaintiff. Assuming for the sake of argument that the plaintiff is found to be in possession, in that case also, once the plaintiff has lost so far as the relief of declaration and title is concerned and Defendant 1 is held to be the true and absolute owner of the property in question, pursuant to the execution of the sale deed dated 17-6-1975 in his favour, the true owner cannot be restrained by way of an injunction against him. In a given case, the plaintiff may succeed in getting the injunction even by filing a simple suit for permanent injunction in a case where there is a cloud on the title. However, once the dispute with respect to title is settled and it is held against the plaintiff, in that case, the suit by the plaintiff for permanent injunction shall not be maintainable against the true owner. In such a situation, it will not be open for the plaintiff to contend that though he/she has lost the case so far as the title dispute is concerned, the defendant - the true owner still be restrained from disturbing his/her possession and his/her possession be protected."

54. It is apparent that the plaintiffs title to the disputed property has not been acknowledged by the true owner or Court, as such the plaintiff ought to have claimed the relief of declaration of his ownership rights on the basis of adverse possession in the disputed property, but the plaintiff has not claimed it and has simplicitor claimed the relief of permanent injunction. It is also apparent that the plaintiff cannot be granted the relief of permanent injunction against the true owner, unless a declaration of his ownership in the disputed property is made by the Court.

55. It is also apparent that defendant no. 2 is the true owner of the property on the basis of the gift deed executed in his favour by defendant no.1 on 18.1.2019. For granting any relief to the plaintiff, the above gift deed has to be ignored by declaring it void, but the relief of getting declared the sale deed void and not binding on the plaintiff has not been claimed by the plaintiff. In view of

this, the plaintiff has to seek declaration of his rights in the disputed property, which he has not claimed.

56. It is further apparent that without the relief of declaration, the plaintiff cannot be granted the relief of permanent injunction against the defendants. It is further apparent that the limitation for claiming the relief of declaration is 3 years. Since plaintiff is claiming ownership of the disputed property on the basis of adverse possession from 31.12.2008, he should have filed the suit within 3 years from this date. It is apparent that, the plaintiffs suit for the relief of declaration is time barred.

57. It is further apparent that the gift deed of the disputed property has been executed by the defendant no.1 in favour of defendant no. 2 on 18.1.2019, on the basis of which, the defendant no. 2 is the owner of the disputed property, but the plaintiff has not claimed its cancellation. The plaintiff could have filed suit for its cancellation within 3 years. The plaintiff has claimed in the plaint that he became aware of the gift deed on 17.9.2021, as such, the plaintiff could have filed suit for the cancellation of the gift deed within 3 years i.e. upto 17.9.2024, but no such suit has been filed by the plaintiff till date, hence on this ground also, the plaintiff cannot be granted any relief.

58. It is also apparent that the plaintiff has claimed that cause of action for filing the instant suit has arisen on 17.9.2021 when the defendants attempted to dispossess him from the disputed property, whereas, as per the plaintiff himself prior to it, the defendant no.1 has executed a gift deed on 18.1.2019 in favour of defendant no. 2 and 3.

59. It is evident that since the defendant no. 2 and 3 became owner of the disputed property on 18.1.2019, hence, the plaintiff cannot claim ownership of the disputed property on the basis of adverse possession, after this date. It is further apparent that if the plaintiff is still in the possession of the disputed property, then after 12 years from 18.1.2019 his claim of ownership on the basis of adverse possession will mature against defendant no. 2 and 3, not prior to it.

60. It is apparent that the plaintiff has neither claimed the relief of declaration of his rights in the disputed property nor claimed the relief of cancellation of gift deed dated 18.01.2019 as such, the plaintiff cannot be granted the relief of permanent injunction by the Court. It is apparent that there is a cloud on the title of the plaintiff in the disputed property which has not been removed by the plaintiff. It is further apparent that the relief of declaration of plaintiff's ownership in the disputed property and cancellation of the above gift deed, both have become time-barred hence, these reliefs cannot be granted to the plaintiff legally. In this situation, the plaintiff's suit for the simplicitor relief of permanent injunction is legally not maintainable against the defendants under Order VII Rule 11(d) CPC.

61. It is also apparent that from the plaint averments and documentary evidence, it is prima facie not proved that the true owner/defendant no.1 was aware of the plaintiff's adverse possession in the disputed property since 01.01.1996, as such, the plaintiff cannot claim adverse possession of the disputed property against defendant no.1. It is also apparent that the plaintiff by depositing the electricity bills and property tax has acknowledged that Capt. Vinod Kumar is the owner of the disputed property as such, the entire case of plaintiff claiming ownership on the basis of adverse

possession, is demolished. In view of the above facts, the plaintiff has got no cause of action to file the instant suit and the plaintiff's suit is barred under Order VII Rule 11(a) CPC.

62. For the aforesaid reasons, the trial court has not erred in allowing the defendants application under Order VII Rule 11 CPC and rejecting the plaint. The appeal is meritless and is liable to be dismissed.

63. **Accordingly, the instant appeal is dismissed with costs.** Consequently, the impugned judgment and decree dated 30.10.2023 in O.S. no.876 of 2021 is affirmed.

64. Office is directed to send back the trial court record, forthwith.

(2026) 4 ILRA 2032
APPELLATE JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 08.04.2026

BEFORE

THE HON'BLE SANDEEP JAIN, J.

First Appeal No. 48 of 2025

Shailendra Jain

...Appellant

Versus

State of U.P. & Ors.

...Respondent

Issues for Consideration

Whether an applicant seeking grant of letters of administration under the Indian Succession Act, 1925 is required to pay the entire ad valorem court fee at the time of presentation of the petition or only the fixed court fee prescribed under Schedule II of the Court Fees Act, 1870?

(ii) Whether the balance court fee payable under Article 11 of Schedule I of the Court Fees Act, 1870 is required to be deposited only after the Court decides to grant letters of administration and before their issuance?

(iii) Whether the trial court was justified in rejecting the appellant's application seeking permission to make good the deficiency of court fee after grant of letters of administration?

Headnotes

Court Fees Act, 1870 — Schedule I, Article 11 — Schedule II — Indian Succession Act, 1925 — Ss. 278, 295 and 299 — Letters of administration — Court fee payable at the stage of institution — Payment of ad valorem court fee — Stage at which payable.

HELD: A harmonious construction of Schedule II and Article 11 of Schedule I of the Court Fees Act, 1870 makes it evident that an applicant seeking grant of letters of administration is required to pay only the fixed court fee prescribed under Schedule II at the time of presentation of the petition. The ad valorem court fee contemplated under Article 11 of Schedule I becomes payable only after the Court decides to grant letters of administration and before the actual issuance thereof. Any interpretation requiring payment of the entire ad valorem court fee at the initial stage would render Article 11 and the statutory scheme otiose. [Paras 10, 12 and 16]

Court Fees Act, 1870 — Schedule I, Article 11 — Schedule II — Letters of administration — Deficiency of court fee — Application seeking permission to deposit balance court fee after grant of letters of administration — Rejection by trial court — Legality.

HELD: The trial court committed an error in directing the appellant to deposit the entire deficient court fee before adjudication of the petition seeking letters of administration. Since only a token court fee is payable at the stage of institution and the balance court fee is required to be paid only after grant but before issuance of letters of administration, the appellant's application seeking permission to make good the deficiency at that stage deserved to be allowed. The impugned order rejecting the application was liable to be set aside. [Paras 16 to 18]

Indian Succession Act, 1925 — Ss. 278 and 295 — Letters of administration — Contentious proceedings — Authenticity of Will — Scope of appellate order.

HELD: The controversy before the appellate court was confined to the stage at which court fee was payable. No opinion was expressed regarding the genuineness or authenticity of the unregistered Will forming the basis of the petition. The trial court was directed to adjudicate the petition as a contentious cause under Section 295 of the Indian Succession Act after affording due opportunity to the parties and in accordance with law. [Paras 17 to 19]

Letters of administration — Court fee — Grant of relief.

HELD: The appellant was entitled to deposit the deficient court fee after the petition for letters of administration was allowed but before the actual issuance of the letters of administration. [Paras 17 and 18]

Appeal allowed. Impugned order set aside. Application permitting payment of deficient court fee after grant of letters of administration allowed. (E-14)

Case Law Cited

Km. Rakhi and Another v. First Additional District Judge, Firozabad and Others, 1999 SCC OnLine All 723 — relied on; Dr. Pushpa Puri Memorial Charitable Trust, Mussoorie and Another v. 2nd Additional District Judge, Dehradun and Another, AIR 2010 Uttarakhand 22 — relied on; Prakashchandra Deokaranji Bhoot and Others v. Manoharlal Deokaranji Bhoot and Another, 2023 SCC OnLine Bom 1166 — relied on.

List of Acts / Statutes

Indian Succession Act, 1925; Court Fees Act, 1870.

List of Keywords

Letters of administration; Court fee; Deficient court fee; Ad valorem court fee; Unregistered Will; Harmonious construction; Maintainability of petition.

Case Arising From

Order dated 30.07.2024 passed by the Additional District Judge, Court No. 10, Kanpur Nagar in Original Suit No. 3 of 2023, **Shailendra Jain v. State of U.P. and Others**, whereby Application 39-A Kha seeking permission to make good the deficiency of court fee after grant of letters of administration was rejected

Appearance for Parties

For the Petitioner: Sri Rajnish Sahai Saxena, Ms. Shreya Gupta and Sri Vikas Mathur
For the Respondents: Sri Kripa Shanker Pandey

(Delivered by Hon'ble Sandeep Jain, J.)

1. The instant appeal has been filed by the petitioner/appellant under Section 299 of the Indian Succession Act, 1925, against the impugned order dated 30.07.2024 passed by the Additional District Judge, Court No. 10, Kanpur Nagar, in O.S. No.3 of 2023 (Shailendra Jain vs. State of U.P. and others), whereby the appellant's application 39-A Kha has been rejected, whereby it was prayed that the appellant be permitted to make good the deficiency of Court fees after the letters of administration was granted in his favour.

2. The facts in brief are that the petitioner/appellant applied for grant of letters of administration regarding the unregistered Will dated 16.4.2022, which was executed by his mother Smt. Veer Bala Jain in favour of the appellant whereby all her movable and immovable assets were bequeathed to the appellant. It is the case of the appellant that his father Jitendra Kumar Jain died on 22.11.2004 and his mother Smt. Veer Bala Jain also died on 20.05.2022, as such, after her death the above Will came into effect and for getting letters of administration, the appellant filed O.S. No.3 of 2023 before the Court of District Judge, Kanpur Nagar, which was later on transferred to the Additional District Judge, Court No.10, Kanpur Nagar.

3. It is apparent that at the time of filing the above suit, the petitioner-appellant only paid Court fees of Rs.25/-, whereas the valuation of the suit was Rs.15,00,000/-. A preliminary objection was raised by the Munsarim that the Court fees paid by the petitioner-appellant was deficient by Rs.1,12,882.50 and on this, the petitioner moved an application 39-C dated 13.10.2023 before the trial court to permit him to make good the deficiency of Court fees after the petition seeking letters of administration is allowed and not before the passing of the order of the court.

4. The above application of the petitioner was objected by the contesting respondent No.3 Smt. Shweta Jain on the ground that letters of administration has been sought regarding unregistered Will dated 16.04.2022, which is doubtful, which has not been executed by Smt. Veer Bala Jain, which has been challenged by her. It was further averred that a Court fees of Rs.1,12,882.50 paise was required to be paid on it and as such, without paying this amount the petition seeking letters of administration was not legally maintainable.

5. The trial court vide impugned order dated 30.07.2024 has concluded that as per report of Munsarim dated 16.03.2023, there is a deficiency of Court fees of Rs.1,12,907.50 paise but the petitioner has only paid Rs.25/-, as such, the deficiency of Court fees of Rs.1,12,882.50 paise remains, which is required to be made good. The trial court considered the case law submitted by the petitioner reported in AIR 2010 Uttarakhand 22, but still concluded that since the petition has been converted into an original suit, being a contentious case, as such, the above precedent was not applicable and the petitioner is required to pay ad-valorem Court fees under Section 7(iv-A) of the Court Fees Act, which has not been paid by the petitioner at the time of filing of the petition. In the light of this reasoning, the petitioner was directed to make good the deficiency of court fees of Rs.1,12,882.50 paise, aggrieved against which the petitioner has filed this Appeal under Section 299 of the Indian Succession Act, 1925.

6. Ms. Shreya Gupta, learned Counsel for the appellant submitted that at the time of applying for letters of administration, the petitioner is only required to pay the fixed Court fees of Rs.25/- as per Schedule II of the Court Fees Act and only after the court comes to the conclusion that the

letters of administration is to be granted to the petitioner for a particular amount only then the petitioner is required to pay Court fees on it in accordance with Article 11 of Schedule I of the Court Fees Act, 1870. She further submitted that there is similar provision also for grant of succession certificates under the Indian Succession Act, 1925, where also the required Court fees is paid after the grant of succession certificate. She further submitted that similar controversy was decided by the Uttarakhand High Court in the case of ***Dr. Pushpa Puri Memorial Charitable Trust, Mussoorie and Another vs. 2nd Additional District Judge, Dehradun and Another AIR 2010 UTTARAKHAND 22***, wherein it has been specifically held that the complete Court fees has to be paid only at the time of grant of letters of administration or probate.

7. In the above facts, it was submitted that the trial court has erred in rejecting the petitioner's application 39-A Kha and as such, the appeal be allowed and the petitioner-appellant be permitted to deposit the deficient court fees at the time of grant of letter of administration in his favour.

8. Per contra, learned Counsel for the contesting respondent No.3 submitted that the order is perfectly justified because the petitioner was required to pay the whole amount of Court fees of Rs.1,12,907.50 paise, which has not been paid by the petitioner, as such, the letters of administration cannot be granted in his favour. Learned Counsel further submitted that the letters of administration cannot be granted to the petitioner on the basis of unregistered Will, which is a forged and fabricated document. With these submissions, it was prayed that the appeal is meritless and is liable to be dismissed at the admission stage.

9. I have heard learned Counsel for the parties and perused the impugned order and documents submitted with the appeal. The appeal is admitted.

10. A very short question arises in this appeal whether the petitioner is required to deposit the entire amount of Court fees at the time of applying for letters of administration under Section 276 of the Indian Succession Act, 1925 or he can apply for it with a Court fees of Rs.25/- in accordance with Schedule II of the Court Fees Act, 1870 and later on make good the deficiency in accordance with Article 11 of Schedule I of the Court Fees Act, 1870, at the time of grant of letter of administration or probate.

11. It is apparent from the facts of this case that the petitioner is seeking letters of administration under Section 278 of the Indian Succession Act, 1925 regarding the unregistered Will dated 16.04.2022 of his late mother Smt. Veer Bala Jain, who has died on 20.05.2022.

12. It is also apparent that the petitioner has only paid a fixed Court fees of Rs.25/- under Schedule II of the Court Fees Act, 1870 and it is also apparent that Article 11 of Schedule I of the above Act prescribes the Court fees which is to be paid on a petition seeking letters of administration. If the above two provisions are reconciled then it is apparent that the Court fees prescribed under Schedule II is only a token amount whereas the full Court fees has been prescribed under Article 11 of Schedule I of the Court Fees Act. If the Court fees of Rs.25/- was sufficient then there was no need for the Legislature to enact Article 11 of Schedule I of the Act. It is well settled that all the provisions of the statute are to be harmoniously construed and an interpretation, which renders any provision otiose is to be avoided. In view of this legal principle, it is apparent that at the time of applying for the letters of administration, only a token amount of Rs.25/- is to be paid in accordance with Schedule II of the Act, 1870 and the remaining amount is to be paid under Article 11 of Schedule I, at the time of grant of letter of administration or probate.

13. This Court in the case of ***Km. Rakhi and Another vs. First Additional District Judge, Firozabad and others*** 1999 SCC OnLine All 723, has held that on petition filed under Section 379 of Indian Succession Act, 1925, for issuance of succession certificate, it is not necessary for the petitioner to pay the entire Court fees, except the Court fees of Rs.25/-, while filing the application for succession certificate. It has been further held that complete Court fees has to be paid after the application for succession certificate is allowed.

14. The Uttarakhand High Court in the case of ***Dr. Pushpa Puri Memorial Charitable Trust*** (supra), has also held that in a petition filed under Section 276 for grant of letters of administration under Indian Succession Act, 1925, the petitioner need not deposit the entire amount of Court fees at the time of filing of the petition and he is only required to pay court fees of Rs.25/- as per Schedule II of Court Fees Act, 1870 and only when the letters of administration are issued, he is required to pay complete court fees.

15. The High Court of Bombay in the case of ***Prakashchandra Deokaranji Bhoot and Others vs. Manoharlal Deokaranji Bhoot and Another*** 2023 SCC OnLine Bom 1166, while considering court fees payable on application for grant of Succession Certificate under the Indian Succession Act, 1925, held as under:-

“14. A reading of Sub-Section (1) of Section 379 suggests that every application for a certificate shall be accompanied, not by court-fees, but by a sum equal to such court-fee as may be payable in respect of a Succession Certificate. Sub-Section (1) of Section 379 of the Act, does not prescribe the consequence of non-deposit of the sum referred to therein, when not accompanying the application.

15. It is thus clear that the provision of Section 379 do not prescribe for the payment of requisite court-fee along with the application but prescribe the deposit of a sum of money in the Court, which would be ultimately expended, under orders of the Court, towards purchase of stamp to be used for denoting the fee payable on the value of each of the shares of the successors. In the event of the Court deciding not to allot any share or to dismiss the application, the parties who has deposited such sum would be entitled to a refund of the same in terms of Sub-Section (3) of Section 379. The scheme of Section 379 itself denotes that the sum to be deposited is not actual court-fee under the Court Fees Act but an amount which may be expended or refunded, at the time of final orders to be passed on the application. It would stand to reason therefore, that the provision of Section 379 could not be mandatory and require such a sum or fee to be deposited as a sine qua non for the maintainability of an application under Section 372 of the Act.

16. Looked at from a different angle, neither the provision of Section 372 nor those of Section 379 in any manner lay down that a Court dealing with such an application would lack jurisdiction to proceed with the matter in the absence of the sum required to be deposited under Sub-section (1) of Section 379. The jurisdiction of the Court to proceed to hear an application for issuance of a Succession Certificate would not depend upon whether the sums specified under Sub-section (1) of Section 379 has been deposited or not; however, a combined reading of Sub-section (1) & (3) of Section 379 of the Act, would suggest that the Court would not issue a Succession Certificate on the culmination of the proceedings, to a party declared as a successor or having a share in the estate, unless the requisite court-fees payable on such share is paid before issuance of such a certificate.

20. Considering the provisions of Section 372 read with Section 379 of the Indian Succession Act, 1925, in answer to the questions formulated in para 3 above, I am of the view, for the reasons discussed, that the deposit of the sum to be expended on the fee referred to in Sub-section (1) of Section 379 is not mandatory, and non-deposit of the same along with the filing of the application that issuance of Succession Certificate under Section 372 of the Act, does not affect the maintainability of the application or of the jurisdiction of the Court to proceed to deciding the application...”

16. It is apparent that a token amount of Rs.25/- is to be paid at the time of moving application seeking letters of administration under Section 276 of the Indian Succession Act and only when the court allows that application then the petitioner is required to deposit the complete Court fees, for the actual issuance of the letter of administration. It is apparent that the petitioner is not supposed to deposit the complete fee at the time of moving the above petition seeking grant of letters of administration.

17. In view of the above facts and law, the impugned order passed by the trial court is certainly erroneous and is liable to be set aside, which has directed the petitioner to deposit the entire Court fees on the petition seeking letters of administration prior to grant and issuance of certificate to the petitioner. This appeal has merit and is liable to be allowed.

18. **Accordingly, the instant appeal is allowed.** Consequently, the impugned order dated 30.07.2024 is set aside and the petitioner's application 39-A Kha stands allowed and the petitioner is permitted to make good the deficiency of court fees after grant but before the issuance of letters of administration.

19. This court has not expressed any opinion as to the genuineness and authenticity of the Will dated 16.04.2022 executed by late Smt. Veer Bala Jain. The trial court is directed to decide the petition seeking letters of administration as a contentious case under Section 295 of the Indian Succession Act, 1925, after giving due opportunity to the opposite parties, preferably within a period of six months from the date of production of certified copy of this order, without affording unnecessary adjournments to either of the parties, in accordance with law.

(2026) 4 ILRA 2037
APPELLATE JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 07.04.2026

BEFORE

THE HON'BLE SANDEEP JAIN, J.

First Appeal No. 273 of 2026

Mr. Puneet Sachdeva
IndusInd Bank & Ors.

...Appellant
Versus
...Respondents

Issues for Consideration

- (i) Whether a civil suit instituted by an employee of a private bank challenging his dismissal from service was barred for want of jurisdiction on the ground that the relief claimed pertained to termination of service?
- (ii) Whether the Trial Court rightly held that the proviso to Order XXXIX Rule 2(2) CPC, as inserted by Section 13 of U.P. Act No. 57 of 1976, barred the jurisdiction of the Civil Court to entertain the suit?
- (iii) Whether an employee of a private bank, whose service conditions are governed by contractual service rules and not by statutory rules, is entitled to reinstatement and consequential service benefits or is confined to the remedy of damages for wrongful termination?
- (iv) Whether the Trial Court was justified in dismissing the suit solely on the question of jurisdiction without adjudicating the dispute on merits?

Headnotes

Civil Procedure—Civil Court—Jurisdiction—Employee of private bank challenging dismissal from service—Maintainability of suit.

HELD: The jurisdiction of a Civil Court under Section 9 CPC can be excluded only by an express statutory provision or by necessary implication coupled with the availability of an adequate and efficacious alternative remedy. Neither the Executive Staff Service Rules, 1994 governing the plaintiff nor any statutory provision expressly barred institution of a civil suit challenging the legality of his dismissal. Since the defendant is a private bank and the plaintiff's service conditions were purely contractual, the Civil Court alone constituted the appropriate judicial forum for adjudicating the dispute. The Trial Court, therefore, erred in holding that it lacked inherent jurisdiction to entertain the suit. [Paras 42, 46 to 49]

Civil Procedure—Order XXXIX Rule 2(2) CPC (U.P. Amendment)—Section 13 of U.P. Act No. 57 of 1976—Scope—Bar against grant of injunction distinguished from jurisdiction to entertain suit.

HELD: The proviso inserted by Section 13 of U.P. Act No. 57 of 1976 merely prohibits grant of injunction in specified service matters. It does not exclude the jurisdiction of the Civil Court to examine the legality of termination or to grant such reliefs as are otherwise permissible in law. The Trial Court wrongly treated the statutory restriction on grant of injunction as a complete bar to its jurisdiction and thereby failed to exercise jurisdiction vested in it. [Paras 47 to 49]

Private employment—Contract of personal service—Termination—Relief of reinstatement—When impermissible.

HELD: Where employment is governed purely by contract and the employer is neither the State within the meaning of Article 12 of the Constitution nor a statutory body governed by statutory service rules, the contract of personal service cannot be specifically enforced. Even if termination is found to be illegal, the employee is not entitled to reinstatement or declaration that the contract of employment subsists. The remedy is confined to damages for wrongful termination. [Paras 43 to 46]

Private Bank—Service Rules—Executive Staff Service Rules, 1994—Non-statutory character—Effect.

HELD: The plaintiff's service was regulated by the Executive Staff Service Rules, 1994 and the Code of Conduct framed by the private bank. The said Rules were contractual and not statutory in nature. The defendant Bank was neither 'State' within the meaning of Article 12 nor were Articles 309 and 311 of the Constitution or labour law protections applicable to the plaintiff. Consequently, the plaintiff could neither invoke writ jurisdiction nor claim reinstatement as a matter of right. [Paras 27, 37, 43 and 46]

Specific Relief Act, 1963—Contract of personal service—Wrongful dismissal—Damages—Maintainability of claim.

HELD: Although reinstatement and mandatory injunction compelling continuance in service cannot be granted in respect of private contractual employment, the employee is entitled to establish that his dismissal was illegal or contrary to the applicable service rules and principles of natural justice and may recover damages for wrongful termination. Such claim is maintainable before the Civil Court. [Paras 43, 49 and 50]

Specific Relief Act, 1963—Section 40—Damages in addition to or in substitution of injunction—Amendment of plaint.

HELD: The Trial Court failed to consider that the plaintiff had already filed an application under Order VI Rule 17 CPC seeking amendment of the plaint to claim damages and that under Section 40 of the Specific Relief Act, damages may be claimed in addition to or in substitution of an injunction and such amendment may be permitted at any stage of the proceedings. Failure to decide the amendment application before dismissing the suit reflected non-application of mind. [Para 50]

Civil Procedure—Dismissal of suit solely on preliminary issue of jurisdiction—Failure to decide merits—Illegality.

HELD: The Trial Court dismissed the suit exclusively on the issue of jurisdiction without examining the legality of the disciplinary proceedings, the plaintiff's challenge to the dismissal order or the relief of damages. Since the Court possessed jurisdiction to entertain the suit, the impugned judgment was legally unsustainable and liable to be set aside with a direction for fresh adjudication on merits. [Paras 49 to 55]

Remand—Trial Court—Directions.

HELD: The judgment and decree dismissing the suit were set aside. The suit was restored to its original number with a direction to the Trial Court to decide it expeditiously, preferably within six months, on the basis of the pleadings and evidence already on record. It was clarified that the High Court had expressed no opinion on the merits of the disciplinary proceedings or the legality of the plaintiff's dismissal. [Paras 51 to 55]

Appeal allowed with costs. Judgment and decree set aside. Suit restored for decision on merits.
(E-14)

Case Law Cited

Dhruv Green Field Ltd. v. Hukam Singh and Others, (2002) 6 SCC 416 — relied on; Ramendra Kishore Biswas v. State of Tripura, (1999) 1 SCC 472 — relied on; Shivdhesar Singh v. District Judge, Mirzapur and Others, 1996 (2) AWC 1317 (All) — relied on; Saurabh Kumar Pandey v. IndusInd Bank Ltd., Writ-A No. 7007 of 2023 (Allahabad High Court) — relied on; Federal Bank Ltd. v. Sagar Thomas and Others, (2003) 10 SCC 733 — relied on; Sitaram Kashiram Konda v. Pigment Cakes and Chemicals Manufacturing Co., AIR 1979 SC 745 — relied on; S.N. Goyal v. Bank of Baroda, (2008) 8 SCC 92 — relied on; Kailash Singh v. Mayo College General Council, (2018) 18 SCC 216 — relied on; Sirsi Municipality v. Cecelia Kom Francis Tellis, (1973) 1 SCC 409 — relied on; Premier Automobiles Ltd. v. Kamlekar Shantaram Wadke, (1976) 1 SCC 496 — referred to; Ram Swarup v. Shikar Chand, AIR 1966 SC 893 : (1966) 2 SCR 553 — referred to.

List of Acts / Statutes/Books

Code of Civil Procedure, 1908; Specific Relief Act, 1963; Constitution of India; Industrial Disputes Act, 1947; Banking Regulation Act, 1949; U.P. Act No. 57 of 1976.

List of Keywords

Civil Court jurisdiction; Private employment; Contract of personal service; Private bank; Dismissal from service; Reinstatement; Wrongful termination; Damages; Specific Relief Act; Executive Staff Service Rules; Jurisdiction; Remand.

Case Arising From

Judgment and decree dated **10.07.2023** passed by the **Additional Civil Judge (Senior Division), Court No. 16, Prayagraj** in **Original Suit No. 180 of 2015, Puneet Sachdeva v. IndusInd Bank and Others.**

Appearance for Parties

For the Revisionist: Sri Anshul Kumar Singhal.

For the Respondents: Sri Mayank Awasthi and Sri Saurabh Raj Srivastava.

(Delivered by Hon'ble Sandeep Jain, J.)

1. The instant appeal has been filed by the plaintiff under Section 96 CPC against the impugned judgment and decree dated 10.7.2023 passed by Additional Civil Judge(Senior Division) Court No. 16, Allahabad in O.S. no. 180 of 2015 Puneet Sachdeva vs.IndusInd Bank and others, whereby the plaintiff 's suit has been dismissed on the ground that the Court lacks inherent jurisdiction to try and decide the suit.

Plaint case

2. The plaintiff filed O.S.no.180 of 2015 against the defendants who are IndusInd Bank and its officials, with the averments that he joined the Bank on 21.8.2008 as Senior Relationship Manager at its Barakhamba Branch, New Delhi and by his dedication, devotion, hard work, excellent performance and appraisal, was promoted as Branch Manager and was transferred to Allahabad Branch of the defendant Bank in June 2011,where he worked there till 9.5.2013. It was further averred that during his tenure of 6 years with the bank, he received commendations, appreciation letter for his work and his appraisal ratings in 4 years from 2008 - 2009 to 2011 - 12 remained outstanding and excellent and he earned promotions from the rank of Deputy Manager to Asst. Vice President on the basis of his hard work, commitment and devotion.

3. It was further averred that in the financial year 2011 - 12 he received appreciation for detecting fraud of ₹ 5 lakhs on account of Mr.Shobhit Srivastava and recovery of ₹ 3 lakhs was effected against the outstanding of ₹ 5 lakhs.

4. It was further averred that as Branch Manager he was not dealing with disbursement/receipt of cash/cheque etc. but was required to examine transactions of ₹ 5 lakhs and above from the daily reports that were brought by the staff to his notice apart from his other routine duties and as Branch Manager, he was required to counter sign the vouchers of ₹ 5 lakhs and above which were initially signed by operation of staff and Manager - Customer Service and Operations(MCSOP). It was further averred that the defendant Bank had given MCSOP the discretionary power to authorise all transactions and to counter sign the voucher for the transaction up to ₹ 5 lakh and vouchers of transaction of ₹ 5 lakh and above were to be signed by the operational staff, MCSOP and Branch Manager. At the relevant time Mr. Neeraj Verma was the MCSOP.

5. It was further averred that the prime responsibility of cash officer Mr. Sachin Yadav of the defendant Bank at Allahabad was receipt and payment of cash to ensure cash management is within retention limit, maintenance of cash registers, joint custodian of vault and ATM. The clearing officer Mrs.Amba Lakshmi of defendant Bank was overall in charge of inward/outward clearing,

reconciliation of accounts with banks, lodgment of outward cheques, all work related to ECS credits, reporting, returns and effective closure of complaints/issues related to it.

6. It was further averred that the prime responsibility of remittance officer Mrs. Suchitra Prajapati of the defendant Bank was issuance, revalidation, cancellation of demand draft and pay orders to customers, transfer entries, RTGS, arrangement of vouchers, daily reconciliation of FD suspense accounts, daily report checking and arrangement and verifying the vouchers which are incomplete, dispatching a voucher to VVU and responding to their queries.

7. It was further averred that the Branch Monitoring Unit (BMU) audit was done on quarterly basis in each Branch and the audit of the defendant Banks' Allahabad Branch was reviewed by Mr. Anurag Chaudhary on 14.3.2013 which was for the period 27.8.2012 to 13.3.2013 and certain observations were made in the audit, which were resolved during course of the report submission and Mr. Neeraj Verma MCSOP mentioned his feedback on various points highlighted in the audit report. The plaintiff has specifically averred that in the above audit there was no mention of missing vouchers and none of the fraudulent transactions could be traced and detected. It was further averred that in the internal audit conducted by the Bank the performance of the Branch was found satisfactory and no fraud of any kind was found in the Branch.

8. The plaintiff has mentioned relevant details in the plaint to point out that Mr. Neeraj Verma was not performing properly, which was also in the notice of higher officials of the Bank. The plaintiff has also averred that Mrs. Suchitra Prajapati who was reporting to Mr. Neeraj Verma MCSOP, was also not deliberately preparing the vouchers of fraudulent transactions and had been showing wrong POD. Mr. Neeraj Verma was also providing wrong and false information to him regarding sending of pending vouchers and this fact was brought to his notice by VVU (voucher verification unit). It is the case of the plaintiff that if transfer vouchers would have been sent to the VVU promptly by Mr. Neeraj Verma then the fraud in regard to unauthorised transactions would have been traced.

9. It was further averred that on 1.5.2013 the plaintiff received a transfer order from the defendant bank that he had been transferred to his home town Delhi at Naraina Branch of the defendant Bank. The plaintiff handed over the charge of his branch to Mr. Vishwaneeet Khosla on 9.5.2013, and the plaintiff was relieved on 13.5.2013. The plaintiff was later on directed by the defendant Bank to join Gujranwala Branch on 18.5.2013, to which he complied.

10. It is the specific case of the plaintiff that on 30.5.2013 he came to know that Mrs. Suchitra Prajapati has committed fraud in internal accounts and misappropriated funds in several customer accounts and the BMU team of the Bank was locating fraudulent entries done by her. The plaintiff was also informed that fraudulent entries beyond her power were authorised by using ID of Mr. Neeraj Verma MSCOP and Mr. Vineet Gupta, Authoriser. The plaintiff was further informed that Mrs. Suchitra Prajapati has confessed to committing fraud amounting to ₹ 41 lakhs consisting of ₹ 17.77 lakhs during the tenure of plaintiff and the remaining ₹ 23.23 lakhs in the period of his successor. The plaintiff was also informed that the Bank has recovered most of the amount. Subsequently, Mrs. Suchitra Prajapati denied that the fraud was committed by her. She also lodged

a case of sexual harassment against all the officials of the defendant bank, who persuaded her for depositing back the amount of fraud, with police authorities and to higher authorities of the Bank.

11. It is the specific case of the plaintiff that the fraud committed by Mrs. Suchitra Prajapati was due to sheer negligence of Mr. Neeraj Verma MCSOP, which was detected by Mr. Gautam Singh of the Branch Monitoring Unit(BMU) who visited the Branch on 27.5.2013 to take stock of the situation and checked the transactions for missing vouchers along with Mr. Neeraj Verma MCSOP.

12. The plaintiff has further averred that due to the above fraud committed by Mrs. Suchitra Prajapati he was suspended by the Bank on 30.9.2013, a disciplinary enquiry was instituted by the Bank regarding the above fraud in which the chargesheet was served on Mrs. Suchitra Prajapati on 9.10.2013, Mr. Neeraj Verma and on him on 18.2.2014, but the disciplinary enquiry was only conducting enquiry for the charges levelled against Mrs. Suchitra Prajapati in the chargesheet given to her whereas, the same should have been done for all the employees to whom the chargesheet was served. According to the plaintiff, it was strange that for one offence different chargesheets were issued. It is the case of the plaintiff that the higher officials of the defendant Bank intimated to him that the fraud had been committed by Mrs. Suchitra Prajapati but to make it appear as serious action, they had also suspended plaintiff for the brief period. It was further averred that on 22.6.2013 the defendant Bank lodged FIR against Mrs. Suchitra Prajapati for committing fraud of ₹ 41 lakhs, in which there was no mention of his involvement, in any manner whatsoever, which is still pending for investigation, in which no chargesheet has been filed till date.

13. It was further averred by the plaintiff that he was suspended by the defendant Bank on 7.10.2013, chargesheet was served on him on 18.2.2014, on 19.2.2014 he was served with the fresh chargesheet on the same grounds in Delhi, on which enquiry was already held in Allahabad. It was further averred that the plaintiff was not given proper opportunity of submitting his reply, since he had to collect and peruse the relevant records for negating the charges, the opportunity given to him was too short, due to which he could not prepare his proper defence statement, the defendant Bank also failed to comply with the principles of natural justice. The plaintiff has further averred that in the meanwhile the higher officials of the Bank were sending clear signal to him that he would be exonerated in the enquiry since he was not part of the fraud as such, he need not raise all those objections.

14. The following charges were levelled against the plaintiff in the disciplinary enquiry conducted by the defendant Bank :-

“(i)Despite mails from BMU, the charged executive and the Manager Customer Service and Operations(MCSOP) failed to reconcile internal account.

(ii)The charged executive and the MCSOP failed to send the vouchers to VVU despite follow-up by BMU. No proper tracking was done at the branch by the charged executive and the MCSOP.

(iii)Daily report was not checked by the charged executive and the MCSOP.

(iv)Mrs. Suchitra Prajapati had not prepared the vouchers and ensured that the vouchers were not sent to VVU, to avoid detection of unauthorised entries by VVU Hub.

(v)The MCSOP Mr.Neeraj Verma has allegedly shared the password to Mrs. Suchitra Prajapati which was done by her with his authority and used in the transaction undertaken by her."

15. It was further averred by the plaintiff that a 2nd domestic enquiry on 25.2.2014 was conducted against him at the corporate office of the defendant Bank at Mumbai by Mr. Sachin Pandey, who was junior to him. It was further averred that the plaintiff came to know from the BMU team that Mr. Neeraj Verma has been reinstated in the job with some punishment. The plaintiff was ultimately dismissed on 19.5.2014 by the defendant no. 2 Mr.Ashok Nair, Head Human Relations of the defendant Bank, on the basis of the report of the disciplinary enquiry, which according to the plaintiff was grossly disproportionate and unwarranted, since there was no evidence against him. According to the plaintiff, the fraud was committed by Mrs. Suchitra Prajapati and Mr. Neeraj Verma, MCSOP but he was wrongly punished. It has been specifically averred by the plaintiff that he has never made any admission of his guilt in the disciplinary enquiry before any official of the Bank or of his wrongdoing in any manner whatsoever. It was specifically averred by the plaintiff that his password was not used in committing fraud nor he had authorised any fraudulent transaction undertaken by Mrs. Suchitra Prajapati and Mr. Neeraj Verma MCSOP.

16. It has been further averred by the plaintiff that for filing Appeal against his dismissal order, he demanded the relevant documents from the Bank which were not provided to him on the ground that they were not relevant. The plaintiff submitted his Appeal against the order of disciplinary authority to defendant no. 2 on 19.6.2014.

17. It was further averred that the Appellate Authority added 2 additional charges on 7.10.2014 against him, which were not before the disciplinary authority in the chargesheet dated 18.2.2014, which was against the principles of natural justice, which read as under :-

"(i) There has been many lapses on your part such as debiting dormant accounts and booking life insurance policies in dummy names and allowing free hand to Mrs. Suchitra Prajapati to undertake transactions to inflate business.

(ii>Password sharing too seems to have been done under your pressure since Mrs. Suchitra Prajapati was managing with some of the customers by selling life insurance policies as also making the MCSOP and the authorisers move out for business."

18. It was further averred that the Appellate Authority failed to conduct impartial enquiry, which failed to properly examine the material on record, who has illegally upheld his termination from the Bank. The plaintiff further averred that due to the illegal termination,he has suffered a loss of about ₹ 26,49,663/-which he is entitled to get with interest @ 18% per annum from the defendant Bank and its officials.

19. In the above backdrop ,the plaintiff claimed the following reliefs in his plaint:-

"(A) Pass a decree of declaration to the effect that the Appellate order dated 8.10.2014 passed by defendant no. 3 and order dated 19.5.2014 passed by defendant no. 2 is illegal and is nullity;

(B) Pass a decree of permanent injunction against the defendant no.1 Bank injunctioning the defendant No. 1 Bank to terminate the plaintiff;

(C) Pass a decree of declaration to the effect that the plaintiff is entitled to his back wages with interest and all employment benefits;

(D) Pass a decree of mandatory injunction directing defendant No. 1 Bank to reinstate the plaintiff forthwith with full back wages and employment benefits;

(E) Award cost of the suit in favour of plaintiff and against the defendants;

(F) Pass any such order as this Hon'ble Court deems fit proper in the facts and circumstances of the present case."

Written statement of the defendants

20. All the defendants filed their joint written statement before the trial court, in which the plaint averments were denied. It was averred that the relief claimed by the plaintiff cannot be granted in original suit, which was not maintainable for the reliefs claimed by him. It was further averred that the plaintiff was directly responsible for the fraud which was committed in his Branch for which appropriate disciplinary proceedings were drawn against him and in pursuance of that, the plaintiff has been rightly dismissed from service of the Bank. It was further averred that the plaintiff, being the Branch Manager, was responsible for all high-value transactions, he was supposed to check and sign the vouchers, being the custodian and overall incharge of the Branch.

21. It was further averred by the defendants that during enquiry several transactions above ₹ 5 lakhs were found, which were not duly checked by the plaintiff, on account of which fraud was committed, which caused serious financial and reputational loss to the Bank. It was further averred that MCSOP worked under the supervision of the plaintiff and it was his duty to ensure that MCSOP worked in a fair and error free manner, in which the plaintiff failed. It was further averred that on account of several supervisory and controlling lapses committed by the plaintiff, Mrs. Suchitra Prajapati, a subordinate employee of the plaintiff, was able to commit fraud amounting to ₹ 40 lakhs. The defendants in their written statement have justified the dismissal of the plaintiff, for the alleged lapses committed by him during his tenure as a Branch Manager.

22. It was further averred by the defendants that after disciplinary enquiry Mrs. Suchitra Prajapati has also been dismissed from service. It was further averred that plaintiff was charged for his negligence and dereliction of duties towards the Bank and because the plaintiff was negligent, the fraud was perpetuated in the Branch, during his tenure as Branch Manager. It was further averred that the plaintiff was given full opportunity to defend himself in the enquiry proceedings in which chargesheet was given to him, and thereafter, final order of dismissal was passed. It was further averred that the plaintiff has not pointed out any procedural irregularity in the disciplinary proceedings conducted by the defendant Bank, and has only pressed upon the factual aspects of the matter, which have already been dealt with in the enquiry proceedings, hence the dismissal as well as the appellate orders, does not warrant any interference by this Court. It was further averred that Mr. Neeraj Verma was also punished in the disciplinary enquiry.

23. It was further averred by the defendants that the relief of re-instatement in service cannot be granted by the Court. Further, the order of dismissal from service cannot be challenged by way

of civil suit. It was further averred that the plaintiff was suspended on 30.9.2013, a chargesheet was served on him on 18.2.2014 for breach of the Executive Staff Service Rules, 1994 and the Code of Conduct, as applicable to him. It was further averred that the appeal preferred by the plaintiff before the Appellate Authority was dismissed by a reasoned order on 8.10.2014. It was averred by the defendants that no illegality has been committed by the Bank in dismissing the plaintiff, in view of this, the suit was liable to be dismissed with costs.

Issues framed by the trial court

24. On the basis of the pleadings of the parties the trial court framed the following issues:-

- “(i) Whether the plaintiff had been unlawfully suspended from service by the defendants ?*
- (ii) Whether the plaintiff suffered any economic loss due to unlawful and arbitrary act of defendant no.1 ?*
- (iii) Whether the suit is under valued ?*
- (iv) Whether the court fees paid by the plaintiff is insufficient ?*
- (v) Whether the court has jurisdiction to try the suit ?*
- (vi) Whether any cause of action has arisen to the plaintiff ?*
- (vii) Whether plaintiff is entitled to the relief claimed by him ? ”*

25. It is evident from the record of the trial court that the plaintiff examined himself as PW-1 before the trial court, but he was not cross-examined by the defendants, inspite of numerous opportunities provided by the trial court, as such, the opportunity of the defendants to cross-examine plaintiff was closed on 29.10.2021. No further evidence was adduced by the plaintiff. The case was proceeded ex-parte against the defendants on 11.11.2022 and after the closure of plaintiffs evidence, the case was fixed for hearing ex-parte arguments, the arguments of the plaintiff were heard on 04.7.2023 and thereafter, the suit was dismissed on 10.7.2023.

Reasoning of the trial court

26. The trial court considered Section 9 and Order 39 Rule 2(2) CPC, as well as the amendment made by Section 13 of the Uttar Pradesh Act 57 of 1976, and from their combined reading, concluded that the trial court lacked inherent jurisdiction to try the suit since the plaintiff was seeking the relief of declaration and mandatory injunction against the order of termination of service, which was specifically barred by Section 13 of the Uttar Pradesh Act 57 of 1976. In the light of the above conclusion, issue no. 5 relating to jurisdiction was decided against the plaintiff. The trial court did not examine the controversy on merit. The plaintiff's suit was dismissed on the ground of being barred by jurisdiction, aggrieved against which, the plaintiff has filed the instant appeal under Section 96 of the CPC.

Submissions made by the learned counsel of the parties

27. Sri Anshul Kumar Singhal learned counsel for the plaintiff appellant submitted that the defendant IndusInd Bank is a private bank, which is not owned by the Government, the employees of which are not governed by any statutory rules, but only governed by the private rules and Code

of Conduct framed by the Bank. It was further submitted that the Bank does not fall in the definition of State or other authorities, so as to attract the provisions of Article 12 of the Constitution of India, as such, the Bank is not amenable to Writ jurisdiction of the Constitutional Courts, meaning thereby, that the employee cannot challenge his illegal dismissal from service by invoking the Writ jurisdiction of the Constitutional Courts. It was further submitted by the learned counsel that the plaintiffs service was not governed by any statutory rules but by Executive Staff Service Rules, 1994 of the defendant Bank and the plaintiff was also bound by the Code of Conduct applicable to him.

28. It was further submitted that since the plaintiff appellant has exhausted the departmental remedy of Appeal provided by the defendant Bank, as such, since no other remedy was available to him, hence, he can very well challenge his illegal termination from the service of the Bank by filing the instant suit, and can also claim the relief that his illegal termination from service be set aside, he be reinstated in service and he be also paid back wages for the illegal duration of termination. Learned counsel further submitted that the plaintiff can also claim damages for his illegal termination from the defendants.

29. It was further submitted that the provisions of Section 13 of U.P. Act 57 of 1976, were inapplicable and the trial court has misread the above provision. It was further submitted that the jurisdiction of civil court was not barred in this matter, as such the trial court has committed material illegality in rejecting the plaintiff's suit on this ground, which is liable to be set aside. With these submissions, it was prayed that the appeal be allowed, the impugned order be set aside and the matter be remanded back to the trial court for deciding it on merits. In support of his contention, the learned counsel has relied on the following case law :-

- “(i) Shivdhesar Singh vs. Union of India 2010 SCC OnLine All 1820.*
- (ii) Ramendra Kishore Biswas vs. State of Tripura and ors. (1999) 1 SCC 472 (By 3 Judges).*
- (iii) Saurabh Kumar Pandey vs. Reserve Bank of India and ors. Writ 'A' no. 7140 of 2021 decided on 01.10.2021 by Allahabad High Court.*
- (iv) Dhruv Green Field Ltd. vs. Hukum Singh and others AIR 2002 SC 2841.*
- (v) Sitaram Kashiram Konda vs. Pigment Cakes & Chemicals Mfg. Co. (1979) 4 SCC 12.”*

30. Per contra, Sri Saurabh Raj Srivastava learned counsel for the defendant respondent Bank submitted that the plaintiff committed certain serious lapses during his tenure as Branch Manager of the Allahabad Branch of the defendant Bank, due to which the bank suffered financial loss of ₹ 41 lakhs and the reputation of the Bank was also tarnished, for which disciplinary enquiry was conducted as per the rules and regulations of the bank against responsible employees, by following the principles of natural justice and affording full opportunity to the plaintiff to submit his defence, in which he was found guilty, as a result of which, he was dismissed from the services of the Bank, which was challenged by the plaintiff by filing appeal, which was also dismissed on merits by the Bank.

31. Learned counsel further submitted that the dismissal of the plaintiff has attained finality, which neither can be set aside by the civil court nor it can order plaintiffs reinstatement in the service of the defendant Bank. It was further submitted that at the most, if the plaintiffs termination

was found illegal by the Court, it can only award damages to the plaintiff for his illegal termination, but the plaintiff has not claimed any damages as such, even the damages cannot be awarded to the plaintiff.

32. It was further submitted that the plaintiff has sought the relief of declaration that his termination from the service of the Bank was illegal, the relief of permanent injunction for restraining the Bank from terminating him from the service of the Bank, back wages with interest and all employment benefits and mandatory injunction for his reinstatement with full back wages and employment benefits, which cannot be granted by the Court. It was further submitted that since the plaintiff has already been terminated from the service of the Bank as such, the relief of permanent injunction cannot be granted to the plaintiff. With these submissions, it was prayed that the appeal is meritless and is liable to be rejected. Learned counsel has relied upon the decision of the Apex Court in ***State Bank of India and ors. vs. S.N. Goyal (2008) 8 SCC 92***.

33. I have heard the learned counsel for the parties, perused the impugned judgment and the record of the trial court. Appeal is admitted.

34. The following issues arise for determination in this appeal :-

“(A) Whether the civil court lacked inherent jurisdiction to examine whether plaintiff's termination from the service of the defendant Bank was illegal ?

(B) What relief could have been granted by the Court to the plaintiff in the suit? ”

Analysis of case law submitted by the learned counsel

35. This Court in the case of ***Shivdhesar Singh*** (supra) was considering a case where the services of Constable employed in the Central Reserve Police Force was terminated and he had challenged it by filing civil suit. It was contended by the respondents that an alternative remedy under the Central Administrative Tribunal Act was available to the plaintiff, as such, the suit was not legally maintainable, but the submission was rejected by this Court, on the ground that, the exclusion of the jurisdiction of the civil court in view of Section 14 of the Specific Relief Act or even on account of the fact that the Central Reserve Police Force Act provides for a complete mechanism for redressal of the grievance of the plaintiff appellant, cannot be inferred. It was further held that where the relevant service rules neither expressly nor by implication takes away, the jurisdiction of the civil court to deal with the service matter, it was not proper to hold that the civil court had no jurisdiction.

36. The Apex Court in the case of ***Ramendra Kishore Biswas*** (supra) was considering a case where the employee of the Central Government had challenged his dismissal from service as void and illegal and had filed civil suit claiming reinstatement. The High Court held that under Rule 24 of the CCS(CCA) Rules, 1965 the jurisdiction of the civil court was barred, and only in the writ petition the termination order could have been challenged. In these circumstances, it was held by the Apex Court as under:-

“5. The opinion expressed by the learned Single Judge to the effect that in view of the CCA Rules, the jurisdiction of the civil court is ousted from dealing with an order passed by the disciplinary authority which can be questioned under the Service Rules and that even after recourse is had to the departmental proceedings, recourse can only be to file a writ petition is palpably erroneous. The learned Single Judge readily accepted the ouster of jurisdiction of civil courts to deal with service matters without proper consideration of the matter. Indeed, it is appropriate to relegate a person to exhaust departmental remedies when he approaches the court without exhausting departmental remedies under the Service Rules but to hold that the civil court had no jurisdiction while hearing a second appeal, after the matter has been litigated in civil courts for more than five years was, to say the least, not proper. The learned Single Judge ought to have decided the case on its own merits and not made a short-cut of it. The appellant could not have been non-suited on the ground that he had failed to take recourse to proceedings under the CCS (CCA) Rules, 1965 against the order of dismissal.

6. Again the opinion expressed by the learned Single Judge to the effect:

It is my firm conviction that in the present case, the civil court cannot make a declaration under Section 34 of the Specific Relief Act, 1963 as its jurisdiction has been taken away by the special rules, i.e., the CCS (CCA) Rules, 1965. Under the circumstances, it means a civil court does not have jurisdiction in respect of matters which are entertained and decided by the statutory tribunal in conformity with the powers conferred by the enactment. ”

is clearly erroneous and cannot be sustained. Service Rules, neither expressly nor by implication, have taken away the jurisdiction of the civil courts to deal with service matters. The opinion of the learned Single Judge does violence both to the Code of Civil Procedure, the Specific Relief Act and the Service Rules. As a matter of fact it appears to us that the learned Single Judge failed to exercise the jurisdiction vested in him while non-suiting the appellant. It, therefore, appears appropriate to us to allow this appeal, set aside the order of the learned Single Judge and remit the matter to the High Court for a fresh decision of the regular second appeal and the cross-objections on their own merits. The appeal, therefore, succeeds and is allowed. The RSA and cross-objections are remitted to the High Court for fresh disposal on merits in accordance with law. ”

37. This Court in **Saurabh Kumar Pandey** (supra) was considering a case where the service of an employee of IndusInd Bank Ltd. was terminated, and the employee challenged the termination order by filing writ petition under Article 226 of the Constitution of India. The learned counsel of the Bank had specifically submitted that writ petition against the employer, a private Bank, was not maintainable since the service contract of a private bank employee cannot be enforced in writ jurisdiction. This Court after considering the various precedents of the Apex Court, held as under:-

“6. It is not disputed by the learned counsel for the petitioner that respondent bank is a private sector Bank duly incorporated and having licence under Banking Regulation Act, 1949. Reserve Bank of India is entrusted with the full responsibility for supervising and regulating the banks, including, private banks. Under Section 22 of the Act, 1949, private banks are required to obtain license from RBI to carry out the banking business in India. On specific query, learned counsel for petitioner is unable to show that service conditions of the petitioner is governed under any statutory Rules applicable to the employees of a private bank.

7. The private banks would be amenable to the writ jurisdiction for breach of any of the statutory provision under which it is incorporated or bound to be governed, but the services of the

employee of a private bank is contractual and governed as per the Rules framed by the Bank/employer. In the instant case, petitioner is governed by Discipline and Appeal Rules, and the Code of Conduct, as applicable on the employees of the Bank.

8. Whether a private company engaged in banking business performs public function, in other words, does banking business as a scheduled bank involve public law element was considered by the Supreme Court in *Federal Bank Ltd vs. Sagar Thomas and others* (2003)10 SCC 733, the Court held that a private company carrying on banking business as a scheduled bank, cannot be termed as an institution or company carrying on any statutory or public function. A private body or a person may be amenable to writ jurisdiction only where it may become necessary to compel such body or association to enforce any statutory obligations or such obligations of public nature casting positive obligation upon it. The statutory provisions governing a private bank is merely regulatory. To put it differently a company engaged in banking business is not required to perform public function, nor essential governmental function is placed upon it.

14. The private bank, as held in *Federal Bank Ltd.(supra)* is not imparting public duty. Even if it is assumed that a private bank is imparting public duty, the act complained of must have direct nexus with the discharge of public duty. It is undisputedly a public law action which confers a right upon the aggrieved to invoke extraordinary writ jurisdiction under Article 226 for a prerogative writ. Individual wrongs or breach of mutual contracts without having any public element as its integral part cannot be rectified through petition under Article 226. Wherever Courts have intervened in exercise of jurisdiction under Article 226, either the service conditions were regulated by statutory provisions or the employer had the status of 'State' within the expansive definition under Article 12 or it was found that the action complained of has public law element.

15. On specific query, learned counsel for the petitioner does not dispute that the conditions of service governing the petitioner are not statutory. The terms and conditions of employment are purely contractual governed under rules framed by the Bank.

16. In view thereof, the preliminary objection raised by learned counsel for the respondent that the writ petition against the impugned termination order would not lie within the domain of writ jurisdiction under Article 226 of the Constitution of India is sustained and upheld."

38. The Apex Court in the case of **Dhruv Green Field Ltd.** (supra) was considering the jurisdiction of the civil courts and when it can be barred. It was held as under:-

8. The jurisdiction of the courts to try all suits of civil nature is very expansive as is evident from the plain language of Section 9 of the Code of Civil Procedure. This is because of the principle *ubi jus ibi remedium*. It is only where cognizance of a specified type of suit is barred by a statute either expressly or impliedly that the jurisdiction of the civil court would be ousted to entertain such a suit. The general principle is that a statute excluding the jurisdiction of civil courts should be construed strictly.

9. The question, when and in what circumstances, can a suit of civil nature be said to be barred by a special statute, is no longer *res integra*. In *Kamala Mills Ltd. v. State of Bombay* [AIR 1965 SC 1942] a seven-Judge Bench of this Court laid down the principle thus:

"The question about the exclusion of the jurisdiction of civil courts either expressly or by necessary implication must be considered, in every case, in the light of the words used in the

statutory provision on which the plea is rested, the scheme of the relevant provisions, their object and their purpose.

Whenever a plea is raised before a civil court that its jurisdiction is excluded either expressly or by necessary implication to entertain claims of a civil nature, the court naturally feels inclined to consider whether the remedy afforded by an alternative provision prescribed by a special statute is sufficient or adequate. Where the exclusion of the civil court's jurisdiction is expressly provided for, the consideration as to the scheme of the statute in question and the adequacy or the sufficiency of remedies provided for by it may be relevant, it cannot, however, be decisive.

But when exclusion is pleaded as a matter of necessary implication, such considerations would be very important, and, in conceivable circumstances, might even become decisive. If a statute creates a special right or a liability and provides for the determination of the right and liability to be dealt with by tribunals specially constituted in that behalf, and it further lays down that all questions about the said right and liability shall be determined by the tribunals so constituted, it is pertinent to enquire whether remedies normally associated with actions in civil courts are prescribed by the said statute or not."

That judgment was followed in Ram Swarup v. Shikar Chand [AIR 1966 SC 893 : (1966) 2 SCR 553 (sub nom Lala Ram Swarup v. Shikar Chand)]. There Gajendragadkar, C.J. speaking for a Constitution Bench of this Court formulated the following tests:

"The two tests, which are often considered relevant in dealing with the question about the exclusion of civil courts' jurisdiction are (a) whether the special statute which excludes such jurisdiction has used clear and unambiguous words indicating that intention; and (b) does that statute provide for an adequate and satisfactory alternative remedy to a party that may be aggrieved by the relevant order under its material provisions. Applying these tests the inference is inescapable that the jurisdiction of the civil courts is intended to be excluded.

The bar excluding the jurisdiction of civil courts cannot operate in cases where the plea raised before the civil court goes to the root of the matter and would, if upheld, lead to the conclusion that the impugned order is a nullity."

10. In the light of the above discussion, the following principles may be restated:

(1) If there is express provision in any special Act barring the jurisdiction of a civil court to deal with matters specified thereunder the jurisdiction of an ordinary civil court shall stand excluded.

(2) If there is no express provision in the Act but an examination of the provisions contained therein leads to a conclusion in regard to exclusion of jurisdiction of a civil court, the court would then inquire whether any adequate and efficacious alternative remedy is provided under the Act; if the answer is in the affirmative, it can safely be concluded that the jurisdiction of the civil court is barred. If, however, no such adequate and effective alternative remedy is provided then exclusion of the jurisdiction of the civil court cannot be inferred.

(3) Even in cases where the jurisdiction of a civil court is barred expressly or impliedly, the court would nonetheless retain its jurisdiction to entertain and adjudicate the suit provided the order complained of is a nullity."

39. The Apex Court in the case of **Sitaram Kashiram Konda** (supra) was considering a case where the plaintiff instituted a suit against employer claiming various reliefs, including a declaration that he had been removed from service illegally, asking for reinstatement and in the

alternative compensation. The trial court dismissed the suit, holding that it had no jurisdiction to try as the dispute was in the nature of an industrial dispute. The 1st Appellate Court allowed the plaintiff's appeal, holding that the dispute raised was of a civil nature. In the 2nd appeal filed by the defendant employer the High Court upheld the view of the trial court and held that the plaintiff had not claimed damages by pleading wrongful dismissal in breach of contract of service. The plaintiff appealed to the Supreme Court by certificate. Allowing the appeal and remanding the matter to the trial court for decision in the light of the Courts judgment, it was held:-

“3. The Court is obliged to Mr K. Jayaram for assisting it as amicus curiae in this case. After having appreciated the entire facts and the circumstances of the case, we are of the opinion that it is not quite correct to say that the suit filed by the appellant is not maintainable at all in a civil court. The correct position of law is that the main reliefs asked for by him which when granted will amount to specific performance of the contract of service and therefore they cannot be granted. There are a number of decisions of this Court to that effect; to wit - S.B. Dutt (Dr) v. University of Delhi [AIR 1958 SC 1050 : 1959 SCR 1236 : 1959 SCJ 78] ; S.R. Tiwari v. District Board Agra [AIR 1964 SC 1680 : (1964) 3 SCR 55 : (1964) 1 LLJ 1] and Indian Airlines Corporation v. Sukhdeo Rai [(1971) 2 SCC 192 : 1971 SCR (Supp) 510 : AIR 1971 SC 1828 : (1971) 1 LLJ 557] . Reference may also be made in this connection to the decision of this Court in Premier Automobiles Ltd. v. Kamlekar Shantaram Wadke [(1976) 1 SCC 496 : 1976 SCC (L&S) 70 : (1976) 1 SCR 427 : (1975) 2 LLJ 445] .

4. But then in the alternative, the appellant had also prayed for awarding compensation to him. And reading the plaint as a whole, it can legitimately be culled out that he had made out a case, whether it was right on facts or not, that is a different question, that he was wrongfully dismissed from service. This relief could be granted by the civil court if it found that the plaintiff's case was true. The High Court, in our opinion, is not right in saying that no such case had at all been made out in the plaint. In our opinion, as we have earlier said, reading the plaint as a whole, such case can be spelt out. That being so to this limited extent, the matter could be examined by the civil court. ”

40. The Apex Court in the case of **S.N.Goyal** (supra) was considering a case where the respondent employee of the Bank was dismissed from the service of the Bank after holding disciplinary enquiry under the State Bank of India Officers Service Rules, which was challenged by the employee by filing civil suit. It was held as under :-

“17. Where the relationship of master and servant is purely contractual, it is well settled that a contract of personal service is not specifically enforceable, having regard to the bar contained in Section 14 of the Specific Relief Act, 1963. Even if the termination of the contract of employment (by dismissal or otherwise) is found to be illegal or in breach, the remedy of the employee is only to seek damages and not specific performance. Courts will neither declare such termination to be a nullity nor declare that the contract of employment subsists nor grant the consequential relief of reinstatement. The three well-recognised exceptions to this rule are:

(i) where a civil servant is removed from service in contravention of the provisions of Article 311 of the Constitution of India (or any law made under Article 309);

(ii) where a workman having the protection of the Industrial Disputes Act, 1947 is wrongly terminated from service; and

(iii) where an employee of a statutory body is terminated from service in breach or violation of any mandatory provision of a statute or statutory rules.

There is thus a clear distinction between public employment governed by statutory rules and private employment governed purely by contract. The test for deciding the nature of relief-damages or reinstatement with consequential reliefs-is whether the employment is governed purely by contract or by a statute or statutory rules. Even where the employer is a statutory body, where the relationship is purely governed by contract with no element of statutory governance, the contract of personal service will not be specifically enforceable. Conversely, where the employer is a non-statutory body, but the employment is governed by a statute or statutory rules, a declaration that the termination is null and void and that the employee should be reinstated can be granted by courts. (*Vide S.B. Dutt (Dr.) v. University of Delhi* [AIR 1958 SC 1050] , *U.P. Warehousing Corpn. v. Chandra Kiran Tyagi* [(1969) 2 SCC 838 : (1970) 2 SCR 250] , *Sirsi Municipality v. Cecelia Kom Francis Tellis* [(1973) 1 SCC 409 : 1973 SCC (L&S) 207 : (1973) 3 SCR 348] , *Vaish Degree College v. Lakshmi Narain* [(1976) 2 SCC 58 : 1976 SCC (L&S) 176 : (1976) 2 SCR 1006] , *J. Tiwari v. Jwala Devi Vidya Mandir* [(1979) 4 SCC 160 : 1979 SCC (L&S) 356 : AIR 1981 SC 122] and *Dipak Kumar Biswas v. Director of Public Instruction* [(1987) 2 SCC 252 : (1987) 3 ATC 505 : AIR 1987 SC 1422] .)

18. In this case the appellant is a statutory body established under the State Bank of India Act, 1955 and the contract of employment was governed by the State Bank of India Officers Service Rules, which are statutory rules framed under Section 43(1) of the said Act. The respondent approached the civil court alleging that his removal from service was in violation of the said statutory rules. When an employee of a statutory body whose service is terminated pleads that such termination is in violation of statutory rules governing his employment, an action for declaration that the termination is invalid and that he is deemed to continue in service is maintainable and will not be barred by Section 14 of the Specific Relief Act. ”

41. The Apex Court in the case of **Kailash Singh vs. Managing Committee, Mayo College, Ajmer and Others (2018) 18 SCC 216** where in respect of dispute related to termination of an employee of Mayo College, Court held that employment was governed by simple contract of employment and, hence, no relief of reinstatement can be granted, but employee, if wrongfully terminated, may claim damages. It is quoted as under:-

“22. We may refer to *Vidya Ram Misra v. Shri Jai Narain College* [*Vidya Ram Misra v. Shri Jai Narain College*, (1972) 1 SCC 623] , where in para 4, it was observed as under: (SCC pp. 624-25)

“4. It is well settled that, when there is a purported termination of a contract of service, a declaration that the contract of service still subsisted would not be made in the absence of special circumstances, because of the principle that courts do not ordinarily enforce specific performance of contracts of service (see *U.P. Warehousing Corpn. v. Chandra Kiran Tyagi* [*U.P. Warehousing Corpn. v. Chandra Kiran Tyagi*, (1969) 2 SCC 838] and *Indian Airlines Corpn. v. Sukhdeo Rai* [*Indian Airlines Corpn. v. Sukhdeo Rai*, (1971) 2 SCC 192]). If the master rightfully ends the contract, there can be no complaint. If the master wrongfully ends the contract, then the servant can pursue a claim for damages. So even if the master wrongfully dismisses the servant in breach of the contract, the employment is effectively terminated. In *Ridge v. Baldwin* [*Ridge v. Baldwin*,

1964 AC 40 : (1963) 2 WLR 935 (HL)] Lord Reid said in his speech: (Ridge case [Ridge v. Baldwin, 1964 AC 40 : (1963) 2 WLR 935 (HL)] , WLR p. 940)

"The law regarding master and servant is not in doubt. There cannot be specific performance of a contract of service and the master can terminate the contract with his servant at any time and for any reason or for none. But if he does so in a manner not warranted by the contract he must pay damages for breach of contract. So the question in a pure case of master and servant does not at all depend on whether the master has heard the servant in his own defence: it depends on whether the facts emerging at the trial prove breach of contract. But this kind of case can resemble dismissal from an office where the body employing the man is under some statutory or other restriction as to the kind of contract which it can make with its servants, or the grounds on which it can dismiss them."

23. The aforesaid view is also adopted by the Constitution Bench in *Sirsi Municipality v. Cecelia Kom Francis Tellis* [*Sirsi Municipality v. Cecelia Kom Francis Tellis*, (1973) 1 SCC 409 : 1973 SCC (L&S) 207] . We may usefully extract the observations in the following paras: (SCC p. 413, paras 15-19)

"15. The cases of dismissal of a servant fall under three broad heads. The first head relates to relationship of master and servant governed purely by contract of employment. Any breach of contract in such a case is enforced by a suit for wrongful dismissal and damages. Just as a contract of employment is not capable of specific performance similarly breach of contract of employment is not capable of finding a declaratory judgment of subsistence of employment. A declaration of unlawful termination and restoration to service in such a case of contract of employment would be indirectly an instance of specific performance of contract for personal services. Such a declaration is not permissible under the Law of Specific Relief Act.

16. The second type of cases of master and servant arises under Industrial Law. Under that branch of law a servant who is wrongfully dismissed may be reinstated. This is a special provision under Industrial Law. This relief is a departure from the reliefs available under the Indian Contract Act and the Specific Relief Act which do not provide for reinstatement of a servant.

17. The third category of cases of master and servant arises in regard to the servant in the employment of the State or of other public or local authorities or bodies created under statute.

18. Termination or dismissal of what is described as a pure contract of master and servant is not declared to be a nullity however wrongful or illegal it may be. The reason is that dismissal in breach of contract is remedied by damages. It (sic.) [To be read as "In ".] the case of servant of the State or of local authorities or statutory bodies, courts have declared in appropriate cases the dismissal to be invalid if the dismissal is contrary to rules of natural justice or if the dismissal is in violation of the provisions of the statute. Apart from the intervention of statute there would not be a declaration of nullity in the case of termination or dismissal of a servant of the State or of other local authorities or statutory bodies.

19. The courts keep the State and the public authorities within the limits of their statutory powers. Where a State or a public authority dismisses an employee in violation of the mandatory procedural requirements or on grounds which are not sanctioned or supported by statute the courts may exercise jurisdiction to declare the act of dismissal to be a nullity. Such implication of public employment is thus distinguished from private employment in pure cases of master and servant."

24. The facts of the present case are covered by the master-servant relationship i.e. the first category. There is no adjudication by invocation of a reference to the Industrial Disputes Act, 1947. Thus, the remedy would only be in damages."

Conclusion of this Court

42. From the above law laid down by the Apex Court in the case of *Dhruv Green Field Ltd.* (supra), *Ramendra Kishore Biswas* (supra) and this Court in *Shivdhesar Singh* (supra) it is apparent that there should be express provision in any Act barring the jurisdiction of the civil court and even if there is an express bar in any Act, but no adequate and efficacious remedy is provided, then exclusion of the jurisdiction of civil court cannot be inferred. From the law laid down by this Court in the case of *Saurabh Kumar Pandey* (supra) it is evident that where the terms and conditions of service governing the petitioner are not statutory, but are purely contractual governed under the Rules framed by a private Bank, the employee of the Bank cannot challenge his termination by filing Writ Petition under Article 226 of the Constitution of India.

43. From the law laid down by the Apex Court in the case of *Sitaram Kashiram Konda* (supra), *S.N. Goyal* (supra) and *Kailash Singh* (supra) it is evident that when the service conditions of the employee are not governed by statutory rules and the employer does not fall within the category of 'State' as defined in Article 12 of the Constitution of India, if an employee is terminated by the employer after conducting disciplinary proceedings, the employee cannot claim the relief of reinstatement. The employee can only show that his termination from service was illegal, against Rules and principles of natural justice, where due procedure as prescribed was not followed, he was not provided with due opportunity of hearing, which has caused him grave prejudice, and if, the contention of the employee is upheld by the Court, that he was wrongfully dismissed from service, in that situation, the Court can only grant him damages for his illegal termination but the Court cannot reinstate him. In such situation, the employee cannot specifically enforce his contract of personal service, which is barred under Section 14 of the Specific Relief Act.

44. It is apparent that the above law is not applicable on a civil servant who is removed from service in contravention of the provisions of Article 311 or any law made under Article 309 of the Constitution of India. Similarly, it is also not applicable where a workman covered under the provisions of Industrial Disputes Act, 1947 and an employee of a statutory body is terminated from service in breach or violation of any mandatory provision of a statute or statutory rules. It is further apparent that even where the employer is a statutory body, but the relationship is purely governed by contract with no element of statutory governance, the contract of personal service will not be specifically enforceable.

45. It is apparent that in the instant case the plaintiff was posted as Branch Manager of the Allahabad Branch of the defendant Bank, then, according to the Bank, due to his lax supervision a fraud of ₹ 41 lakhs was committed by an employee Mrs. Suchitra Prajapati, who was subordinate of the plaintiff, for which he was initially suspended on 30.9.2013, thereafter, as per the Executive Staff Service Rules, 1994 of the Bank and the Code of Conduct applicable on the plaintiff, charges were framed against him and in the disciplinary enquiry he was found guilty and accordingly, he was dismissed from service by defendant No. 2 on 19.5.2014, which was challenged by plaintiff by filing Appeal, as provided under the above Rules of the Bank, which was also dismissed by defendant No. 3 on 08.10.2014, and thereafter, the plaintiff has challenged his above dismissal by filing the instant suit, in which, he has claimed the following reliefs:-

“(A) Pass a decree of declaration to the effect that the Appellate order dated 8.10.2014 passed by defendant no. 3 and order dated 19.5.2014 passed by defendant no. 2 is illegal and is nullity;

(B) Pass a decree of permanent injunction against the defendant no.1 Bank injunctioning the defendant No.1 Bank to terminate the plaintiff;

(C)Pass a decree of declaration to the effect that the plaintiff is entitled to his back wages with interest and all employment benefits;

(D)Pass a decree of mandatory injunction directing defendant No. 1 Bank to reinstate the plaintiff forthwith with full back wages and employment benefits;

(E)Award cost of the suit in favour of plaintiff and against the defendants;

(F)Pass any such order as this Hon'ble Court deems fit proper in the facts and circumstances of the present case. ”

46. It is apparent that the defendant Bank, is a private Bank, and the plaintiffs employment was purely contractual, which is apparent from the letter of offer filed by the plaintiff, which was governed by the Executive Staff Service Rules, 1994 of the Bank and the plaintiff was bound by the Code of Conduct applicable on him, which are not statutory. Neither the defendants fall in the definition of 'State' as mentioned in Article 12 of the Constitution of India nor the service conditions of the plaintiff were governed by the statutory rules. It is further apparent that the provisions of Article 309 and 311 of the Constitution of India and the Labour Laws were not applicable on the plaintiff. There is no express provision in any contract or Rule, which bars the remedy of civil suit to the plaintiff. It is apparent that in the above circumstances, the plaintiff could not have challenged his dismissal by filing Writ Petition before the Constitutional Court under Article 226 of the Constitution of India or by filing petition before the Service Tribunals, which was available to the employees of the Central or State Government. It is apparent that the plaintiff could have only approached one judicial forum to redress his grievance, where he could have challenged his alleged illegal dismissal by the Bank, which was the Civil Court.

47. Order 39 Rule 2(2) CPC has been amended in the State of U.P. vide Section 13 of U.P. Act No. 57 of 1976, w.e.f. 1.1.1977, whereby the following proviso has been inserted, which reads as under:-

"Provided that no such injunction shall be granted –

(a) where no perpetual injunction could be granted in view of the provisions of Section 38 and Section 41 of the Specific Relief Act, 1963, (Act 47 of 1963), or

(b) to stay the operation of an order for transfer, suspension, reduction in rank, compulsory retirement, dismissal, removal or otherwise termination of service of, or taking charge from, any employee including any employee of the Government, or

(c) to stay, any disciplinary proceeding pending or intended or, the effect of any adverse entry, against any employee of the Government, or

and any order for injunction granted in contravention of these provisions shall be void....."

48. It is apparent from the impugned judgment that the trial court has considered the above Proviso of Order 39 Rule 2(2) CPC and concluded that the relief of declaration and mandatory injunction against the order of termination of service is specifically barred in the State of Uttar Pradesh by the above amending Act, as such, the trial court does not have the jurisdiction to try the suit.

49. In the light of the above discussion, it is true that the civil court cannot grant any relief of permanent and mandatory injunction in this matter but the plaintiff can show that his dismissal by the defendant Bank was wrong and he can also claim damages for his wrongful dismissal from the Bank. It is true that he cannot be reinstated in the service of the defendant Bank and his only remedy is to claim damages from the Bank, for which, the civil court has the jurisdiction. In view of this, the civil court had the jurisdiction for examining the above facts and for awarding the relief of damages, as such, the trial court has erred by concluding that the civil court lacked inherent jurisdiction in this matter.

50. From the perusal of the plaint it is evident that the plaintiff has not claimed damages from the defendants, but has claimed back wages with interest and all consequential employment benefits. From the perusal of the record of the lower court, it is evident that the plaintiff moved an amendment application 37-A under Order VI Rule 17 CPC on 28.7.2022 claiming decree for damages @ ₹ 5,000/- per month from 19.5.2014 till the date of filing of the suit, pendente lite and future till realisation, against which no objection has been filed by the defendants, which remained undisposed by the trial court, till the suit was dismissed on 10.7.2023, which shows the carelessness of the trial court. It is further apparent that under Section 40 of the Specific Relief Act, 1963, the plaintiff can always demand damages in lieu of, or in addition to, injunction and such amendment can be allowed by the Court at any stage of the proceedings.

51. For the aforesaid reasons, the impugned judgment and decree passed by the trial court is erroneous and legally unsustainable, which is liable to be set aside. Consequently, the appeal deserves to be allowed with costs.

52. **Accordingly, the appeal is allowed with costs throughout.** The impugned judgment and decree dated 10.7.2023 is set aside and consequently, O.S.no.180 of 2015 stands restored on its original number. The finding of trial court on issue no. 5 is set aside and it is held that the trial court has jurisdiction to try the suit.

53. The trial court is directed to decide the suit expeditiously preferably within a period of **6(six) months** from the date a certified copy of this order is received by it, without affording unnecessary adjournment to either of the parties, on merits, in accordance with law.

54. It is made clear that this Court has not expressed any opinion as to the legality of the dismissal of the plaintiff by the defendant Bank. The trial court is at liberty to arrive at a just conclusion on the basis of pleadings and evidence on record, in accordance with law.

55. Office is directed to send back the record of the trial court, forthwith.

(2026) 4 ILRA 2057
APPELLATE JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 15.04.2026

BEFORE

THE HON'BLE SANDEEP JAIN, J.

First Appeal No. 713 of 2021

Pappu	...Appellant
	Versus
U.P. State Electricity Board	...Respondent

Issues for Consideration

- (i) Whether in a suit claiming compensation for electrocution from a high-voltage transformer, the plaintiff is required to prove negligence on the part of the Electricity Board or whether the principle of strict liability governs the claim?
- (ii) Whether the plea of contributory negligence could be raised against a seven-year-old child who sustained permanent disability after coming into contact with an unfenced transformer installed adjacent to a primary school?
- (iii) Whether the suit was barred for want of notice under Section 33 of the Indian Electricity Act, 1910?
- (iv) Whether the Trial Court was justified in dismissing the suit for compensation and, if not, what would be the just and reasonable compensation payable to the plaintiff?

Headnotes

Electricity—Electrocution—High-voltage transformer—Compensation—Strict liability—Negligence not required to be proved.

HELD: In cases where death or bodily injury results from electrocution caused by high-tension electrical infrastructure belonging to the Electricity Board, the rule of strict liability governs the claim. The claimant is only required to establish that the injury was caused by electrocution from the defendant's electrical installation. Proof of negligence is unnecessary. The liability arises because transmission and distribution of high-voltage electricity constitute an inherently hazardous activity imposing a non-delegable duty upon the supplier to ensure public safety. [Paras 43 to 49]

Electricity—Transformer installed adjacent to primary school—Transformer not protected by fencing or barricading—Failure of Electricity Board to adduce evidence regarding compliance with safety regulations—Adverse inference.

HELD: The plaintiff consistently pleaded and proved that the 11 KV transformer had been installed barely three feet from the primary school building without fencing, barricading or protective enclosure. Although the Electricity Board pleaded that the transformer had been installed in accordance with applicable rules, it neither produced the relevant regulations nor examined any official to establish compliance therewith. In the absence of any documentary or oral evidence from the defendant, an adverse inference under Section 114 illustration (g) of the Evidence Act was liable to be drawn that the defence was false. [Paras 50 to 56]

Evidence—Adverse inference—Party withholding evidence—Failure to enter witness box.

HELD: Where the Electricity Board neither examined any responsible officer nor produced evidence to substantiate its pleaded defence, despite the burden resting upon it to prove compliance with statutory safety

requirements, the Court was justified in drawing an adverse presumption against the defendant under Section 114(g) of the Evidence Act. [Paras 53 to 55]

Electricity—Electrocution—Child aged seven years—Contributory negligence—Plea not available.

HELD: The plaintiff was merely seven years old when he accidentally came into contact with the unfenced transformer while playing outside the primary school. A child of such tender age cannot reasonably be expected to appreciate the danger posed by a high-voltage transformer. The plea that the accident occurred due to the plaintiff's own negligence was therefore untenable. In the absence of evidence that the transformer was fenced or otherwise secured, no contributory negligence could be attributed to the child. [Paras 57 to 63]

Indian Electricity Act, 1910—S. 33—Notice of accident—Nature of provision—Suit for compensation.

HELD: Section 33 of the Indian Electricity Act, 1910 merely requires notice of an accident to be given to the Electrical Inspector and other prescribed authorities. The provision does not create any statutory bar to the institution of a civil suit for compensation in the event of non-compliance. The Trial Court therefore erred in holding that the suit was not maintainable for want of notice under Section 33. [Paras 64 and 65]

Civil Suit—Compensation—Electrocution—Erroneous appreciation of evidence by Trial Court.

HELD: The Trial Court committed manifest errors in holding that the accident resulted from the plaintiff's own negligence, in treating delay in lodging the FIR as material despite the accident being admitted by the defendant, and in rejecting documentary evidence on hyper technical grounds. Such findings were contrary to the pleadings, evidence and settled principles governing electrocution cases and rendered the dismissal of the suit legally unsustainable. [Para 66]

Compensation—Permanent disability—Amputation of both upper limbs—Assessment of damages—Principles.

HELD: Compensation in electrocution cases involving permanent disability is to be determined on principles analogous to those governing motor accident claims. Assessment must take into account loss of future earning capacity, functional disability, future prospects, attendant charges, medical expenses, future medical treatment, pain and suffering, loss of amenities, loss of marriage prospects and other consequential losses. [Paras 67 to 79]

Permanent disability—Amputation of both upper limbs—Functional disability—Assessment.

HELD: Since both upper limbs of the plaintiff had been amputated, he had suffered 100% functional disability rendering him incapable of earning his livelihood and wholly dependent upon others throughout his life. Compensation was therefore required to be computed on the basis of minimum wages of a skilled workman with addition towards future prospects and by applying the appropriate multiplier. [Paras 69 to 79]

Compensation—Award.

HELD: The plaintiff was held entitled to compensation of Rs.26,65,000/-, after deducting Rs.1,25,000/- already received, together with pendente lite and future interest at 6% per annum from the date of institution of the indigent proceedings. Directions were also issued for investment of the decretal amount in a fixed deposit for the benefit of the permanently disabled plaintiff, with liberty to seek withdrawal for medical treatment and other special circumstances. [Paras 79 to 82]

Appeal allowed. Judgment and decree of the Trial Court set aside. Suit decreed. (E-14)

Case Law Cited

M.P. Electricity Board v. Shail Kumari, (2002) 2 SCC 162 — relied on; M.P. Electricity Board v. Shiv Narayan, (2005) 7 SCC 283 — relied on; M. Radhey Shyam Lal v. M. Prahlad Rai, AIR 1970 SC 1017 — relied on; Vidhyadhar v. Manikrao and Another, (1999) 3 SCC 573 — relied on; Iswar Bhai C. Patel alias Bachu Bhai Patel v. Harihar Behera and Another, (1999) 3 SCC 457 — relied on; M.S. Grewal and Another v. Deep Chand Sood and Others, (2001) 8 SCC 151 — relied on; Rylands v. Fletcher, (1868) LR 3 HL 330 — relied on; Kaushnuma Begum (Smt.) and Others v. New India Assurance Co. Ltd. and Others, (2001) 2 SCC 9 — relied on; M.C. Mehta v. Union of India, (1987) 1 SCC 395 — relied on; Raj Kumar v. Ajay Kumar and Another, (2011) 1 SCC 343 — relied on; National Insurance Co. Ltd. v. Pranay Sethi and Others, (2017) 16 SCC 680 — relied on; Kajal v. Jagdish Chand and Others, (2020) 4 SCC 413 — relied on; Master Ayush v. Reliance General Insurance Co. Ltd. and Another, (2022) 7 SCC 738 — relied on; Pappu Deo Yadav v. Naresh Kumar and Others, (2020) 14 SCC 150 — relied on; Sidram v. Divisional Manager, United India Insurance Co. Ltd., (2023) 9 SCC 442 — relied on; Rahul Ganpatrao Sable v. Tukaram Maruti Chandane, (2023) 1 SCC 693 — relied on; Baby Sakshi Grewal v. Oriental Insurance Co. Ltd., 2025 SCC OnLine SC 481 — relied on; Hitesh Nagjibhai Patel v. State of Gujarat, 2025 SCC OnLine SC 222 — relied on; Anshu v. National Insurance Co. Ltd., 2024 SCC OnLine Del 6936 — referred to; Paschim Gujarat Vij Company Ltd. (PGVCL) v. Ratilal Maganbhai Patel, 2024 SCC OnLine Guj 4698 — referred to; Ajmer Vidyut Vitran Nigam Ltd. v. Rukmani Devi, S.B. Civil First Appeal No. 188 of 2018 (Rajasthan High Court, decided on 09.09.2024) — referred to; Yashpal Singh v. State of Uttarakhand, First Appeal No. 81 of 2022 (Uttarakhand High Court, decided on 22.11.2024) — referred to; Sunita Tiwari v. Madhya Pradesh Madhya Kshetra Vidyut Vitaran Co. Ltd., Misc. Appeal No. 5948 of 2024 (Madhya Pradesh High Court, decided on 20.01.2025) — referred to.

List of Acts / Statutes/Books

Indian Electricity Act, 1910; Electricity Act, 2003; Electricity Rules, 1956; Code of Civil Procedure, 1908; Indian Evidence Act, 1872.

List of Keywords

Electrocution; High-voltage transformer; Strict liability; Absolute liability; Electricity Board; Compensation; Permanent disability; Child victim; Functional disability; Contributory negligence; Adverse inference; Safety measures; Unfenced transformer; Future prospects; Loss of amenities; Medical expenses; Artificial limbs.

Case Arising From

Judgment and order dated 21.07.2025 passed by the District Judge, Firozabad in Misc. Probate Petition No. 2 of 2023, Amit Gupta and Another v. Smt. Kalpana Gupta and Others

Appearance for Parties

For the Appellants: Sri Rishabh Agarwal.

For the Respondents: Sri Abhishek Agarwal and Sri Arvind Agrawal.

(Delivered by Hon'ble Sandeep Jain, J.)

1. The instant appeal has been filed by the plaintiff under Section 96 CPC against the impugned judgment and decree dated 29.10.2005 passed by the Additional District Judge Court No. 7 Agra in O.S. no.171 of 2003 Pappu vs. Uttar Pradesh Electricity Board, whereby the plaintiff 's suit seeking compensation for the injuries sustained due to electrocution from the transformer of the defendant on 01.3.1997 has been dismissed on the ground that the incident occurred due to the plaintiffs' own negligence. **Appeal is admitted.**

Plaint case

2. The plaintiff- appellant Pappu filed O.S.no 171 of 2003 through his guardian and next friend his father Hari Singh, against defendant U.P. State Electricity Board with the averments that he was an innocent, simple but intelligent, healthy, energetic and handsome child aged about 7 years, studying in 2nd class in Kapil Dev Shastri, Jr.High School, Nangla Padi,Agra. The defendant is a statutory body constituted under the provisions of the electricity laws, the basic object of whom is to generate, transmit and supply electricity by installing the electric line, transformers and other instruments.

3. It was further averred that the defendant placed a transformer of 11,000/400 Volts 100 KVA capacity on the open land near the gate of the building of Primary School,Nangla Padi,Agra, which was managed by Nagar Nigam, Agra. It was further averred that the distance between the steps of the school building and the place where the above transformer was installed was not more than 3 feet, the transformer was placed in open without any fencing, barricading or any other means to protect it. It was further averred that under law such transformer must be efficiently protected by fencing not less than 1.8 m in height or other means so as to prevent access to the electric line and apparatus therein. It was further averred that the officials of the defendant never erected any such protection around the transformer as was required by law.

4. It was further averred that the residents of the locality several times requested the officials of the defendant to protect such transformer as per law by fencing or otherwise so that any untoward accident may not be caused but no heed was paid to it.

5. It is the specific case of the plaintiff that on 01.3.1997 at about 5 PM when he was playing with other children near the above school building, then he had an accidental contact with the 11 KV side of the transformer, which was unprotected and unsecure, there was a heavy flash and both his hands and arms were badly burnt due to electrocution. Some neighbours on seeing the incident rushed to the spot and removed the plaintiff from the said transformer and got him admitted to S.N. Medical College Hospital, Agra, where a major operation was done on 14.3.1997 in which both the hands and arms of the plaintiff were amputated. He was again operated on 28.4.1997 and 7.5.1997. It was further averred that the plaintiff remained in the hospital from 01.3.1997 to 19.3.1997 and again from 03.4.1997 to 12.5.1997 and he was still in the treatment of Dr.Rahul Sahai. It was further averred that an FIR regarding the accident was lodged at police station New Agra, District Agra.

6. It is the specific case of the plaintiff that the said accident was caused by the serious and unimaginary negligence committed by the officials of the defendant. It was further averred that the plaintiff has lost both his hands, as such his life has become miserable since he is totally dependent on others, he cannot take food, cannot wear his clothes, cannot wash or brush his teeth and cannot perform his daily morning rituals. He cannot play with toys, he can only watch them helplessly. It was further averred that the plaintiff is not in a position to earn his livelihood throughout his life, his father was also an ailing person, who was unemployed.

7. The plaintiff claimed compensation for loss of earning @ ₹ 4,000/-per month up to the age of 70 years amounting to ₹ 30.24 lakhs, salary of one attendant for 24 hours a day @ ₹ 3,000/- per month amounting to ₹ 22.68 lakhs, expenses incurred in treatment of ₹ 50,000/-, compensation for mental torture, agony to him and his family amounting to ₹ 5 lakhs, loss of earning of his mother and brother amounting to ₹ 5,000/-. In this way, the plaintiff claimed compensation of ₹ 58.47 lakhs for the injuries suffered by him due to electrocution from the transformer of the defendant, which was still lying open, unprotected and unsecured after the accident.

8. The plaintiff initially sought permission to file the suit as an indigent person by filing miscellaneous application on 30.5.1997, which was allowed by the trial court on 21.2.2003 with the finding that plaintiff was only 10 years old, whose both hands are amputated, whose father has died, whose mother is a labourer and the plaintiff has 3 other siblings. During the pendency of the indigent proceedings the plaintiffs father Hari Singh died on 23.5.1998, and the mother of the plaintiff Smt. Shanti Devi became the guardian and next friend of the plaintiff. Thereafter, the suit was registered as O.S.no.171 of 2003.

9. In the above backdrop, the plaintiff has claimed with following reliefs:-

(A) That a decree of ₹ 58.47 lakhs along with interest @ 2% per month future and pendente lite from the date of accident till the date of realisation be decreed in favour of the plaintiff against the defendant.

(B) That the cost of the suit be also awarded in favour of plaintiff against the defendant.

(C) That any other relief which the Hon'ble Court may deem just and proper in the circumstances of the case be also awarded in favour of the plaintiff against the defendant.

Written Statement of the defendant

10. The defendant in his written statement evasively denied the plaint averments. It was averred that the transformer was installed as per rule and regulation of the Board. It was specifically denied that the officials of the defendant never made any such protection as required under law. It was also specifically denied that the residents of the locality ever requested the defendant to protect the transformer. It was admitted that an incident took place on 1.3.1997 due to the own negligence of the plaintiff in which the plaintiff was electrocuted. It was averred that there was no negligence on the part of the defendant in the alleged accident, which occurred due to the own negligence and fault of the plaintiff as such, the defendant cannot be blamed for the laches on plaintiffs part and the defendant was not liable to pay any damages as claimed by the plaintiff. It was also averred that the plaintiffs claim was highly inflated, excessive and unreasonable, the plaintiff has got no cause of action to file the suit against the defendant.

11. It was further averred that plaintiff filed complaint no.9484/24/97-98 before the National Human Rights Commission, New Delhi who vide its order dated 20.5.1999 directed the defendant to pay ₹ 1 lakh in addition to a sum of ₹ 20,000/- and ₹ 5,000/- already paid to the plaintiff and in compliance of the above order, the defendant paid ₹ 1 lakh on 4.7.2000, on which the plaintiff was getting monthly interest. It was further averred that the defendant as a matter of courtesy and on

humanitarian ground has paid an amount of ₹ 1.25 lakhs to the plaintiff as a consolation compensation which has been acknowledged by him.

12. It was further averred that the plaintiff had knowledge of the existing danger and he could have reasonably avoided such danger or the alleged negligence of the defendant. The plaintiff was under legal duty to take care of his own safety which he did not and consequently, he was the author of his own wrong, who was injured by his own carelessness, who had voluntarily undertaken the risk for own negligence of not taking precaution against the known risk and the defendant was not liable for the alleged incident and consequently, was under no legal obligation to pay the alleged compensation to the plaintiff. The suit was barred by Section 33 of the Indian Electricity Act. The suit was misconceived and liable to be dismissed with costs.

Documentary evidence of the plaintiff

13. Original discharge slip issued by S.N. Medical College Hospital, Agra; injury report of plaintiff dated 01.3.1997; certificate issued by the Ortho Surgeon, District Hospital Agra dated 11.9.1997; copy of application given by the plaintiffs father to police station New Agra, Agra on 14.3.1997 and 5.5.1997, copy of application dated 12.3.1997 written by Nathan Singh Kushwah PW-3 to Executive Engineer Electricity Department, Agra; prescriptions of Jaidevi Nursing Centre, Agra and cashmemos of medicines purchased by the plaintiff.

14. The plaintiff was examined by Dr. A.K. Singh at the Emergency Department of S.N. Medical College and Hospital, Agra on 01.3.1997 at 7:15 PM, where the following injuries were found on his body :-

"Superficial to deep burn over right upper extremity, some part of left arm upper one-third and left forearm with hand, some part of left big toe, burn.....KUO. Patient admitted. Police informed."

Opinion:-injury caused by electric burn KUO, duration fresh. "

15. According to the discharge slip filed by the plaintiff he remained admitted in S.N. Medical College and Hospital, Agra from 01.3.1997 till 19.3.1997 and again from 03.4.1997 till 12.5.1997 for surgical treatment under Dr.Rahul Sahai, the summary of which reads as under:-

"Patient was admitted as a case of electric burn, amputation was done of both upper limbs, the right upper limb was amputated above elbow, while the left upper limb was amputated below the elbow. There was no post operation complications. Patient discharged with advice of medical treatment."

16. The plaintiff has also filed the certificate issued by Dr.A.K.Ambesh,Ortho Surgeon, District Hospital Agra dated 11.9.1997 according to which the plaintiff is permanently disabled due to below shoulder amputation of both upper extremity.

17. No documentary and oral evidence was adduced by the defendant.

Issues framed by the trial court

18. On the basis of the pleadings of the parties, the following issues were framed by the trial court:-

- (i) Whether the accident occurred on 1.3.1997 due to fault of the electricity department since the transformer was kept open, as a result of which the plaintiff sustained injuries ?*
- (ii) Whether the plaintiff is entitled to any compensation from the department ?*
- (iii) Whether the suit is barred by Section 33 of the Indian Electricity Act ?*

Oral evidence of the plaintiff

19. The plaintiff examined his mother Smt. Shanti Devi as PW-1, Omprakash as PW-2 and Nathan Singh Kushwaha as PW-3.

20. Smt. Shanti Devi PW-1 deposed in her examination-in-chief that the plaintiff is her son who was residing with her. Defendant had established the transformer of 11,000/400 Volts and 100 KVA capacity in open place near the gate of Primary School, Nangla Padi, Agra which was managed by Nagar Nigam. There was hardly a distance of 3 feet between the transformer and the school building and the transformer was installed in an open place, without any fencing and barricading in order to save people. The employees of the defendant never took any steps for the safety of transformer. The local residents complained many times to the employees of the defendant for erecting fencing around the transformer so that the life of the people was not endangered but malafidely they did not pay any heed.

21. She further deposed that on 01.3.1997 at about 5 PM the plaintiff along with other children of the above primary school, were playing near the school building, then while playing the plaintiff came in contact of the above transformer, which was kept on the ground without any fencing. As soon as the plaintiff came in contact with the transformer, a flash was generated in which both hands of the plaintiff were badly burnt due to electrocution, some neighbours rushed to the spot who removed the plaintiff from the transformer and got admitted him to S.N. Medical College. She further deposed that a FIR was registered regarding the accident at police station New Agra, Agra by plaintiffs father Hari Singh.

22. She further deposed that since both the hands of the plaintiff were badly burnt, the doctors in order to save his life, amputated them in an operation on 14.3.1997. Since some other medical problems remained, the plaintiff was again operated in the above Hospital on 28.4.1997 and 7.5.1997, for which the plaintiff remained admitted in the above Hospital from 1.3.1997 to 19.3.1997 and 3.4.1997 to 12.5.1997, and thereafter, the plaintiff was under treatment of Dr. Rahul Sahai.

23. She further deposed that the above accident occurred solely due to the negligence of the defendant and its employees. Without both hands, the life of the plaintiff has become miserable, who cannot - eat, wear clothes, perform daily rituals, play with toys. The plaintiff requires the assistance of an attendant throughout his life. The plaintiff belongs to a poor family, whose father has died due to poverty and illness. Since both hands of the plaintiff have been amputated, he is not

in a condition to earn his livelihood. She has demanded a compensation of ₹ 58.47 lakhs under different heads. She further deposed that even after the accident, the transformer is still lying in the open.

24. PW-1 in cross-examination deposed that the school in which the plaintiff studied was at a distance of about one kilometre from her house. She admitted that the information of the accident was given to her by neighbouring children. She disclosed that the accident occurred from the transformer which was kept on the road outside the school. She further disclosed that on getting information, she straightaway went to the emergency of the S.N. Medical College where the plaintiff was admitted. She further deposed that the plaintiff remained admitted in the above Hospital for about 4 months during which his both hands were amputated.

25. She further deposed that at the time of the accident the plaintiff was studying in class II of Kapil Dev school, after the accident the studies of plaintiff abruptly ended, who thereafter, remained at the house. She admitted that she has seen the place of accident, where the transformer was kept in open, on the ground, which was not surrounded by any fencing, which was at the same place since 2 years prior to the accident, and regarding this, the local residents had complained even prior to the accident.

26. She denied the suggestion that the accident occurred due to the sole negligence of her son. She disclosed that her 3 other sons were elder than the plaintiff who were doing private job and marriage of one son has been solemnised. She admitted that she had earlier complained to the Human Rights Commission which granted ₹ 1 lakh compensation which has been deposited by the defendant in plaintiffs name, on which he is earning monthly interest of ₹ 700/-. She also admitted that besides the above amount, the defendant has also paid ₹ 25,000/-.

27. Omprakash PW-2 deposed in his examination-in-chief that he was the eyewitness of the accident that occurred on 1.3.1997, since he used to iron the clothes near the school on a cart. He deposed that the defendant had installed a 11,000/400 Volts, 100 KVA transformer in open near the Primary School, Nangla Padi, Agra which was managed by the Nagar Nigam. There was hardly a distance of 3 feet between the transformer and the school building, the transformer was kept in open, without any fencing and barricading to save people from coming in contact with it. The local residents also complained many times to the employees of the defendant for erecting fencing around the transformer but no heed was paid.

28. He further deposed that on 01.3.1997 at about 5 PM when plaintiff was playing with other children near the above school building then while playing, he came in contact with the above transformer, which was kept on the ground without any fencing, from which electricity lines were going, due to which an electric flash was generated, and due to the flow of electricity, both hands of the plaintiff were badly burnt. He and other nearby people rushed to the spot and pulled the plaintiff from the collar of his shirt, removed him from the transformer, who was taken by his parents to the emergency department of the S.N. Medical College. The badly burnt hands of the plaintiff were amputated by doctors by operation on 19.3.1997. The accident occurred due to the negligence of the employees of the defendant. The life of the plaintiff without hands has become miserable. The plaintiff and his family are very poor, who have got no means of livelihood.

29. PW-2 in cross-examination deposed that his cart on which he used to iron clothes, was at a distance of about 10 - 15 paces from the transformer. He knew the plaintiff prior to the accident. The accident occurred at about 5 PM, the transformer was at a distance of about 3 - 4 feet from the school of Nagarpalika, which used to close in the evening. After the accident, nearby people gathered at the site of accident. He disclosed that the children were playing near the transformer, which was on the road, and a 11 KV line was coming from above to the transformer. He also deposed that no sooner the plaintiff touched the transformer, he got electrocuted and his hands were badly burnt. He also disclosed that a complaint was made by municipal member Nathan Singh. He denied the suggestion that he was not present at the time of the accident and was giving false testimony due to acquaintance with the plaintiff. He further denied the suggestion that the accident occurred due to the negligence of the plaintiff, for which the employees of the defendant cannot be faulted.

30. Nathan Singh Kushwaha PW-3 deposed in his examination-in-chief that the defendant had installed 11,000/400 Volts, 100 KVA transformer in open near the gate of Primary School, Nangla Padi, Agra managed by Nagar Nigam, Agra, which was hardly at a distance of 3 feet from the school building. The transformer was in the open, which was not surrounded by any fencing and barricading, in order to save people from coming in contact with it.

31. He further deposed that in the year 1997 he was the member of the Nagar Nigam from Nangla Padi and he himself and the local residents complained many times to the officials of the defendant for fencing the above transformer, so that the lives of the common people may not be endangered, but negligently the employees of the defendant failed to pay any heed on his application. He further deposed that on getting information of the accident on 1.3.1997 at 6 PM, being the neighbour and municipal member he went to the S.N. Medical College to see the admitted plaintiff, where he saw his badly burnt hands, and nearby, parents and family members of the plaintiff were present who were very distraught. He also deposed that a FIR was also registered with the police regarding the accident, the application of which was scribed by him. He also deposed that in a major operation on 19.3.1997 both hands of the plaintiff were amputated and the accident occurred due to the loss negligence of the defendant and its employees. He further deposed that the plaintiff and his family members were very poor who had no means of livelihood.

32. PW-3 deposed in cross-examination that he was a teacher, whose house was at a distance of about 200 metres from the site of accident. He admitted that he was not present at the time of accident, who came to know about the accident at about 6 PM, when he returned to his house. He reiterated that the distance of the transformer from the boundary of Nagar Nigam's school was about 3 feet. He disclosed that there was no shop on both sides of the transformer, which was in the open place, which was kept on a foundation of bricks, which had been cemented, nearby poles were installed, but there was no fencing. He disclosed that the transformer was installed one - one and half years prior to the accident. He disclosed that on the 14th he got the FIR registered, the application of which was written by him. He also disclosed that as per his knowledge prior to this accident, no such accident occurred. He denied the suggestion that previously he had not complained to the officials of the defendant. He also denied the suggestion that since he was friendly with the plaintiff, was giving false testimony. He also denied the suggestion that as per the rules of the defendant, the transformer was correctly installed.

Reasoning of the trial court

33. The trial court recorded the following reasons in the impugned judgment:-

- (i) Smt. Shanti Devi PW-1 was not an eyewitness of the accident.*
- (ii) Plaintiff has not examined himself as a witness in the court.*
- (iii) From the evidence of eyewitness PW-2 Omprakash it was proved that the plaintiff has himself negligently touched the transformer, in which there was no negligence of the defendant.*
- (iv) Nathan Singh PW-3 is not an eyewitness but he has admitted that the transformer was installed on a foundation of bricks which was cemented, which proved the statement of PW-1 wrong, that transformer was installed on the ground.*
- (v) The plaintiff has filed photo copy of the documents, which were not proved in accordance with law, hence were inadmissible in evidence.*
- (vi) The plaintiff has not given any notice under Section 33 of the Indian Electricity Act, 1910.*
- (vii) The defendant has already paid an amount of ₹ 1 lakh to the plaintiff on account of complaint made to the Human Rights Commission. Besides this, the defendant has also paid an amount of ₹ 25,000/- to the plaintiff.*
- (viii) The accident took place on 01.3.1997, but the application was given with delay at the police station on 14.3.1997, but the explanation of delay was not given.*
- (ix) From the evidence on record it was not proved that the accident occurred due to the negligence and fault of the defendant.*

34. For the aforesaid reasons, the trial court concluded that the plaintiff failed to prove his case, hence no relief could be granted to him and consequently, the plaintiffs suit was dismissed with costs, aggrieved against which, the plaintiff sought leave of this Court to file this Appeal under Section 96 CPC, as an indigent person, which was granted vide order dated 09.9.2021 and consequently, the plaintiff was permitted by this Court, to file appeal as an indigent person.

Submissions of the learned counsel of the parties

35. Learned counsel for the plaintiff appellant submitted that the plaintiff was only 7 years old at the time of the accident, which occurred on 01.3.1997 at about 5 PM, who was studying in class II, who was playing with other children outside the Primary School managed by Nagar Nigam, Agra, when he accidentally came in contact with the 11,000/400 Volts, 100 KVA transformer of the defendant, which was kept in open without being surrounded by any fencing and barricading, which was necessary in order to prevent people from coming in contact with it.

36. Learned counsel further submitted that had the transformer surrounded by proper fencing and barricading, the plaintiff would not have come in contact with it. It was further submitted that the plaintiff was only 7 year old child at the time of accident as such, the plea of negligence cannot be taken against him. It was further submitted that in cases of electrocution from high tension electricity, the principle of negligence is inapplicable. In such cases, the principle of strict liability applies and it was the bounden duty of the defendant to keep its transformer enclosed in a cage, so as to prevent passers by from coming in contact with it.

37. It was further submitted that the defendant has admitted the accident and has also not entered the witness box to deny the accident and offer himself for cross-examination by the plaintiff. Further the defendant has not led any evidence to contradict the plaintiffs case. It was further submitted that the defendant has not produced any rule or regulation to prove that it was not required to take sufficient precaution for ensuring that people may not come in contact with the transformer.

38. It was further submitted that the plaintiff has lost both his hands in the accident, which occurred due to electrocution from the transformer of the defendant, which was kept negligently in open place, without being surrounded by any cage, to prevent plaintiff and other people from accidentally coming in contact with it, as such, the plaintiff is entitled to compensation for the injuries suffered by him in the accident.

39. It was further submitted that the plaintiff has lost both his hands in the accident, which is proved from the oral and documentary evidence on record. The plaintiff is unable to earn his livelihood and he is completely dependent on other persons for his survival, throughout his life. The plaintiff requires one constant attendant to look after him. It was also submitted that in this case the plaintiff is entitled to compensation on the basis that he was a skilled labour at the time of the accident, for the loss of earning due to 100% permanent disability. He also submitted that the plaintiff is also entitled to compensation for loss of future prospects, loss of amenities and enjoyment of life, loss of marriage prospects, expenses incurred on medical treatment, expenses for future medical treatment, compensation for pain and suffering, etc. With these submissions, it was prayed that the appeal be allowed and reasonable compensation be awarded to the plaintiff.

40. Per contra, learned counsel for the defendant respondent submitted that the transformer was not kept on the ground but it was installed on a cemented platform, which was at a considerable height, the plaintiff climbed the above platform, which was not permitted, thereafter, the plaintiff touched the transformer, which was also not permitted. It was submitted that had the plaintiff not climbed the platform on which the transformer was installed and further, not touched the transformer, the accident would not have occurred. It was submitted that the accident occurred only due to the sole negligence of the plaintiff, who touched the transformer. There was no occasion for the plaintiff to touch the transformer. It was submitted that from the evidence of the plaintiff it was proved that the accident occurred only due to the negligence of the plaintiff as such, the trial court has rightly dismissed the suit, which requires no interference from this Court in exercise of its appellate jurisdiction. With these submissions, it was prayed that the appeal is meritless, which is liable to be rejected.

41. I have heard the learned counsel of both the sides, perused the impugned judgment and the record of the trial court.

42. The following issues arise for determination by this Court:-

(i) Whether the plaintiff is required to prove that the defendant was negligent in installing its transformer in the open, which was not surrounded by any fencing or barricading, in order to prevent people from accidentally coming in contact with it ?

(ii) Whether for the injuries suffered in the accident, the plaintiff is entitled to any compensation from the defendant ? If yes , then how much ?

Case law applicable

43. The Apex Court in the case of **Parvati Devi and Others vs. Commissioner of Police, Delhi and others (2000) 3 SCC 754**, held as under:-

“2. The appellants moved the High Court of Delhi claiming compensation as the husband of Appellant 1 died on account of electrocution while walking on the road. That the death was on account of electric shock is established in view of the CFSL report from Calcutta. But as the appellants could not produce relevant materials indicating the negligence of any particular officer of the authority, the High Court refused to award compensation. It is against this order, the present appeal has been filed. **Once it is established that the death occurred on account of electrocution while walking on the road, necessarily the authorities concerned must be held to be negligent, and therefore, in the case in hand, it would be NDMC who would be responsible for the death in question.** It is found from the records that the appellant was serving as a machineman in The Statesman and was aged 54 years on the date of death, and the age of retirement is 60 years. Taking these factors into consideration, we direct that the appellants, who are the legal heirs of the deceased, be awarded compensation to the tune of Rs 1,00,000 and NDMC should pay the same within 3 months from today failing which it will carry interest at the rate of 12 %. This should be in total satisfaction of the compensation for the legal heirs of the deceased.”

(emphasis supplied)

44. The Apex Court in the case of **MP Electricity Board vs. Shail Kumari (2002) 2 SCC 162**, while interpreting the principle of strict liability in a case where death was caused due to electrocution, held as under:

“7. It is an admitted fact that the responsibility to supply electric energy in the particular locality was statutorily conferred on the Board. If the energy so transmitted causes injury or death of a human being, who gets unknowingly trapped into it the primary liability to compensate the sufferer is that of the supplier of the electric energy. So long as the voltage of electricity transmitted through the wires is potentially of dangerous dimension the managers of its supply have the added duty to take all safety measures to prevent escape of such energy or to see that the wire snapped would not remain live on the road as users of such road would be under peril. It is no defence on the part of the management of the Board that somebody committed mischief by siphoning such energy to his private property and that the electrocution was from such diverted line. It is the lookout of the managers of the supply system to prevent such pilferage by installing necessary devices. At any rate, if any live wire got snapped and fell on the public road the electric current thereon should automatically have been disrupted. Authorities manning such dangerous commodities have extra duty to chalk out measures to prevent such mishaps.

8. Even assuming that all such measures have been adopted, a person undertaking an activity involving hazardous or risky exposure to human life is liable under law of torts to compensate for the injury suffered by any other person, irrespective of any negligence or

carelessness on the part of the managers of such undertakings. The basis of such liability is the foreseeable risk inherent in the very nature of such activity. The liability case on such person is known, in law, as "strict liability". It differs from the liability which arises on account of the negligence or fault in this way i.e. the concept of negligence comprehends that the foreseeable harm could be avoided by taking reasonable precautions. If the defendant did all that which could be done for avoiding the harm he cannot be held liable when the action is based on any negligence attributed. But such consideration is not relevant in cases of strict liability where the defendant is held liable irrespective of whether he could have avoided the particular harm by taking precautions."

45. The Gujarat High Court in the case of ***PGVCL and Another vs. Devsinhbhai Arjanbhai Hadiya and Another*** 2025 SCC Online Guj 4823, held as under:-

"8. Negligence in electrocution cases is often established through the failure of the electricity board or their officers in non-maintaining a high standard care in managing electrical infrastructure. Failure to repair or maintain equipment, resulting in accidents like electrocution, principle of strict liability is often applied because electricity is considered inherently Dangerous activity. Electricity providers have an utmost duty of care to ensure that lines and equipments are safe. This includes proper installation, maintenance and repair of all electrical infrastructure. If there is evidence of failure to meet these duties of care, it tantamounts to negligence on the part of electricity provider. The breach of duty must have directly caused the electrocution. Broken high voltage wires, open or exposed electrical wires, poor maintained poles or other infrastructure, lack of safety measures like warning signs where contact is possible are the instances of failure in taking utmost good care of electrical infrastructure and on proving such failures would invite a liability of compensating the victim or their legal representatives.

9. In Law of Torts, negligence means failure to exercise the standard of care that reasonable person would exercise in a similar situation, which results in harm or injury to another person. To prove negligence important elements such as a duty to the plaintiff, a breach of that duty, causation and damages are to be established. In the present case, the evidence indicates that plaintiffs have succeeded on all four counts and the oral deposition of the appellant is sufficient evidence in holding the appellants liable for compensation."

46. This Court in the case of ***Yashpal Singh (Minor) vs. State of UP Thru. Princ. Secy.(Electricity) and 5 Others*** 2017 SCC OnLine ALL 1246, where death was caused due to contact with a live wire on account of the negligence and laxity of the functionaries of the Electricity Department, who failed to maintain the supply lines and take necessary precautions, held as follows:-

"27. The electricity authorities are duty bound to observe precautions/safeguards under the provisions of the Indian Electricity Act and the Rules framed thereunder. Failure of such statutory functions/duties tantamounting to negligence cannot be overcome by alleged statutory obligations on the part of the consumer of the electricity. Electrocution by live wires necessitates strict liability and differs from liability arising on account of negligence and is not relevant in cases of strict liability. The electricity department is liable irrespective of the fact whether the harm could have been avoided by the consumer or injured by taking precautions."

47. The High Court of Rajasthan in the case of *Ajmer Vidhyut Vitran Nigam Ltd. Vidyut Bhawan, Jyoti Nagar, Jaipur and Others vs. Sohani Jat and Others* 2022 SCC OnLine Raj 2265, held as under:-

“13. From the factual matrix of this case negligence on the part of defendants by non maintaining High Voltage Electricity Line of 11,000 KV at the appropriate height is clear. At the site wires of High Voltage Electricity Line of 11,000 KV were loose and wire broken due to which heavy electricity passed in the pump-set of deceased and he was electrocuted. Once it is established that wire of High Voltage Electricity Line of 11,000 KV was broken due to which deceased got electrocuted, the principle of strict liability and vicarious liability comes in play. The defendants would be strictly and vicariously liable to compensate persons affected by accidents without being any fault of their and due to negligence on the part of department.”

(emphasis supplied)

48. This Court in the case of *Smt. Sunita Tiwari vs. State of UP and others Neutral Citation No.2010:AHC:83628*, while interpreting electricity as “hazardous substance” irrespective of its proportion under the Public Liability Insurance Act, 1991, where rule of strict liability is applicable, held as under:-

“This Court in the case of U.P. State Electricity Board vs. District Magistrate, Dehradun, 1997 UPLBEC (2) 1344, has already considered the issue that electricity falls within the definition of “hazardous substance” and the accident, caused on account of it, is covered under the provisions of the Public Liability Insurance Act, 1991. Relevant extract of the judgment, as contained in paragraphs 42 to 44, is being quoted below:

“42. Hence in my opinion ‘hazardous substance’ as defined in Section 2 (d) of the 1991 Act is not to be confined to a substance specified in the notification issued by the Central Government, but it includes all substances which come under the definition of ‘hazardous substance’ under the Environment (Protection) Act, 1986, with this exception that if any such substance is also notified by the Central Government under Section 2 (d) of the 1991 Act then it will be a ‘hazardous substance’ only if it exceeds the quantity specified in the said notification. Thus the notification issued by the Central Government under Section 2 (d) of the 1991 Act can only narrow down the scope of ‘hazardous substance’ as defined under the Environment (Protection) Act, 1986, but substances which are not specified in the said notification will nevertheless be regarded as ‘hazardous substances’ under the 1991 Act if they come within the definition of ‘hazardous substances’ under the Environment (Protection) Act, 1986.

43. I have already stated above that electricity is “hazardous substance” as defined under the Environment (Protection) Act, 1986 and hence I reject the submission of the learned counsel for the petitioners that it is not a hazardous substance since it has not been included in the Notification dated 24-3-1992.

44. THE principle of strict Liability Section 3 (2) of the 1991 Act places a strict liability (liability without fault) in cases of such accident due to ‘hazardous substances’ and it is not necessary for the claimant to plead that the death or injury was caused by wrong or negligent act of any person.....”

49. It is apparent from the law laid down by the Apex Court in *Parvati Devi* (supra) and *Shail Kumari* (supra) and High Courts in other cases, that in cases of electrocution by broken electricity line or any electrical infrastructure/equipment connected to it, the principle of strict liability is applicable and for obtaining compensation in such cases, the plaintiff is not supposed to prove that the Electricity Board or Power Corporation was negligent in maintaining the high tension electricity line, which snapped due to the fault of the Board/Corporation or the Board/Corporation was negligent in maintaining its electrical infrastructure/equipment. It is well settled that in cases of strict liability, the negligence of the defendant or its servants/employees is not to be proved. The plaintiff is only required to prove that he died or suffered injuries due to electrocution from the high tension electricity line or the electrical infrastructure/equipment of the defendant. Of course, this principle will not apply where any person dies or is injured due to electrocution while committing theft of electricity or of electrical infrastructure/ equipment such as distribution transformer, the oil of the transformer, copper or aluminium electrical wire, electrical poles, etc. This principle will also not apply where a person enters a restricted place where the electricity is being generated, transmitted, distributed such as electric substation, which is duly barricaded, fenced, walled, having gates for restricting the entry, which are locked, a display board is installed with a warning that it is a dangerous and prohibited zone, where public entry is banned. This principle is also not applicable where the person suffers injury while committing theft of the high tension electricity line of the Railways or any infrastructure/equipment connected with it.

Conclusion of this Court

50. It is the case of the plaintiff that at the time of the accident on 1.3.1997, he was only 7 years old, was studying in class II and was playing with other children outside the Primary School, Nangla Padi, Agra which was managed by Nagar Nigam Agra, then at 5 PM, he accidentally came in contact with the 11,000/400 Volts, 100 KVA electric transformer of the defendant, which was kept hardly at a distance of 3 feet from the steps of the school building, without any fencing or barricading, so as to prevent people from accidentally coming in contact with it. It is the specific case of the plaintiff that the transformer was not having any fencing and barricading, and due to this, while playing, he came in contact with it, got electrocuted, in which his both hands were badly burnt. The defendant in its written statement has specifically admitted the above incident, that the plaintiff was indeed electrocuted on 1.3.1997, but it is the case of the defendant that the incident occurred due to the own negligence on the part of the plaintiff, in which there was no negligence of the defendant. In view of the above admission of the defendant, it was proved that indeed the plaintiff was electrocuted from the above electric transformer of the defendant.

51. The plaintiff in his plaint specifically averred that the transformer of the defendant must have been protected by fencing of at least 1.8 metre height or other means so as to prevent access to the electric line and apparatus therein, but the defendant never made any such protection as required under law. The defendant in its written statement countered it by saying that the transformer was installed as per rule and regulation of the Board. It was also denied that the officials of the defendant never made any such protection as required under law.

52. It is apparent that once having pleaded that the transformer was installed as per rules and regulation of the defendant, it was the bounden duty of the defendant to prove that it was indeed so.

The defendant has not brought to the notice of the Court what were the relevant rules and regulation, which were to be complied while installing the transformer in the open place, outside the primary school and further, it had indeed complied with them.

53. The Apex Court in the case of ***Iswar Bhai C.Patel vs. Harihar Behera (1999) 3 SCC 457*** has observed as under :-

"17..... Having not entered into the witness box and having not presented himself for cross-examination, an adverse presumption has to be drawn against him on the basis of the principles contained in Illustration (g) of Section 114 of the Evidence Act, 1872."

54. The Apex Court in the case of ***Vidyadhar vs. Manikrao and Anr. (1999) 3 SCC 573*** has again reiterated that where a party to the suit does not appear in the witness box and states his own case on oath and does not offer himself to be cross-examined by the other side, a presumption would arise that the case set up by him is not correct.

55. It is apparent that the defendant has neither adduced any documentary nor any oral evidence in order to prove the averments of its written statement, as such, the contention of the defendant remains unproved. No official of the defendant has entered in the witness box to prove the case of defendant on oath, as pleaded in the written statement and offer himself for cross-examination by the plaintiff. In view of the above, an adverse presumption has to be drawn against the defendant, on the basis of principles contained in Section 114(g) of the Evidence Act, 1872, that the case set up by the defendant that it installed the transformer as per the applicable rules and regulations of the Board and had also undertaken requisite safety measures to prevent anyone from accidentally coming in contact with it, is false.

56. From the evidence on record it is proved that the transformer of the defendant was kept just outside the Primary School, on the road, which was unprotected and unsecured, which was not fenced, barricaded or caged. From the evidence of PW-3 it was proved that the transformer was kept on the roadside (kharanja) on foundation of bricks, which was cemented, electrical poles were installed adjoining the transformer, but it was not fenced.

57. Learned counsel for the defendant respondent has submitted that the transformer was kept on a high cemented platform, on which the plaintiff climbed and thereafter, touched the transformer, due to which he was electrocuted. It was submitted that had the plaintiff not climbed the cemented platform on which the transformer was installed and not touched the transformer, then this incident would not have occurred, and for this incident, the plaintiff is solely responsible. It was also submitted that the plaintiff was well aware of the danger from the transformer, which he deliberately ignored, for which the defendant cannot be faulted in any manner whatsoever.

58. The Punjab and Haryana High Court in the case of ***Anshu vs. State of Haryana and Others in CWP No.17880 of 2023 decided on 16.03.2026***, where due to the negligence of Dakshin Haryana Bijli Vitran Nigam Ltd. in maintaining a high-tension electric wire at a safe distance from a balcony, the claimant, aged 6 years, suffered serious permanent disability due to the amputation of her right arm, held as under:-

“12.1 Further, with regard to the liability to pay compensation by the tortfeasor, in the case of a gravely injured child, the concept of contributory negligence cannot be made applicable. There can be no denying that a child functions according to his own reasoning and intelligence. As noticed hereinabove, there is no material brought on record to show that the petitioner was at any fault. Even with regard to the allegation qua the father of the petitioner having extended the balcony, in the absence of any material available on record and the factum that the respondent Nigam has accepted its negligence and liability, the petitioner cannot be held liable for contributory negligence. Even otherwise, the manner in which the accident had occurred, it was for the Nigam to establish contrary to the inquiry report that there was no negligence on its part. Since the HT line carrying high voltage electricity was passing at a very close distance from the petitioner’s house, no contributing negligence can be attributed to a girl aged about 6 years. A Division Bench of the Madhya Pradesh High Court in M.P. State Road Transport Corporation and others vs. Abdul Rahaman and others, reported in AIR 1997 MP 248, held as under:

“11. From the aforesaid discussion relating to contributory negligence on the part of a child of tender age there is no doubt that the concept of contributory negligence cannot be made applicable to a child. A child functions according to his own reasoning and his intelligence. Logicity and rationality are not expected from a child as a child of tender age has no continuous thinking process and is governed by his impulse, instinct and innocence. Can one ever conceive that a child, if would have been aware of the peril, would ever commit an act which is dangerous or hazardous for him? The answer has to be a categorical 'No', because a child's action is childlike and really innocent. Possibly for that reason, it has been said :--

"The Maker of the Stars and Sea, become a Child earth for me?"

A child remains a child in spite of all training and directions and if anything sparkles it is the glory of his innocence which makes him indifferent to the risks which an adult apprehends and pays attention. In view of our aforesaid analysis, we conclude and hold that Riyaz, the child of four, was not liable for contributory negligence.

24. Insofar as the disability in the present case is concerned, the petitioner’s right arm having been amputated from the shoulder, she would require an advance prosthetic arm, which would enable her to attend to her daily activity and carry on with life. It is also to be taken note that the petitioner would require servicing and replacement of the accessories of the prosthetic limb periodically. In the absence of evidence regarding the quantum of expenditure in that regard, this Court is inclined to conservatively accept the amount awarded by the Hon’ble Supreme Court of India in Civil Appeal No.12098-12099 of 2024 decided on 04.09.2025 titled as Anoop Maheshwari vs. Oriental Insurance Company Ltd. and others, reported in 2025 SCC OnLine SC 1918. In the said case, in the absence of any evidence regarding the frequency of change or the servicing of the prosthetic limb or the quantum of expenditure, their Lordships of the Apex Court were of the opinion that an amount of Rs.10 lakh would suffice to account for the future expenses of continued use of the prosthetic limb and medical expenses arising in that regard. The said amount is also required to be awarded to the petitioner in the present case. ”

59. It is true that PW-3 has disclosed in his cross-examination that the transformer was installed on the cemented platform of bricks, which was by the roadside, but he has specifically

said that there was no fencing surrounding the transformer or the platform. No suggestion has been given to this witness in the cross-examination that indeed the transformer was surrounded by fencing, barricading or it was caged. Besides this, the defendant could have proved the above fact by adducing evidence, but no such evidence was led by the defendant before the trial court. It is further apparent that no such suggestion was given to eyewitness Omprakash PW-2 that the plaintiff climbed on the cemented platform and then touched the transformer deliberately. No question was put to PW-2 in order to ascertain the height of the cemented platform on which the transformer was installed. No such suggestion was put to PW-2 that the transformer was fenced, barricaded or caged and the plaintiff crossed that barrier and then, touched the transformer.

60. There is no evidence on record to prove that transformer was indeed surrounded by any fencing, barricading or it was caged so as to prevent anyone from accidentally coming in contact with it. It is apparent that in such circumstances, the plaintiff while playing near the transformer has accidentally touched it, and consequently, has suffered electrocution from high tension electric supply of 11KV, the fact of electrocution has been admitted by the defendant. It is also not proved from evidence on record that the plaintiff climbed the cemented platform on which the transformer was installed and then deliberately touched the transformer.

61. The injury report dated 01.3.1997, the treatment papers and the discharge summary of S.N.Medical College, Agra duly proved that the plaintiff has suffered burn injuries on his both hands due to electrocution. It is not the case of the defendant that the plaintiff has not suffered electrocution injuries. In fact, the defendant has admitted in its written statement that the plaintiff suffered electrocution injuries due to his own negligence. The defendant has also disclosed in its written statement that he has paid on humanitarian ground a compensation of ₹ 1.25 lakhs to the plaintiff, which itself proves that the plaintiff was electrocuted from the defendants transformer, which is not disputed by the defendant.

62. It is apparent that the plaintiff has been electrocuted from the transformer of the defendant which was installed on a cemented platform by the roadside. It is also proved that the transformer was of 11,000/400 Volts 100 KVA capacity, which was connected to a 11 KV high tension electric line of the defendant. The defendant has failed to prove that the transformer was fenced, barricaded or was caged, and the plaintiff crossed that barrier and touched the transformer. Since there was no barrier around the transformer, hence, the plaintiff accidentally came in contact with it while playing with other children outside the Primary School. In these facts and circumstances, the plaintiff was not required to prove that he was not negligent in the accident but the tortious principle of strict liability applies in which, the plaintiff has only to prove that he suffered electrocution injuries from high tension electrical infrastructure/equipment of the defendant, which he has successfully proved. In the facts and circumstances of the case, neither the plaintiff was required to prove that he was not negligent nor there was any negligence on the part of the plaintiff.

63. It is also apparent that the plaintiff was only about 7 years old at the time of the accident. It is also proved from evidence on record that the transformer was installed just outside the Primary School managed by Nagar Nigam, Agra, as such, the defendant was well aware of the existence of the school and the possibility that children studying in school may come in contact with its transformer, hence, the defendant should have taken proper steps to avoid any such

untoward incident of electrocution from its transformer, but no such steps were ever taken by the defendant. From the evidence on record it is proved that even after the accident, the defendant has not taken any steps to avoid any such accident in future, which shows the careless and negligent attitude of the defendant towards the general public. It is also apparent that it is not expected from a child of 7 years of age to be aware of the imminent danger from a transformer, as such, the defendant cannot take the plea of negligence on the part of the plaintiff, for avoiding its tortious liability.

The defendant has also taken a plea in its written statement that the plaintiffs suit was barred by Section 33 of the Indian Electricity Act, 1910. The trial court has concluded that the plaintiff has not given any notice to the Electrical Inspector or other official of the defendant under the above provision. The question arises if no notice has been given by the plaintiff under the above provision, then whether the suit was barred ?

64. Section 33 of the Indian Electricity Act, 1910 reads as under :-

Notice of accidents and inquiries--(1) *If any accident occurs in connection with the generation, transmission, supply or use of energy in or in connection with, any part of the electric supply - lines or other works of any person and the accident results or is likely to have resulted in loss of human or animal life or in any injury to a human being or an animal, such person shall give notice of the occurrence and of any such loss or injury actually caused by the accident, in such form and within such time as may be prescribed to the Electrical Inspector and to such other authorities as the appropriate Government may by general or special order, direct.*

(2) *The appropriate Government may, if it thinks fit, require any Electrical Inspector, or any other competent person appointed by it in this behalf, to inquire and report –*

(a) *as to the cause of any accident affecting the safety of the public, which may have been occasioned by or in connection with, the generation, transmission, supply or use of energy, or*

(b) *as to the manner in, and extent to, which the provisions of this Act or of any person, have been complied with.*

(3) *Every Electrical Inspector or other person holding an inquiry under sub-section(2) shall have all the powers of a Civil Court under the Code of Civil Procedure, 1908(5 of 1908), for the purpose of enforcing the attendance of witnesses and compelling the production of documents and material objects, and every person required by an Electrical Inspector or such other person as aforesaid to furnish any information shall be deemed to be legally bound to do so within the meaning of Section 176 of the Indian Penal Code(45 of 1860).*

65. The above provision only stipulates giving notice of the accident to the Electrical Inspector or such other authorities prescribed by the Government. In the above provision, nowhere it is mentioned that if it is not complied with, then the suit claiming compensation cannot be filed against the defendant.

66. From the above facts and applicable law, it is apparent that the trial court has erred in concluding that the accident occurred due to plaintiff's own negligence, for which the defendant cannot be faulted. The trial court also erred in concluding that the plaintiff has lodged the FIR regarding the accident with delay, as if, the trial court was deciding a criminal case. The issue of delay in lodging the FIR was not at all relevant, since the defendant has admitted in its written

statement the accident of electrocution from its transformer and the defendant has even paid a paltry compensation of ₹ 1.25 lakhs for this, to the plaintiff. In view of this, the observation of the trial court that the plaintiff has filed photo copy of the documents which are inadmissible in evidence, is a perverse finding, on the basis of which plaintiff's suit could not have been dismissed. It is a travesty of justice that the plaintiffs suit has been dismissed by an incompetent trial court Judge.

67. It is also evident that the trial court has not determined the amount of compensation payable to the plaintiff for the accident which occurred on 01.3.1997. It will be a travesty of justice if the case is remanded to the trial court for determination of compensation because 29 years have already lapsed after the accident and it will further prolong the agony of the plaintiff and his family. In view of this, this Court has proceeded to determine the compensation payable to the plaintiff, in accordance with the law and various precedents of the Apex Court.

Compensation payable to the plaintiff

68. In the instant case the compensation is to be determined in the same manner, in which it is determined in a motor accident claim case, by considering the occupation of the plaintiff, his monthly income, nature of injuries whether simple or grievous, quantum of permanent disability, the earning capacity loss due to the permanent disability, and he is entitled to get compensation for future loss of earning due to permanent disability, treatment expenses incurred by him and to be incurred in future, compensation for loss of earning due to future prospects, compensation for pain and suffering, loss of amenities, enjoyment of life, special diet and expenditure incurred on transportation.

69. It is proved from the evidence on record that the plaintiff was only 7 years old at the time of the accident, his both hands were badly burnt in the electrocution suffered from the defendants transformer, he remained admitted in the S.N.Medical College, Agra for treatment from 01.3.1997 to 19.3.1997 and again from 03.4.1997 to 12.5.1997 and he was still in the treatment of Dr.Rahul Sahai, when the case was filed. It was proved from the documentary and oral evidence on record that in the above Medical College his right hand above elbow and left hand below elbow, were amputated, due to electrocution burn injuries. It is also proved from the medical certificate of Dr.A.K.Ambesh, Ortho Surgeon, District Hospital, Agra dated 11.9.1997 that the plaintiff has suffered permanent disability due to below shoulder amputation in both upper extremity.

70. The Apex court in the case of ***Raj Kumar vs. Ajay Kumar and Another, (2011) 1 SCC 343***, while analysing how to determine compensation in cases of permanent disability, has held as under:-

“10. Where the claimant suffers a permanent disability as a result of injuries, the assessment of compensation under the head of loss of future earnings would depend upon the effect and impact of such permanent disability on his earning capacity. The Tribunal should not mechanically apply the percentage of permanent disability as the percentage of economic loss or loss of earning capacity. In most of the cases, the percentage of economic loss, that is, the percentage of loss of earning capacity, arising from a permanent disability will be different from

the percentage of permanent disability. Some Tribunals wrongly assume that in all cases, a particular extent (percentage) of permanent disability would result in a corresponding loss of earning capacity, and consequently, if the evidence produced show 45% as the permanent disability, will hold that there is 45% loss of future earning capacity. In most of the cases, equating the extent (percentage) of loss of earning capacity to the extent (percentage) of permanent disability will result in award of either too low or too high a compensation.

11. What requires to be assessed by the Tribunal is the effect of the permanent disability on the earning capacity of the injured; and after assessing the loss of earning capacity in terms of a percentage of the income, it has to be quantified in terms of money, to arrive at the future loss of earnings (by applying the standard multiplier method used to determine loss of dependency). We may however note that in some cases, on appreciation of evidence and assessment, the Tribunal may find that the percentage of loss of earning capacity as a result of the permanent disability, is approximately the same as the percentage of permanent disability in which case, of course, the Tribunal will adopt the said percentage for determination of compensation. (See for example, the decisions of this Court in *Arvind Kumar Mishra v. New India Assurance Co. Ltd.* [(2010) 10 SCC 254 : (2010) 3 SCC (Cri) 1258 : (2010) 10 Scale 298] and *Yadava Kumar v. National Insurance Co. Ltd.* [(2010) 10 SCC 341 : (2010) 3 SCC (Cri) 1285 : (2010) 8 Scale 567])

(emphasis supplied)

71. Since, both hands of the plaintiff have been amputated, there is not an iota of doubt that he has become permanently disabled. It is further apparent that due to the amputation of his hands, the plaintiff is not in a condition to do any work and earn his livelihood. In view of this, the plaintiff has suffered 100 % functional disability, who is completely dependent on others for his survival and daily chores. The plaintiff is unable to eat, dress-up, play, his entire childhood has been spoiled, he cannot enjoy the amenities of life, his marriage prospects have vanished, his life has become miserable.

72. The Apex Court in the case of *Kajal vs. Jagdish Chand & Ors.* (2020) 4 SCC 413, *Master Ayush vs. Branch Manager, Reliance General Insurance Co. Ltd. & Anr.* (2022) 7 SCC 738, *Baby Sakshi Greola vs. Manzoor Ahmad Simon & Anr.* 2024 SCC OnLine SC 3692 and *Hitesh Nagjibhai Patel vs. Bababhai Nagjibhai Rabari & Another* 2025 INSC 1070 has held that where a claimant has suffered 100% permanent functional disability due to an accident, the compensation under the head of loss of income must be awarded, at the very least, on the basis of the minimum wages of a skilled workman prevailing at the time of the accident in that region and should not be assumed on a notional basis. The Apex Court has also applied a multiplier of 18 for determining compensation in cases, where the claimant was below the age of 15 years at the time of the accident.

73. The Apex Court in the case of *Pappu Deo Yadav vs. Naresh Kumar* (2022) 13 SCC 790 (By Three Judges) while considering the issue of awarding future prospects in cases of permanent disablement from motor accident, held as under:-

“7. Two questions arise for consideration : one, whether in cases of permanent disablement incurred as a result of a motor accident, the claimant can seek, apart from

compensation for future loss of income, amounts for future prospects too; and two, the extent of disability. On the first question, the High Court no doubt, is technically correct in holding that Pranay Sethi involved assessment of compensation in a case where the victim died. However, it went wrong in saying that later, the three-Judge Bench decision in Jagdish [Jagdish v. Mohan, (2018) 4 SCC 571 : (2018) 3 SCC (Civ) 102 : (2018) 2 SCC (Cri) 572] was not binding, but rather that the subsequent decision in Anant [Anant v. Pratap, (2018) 9 SCC 450 : (2018) 4 SCC (Civ) 378 : (2018) 3 SCC (Cri) 756] to the extent that it did not award compensation for future prospects, was binding. This Court is of the opinion that there was no justification for the High Court to have read the previous rulings of this Court, to exclude the possibility of compensation for future prospects in accident cases involving serious injuries resulting in permanent disablement. Such a narrow reading of Pranay Sethi is illogical, because it denies altogether the possibility of the living victim progressing further in life in accident cases-and admits such possibility of future prospects, in case of the victim's death. "

74. The Apex Court in the case of **Sidram vs. Divisional Manager, United India Insurance Co. Ltd. & Another (2023) 3 SCC 439**, while directing that in cases of serious permanent disability, compensation for future prospects should also be awarded, held as under:-

"31. It is now a well-settled position of law that even in cases of permanent disablement incurred as a result of a motor accident, the claimant can seek, apart from compensation for future loss of income, amounts for future prospects as well. We have come across many orders of different tribunals and unfortunately affirmed by different High Courts, taking the view that the claimant is not entitled to compensation for future prospects in accident cases involving serious injuries resulting in permanent disablement. That is not a correct position of law. There is no justification to exclude the possibility of compensation for future prospects in accident cases involving serious injuries resulting in permanent disablement. Such a narrow reading is illogical because it denies altogether the possibility of the living victim progressing further in life in accident cases-and admits such possibility of future prospects, in case of the victim's death. "

75. The Apex Court in the case of **Rahul Ganpatrao Sable vs. Laxman Maruti Jadhav (Dead) through LRS. and others, (2023) 13 SCC 334** has awarded compensation towards attendant charges, future medical expenses, loss of marriage prospects and pain and suffering.

76. The Constitution Bench of the Apex Court in the case of **National Insurance Co. Ltd. vs. Pranay Sethi and Others (2017) 16 SCC 680** has held that where the injured is self employed and upto 40 years old, then he is entitled to compensation towards future prospects @ 40% of his income.

77. It is evident that the accident occurred on 01.3.1997, when the plaintiff was only 7 years old. In this case the compensation is to be determined on the basis of minimum wages of skilled labour prevailing in the State of Uttar Pradesh at the time of accident, which was about ₹ 3,000/- per month. The plaintiff is entitled to future prospects @ 40% of his income. Besides this, since the plaintiff is fully dependent on others, he is entitled to wages of one attendant, on the basis of minimum wages of unskilled labour @ ₹ 2,500/- per month. He is entitled to future prospects on the wages of one attendant @ 40%, since the wages payable to attendant will also increase in future.

78. The plaintiff is also entitled to medical expenses incurred by his family for his treatment, special diet and transportation, loss of marriage prospects, pain and suffering, loss of amenities of life and loss of income of family members during his treatment. The plaintiff has not submitted any evidence regarding cost of artificial limb. It is also apparent that plaintiff has filed the suit and this appeal, as an indigent person, who is not having any financial means to arrange an artificial limb. In these circumstances, it will be in the interest of justice, that a reasonable amount is awarded to the plaintiff under this head, so that he can afford an artificial limb.

79. The plaintiff has also filed the cash memos of medicine purchased amounting to Rs.4,191.60, prescription of the doctors and discharge summary of S.N.Medical College,Agra, as such, it will be appropriate to award ₹ 5,000/- to the plaintiff towards medical expenses incurred by his family for his treatment. In view of the above facts and applicable legal principles, the compensation payable to the plaintiff is determined as under:-

S.No.	Compensation Head	Amount Awarded (in Rs.)	In Accordance with
1.	Monthly income of the injured plaintiff on the basis of minimum wages of skilled workman	3,000/-	Kajal (supra), Master Ayush (supra), Baby Sakshi Greola (supra) and Hitesh Nagjibhai Patel (supra)
2.	Annual income of the injured plaintiff	3,000X12= 36,000/-	Kajal (supra), Master Ayush (supra), Baby Sakshi Greola (supra) and Hitesh Nagjibhai Patel (supra)
3.	Add future prospects @40% since injured plaintiff was about 7 years on the date of the accident.	36,000 X 40%=14,400/-	Pranay Sethi (supra), Pappu Deo (supra) and Sidram (supra)
4.	Total annual loss of future income	36,000+14,400=50,400/-	Pranay Sethi (supra), Pappu Deo Yadav (supra) and Sidram (supra)

5.	Multiplier applied since age of the injured/claimant was 7 years on the date of accident	18	Pranay Sethi (supra)
6.	Total future loss of income due to 100% functional disability	50,400 X 18= 9,07,200/-	Pranay Sethi (supra) and Raj Kumar (supra)
7.	Special Diet and Transportation Expenses	10,000/-	Hitesh Nagjibhai Patel (supra)
8.	Treatment Expenses	5,000/-	
9.	Attendant Expenses (1 attendant)	2,500+1,000(40% of 2,500)=3,500X12X18=7,56,000/-	Rahul Ganpatrao Sable (supra) and Kajal (supra)
10.	Compensation towards pain, suffering and loss of amenities	5,00,000/-	Kajal (supra)
11.	Loss of marriage prospects	3,00,000/-	Kajal (supra) and Hitesh Nagjibhai Patel (supra)
12.	Future medical expenses for artificial limb	3,00,000/-	Hitesh Nagjibhai Patel (supra)
13.	Loss of income of his parents and family members during his treatment (4 months)	3,000X4=12,000/-	Kajal (supra)
14.	Total compensation	27,90,000/-	-
15.	Less compensation received earlier from the defendant	1,25,000/-	-
16.	Net compensation to be paid by defendant	27,90,000- 1,25,000=26,65,000/-	-

80. In this way, the plaintiff is entitled to total compensation of ₹ 26,65,000/- for the injuries suffered by him due to electrocution from the transformer of the defendant. He is also entitled to pendentelite and future interest on the above compensation @ 6% per annum, from the date of filing of the misc.case as indigent person i.e. 30.5.1997 till realisation from the defendant.

81. For the aforesaid reasons, the trial court has erred in dismissing the plaintiff's suit, which is legally unsustainable and is liable to be set aside.

82. **Accordingly, the appeal is allowed with costs throughout.** The impugned judgment and decree dated 29.10.2005 in O.S. no.171 of 2003 is set aside and the plaintiff's suit is decreed for the following reliefs :-

(i)The plaintiff is entitled to a sum of ₹ 26.65 lakhs as compensation for the injuries suffered by him, along with pendente lite and future interest @ 6% per annum from the date of filing of the miscellaneous case i.e.30.5.1997, till its realisation from the defendant.

(ii)The plaintiff is also entitled to the costs of the suit and the appeal, including the court fees payable in the suit and the appeal, from the defendant.

(iii)The defendant is directed to pay the above amount within a period of **one month** from today, failing which, the plaintiff is at liberty to initiate execution proceedings against the defendant for realisation of the decretal amount.

(iv)Since the plaintiff is permanently disabled and dependent on others, the compensation realised from the defendant along with interest, will be deposited by the trial court in a fixed deposit account of any nationalised bank or post office, bearing maximum **monthly interest**, which the plaintiff will be able to draw every month for his livelihood. Without the permission of the court, the plaintiff will not be able to withdraw any amount from the fixed deposit. Of course, for medical treatment and other special circumstances, the plaintiff is permitted to withdraw the amount from the fixed deposit, but with the permission of the trial court.

(v)Since the plaintiff is illiterate and poor, for executing the decree, he can take assistance of the concerned District Legal Service Authority. The concerned District Judge is directed to assist the plaintiff in this matter, so that, he may not be fleeced, for reaping the fruits of the decree.

83. Office is directed to send back the record of the trial court.

(2026) 4 ILRA 2081
REVISIONAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 22.04.2026

BEFORE

THE HON'BLE LAXMI KANT SHUKLA, J.

Criminal Revision No. 2935 of 2024

Shavez Khan

...Revisionist

Versus

State of U.P. & Ors.

...Opposite Parties

Issues for Consideration

- (i) Whether rejection of an application under Section 156(3) Cr.P.C. on the ground of absence of sanction under Section 197 Cr.P.C. for prosecution of a public servant was legally sustainable?
- (ii) Whether a person who had accepted compensation under a Government scheme treating the death of the deceased as accidental could subsequently seek criminal prosecution alleging that the same death was homicidal?
- (iii) Whether the High Court, in exercise of revisional jurisdiction, should interfere with the rejection of an application under Section 156(3) Cr.P.C. when the ultimate conclusion of the Magistrate was otherwise sustainable?

Headnotes

Code of Criminal Procedure, 1973 — Ss. 156(3) and 197 — Application for direction to register F.I.R. — Public servant — Rejection on ground of absence of sanction under Section 197 Cr.P.C. — Legality.

HELD: Sanction under Section 197 Cr.P.C. becomes relevant at the stage of taking cognizance of the offence and not at the stage of consideration of an application under Section 156(3) Cr.P.C. Consequently, rejection of an application under Section 156(3) Cr.P.C. solely on the ground that prior sanction under Section 197 Cr.P.C. had not been obtained is not legally sustainable. [Paras 6, 7 and 16]

Code of Criminal Procedure, 1973 — S. 156(3) — Direction for registration of F.I.R. — Applicant accepting compensation for accidental death under Government scheme — Subsequent plea of homicidal death — Maintainability of criminal proceedings.

HELD: Accidental death and homicidal death are mutually inconsistent factual situations. Where the revisionist had accepted compensation under a Government scheme by treating the death of his father as accidental, he could not thereafter seek criminal prosecution of the opposite parties on the allegation that the very same death was homicidal. The inconsistent stand adopted by the revisionist rendered the allegations made in the application under Section 156(3) Cr.P.C. unreliable and disentitled him to the relief sought. [Paras 8 to 16]

Criminal Law — Accidental death — Homicidal death — Distinction.

HELD: An accidental death is one resulting from an unintended, unexpected and unplanned event, whereas homicidal death is the consequence of an intentional criminal act. The two concepts are fundamentally distinct and cannot be equated. A claim founded on accidental death cannot simultaneously be maintained as one based on homicidal death in respect of the same occurrence. [Paras 13 to 16]

Code of Criminal Procedure, 1973 — Ss. 156(3), 397 and 401 — Revision — Interference with order of Magistrate — Erroneous reasoning but correct ultimate conclusion.

HELD: Although the Magistrate erred in rejecting the application under Section 156(3) Cr.P.C. on the ground of absence of sanction under Section 197 Cr.P.C., the ultimate conclusion rejecting the application did not warrant interference since, on the material available, the allegations set up by the revisionist were inconsistent with his own conduct in obtaining compensation for accidental death. Where the final conclusion is otherwise sustainable, revisional interference is unwarranted merely because one of the reasons assigned by the court below is legally erroneous. [Para 16]

Revision dismissed. (E-14)

Case Law Cited

Anil Kumar v. M.K. Aiyappa and Another case.

List of Acts / Statutes

Code of Criminal Procedure, 1973; Indian Penal Code, 1860 — Section 302.

List of Keywords

Sanction for prosecution; Public servant; Registration of F.I.R.; Accidental death; Homicidal death; Government compensation scheme; Revisional jurisdiction; Inconsistent pleadings; Magistrate's powers.

Case Arising From

Order dated **04.05.2024** passed by the Chief Judicial Magistrate, Rampur in Case No. 662 of 2022, **Shavez Khan v. Rakesh Chand, Tehsildar**, under Section 156(3) Cr.P.C., Police Station Swar, District Rampur, whereby the application under Section 156(3) Cr.P.C. seeking direction for registration of an F.I.R. was rejected.

Appearance for Parties

For the Appellants: Sri Krishna Dutt Tiwari.

For the Respondents: earned A.G.A.; Sri Alind Kumar; Sri Kiran Rani; and Sri Laloo Yadav

(Delivered by Hon'ble Laxmi Kant Shukla, J.)

1. Heard Mr. Krishna Dutt Tiwari, the learned counsel for revisionist, the learned AGA for State-opposite party no. 1 and Mr. Laloo Yadav, the learned counsel for opposite party nos. 2, 3 and 4.

2. Perused the record.

3. Revisionist Shavez Khan has preferred this Criminal Revision challenging the impugned order dated 04.05.2024 passed by Chief Judicial Magistrate, Rampur (hereinafter referred as Jurisdictional Magistrate) in Case No. 662/2022 Shavez Khan Vs. Rakesh Chand, Tehsildar, under section 156(3) Cr.P.C., Police Station Swar, District Rampur whereby the jurisdictional magistrate rejected the application of the revisionist under section 156(3) Cr.P.C.

4. Feeling aggrieved from that order, this revision has been filed on the ground that the impugned order is illegal, perverse to law and has been passed without application of judicial mind, and is, therefore, liable to be set aside.

5. The factual matrix of the case in short is that the revisionist filed an application under section 156(3) Cr.P.C. stating that on 05-09-2022, at 05:30 in the morning, he along with his father had gone to collect fodder for their animals. After harvesting the fodder, they returned to the banks of the Kosi River in the Bhuvanra Ehtmal forest. At around 07:00 in the morning, opposite party no. 2 accompanied by opposite party no. 3 and 4 and two unknown persons having rifles in their hands, came from Akbarabad, started giving filthy abuse to father of the revisionist and making allegation of illegal mining against him. Opposite party no. 2 told opposite party nos. 3 and 4 to kill him by throwing him into the river. Upon hearing the noise, the witnesses reached there. Then, at the behest of opposite party nos. 2, 3 and 4 threw the revisionist's father, into a deep riverbed and stood there until he died. Two unknown persons pointed rifles at everyone and threatened to shoot if anyone tried to save him. Responding to the revisionist's cries, people gathered and pulled the dead body from the water. The revisionist's uncle, filed a complaint at the police station, but no case was registered. The body was neither sent to the District Hospital, Rampur, for post-mortem examination, nor post-mortem report filed. The body remained on the banks of the Kosi River until evening. The police themselves wrote a written complaint on a plain paper signed by the

revisionist's uncle. The same night, a post-mortem report was filed. The revisionist sent applications to S.P. Rampur in person and by speed post to get a report written in this regard, to the Additional Director General of Police, Bareilly, to the Chief Minister of Uttar Pradesh Government, Lucknow by speed post, and to the DIG, Moradabad Division, Moradabad by speed post on 14-09-2022.

6. The Jurisdictional Magistrate, after calling for a report from the concerned police station, rejected the application on the ground that opposite party no. 2 is a public servant and as per the directions passed by the Hon'ble Allahabad High Court in *Anil Kumar Vs. M.K. Ayyappa case*, prior sanction from the competent authority under Section 197 Cr.P.C. has been made mandatory for prosecuting a public servant, which is not available on record.

7. Learned counsel appearing on behalf of revisionist submitted that the permission under section 197 Cr.P.C. is required at the time of taking cognizance meaning thereby if the matter is investigated and charge sheet is filed against public servant without permission of initiation of criminal proceeding issued by proper authority the Court cannot take cognizance on the same i.e. different stage but such condition precedent does not apply to the application under section 156(3) Cr.P.C. and thus it is contended that the impugned order, having been passed on this erroneous ground, suffers from material irregularity and illegality, and is liable to be set aside by this Court.

8. Per contra learned AGA as well as learned counsel appearing on behalf of opposite party nos. 2, 3 and 4 vehemently opposed the criminal revision and argued that according to the post mortem report, the cause of death was asphyxia due to drowning. It is pertinent to mention that there is not external injury on the part of dead body of deceased. It is remarkable that the family of the deceased treated the death as accidental death and moved an application for compensation under government scheme and received Rs. Five Lakhs. Though the revisionist was tried to get said amount immediately without following the process but opposite party no. 2 have no power to grant such compensation immediately, the file was already forwarded by opposite party no. 2 to higher authorities sitting at District Head Quarter and the action in District Head Quarter was to be taken.

9. In this circumstances the opposite party nos. 2, 3 and 4 had no opportunity to do anything with that application but under his whim the revisionist was making pressure on them and in that pursuance he filed such application before jurisdictional magistrate. It is the dual standard of revisionist on one hand he received compensation for accidental death of his father and on other hand he wants to prosecute opposite party nos. 2, 3 and 4 for the same.

10. Learned counsel appearing on behalf of opposite parties referred page 16, 17, 18, 19, 20, 21, 22 and 23 of counter affidavit dated 11.12.2025 and urged that the opposite party nos. 2, 3 and 4 are public servant. Opposite party no. 2 is Tehsildar and opposite party nos. 3 and 4 are Lekhpal who would have no enmity with the deceased, even no enmity has been shown in application u/s 156(3) of Cr.P.C. 2. In such circumstances the story cooked in application u/s 156(3) Cr.P.C. is only a bundle of false and nothing more and the jurisdictional magistrate rightly rejected the said application and passed the impugned order.

11. When confronted with above, the learned counsel for revisionist only argued that the government insurance scheme is a beneficiary scheme and since the revisionist's father died under unnatural condition and the cause of death was asphyxia due to drowning so to get compensation against that is his legal right under the scheme so he got it the same but though such drowning of father of revisionist was caused by opposite party nos. 2, 3 and 4 along with two persons, so he is trying to get them punished for the same.

12. Having heard the rival submissions and perusal of the material available on record, this Court is of the view that accidental death and homicidal death are two different facts. A homicidal death cannot be construed or treated as accidental death.

13. According to the Oxford Dictionaries, word accident is a noun having meaning:- an unpleasant event that happens unexpectedly and causes damage, injury or death. According to Cambridge Dictionary accident means something bad that happens that is not expected or intended and that often damages something or injures someone. According to Wikipedia an **accident** is an unintended and usually undesirable event that is not deliberately caused by humans. Although in ordinary conversations, intentionality is the only factor most people consider, formally, accidents require three factors: it must be unintended, unpreventable, and unexpected. The term accident usually implies the presence of unrecognized or unaddressed risks.

14. An accident is a event that unintentionally happened, that results in damage, injury or harm. An accident is an event that has unintentionally happened, but this may or may not result any damage, harm or injury. Further more it is an undesirable or unintended and usually results as any harm injury damage or loss. It signifies a mishap, chance occurrence, or an unplanned incident. Synonyms include misfortune, calamity, disaster, mishap, and chance.

15. An accident is an unplanned and unintentional event that especially resulting in injury damage or harm. An incident is a broader term for any unplanned event, including those that do not cause harm (near misses). Essentially all accidents are incidents but not all incidents are accidents. In contrast, a homicidal death is the result of an incident which has defined meaning other than accident.

16. When a person performs any action without any malafide intention to cause harm but due to inadvertence the result of such action came out differently without the intentional role of doer meaning thereby the result of act as intended by his it's doer was against his hope. On the other hand a crime is result of an intentional act. In such circumstance, I am of the view that the accidental death and a homicidal death is different to each other both cannot be summarized in one definition. In such circumstance, if the revisionist has claimed compensation for accidental death of the deceased, he cannot claim it as homicidal death. In such situation, though the trial court's ground for rejecting the Application U/S 156 (3) Cr.P.C. was not good in law, but otherwise the story presented by the revisionist before jurisdictional magistrate cannot be considered as true, and, therefore, no interference by this Court with the impugned order is required.

17. Accordingly, the criminal revision, is hereby **dismissed**.

(2026) 4 ILRA 2086
APPELLATE JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 09.04.2026

BEFORE

THE HON'BLE SANDEEP JAIN, J.

First Appeal No. 10 of 2022

B.N. Tripathi & Ors.

...Appellants

Versus

State of U.P.

...Respondent

Issues for Consideration

- (i) Whether the Kanpur Development Authority was justified in withholding possession of the leased plot despite execution and registration of a 999-year lease deed and receipt of the entire lease premium?
- (ii) Whether the plaintiffs proved that the leased plot had been obtained for establishment of an industrial unit and that they suffered loss on account of non-delivery of possession?
- (iii) Whether the Trial Court rightly dismissed the suit by holding that the plaintiffs had failed to prove their case despite the defendants having led no evidence?
- (iv) Whether the plaintiffs were entitled to mandatory injunction for delivery of possession, damages for loss of business profits, damages on account of escalation in project cost, interest and exemplary costs?

Headnotes

Lease—999-year lease—Industrial plot—Entire premium paid—Registered lease deed executed—Possession withheld without cancellation of lease or forfeiture—Mandatory injunction.

HELD: Upon execution and registration of the lease deed and payment of the entire premium, the plaintiffs acquired enforceable leasehold rights over the suit property. The defendants neither pleaded nor proved cancellation of the lease, forfeiture, resumption or creation of any third-party rights. Mere withholding of possession for decades without any legal justification constituted breach of contractual and statutory obligations. The plaintiffs were, therefore, entitled to a decree directing delivery of vacant possession of the leased plot. [Paras 32 to 41]

Evidence—Registered lease deed—Terms reduced into writing—Contrary plea in written statement unsupported by evidence—Effect.

HELD: The registered lease deed constituted the best evidence of the contractual relationship between the parties and expressly acknowledged payment of the entire lease premium. The plea that the plaintiffs had failed to pay the entire consideration, in the absence of any documentary or oral evidence, could not override the recitals contained in the registered instrument. [Paras 32 to 36]

Evidence—Burden of proof—Statutory authority withholding best evidence—Failure to enter witness box—Adverse inference.

HELD: Although the defendants pleaded that possession had already been delivered, they neither produced the possession memo nor examined any officer conversant with the facts. A party withholding the best available evidence and abstaining from entering the witness box invites an adverse inference under Section 114 Illustration (g) of the Evidence Act that the defence set up is incorrect. Mere pleadings without proof do not discharge the burden cast upon the defendants. [Paras 37 to 40]

Civil Procedure—Appreciation of evidence—Trial Court ignoring admitted documents and material evidence—Perverse findings.

HELD: The Trial Court ignored the registered lease deed, previous litigation between the parties, correspondence exchanged with the Development Authority and other undisputed documentary evidence. The findings that the plaintiffs failed to establish the terms of allotment, demand for possession and entitlement to relief were contrary to the record and suffered from perversity, warranting interference in appeal. [Paras 43 to 45]

Lease—Industrial plot—Failure to deliver possession—Loss of business opportunity—Entitlement to damages.

HELD: The lease itself established that the plot had been allotted for setting up an industrial unit. The plaintiffs proved that they had obtained registration from the Industries Department and prepared a project report indicating the anticipated profitability of the proposed factory. Since establishment of the industry became impossible solely due to the defendants' failure to hand over possession, the plaintiffs became entitled to damages for loss of business profits. [Paras 46 to 56]

Damages—Breach of lease—Loss of anticipated profits—Assessment.

HELD: Exact computation of future business profits is not always possible where a commercial venture is prevented from commencing because of breach by the opposite party. Once the intended business, the wrongful conduct of the defendants and the probable income stood established, the Court was justified in awarding compensation on a reasonable estimate based upon the project report and surrounding circumstances. [Paras 47 to 56]

Damages—Delay in delivery of possession—Escalation in project cost due to inflation—Compensation.

HELD: The prolonged deprivation of possession resulted in substantial escalation in the cost of establishing the proposed industrial unit. The plaintiffs were, therefore, entitled to compensation towards increased project cost attributable to inflation and the delay occasioned by the defendants' unlawful conduct. [Paras 55 and 56]

Development Authorities—Statutory obligations—Arbitrary withholding of possession despite receipt of entire consideration—Public accountability.

HELD: A statutory development authority is expected to act fairly and reasonably. Retaining possession of an allotted plot for decades after execution of a registered lease deed and receipt of the entire premium, without cancelling the lease or assigning any lawful reason, amounts to arbitrary exercise of power and defeats the legitimate expectations of citizens. Such conduct renders the authority liable for consequential damages. [Paras 57 to 59]

Civil Procedure—Exemplary costs—Statutory authority compelling unnecessary litigation.

HELD: Where a public authority compels citizens to engage in prolonged litigation despite their clear legal entitlement, award of exemplary costs is justified to discourage arbitrary conduct and compensate the successful litigants for avoidable hardship. [Paras 57 to 61]

Lease—Mandatory injunction—Damages—Interest.

HELD: The plaintiffs were entitled to delivery of possession of the leased plot, damages for loss of business profits from 01.07.1987 till delivery of possession, Rs.5,00,000/- towards escalation in project cost, pendente

lite and future interest at 6% per annum, delivery of the sanctioned building plan and exemplary costs of Rs.2,00,000/-. [Paras 60 and 61]

Appeal allowed. Judgment and decree of the Trial Court set aside. Suit decreed. (E-14)

Case Law Cited

Iqbal Basith and Others v. N. Subbalakshmi and Others, (2021) 2 SCC 718 (Three-Judge Bench) — cited; Maula Bux v. Union of India, (1969) 2 SCC 554 — relied upon; M/s A.T. Brij Paul Singh and Others v. State of Gujarat, (1984) 4 SCC 59 — relied upon; Bhagwati Prasad Jhunhunwala and Others v. UCO Bank and Another, 2023 SCC OnLine Cal 359 (Division Bench, Calcutta High Court) — relied upon; Iswar Bhai C. Patel v. Harihar Behera, (1999) 3 SCC 457 — relied upon; Vidyadhar v. Manikrao and Another, (1999) 3 SCC 573-relied upon.

List of Acts / Statutes/Books

Code of Civil Procedure, 1908; Indian Evidence Act, 1872; Indian Contract Act, 1872; Transfer of Property Act, 1882.

List of Keywords

Industrial plot; Kanpur Development Authority; Mandatory injunction; Delivery of possession; Breach of lease; Loss of business profits; Escalation in project cost; Adverse inference; Burden of proof; Registered lease deed; Exemplary costs; Public accountability; Statutory authority.

Case Arising From

Judgment and decree dated **20.04.2016** passed by the **2nd Additional Judge, Small Causes Court, Kanpur Nagar** in **Original Suit No. 243 of 2009, B.N. Tripathi and Others v. State of U.P. and Another**

Appearance for Parties

For the Revisionist: Sri Anuj Agarwal; Sri B.N. Tripathi (in person); Ms. Shreya Gupta
For the Respondents: Sri Raj Nath Pandey and Sri Rajesh Kumar Singh

(Delivered by Hon'ble Sandeep Jain, J.)

1. The instant appeal has been filed by the plaintiff under Section 96 CPC against the impugned judgment and decree dated 20.4.2016 passed by the 2nd Additional Judge Small Cause Court, Kanpur Nagar in O.S. no. 243 of 2009 B.N. Tripathi and others vs. State of U.P. and another, whereby the plaintiffs suit for the relief of mandatory injunction directing the defendants to deliver the possession of the disputed plot and award of damages of ₹ 41,16,800/- with interest @18% p.a. has been dismissed.

Plaint case

2. The plaintiffs filed O.S. no. 243 of 2009 against the defendant no.1 State of Uttar Pradesh and defendant no. 2 Kanpur Development Authority (KDA) with the averments that they are the joint lessees of plot No. 56, Block 'A', Scheme 39, Jajmau, Kanpur, hereinafter referred to as the disputed plot, admeasuring 2,222 square yards by virtue of lease deed dated 3.12.1984, which was executed by the defendant KDA. It was further averred that the disputed plot was leased to plaintiffs for a period of 999 years commencing from 3.12.1984, for a consideration of the premium reserved under the aforesaid lease deed of ₹ 22,220/-, which was paid by the plaintiffs at

the time of execution of the above lease deed, the boundaries of which were duly described in the lease deed and at the foot of the plaint. It was further averred that the above lease deed was registered in the office of sub-Registrar Kanpur at Bahi no.1, Book 562/611 at pages 144/288 and 301 on 07.12.1984.

3. It was further averred by the plaintiffs that before the execution of the lease deed, an unwarranted demand of interest @ 15% per annum was made by the KDA from the plaintiffs, and under protest the payment of interest so illegally demanded, which amounted to ₹ 44,420.22 was paid by the plaintiffs to the defendant KDA, and thereafter, the plaintiffs filed O.S.no. 335 of 1985 challenging the legality of the above demand of interest, which was decreed by judgment and decree dated 15.5.1994 in favour of the plaintiffs, thus, the legal interest was refunded to the plaintiffs.

4. It was further averred that for the purpose of harassing the plaintiffs, the defendant KDA initially demanded uncalled for, illegal and unwarranted interest and the possession of the disputed plot was not handed to the plaintiffs under the garb of above illegal demand of interest and whenever the plaintiffs demanded possession of the disputed plot from the defendant KDA, the frivolous ground of the pendency of the above suit no. 335 of 1985 was taken by it, which was untenable.

5. It was further averred that in the meantime, the plaintiffs moved the defendant KDA for sanction of building plan which was sanctioned on 27.2.1998 but since the possession of the disputed plot was not delivered to the plaintiffs as such, it was impossible for them to raise construction on it, hence the validity of the building plan needs to be extended to make it effective after the delivery of possession of the plot.

6. It was further averred that the plaintiffs constantly wrote letters to the defendant KDA asking for delivery of possession but the possession was not delivered. The above letters were written on 21.7.1985, 2.6.1990, 3.6.1990, 9.12.1990, 25.9.2002, 15.11.2002, 29.1.2003, 28.3.2003, 9.10.2003, 27.10.2003, 19.12.2003, 11.3.2004, 17.5.2004, 5.7.2004, 16.10.2004 and 13.1.2005. It was further averred that finally the plaintiffs served a legal notice dated 17.1.2005 on the defendant KDA demanding possession of the disputed plot along with damages at the rate of ₹ 1 lakh per annum within a period of 15 days from the date of receipt of the notice but despite service of notice on 18.1.2005, the defendant failed to deliver the possession.

7. It was specifically averred by the plaintiffs that the disputed plot was purchased for doing some trade or business on it, for the livelihood of the plaintiffs and their family members, but due to non-delivery of the disputed plot, the aspirations and dreams of the plaintiffs were completely crushed by the high-handed, illegal and arbitrary action of the defendants.

8. It was further averred that when the possession of the disputed plot was not delivered, the plaintiffs filed a writ petition no. 425 of 2006 before this Court, which was disposed by order dated 9.5.2006 with the direction that the plaintiffs can approach the civil court for the relief of delivery of possession of the disputed plot, and after the above order of this Court, the defendant KDA was approached by the plaintiffs but inspite of giving assurance by the senior officials of the

defendant, the possession of the disputed plot was not delivered to the plaintiffs, who are senior citizens aged about 70 years, who are at the fag end of their lives. It was further averred that the plaintiffs invested their hard earned money in the disputed plot but its possession was deliberately, without any reason, was not handed to the plaintiffs and as such, by the arbitrary and illegal action of the defendants, the plaintiffs have been deprived of reaping the fruits of the disputed plot, which was still lying vacant. It was further averred that since the possession of the disputed plot was never handed to the plaintiffs, the plaintiffs could not use it or acquire its possession.

9. It was further averred that in the year 1992, the plaintiffs even obtained registration of the business concern from Directorate of Industries, U.P. in the name of Narayan Krishi Yantra Udyog and according to the project report, the plaintiffs were supposed to earn profit of ₹ 13,700/- per month from the above business, but since the possession of the disputed plot was not handed to the plaintiffs, they failed to establish their factory, which was the basic object of acquiring the disputed plot, due to which the plaintiffs have suffered financial loss, because the capital cost of establishing the factory has increased and due to this, the plaintiffs have suffered a loss of ₹ 5 lakhs.

10. It was further averred that the plaintiffs have assessed the loss on a flat rate of ₹ 13,700/- per month, which amounts to ₹ 1,64,400/- per annum and till the end of the month of December, 2006 the total loss was ₹ 36,16,800/- which was due to the non-delivery of possession of the disputed plot and if, amount the loss of increased capital cost of ₹ 5 lakhs was added, then the plaintiffs have suffered a total loss of ₹ 41,16,800/- to which they are entitled along with interest @ 18% per annum from the defendants.

11. In the above backdrop, the plaintiffs claimed the following reliefs :-

(A) A decree of mandatory injunction, thereby directing the defendant to deliver the possession of plot No. 56, Block 'A', Scheme 39, Jajmau, Kanpur, admeasuring 2,222 square yards, fully bounded at the foot of the plaint, to the plaintiffs and also deliver its sanction letter regarding the sanctioned building plan in respect of that plot.

(B) Money decree be passed for a sum of ₹ 41,16,800/- together with up-to-date interest @18% per annum in favour of the plaintiffs and against the defendant.

(C) A decree be passed declaring that the building plan in respect of the aforesaid plot sanctioned by KDA no. 214/489/Bhau/92-93 dated 27.2.1998 shall be effective and operative after delivery of possession of that plot by KDA to the plaintiff.

(D) Cost of the suit.

(E) Any other relief which this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.

Written Statement on behalf of defendant Kanpur Development Authority(KDA)

12. The defendant denied the plaint averments, which were evasive and not specific. It was averred that the answering defendant was not the least concerned with the object of the purchase of the disputed plot. The plaintiffs claim of damages was vague and imaginary. It was further averred that no cause of action has accrued to the plaintiffs to file the present suit.

13. It was specifically averred that the possession of the disputed plot has been given to the plaintiffs, as per rules of the KDA, on payment of entire dues, which were payable from time to time. The plaintiffs deliberately failed to make payment, as demanded by the answering defendant and instead, entered into uncalled for litigation, only to harass the officials of the KDA. It was further averred that the plaintiffs are fond of litigation and it is for this reason, earlier suit no. 335 of 1985 and the Writ before the High Court was filed. It was further averred that the instant suit was filed on whims, which was barred under Section 34 and 41(h) of the Specific Relief Act.

Documentary evidence of the parties

14. The plaintiffs filed original lease deed dated 3.12.1984 executed by KDA in their favour, certified copy of the judgment dated 17.5.1994 passed in O.S. no. 335 of 1985, copy of the letters written to the KDA, copy of the legal notice dated 17.1.2005 given to the KDA, certificate of Directorate of Industries Uttar Pradesh, project report, etc.

15. The defendants have not filed any documentary evidence.

Issues framed by the trial court

16. No written statement was filed by the defendant State of U.P. On the basis of the pleadings of the plaintiffs and the defendant KDA, the following issues were framed :-

(i) Whether without any legal and reasonable cause, the defendant failed to hand over the possession of the disputed plot No. 56, Block 'A', Scheme 39, Jajmau to the plaintiffs? If so, its effect?

(ii) Whether the suit has been less valued?

(iii) Whether the court fees paid is insufficient?

(iv) Whether the plaintiff's suit is barred by Section 34 and Section 41(h) of the Specific Relief Act ?

(v) Whether the plaintiffs are entitled to get any relief ?

Oral evidence adduced by the parties

17. The plaintiff B.N.Tripathi examined himself as PW-1, who in his examination-in-chief proved the plaint averments. He deposed that the lease deed dated 3.12.1984 was executed in favour of the plaintiffs by the power-of-attorney holder of Kanpur Development Authority(KDA),

K.N.Bhalla, and thereafter, the lease deed was got registered. He further deposed that the entire premium of ₹ 22,220/- was paid by the plaintiffs to the KDA, but, an illegal demand of interest @ 15% per annum was made by the KDA, which was fulfilled under protest by depositing an amount of ₹44,420.22 as interest with the KDA, which was later on challenged by filing O.S. no. 335 of 1985 against the KDA, which was decreed in favour of plaintiffs on 15.5.1994. He further deposed that inspite of fulfilling the illegal demand of KDA, the plaintiffs were not handed the possession of the disputed plot on the ground that the above suit no. 335 of 1985 was pending. He further deposed that even after the decision of the suit no. 335 of 1985, the plaintiffs were not handed the possession of the disputed plot, regarding which several letters were written to the KDA by registered post and a representation was also made, but to no effect. The plaintiff has proved the above letters sent by registered post to the defendant KDA from time to time. The plaintiff has further proved the legal notice given by his counsel Yatindra Shukla dated 17.1.2005 through registered post to the KDA. The plaintiff further deposed that they obtained the disputed plot for doing business on it, in order to sustain their livelihood but they were not handed its possession, due to which they have suffered a loss of ₹ 41,16,800/-, for the recovery of which they have filed the suit, along with interest @ 18% per annum. He further deposed that the plaintiffs have also filed a writ petition no. 25403 of 2006 before this Court, in which by order dated 9.5.2006 it was ordered that for getting possession, the plaintiffs may file a suit before the civil court. He further deposed that after the passing of the above order by this Court, the plaintiffs met senior officers of KDA and requested them to give possession of the disputed plot, on which they assured the plaintiffs, which proved to be false, and as such they filed the instant suit on 9.2.2007. It was further deposed that the deponent was more than 80 years old and the plaintiff no. 2 died on 13.9.2011. He further deposed that in the year 1992 the plaintiffs have got registered the intended business in the name and style of Narayan Krishi Yantra Udyog, with the Directorate of Industries, Government of U.P. and the project report was also prepared, according to which the plaintiffs were expecting to earn monthly income of ₹ 13,700/-, from which they were deprived. He further deposed that the cost of setting business has also increased due to inflation by ₹ 5 lakhs. He further deposed that the plaintiffs are the lease holders of the disputed plot and they are entitled to its physical possession and are also entitled to get damages with interest from the defendants.

18. PW-1 in cross-examination deposed that the disputed plot was purchased in auction from KDA in the year 1967. His bid was highest @ ₹ 10/- per square yard, among the persons, who participated in the auction. In all 16 plots were auctioned.

19. The defendants neither adduced any documentary or oral evidence nor any arguments were submitted on their behalf, before the trial court.

Reasoning of the Trial Court

(1) The plaintiffs have nowhere mentioned the duration in which, after the execution of the lease deed, they were supposed to get the possession of the disputed plot.

(2) The plaintiffs were supposed to disclose what action was taken by them for getting the possession of the disputed plot and in response to that, what action was taken by the KDA.

(3) After the execution of the lease deed in their favour, the plaintiffs were supposed to disclose what were the other terms and conditions of the KDA.

(4) The plaintiffs have also not disclosed why the possession of the disputed plot was not handed to them by the KDA.

(5) If the possession of the disputed plot was not handed to the plaintiffs, then they should have complained to the KDA.

(6) The plaintiffs have failed to disclose what reply was given by the KDA to the letters sent to it by the plaintiffs. This fact was also required to be proved by the plaintiffs by their oral and documentary evidence.

(7) The plaintiffs have also failed to submit any document to prove that after the execution of lease deed, how the payment was to be effected.

(8) The plaintiffs has only filed attested copy of the lease deed, but have not filed any terms and conditions issued by the KDA.

(9) The plaintiffs have concealed and suppressed material facts from the court, the burden was upon the plaintiffs to prove the above facts, which they have utterly failed to discharge.

20. In view of the above reasons, issue no.(i) was decided against the plaintiffs. Issue no. (ii) and (iii) were previously by order dated 4.7.2014 decided ex-parte in favour of the plaintiffs. Issue no. (iv) was also decided in favour of the plaintiffs, against the defendants, because it was not pressed by the defendants. Since issue no.(i) was decided against the plaintiffs, as such, in the opinion of the trial court, the plaintiffs were not entitled to get any relief, because they failed to prove their case, hence, the plaintiffs suit was dismissed with costs, aggrieved against which, the plaintiffs have filed the instant appeal under Section 96 CPC.

Submissions of the learned counsel of the parties

21. Ms.Shreya Gupta learned counsel for the plaintiff appellant submitted that the disputed plot was purchased in auction by the plaintiffs way back in the year 1967 and the plaintiffs deposited the whole amount of consideration of the lease amounting to ₹ 22,220/- with the defendant KDA, but still the KDA demanded interest at the rate of 15%, which was illegal, but still the plaintiffs paid the further amount of ₹ 44,420.22 with the KDA under protest and then filed O.S. No. 335 of 1985 for recovery of the amount paid under protest, which was decreed on 15.5.1994 in favour of the plaintiffs, and it was held that the above demand of additional amount of ₹ 44,420.22 was illegal.

22. Learned counsel further submitted that the lease deed was executed by the KDA after obtaining the full consideration of ₹ 22,220/- from the plaintiffs, which is recorded in the lease deed. It was further submitted that since the above demand of the KDA of ₹ 44,420.22 was found

to be illegal, and thereafter, no additional demand was ever made by the KDA from the plaintiffs, as such, no money was due from the plaintiffs to the KDA.

23. Learned counsel further submits that the lease deed itself contains all the terms and conditions, but it nowhere mentions that when the possession of the disputed land was to be handed to the plaintiffs. The lease deed is silent on this aspect. Learned counsel further submits that as per the written statement of the KDA, the possession of the disputed plot was handed to the plaintiffs, but no documentary or oral evidence was adduced to prove the above averment. It was further submitted that the plaintiffs always demanded the possession of the disputed plot after the lease deed was executed in their favour on 3.12.19 84 by the KDA, but the possession of the disputed plot was never handed to the plaintiffs.

24. It was further submitted that from the year 1985 till the filing of the suit in the year 2007, the plaintiff continuously demanded possession of the disputed plot from the KDA by writing numerous letters to it, but there was no response from the other side. She further submitted that the plaintiffs also filed a writ petition before the High Court in the year 2006, which was disposed with the observation that the plaintiffs may file suit before the civil court for getting possession of the disputed plot.

25. She further submitted that the disputed plot was taken on lease for setting up business on it, for sustaining the livelihood of the plaintiffs and their family members from the earning of the business, which was supposed to be established on the disputed plot. She further submitted that in the year 1992 the proposed business in the name and style of 'Narayan Krishi Yantra Udyog' was got registered with the Directorate of Industries, State of Uttar Pradesh and the project report was also got prepared, according to which, the plaintiffs were supposed to earn monthly profit of ₹ 13,700/- after the commencement of the business, but it never materialised, because the possession of the disputed plot was never handed to the plaintiffs. She further submitted that all the hopes and aspirations of the plaintiffs were crushed by the illegal, arbitrary and whimsical acts of the KDA, which without any reason, failed to hand over the possession of the disputed leasehold plot to the plaintiffs.

26. She further submitted that the plaintiffs have proved their case on the basis of oral and documentary evidence, which has not been controverted by the defendants, because the defendants failed to adduce any oral or documentary evidence. She further submitted that the defendant KDA never entered the witness box to deny the plaintiffs case but still the trial court has erroneously held that the plaintiff failed to prove their case, which is a perverse finding.

27. She further submitted that the defendant KDA has not denied the execution of the lease deed of the disputed plot in favour of the plaintiffs. Further, the additional demand of the KDA was found to be illegal by the court in O.S. no. 335 of 1985, which was decreed in plaintiffs favour on 15.5.1994, which was never challenged before any court, as such, the defendant KDA cannot take a stand that the plaintiffs have not paid the full consideration of the lease. She further submitted that the defendant KDA could have submitted documentary evidence of handing over the possession of the disputed plot to the plaintiffs before the court, but no such evidence was submitted by it. She further submitted that the defendant KDA failed to prove any valid reason for not handing the

possession of the disputed plot to the plaintiffs. She further submitted that it is not the case of KDA that the allotment of the disputed plot or the lease deed executed in favour of the plaintiffs have been cancelled by it and subsequently, the disputed plot has been leased to some other person or any 3rd party right has been created on it.

28. She further submitted that since the plaintiffs were deprived from the possession of the disputed plot, which they have intended for business purposes, for sustaining their livelihood, as such, they have suffered grave financial loss. Learned counsel submitted that as per the project report the plaintiffs were supposed to earn a minimum profit at the rate of ₹ 13,700/- per month after the business started on the disputed plot, but since its possession was never handed to them, they were deprived from earning that amount. Learned counsel further submitted that the cost of establishing business also escalated due to inflation and on this account the plaintiff suffered the loss of ₹ 5 lakhs. She further submitted that the plaintiffs in all claimed damages of ₹ 41,16,800/- along with interest pendente lite and future at the rate of 18% per annum from the defendant KDA, which they were entitled to get, but the trial court has without appreciating the evidence on record, has all together for perverse reasons dismissed the plaintiffs suit which is legally unsustainable and is liable to be set aside. With these submissions it was prayed that the instant appeal be allowed and the plaintiffs suit be decreed with costs. In support of her submission she has relied upon the following case law :-

(i) *Iqbal Basith and ors. vs. N.Subbalakshmi and ors. (2021) 2 SCC 718 (by 3 Judges)*

(ii) *Maula Bux vs. Union of India (1969) 2 SCC 554 (by 3 Judges)*

(iii) *M/s A.T.Brij Paul Singh and ors. vs. State of Gujarat (1984) 4 SCC 59 (by 3 Judges)*

(iv) *Bhagwati Prasad Jhunhunwala & ors.vs. UCO Bank & anr. 2023 Supreme (Cal) 359*

29. Sri Abhinav Krishna Srivastava learned counsel for the Kanpur Development Authority(KDA) justified the decision of the trial court on the ground that the plaintiffs failed to prove their case. It was also submitted that the possession of the disputed plot has been handed to the plaintiffs but the learned counsel could not point out any documentary evidence in support of this contention. Learned counsel admitted that the lease deed mentions that the KDA has received the consideration of the lease deed but it does not mention that the possession of the disputed plot was handed to the plaintiffs. Learned counsel could not point out any reason for not handing the possession of the disputed plot to the plaintiffs. Learned counsel admitted that the lease deed executed in favour of the plaintiffs has not been cancelled and no 3rd party right has been created in the disputed plot. Learned counsel was repeatedly asked by the court to specify the reason for not handing the possession of the disputed plot to the plaintiffs, but he failed to give any reply.

30. I have heard the learned counsel of the parties, perused the impugned judgment and the record of the trial court.

31. The following issues arise for determination in this appeal :-

(i) Whether the defendant KDA was justified in not handing the possession of the disputed leased plot to the plaintiffs ?

(ii) Whether the plaintiffs had obtained the plot for commercial purposes for earning their livelihood from it ?

(iii) To what amount of damages are the plaintiffs entitled ?

Conclusion of this Court

32. It is evident that the plaintiffs obtained the disputed leased plot by paying its full premium of ₹ 22,220/- as mentioned in the plaint and the lease deed, the execution of which has not been specifically denied by the defendant KDA, in its written statement. The plaintiffs have filed the original lease deed and also proved it in the court, by examining plaintiff no.1 B.N.Tripathi as PW-1. It is apparent that the lease deed itself contains the terms and conditions of the lease, as such, both the parties were bound by it. This Court has itself perused the lease deed which mentions that the lease has been executed on 3.12.1984 on the terms and conditions printed on it.

33. The lease deed mentions that it is for the purposes of constructing factory building only, as per the building plan approved by the Vice-Chairman of the KDA. The lease deed also records that the consideration of the premium of ₹ 22,220/- has been paid by the plaintiffs to the KDA @ ₹ 10/- per square yard and the area of the leased plot was 2,222 square yards. The lease deed mentions the description of the disputed plot, which is same, as has been mentioned by the plaintiffs in the plaint and its term as 999 years. It is apparent that the lease of the disputed property was executed by the KDA after obtaining full premium in favour of the plaintiffs for a duration of 999 years on 3.12.1984. It is further mentioned in the lease deed that the lessee will commence the construction of factory building on the plot within a period of one year and will completely finish the same within the period of 2 years from the date of the lease deed or such extended period as may be allowed by the KDA. The lease deed also records that it shall be lawful for the KDA in respect of any breach of agreement to re-enter the demised premises. It also mentions that the KDA can determine the lease in the case of failure on the part of the lessee to fulfil its obligations. It is also apparent that the lease deed has been registered subsequently, in the office of sub-registrar Kanpur on 7.12.1984, as such it is legally enforceable and admissible in evidence. It is also apparent that no oral evidence can be adduced contrary to the terms of the lease deed.

34. The defendant KDA has averred in its written statement that the plaintiff failed to pay the entire dues of the KDA, which is not true, because the lease deed itself mentions that the plaintiffs have paid the entire premium of the lease amounting to ₹ 22,220/- to the KDA, which has also been accepted by the KDA in the lease deed, at the time of its execution and registration, as such, the assertion of KDA that the entire amount of dues was not paid by the plaintiffs, is not tenable and is liable to be rejected.

35. It is the specific case of the plaintiffs that apart from the premium of the lease amounting to ₹ 22,220/- interest at the rate of 15% per annum was also demanded by KDA from them, which was deposited under protest by the plaintiffs. The plaintiffs have specifically averred

that they deposited an amount of ₹ 44,420.22 under protest with KDA and subsequently, for reclaiming it they filed O.S.no. 335 of 1985 B.N.Tripathi and another vs. KDA and another, which was decreed by the court on 17.5.1994, and the KDA was directed to refund the amount of ₹ 44,420.22 by the court. The plaintiffs have filed the certified copy of the above judgment dated 17.5.1994, which clearly mentions that the disputed plot was purchased in auction by the plaintiffs by making highest bid, which was confirmed in favour of plaintiffs on 26.4.1967. It is apparent that O.S. no. 335 of 1985 was filed by the plaintiffs after the execution of lease deed on 3.12.1984 in their favour by the KDA, for recovering the excess amount paid by them to the KDA. The above judgment specifically records that the demand of interest by the KDA from 8.1.1967 to 9.11.1984 was not lawful, and the defendants should have executed the lease deed just after 9.11.1984, but it was executed on 3.12.1984.

36. It is apparent that the lease deed itself mentions that the defendant KDA has received the entire premium of ₹ 22,220/-from the plaintiffs and the additional demand of interest @15% per annum amounting to ₹ 44,420.22 was found illegal by the Court of 11th Additional District Judge, Kanpur Nagar in O.S. no. 335 of 1985, as such, there is no force in the contention of the defendant KDA that the plaintiffs have not paid the entire consideration of the lease deed to the KDA.

37. The Apex Court in the case of **Iswar Bhai C.Patel vs.Harihar Behera (1999) 3 SCC 457** has observed as under :-

"17..... Having not entered into the witness box and having not presented himself for cross-examination, an adverse presumption has to be drawn against him on the basis of the principles contained in Illustration (g) of Section 114 of the Evidence Act, 1872."

38. The Apex Court in the case of **Vidyadhar vs. Manikrao and Anr. (1999) 3 SCC 573** has again reiterated that where a party to the suit does not appear in the witness box and states his own case on oath and does not offer himself to be cross-examined by the other side, a presumption would arise that the case set up by him is not correct.

39. The next controversy is regarding the possession of the disputed plot. The plaintiffs allege that its possession was not handed to them, whereas, as per the KDA the possession was handed to the plaintiffs. It is apparent that the KDA has neither adduced any documentary nor any oral evidence in order to prove the averments of its written statement, as such, the contention of the KDA remains unproved. No official of the KDA has entered in the witness box to prove the case of KDA on oath, as pleaded in the written statement and offer himself for cross-examination by the plaintiffs. In view of the above, an adverse presumption has to be drawn against the KDA, on the basis of principles contained in Section 114(g) of the Evidence Act,1872, that the case set up by the KDA is false.

40. The terms and conditions of the lease deed does not mention anything about the possession of the disputed plot. It is further apparent that the burden is upon the KDA to prove that the possession of the disputed plot was handed by it to the plaintiffs but that burden has not been discharged by it. The KDA could have filed the possession memo, which is prepared at the time of handing of possession to the lessee, which is also signed by 2 witnesses. By producing the

possession memo and examining its witnesses in the court, the KDA could have proved that it has handed over the possession of the disputed plot to the plaintiffs, but no such evidence was led by the KDA. Mere bald assertion by the KDA in its written statement is not sufficient to prove that it has handed the possession of the disputed plot to the plaintiffs.

41. It is further apparent that no valid reason has been mentioned by the KDA in its written statement for not handing the possession of the disputed plot to the plaintiffs. It is apparent that the lease deed is silent as to the duration within which the possession was to be handed to the plaintiffs after the execution of the lease deed.

42. It is the specific case of the plaintiffs that they obtained the leased plot for commercial purposes, for earning their livelihood and for the sustenance of their family. The lease deed also mentions that the lease was for construction of a factory, which was to be constructed within a period of 2 years, after getting the building plan approved from the KDA within a period of one year. It also mentions that the KDA had the authority to terminate the lease in violation of the terms and conditions of the lease and re-enter the disputed plot. It also mentions that the KDA was entitled to claim damages for the violation of the terms and conditions of the lease by the plaintiffs.

43. It is also apparent from the documentary and oral evidence of the plaintiffs that after the execution of lease deed on 3.12.1984 they had continuously written letters to the KDA demanding possession of the disputed plot. The plaintiffs have filed a copy of the letters sent to the KDA between the year 1985 till the filing of the suit, along with the registered post receipts, which proved that the plaintiffs were continuously asserting their rights and demanding possession of the disputed plot. It is further evident that the plaintiffs letters on the above subject were never replied by the KDA, to specify the reason why possession was not being given to the plaintiffs. It is not the case of the KDA that they had duly communicated to the plaintiffs the reason for not handing over the possession of the disputed plot. The KDA could have proved the above fact by adducing evidence, but no such evidence was led by it. It is further apparent that the plaintiffs, prior to the filing of the instant suit, filed a Writ Petition no.25403 of 2006 Smt.Yugrani Devi and another vs. State of U.P. and others for obtaining possession of the disputed plot, which was dismissed by a Division Bench of this Court on 9.5.2006, with the observation that the plaintiffs can file a suit in the subordinate Court in this regard. In the light of the above evidence on record, the conclusion of the trial court that the plaintiffs have failed to prove what steps were taken by them for getting possession of the disputed plot and if any action was taken by them, then what reply was submitted by the KDA, is a perverse finding.

44. It is apparent that the plaintiffs have taken all possible steps, they could have taken to get the possession of the disputed plot. It is apparent that the KDA has neither taken the plea of limitation nor any issue has been framed on it, as such, the question of limitation is not involved in the suit.

45. It is apparent from the above analysis that the trial court has not cared to go through the terms and condition mentioned in the lease deed, and the documentary evidence on record and due to this fatal error, has recorded a series of perverse findings such as □ that the plaintiffs failed to prove the terms and conditions of the lease as well as, when the possession was to be handed to

them; the plaintiffs failed to prove why the possession of the disputed plot was not handed to them by the KDA; the plaintiffs never complained to the KDA that the possession was not handed to them; the plaintiffs failed to prove what amount was required to be paid after the execution of the lease deed in their favour ; the plaintiffs have not filed the terms and conditions of the KDA, any agreement or the scheme, due to which, the plaintiffs have failed to prove their case and the plaintiffs have also suppressed and concealed material facts from the Court, which they were bound to disclose. It is apparent that all the above findings recorded by the trial court are perverse, because the trial court has not cared to go through the plaint averments, written statement of the KDA, lease deed, the terms and conditions mentioned in it, the correspondence undertaken by the plaintiffs with the KDA and the judgment of O.S. no. 335 of 1985. Had the trial court gone through the above pleadings and documents carefully, then, perhaps the findings of the trial court could have been different. It is apparent that the trial court has failed to discharge its duties lawfully, and has passed a perverse judgment, which is legally unsustainable.

46. It is apparent that the plaintiffs have been deprived from the possession of the disputed plot, without any valid reason by the KDA. It is further apparent that the plaintiffs obtained the disputed plot for commercial purposes, for earning their livelihood, but since the possession of the plot was not handed to them, the plaintiffs could neither construct the factory on the disputed plot and start the business nor earn anything from it. The plaintiffs purpose of obtaining the plot was frustrated deliberately by the KDA, for which, the plaintiffs are entitled to get damages, for the lost profits they would have generated from the business, they had intended to commence on the disputed plot. From the evidence on record, it is proved, that the plaintiffs registered their business in the name and style of 'Narayan Krishi Yantra Udyog' with the Directorate of Industries, State of Uttar Pradesh, on 21.10.1992. The plaintiffs also got prepared the project report for manufacturing agricultural implements such as cultivator, sprayer, paddy thresher, leveller, disc-harrow, etc. which was filed and proved before the trial court, according to which, from the alleged business they would have earned a monthly profit of ₹ 13,700/- against which no contra evidence has been led by the KDA. In view of the above unrebutted evidence on record, more particularly, when the trial court has not examined this issue on merits, this Court has to determine what amount of reasonable damages could be awarded to the plaintiffs against the KDA, in the above facts and circumstances.

47. The Apex Court in the case of **Maula Bux** (supra) has held that in every case of breach of contract the person aggrieved by the breach is not required to prove actual loss or damage suffered by him before he can claim a decree and the Court is competent to award reasonable compensation in case of breach even if no actual damage is proved to have been suffered in consequence of the breach of contract. In case of breach of some contracts it may be impossible for the Court to assess compensation arising from breach, while in other cases compensation can be calculated in accordance with established rules. Where the Court is unable to assess the compensation, the sum named by the parties if it be regarded as a genuine preestimate may be taken into consideration as the measure of reasonable compensation, but not if the sum named is in the nature of penalty. Where loss in terms of money can be determined, the party claiming compensation must prove the loss suffered by him.

48. The Apex Court in the case of **M/s A.T. Brij Paul Singh** (supra) has held that in a works contract, if the party entrusting the work commits breach of the contract, the contractor

would be entitled to claim damages for loss of profit which he expected to earn by undertaking the works contract. What must be the measure of profit and what proof should be tendered to sustain the claim are different matters, but the claim under this head is certainly admissible. It was further held that while estimating the loss of profit that can be claimed for the breach of contract by the other side, it would be unnecessary to go into the minutest details of the work executed in relation to the value of the works contract. A broad evaluation would be sufficient.

49. A Division Bench of the Calcutta High Court in the case of *Bhagwati Prasad Jhunjhunwala* (supra) has held that mesne profit is conceptualised in the form of a damage which is to be determined on a case to case basis. The broad principles for determining the mesne profit is firstly that the defendant is in actual possession of the decretal property. Secondly, such possession is wrongful; thirdly, the person in wrongful occupation have actually received or might with ordinarily diligent(sic) have received a profit because of his wrongful occupation of the immovable property and fourthly, any improvement made by a person in wrongful occupation shall not be included in the mesne profit. There is no quarrel on fact that upon expiration of period of lease by efflux of time, the respondent continued in possession till the actual delivery of possession was given to the appellants. The period between expiry of lease and the delivery of actual possession cannot be assumed as lawful but the possession during such period is wrongful and, therefore, the mesne profit /damages are to be determined and it is a liability of the person in wrongful occupation to compensate a person a profit which he derived or might have derived during such wrongful possession.

50. It was further held that the decree for mesne profits/damages is in effect a money decree and the moment the interest on such profit is imbibed within the definition given under Section 2(12) CPC, the rate of interest on such mesne profit should not exceed 6% per annum. The trial court committed an error in not awarding the interest from the date of the decree till its actual payment.

51. The plaintiffs have filed the project report of the proposed business in the name and style of 'Narayan Krishi Yantra Udyog', which was to be established for manufacturing agricultural implements on the disputed plot, a total investment of ₹ 3,46,800/- was to be incurred for establishing the factory which included cost of building, plant and machinery and working capital, a monthly sale of ₹ 90,000/- was expected and after deducting the cost of monthly production ₹ 76,300/-, a monthly profit of ₹ 13,700/- was expected to be generated from the business, from which they were deprived. The KDA has not led any evidence to dispute the above project report and estimation of profit, submitted by the plaintiffs, which remains uncontroverted. It is further apparent that the estimate submitted by the plaintiffs cannot be minutely examined by this Court.

52. It is further apparent that this issue has not been examined by the trial court but at this stage, after about 19 years of litigation, the matter cannot be remanded to the trial court for the assessment of damages, which will further prolong the agony of the plaintiffs. It is apparent that plaintiff no. 2 Yugrani Devi has died during the pendency of the suit, whereas, plaintiff no.1 B.N.Tripathi is almost 90 years old, as such, this Court has examined the quantum of damages to which the plaintiffs are legally entitled in the facts and circumstances of the case.

53. This Court is satisfied that the quantum of profit which was disclosed by the project report submitted by the plaintiffs, was fair and reasonable. It is also apparent that the plaintiffs are legally entitled to the loss of profit they were expected to earn, from the alleged business. This Court is also conscious that in the business, generation of profit is never guaranteed, sometimes there is a loss, sometimes there is a profit, and even the quantum of profit/loss is not assured, but keeping in view the long duration of more than 41 years, for which the plaintiffs have been deprived of the possession of the disputed plot it would be fair that they are awarded damages at the rate of ₹ 13,700/- per month, along with pendente lite and future interest @ 6% per annum.

54. From the perusal of the lease deed, it is apparent that, the plaintiffs were supposed to get the building plan of the proposed factory sanctioned as per the applicable bye laws of KDA and start construction of the factory building within one year, which was to be completely finished within a period of 2 years from the date of lease, or such extended time granted by the KDA. It is apparent that the construction of the factory was supposed to be completed within a maximum period of 2 years from obtaining the possession of the plot. In view of this, the plaintiffs are not entitled to claim damages from the date of the execution of the lease deed i.e. 3.12.1984. It is further pertinent to mention here that in the meanwhile the plaintiffs also submitted the building plan of the proposed factory, which was sanctioned by the KDA on 27.2.1998 but neither the sanctioned building plan nor the possession of the disputed plot was handed to the plaintiffs, hence the construction of factory on it, could not be started.

55. It is further apparent that the plaintiffs have demanded damages of ₹ 5 lakhs towards cost escalation in establishing the factory, due to inflation. It is apparent that the project report was prepared long back in the year 1992 and since then, the cost of establishing factory i.e. building material, labour charges, cement, iron and steel, etc. has considerably increased as such, the amount of ₹ 5 lakhs claimed by the plaintiffs towards cost escalation, is just and reasonable.

56. Since, the possession of the disputed plot was supposed to be handed soon after the execution of the lease in favour of the plaintiffs on 03.12.1984, and thereafter, within a further period of 2 years the plaintiffs were supposed to complete the construction of factory on it, as such, it will be just and reasonable to award damages for the loss of profit at the rate of ₹ 13,700/- per month from 01.7.1987 till the possession of the disputed plot is not handed to the plaintiffs along with pendente lite and future interest at the rate of 6% per annum. The plaintiffs are also entitled to damages towards escalation of cost of establishing the factory of ₹ 5 lakh along with pendente lite and future interest at the rate of 6% per annum, till the payment is made by the KDA.

Conduct of the defendants

57. India is a country governed by rule of law. It is the solemn duty of the State to protect its citizens and abide by the laws but in this case, the officials of the KDA have acted in an arbitrary, illegal and mala fide manner to deny the plaintiffs the possession of the disputed plot for without any reason. This Court repeatedly asked the Counsel of the KDA to disclose why the possession of the disputed plot was not handed to the plaintiffs, but he failed to give any reason. The plaintiffs were running from pillar to post to obtain the possession of the disputed plot but they were helpless against the might of the State and its functionaries. There was no reason whatsoever for the

defendants, to deny the plaintiffs the lawful possession of the disputed plot, once they had paid the entire consideration of the lease way back on 03.12.1984. The plaintiffs obtained the plot in auction in the year 1967, being the highest bidder, the lease of which for 999 years was executed on 03.12.1984 by the KDA after getting excess consideration, which was refunded by the intervention of the court after a separate suit was filed by the plaintiffs, are waiting for 41 years to get the possession of their plot, but still only God knows when they will be able to obtain its possession. In the meanwhile, plaintiff no.2 Smt.Yugrani Devi has died on 13.9.2011 and plaintiff no.1 B.N.Tripathi is now almost 90 years old. Since the KDA, is a statutory body of the State, hence the State of Uttar Pradesh is also vicariously liable for the arbitrary, illegal acts committed by the KDA and its officials, in not handing over the possession of the disputed plot to the plaintiffs, without any lawful reason.

58. This Court wants the Hon'ble Chief Minister of the State of Uttar Pradesh to look into this matter and order enquiry to fix negligence of the concerned officials and also to recover the damages from them, in accordance with law, which has been awarded to the plaintiffs along with interest, since taxpayers money is involved, and the State must also ensure appropriate disciplinary action against them, for their alleged illegal acts, which were unwarranted, arbitrary and whimsical, which have tarnished the image of the State and its functionary in the public. The State being the protector of the citizens and upholder of the laws, it is never expected from the functionaries of the State that they would act in such an irresponsible and illegal manner.

59. It is apparent that the plaintiffs have been unnecessarily forced to file the suit at the fag end of their lives and despite doing everything in their control, they have been deprived from the lawful possession of the leased plot. There was no reason whatsoever for the defendants, to deny the plaintiffs the lawful possession of the disputed plot, once they had paid the entire consideration of the lease way back on 03.12.1984. In view of the above facts, the plaintiffs are also entitled to get exemplary costs against the defendants.

60. For the aforesaid reasons, the judgment and decree passed by the trial court being perverse, is liable to be set aside.

61. **Accordingly, the appeal is allowed with costs throughout.** The judgment and decree passed by the trial court in O.S.no. 243 of 2009 dated 20.4.2016 is set aside, and the plaintiffs suit is decreed, jointly and severally, against the defendants, for the following reliefs :-

(A) A decree of mandatory injunction is granted in favour of the plaintiffs against the defendants, whereby the defendants are directed to deliver the vacant and physical possession of plot no. 56, Block 'A', Scheme 39, Jajmau, Kanpur, admeasuring 2,222 square yards, to the plaintiffs within a period of one month from today.

(B) The plaintiffs are entitled to get damages for the loss of profit they would have earned from the business at the rate of ₹ 13,700/- per month from 01.7.1987 till the actual and vacant possession of the disputed plot is not handed to them, along with pendente lite and future interest @ 6% per annum, till realisation.

(C)The plaintiffs are entitled to get damages for the cost of escalation for establishing the factory on the disputed plot due to inflation amounting to ₹ 5 lakhs with pendente lite and future interest @ 6% per annum, till its payment by the defendant.

(D)The defendants are further directed to deliver the sanctioned building plan dated 27.2.1998 regarding the disputed plot to the plaintiffs, for enabling them to construct the factory on the disputed plot.

(E)The plaintiffs are also entitled to costs of the suit and the appeal.

(F) The plaintiffs are also entitled to exemplary costs of ₹ 2 lakh from the defendants under Section 35 CPC, for the harassment, suffering, pain and agony caused to them, in pursuing this litigation.

(G) The defendants are directed to handover the vacant and physical possession of the disputed plot to the plaintiffs and further pay the damages etc. within a period of **one month** from today, failing which, the plaintiffs will be entitled to claim them through Court, by initiating execution proceedings.

62. Registrar (Compliance) is directed to send a copy of this order to the Chief Secretary, Government of Uttar Pradesh, Lucknow for information and necessary action.

(2026) 4 ILRA 2103
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 20.04.2026

BEFORE

THE HON'BLE MANISH MATHUR, J.

Writ A No. 9112 of 2025

Km. Sunita Devi

**...Petitioner
Versus**

State of U.P. & Ors.

...Respondents

Issue(s) for consideration

(a) Whether recommendations of the Internal Complaint Committee made in terms of Section 13(3) of the Act of 2013 are mandatory or directory?

(b) Whether the impugned orders of suspension from service are in consonance with Rule 4 of UP Government Servants (Discipline and Appeal) Rules of 1999?

Headnotes

A. Service Law – U.P. Government Servants (Discipline and Appeal) Rules 1999: Rule 4, 7; Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013: Section 11, 13(4) - On 27.07.2025, an official complaint detailing severe allegations of prolonged sexual harassment was lodged by a newly promoted Sales Tax Officer against another departmental officer (the delinquent).

Acting under the Act of 2013, the state administration immediately constituted an Internal Complaints Committee (ICC) on 28.07.2025, appointing the petitioners as members.

By a letter dated 29.07.2025, the Joint Commissioner (Establishment) strictly directed the ICC to complete proceedings and submit its final report within the same day. The ICC recorded statements from the complainant, the delinquent, and various witnesses. On 31.07.2025, the ICC submitted a report entirely exonerating the delinquent, concluding that his problematic actions did not explicitly fall under the statutory definition of "sexual harassment." (Para 48)

Following the exoneration, on 02.08.2025, the complainant submitted a pen drive containing an audio recording of the actual ICC proceedings to the state authorities. She alleged that the committee members exhibited blatant hostility and acted in a hyper-partisan manner to actively shield the perpetrator. On 03.08.2025, the state suspended the delinquent employee despite the ICC's clearance. Concurrently, via impugned administrative orders dated 05.08.2025 and 06.08.2025, the state placed the petitioners (the ICC members) under suspension from service in contemplation of full-scale departmental disciplinary inquiries for structural bias and misconduct.

B.(i) Rule of purposive interpretation - A statute or a provision must be construed w.r.t. its intent, which is meaningful and fulfills the object and purport of such intention. The doctrine also indicates that meaning of words used in a provision is required to be comprehended to advance the purpose of object and to remedy the mischief, if any, which it sought to remedy. Context includes reading the statute or the provision as a whole with the surrounding circumstances so that its intention is in consonance with the policy in order to give it a meaningful object. (Para 30, 31)

In the present case it transpires that the intent of legislature and the wordings of the Act confer complete power upon the complaints committee not only to inquire into the complaint of sexual harassment but also to make its recommendations in terms of Ss. 13 and 14 of the Act of 2013 which are required to be complied with by the employer or the district officer, treating such a recommendation to be a misconduct. Section 26 (1)(b) of the Act also imposes penalty upon the employer for non-compliance of recommendations made by the complaint committee. Provision of appeal in Section 18 of the Act has been provided only against the recommendations of the complaints committee and not against action taken by the employer in terms thereof. (Para 32)

To give a meaningful object to the Act of 2013 so that it ensures a smooth and harmonious working and is also reasonable, it can thus be deduced from the aforesaid provision that **the recommendations made by the complaints committee u/s 13 or 14 of the Act of 2013 are mandatory in nature and not merely recommendatory or directory.** (Para 33)

(ii) Discrepancy in language used in Section 12(3) r/w Section 13 of the Act - No doubt u/s 12(3), it has been directed that the employer shall implement recommendations made u/s 12(1) of the Act with the said words missing in Section 13 of the Act but nonetheless in view of surrounding circumstances, pertaining to appeal u/s 18 only from the recommendations of complaints committee and penalty clause u/s 26(1)(b), the nature of report submitted by committee u/Ss 13 and 14 of the Act are conclusive and require implementation by the employer without any further action contemplated. (Para 34)

The report submitted by complaints committee although indicated as recommendation, nonetheless is held to be mandatory in nature. (Para 35)

C. Rule 4 of the Rules of 1999, clearly prescribes that suspension of an employee can be resorted to in contemplation of departmental inquiry provided the charges levelled against the delinquent are serious enough to merit major penalty. (Para 45)

It is evident that petitioners have been suspended from service pending departmental proceedings on the allegation that they made a concerted effort to exonerate the delinquent by not following their duties and responsibilities. (Para 41, 43, 46, 47)

C.(i) Disciplinary action for exercise of quasi judicial power - Where a prima facie finding of misconduct is recorded, departmental proceedings can ensue.

The possibility on a given set of facts to arrive at a different conclusion is not a ground to indite a judicial officer for taking one view. The correctness or legality of the decision cannot be a ground to proceed departmentally against a person exercising quasi judicial power and it is only the conduct in discharge of duties which can form the basis. The law encapsulated is that judicial authorities have freedom to record and pass judgments as per material available before them in a free and impartial manner for which they cannot be proceeded against unless there is a *prima facie* material to show recklessness or misconduct in the discharge of such duty which is unbecoming of the post which is being held. The same would be applicable in case if such person has acted in order to unduly favour a party or is actuated by corrupt motive. (Para 49, 51, 54, 56)

Applicability - Since the Internal Complaints or Local Committee exercises quasi-judicial powers and is expected to make its recommendations in a free, fair and impartial manner placing reliance on evidence available before them, the aforesaid principle would be squarely applicable. (Para 55)

C.(ii) The impugned orders of suspension have not made any differentiation between the correctness or legality of the decision *vis-a-vis* conduct of the petitioners in discharge of their duty as members of the committee. The order impugned have been passed without forming any *prima facie* satisfaction, is clearly cursory in nature and does not indicate any application of mind. (Para 63, 65, 67)

Before proceeding departmentally against any such quasi-judicial power, it is incumbent and imperative upon the disciplinary authority to record a *prima facie* satisfaction w.r.t. such misconduct in discharge of such quasi-judicial duty which is required to be separated from the correctness or legality of the decision or recommendation as in the present case. (Para 57, 58, 64)

A *prima facie* satisfaction is imperative for the free, fair and impartial decision by the quasi-judicial authority particularly to ensure that such a quasi-judicial authority does not have the Sword of Damocles hanging over them to be proceeded against departmentally in case their recommendations do not find favour with the authorities. In case such quasi-judicial authorities conduct proceedings under such fear, it would obviate the very purpose of the act itself and therefore it is essential that such quasi-judicial authorities as the internal complaints or the local committees act without such a fear. (Para 59, 60)

While this court lauds stand of State Government and there can be no gainsaying that aspect of sexual harassment in the workplace is required to be nipped in the bud by preventive and corrective steps being taken, at the same time **it is also essential that the proceedings of the Internal Complaints or the Local Committee should be fair, transparent and without any aspect of fear or favour in the minds of the members of a committee.** (Para 61)

Present proceedings pertained only to suspension of service of petitioners and not the initiation of disciplinary proceedings by issuance of charge-sheet and therefore, **the impugned orders are required to be decided in terms of provisions of Rule 4 of Rules of 1999.** Proviso to sub-section (1) thereof clearly indicates the conditions under which a government servant can be placed under suspension. **The said proviso stipulates that suspension should not be resorted to unless allegations so serious that in the event of being established may ordinarily warrant major penalty.** (Para 62)

D. U/Rule 7 of the Rules of 2013, the manner of inquiry into complaint has been delineated with a time frame also being indicated, which appears to have been completely ignored by the

opposite parties while constituting the committee vide order dated 28.07.2025 in which the direction of state government has been indicated to the committee that it should submit its report on the same day itself. (Para 66)

The impugned orders dated 05.08.2025 and 06.08.2025 are quashed, granting liberty to authority to pass orders afresh, in accordance with observations and directions. (Para 67)

Writ petition allowed. (E-4)

Case Law Cited

1. Union of India & others Vs. J. Ahmed, (1979) 2 SCC 286 (Para 7)
2. P.C. Joshi Vs. State of U.P. & others, (2001) 6 SCC 491 (Para 7)
3. Krishna Prasad Verma Vs. State Of Bihar & Others, (2019) 10 SCC 640 (Para 7)
4. Sadhna Chaudhary Vs. State of U.P & Another, (2020) 11 SCC 760 (Para 7)
5. Amresh Srivastava Vs. State Of M.P & Others, (2025) SCC Online 693 (Para 7)
6. Nirbhay Singh Suliya Vs. State of M.P & another, Civil Appeal no. 40 of 2026 (arising out of SLP (C) No. 24570 of 2024) (Para 7)
7. Union of India and Others Vs. KK Dhawan, (1993) 2 SCC 56 (Para 14)
8. Zunjarrao Bhikaji Nagarkar Vs. Union of India and Others, (1999) 7 SCC 409 (Para 14)
9. Union of India And Another Vs. Ashok Kumar Aggarwal, (2013) 16 SCC 147 (Para 14)
10. State of Orissa Vs. Bimal Kumar Mohanty, (1994) 4 SCC 126 (Para 14)
11. May George Vs. Special Tehsildar and others, (2010) 13 SCC 98 (Para 29)
12. Vivek Narayan Sharma and others (Demonetisation Case-5 J.) Vs. UOI and others, (2023) 3 SCC 1 (Para 30)
13. X Vs. Principal Secretary, Health and Family Welfare Department, Government of NCT of Delhi and another, (2023) 9 SCC 433 (Para 31)
14. R.R. Parekh Vs. High Court of Gujarat, 2016 (14) SCC 1 (Para 52)

List of Acts

U.P. Government Servants (Discipline and Appeal) Rules 1999; Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

List of Keywords

service, sexual harassment, quasi, judicial, *prima facie*, satisfaction, misconduct, disciplinary, suspension, committee, purposive interpretation, mandatory.

Appearances for Parties

For Petitioner(s): Sharad Pathak

For Respondent(s): C.S.C.

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

1. Heard Mr. Sharad Pathak learned senior counsel assisted by Ms. Priya Singh learned counsel for petitioner and Mr. S.M. Singh Royekwar learned Additional Advocate General assisted by Mr. Akash Sinha learned state counsel for opposite parties.

2. Writ A No. 9112 of 2025 and writ A No. 9114 of 2025 having the same cause of action had earlier been consolidated and are being adjudicated upon by this common judgment and order.

3. Petition has been filed challenging orders dated 5th August 2025 and 6th August 2025 whereby petitioners have been suspended from service in contemplation of departmental inquiries.

4. It is submitted that upon a complaint being made on 27th July 2025 regarding allegation of sexual harassment against another officer (hereinafter referred to as the delinquent) under provisions of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (hereinafter referred to as 'Act of 2013') an Internal Complaints Committee was constituted on 28th July 2025 with petitioners being included as members thereof. Vide letter dated 29th July 2025, the Joint Commissioner (Establishment) directed the committee to submit its report within the same day. In terms of the aforesaid directions, proceedings under the Act of 2013 were initiated and statement of complainant, of the delinquent employee and other witnesses were recorded on the same date on 27th July 2025. Application was submitted by the delinquent seeking time to give a reply for which a day's time was granted and was subsequently submitted on 30th July 2025. On the basis of aforesaid proceedings, the committee submitted its report dated 31st July 2025 exonerating the delinquent whereafter the delinquent employee was placed under suspension from service vide order dated 3rd August 2025 and subsequently vide impugned orders, the petitioners who were members of the Internal Complaints Committee were also suspended from service pending departmental proceedings.

5. It is submitted that as per the Act of 2013, the report submitted by Internal Complaints Committee was only recommendatory in nature and was subject either to acceptance or rejection by the head of the department. It is submitted that the impugned order does not advert as to whether the said report was ever rejected by the head of department and a perusal of impugned order will also reveal that there is no specific or even prima facie satisfaction recorded that any deliberate attempt was made by the entire committee for absolving the delinquent. Learned counsel further submits that even otherwise the impugned order is against provisions of Rule 4 of the U.P. Government Servants (Discipline and Appeal) Rules 1999 inasmuch as the proceedings may not result in any major penalty.

6. It is also submitted that initiation of departmental inquiry only on the basis of report submitted by the committee sets a very dangerous precedent since it may have the consequence of such committees being compelled to submit a tailor made report as per wishes of employer instead of an impartial one.

7. Learned counsel further submits that it is settled law that a quasi-judicial authority should not be proceeded against departmentally merely on the basis of opinion submitted by it since it has larger implications with regard to fairness of proceedings. It is submitted that pressure exerted upon the committee is evident from the order constituting the committee indicating a report to be submitted within one day although Rule 7 of the Rules of 2013 framed under the Act clearly stipulate a timeline for conclusion of said proceedings. Learned counsel has placed reliance on following judgments to buttress his submissions:-

Union of India & others Vs. J. Ahmed, (1979) 2 SCC 286; P.C. Joshi Vs. State of U.P. & others (2001) 6 SCC 491; Krishna Prasad Verma Vs. State Of Bihar & Others (2019) 10 SCC 640; Sadhna Chaudhary v. State of U.P & Another (2020) 11 SCC 760; Amresh Srivastava Vs. State Of M.P & Others (2025) SCC Online 693; Nirbhay Singh Suliya v. State of M.P & another, Civil Appeal no. 40 of 2026 (arising out of SLP (C) No. 24570 of 2024

8. Mr. S. M. Singh, Royekwar learned counsel appearing on behalf of state has refuted submissions advanced by learned counsel for petitioner with submission that the complainant was promoted as a Sales Tax Officer on 27th February 2025 whereafter the delinquent contacted her on phone even before she joined and after facing multiple episodes of sexual harassment by the delinquent, she was able to muster courage to lodge a formal complaint on 27th July 2025. Taking cognizance of the said complaint, the state government directed Commissioner (State Tax) to submit his report. Directions for constitution of the internal complaints committee were also issued.

9. It is submitted that the committee thereafter required Smt. Vibha Pandey, Joint Commissioner (Executive) to submit her testimony regarding the allegations. The said lady vide letter dated 30th July 2025 unequivocally accepted the fact that the complainant had earlier as well reported her harassment by the delinquent.

10. Learned counsel submits that in its report dated 31st July 2025, the committee has exonerated the delinquent ignoring testimony of Smt. Vibha Pandey and by taking into account the testimony of irrelevant witnesses. It is further submitted that subsequently on 2nd August 2025, the complainant presented an audio recording of the proceedings of committee and submitted the same through a pen drive as she apprehended an incorrect recommendation judging by the hostile conduct of members of the committee. He submits that it is in pursuance thereof that taking true version of the proceedings of committee as available in the audio, recommendation for suspension of the members of committee was made on 3rd August 2025 whereafter impugned orders have been passed.

11. Learned counsel submits that there was a deliberate and intentional effort on the part of members of the committee to exonerate the delinquent employee since the committee has conveniently disregarded the written testimony of Smt. Vibha Pandey, Joint Commissioner (Executive).

12. Learned counsel has further submitted that members of committee themselves were privy to the conduct of delinquent and had the opportunity to know about the sexual harassment being faced by complainant on multiple previous occasions but despite having such knowledge, the members of committee acted in a partisan manner and proceeded to protect the delinquent. He therefore submits that it is in view of such efforts to exonerate the delinquent employee that disciplinary proceedings have been resorted to and is not only on the basis of decision taken by the committee.

13. He submits that disciplinary proceedings can be initiated against officers even if the conduct is an exercise of quasi-judicial powers and that courts should not ordinarily interfere with an order of suspension which in the present case is justified considering gravity of charges. It is submitted that in case the delinquents are permitted to join in the same office, it may result in mischief and tampering of evidence.

14. Learned counsel has further submitted that Section 13(4) of the Act of 2013 mandates that the employer or the district officer shall act upon the recommendation within 60 days of its receipt and therefore the recommendation of the committee would be mandatory in nature. He

further submits that it is the prerogative of the employer to discipline the workforce and incidents of sexual harassment should not go unpunished. Any attempt to protect such perpetrators should be dealt with in an exemplary manner to ensure deterrence. Learned counsel has also adverted to paragraph 4 of the counter affidavit to indicate discrepancies in the conduct of proceedings by the committee to submit that such discrepancies clearly indicated a deliberate attempt on the part of members of the committee to protect the delinquent employee. He submits that report with regard to preliminary inquiry against petitioners has already been produced in sealed cover before this court. Learned counsel has placed reliance on following judgments to buttress his case:-

Union of India and Others Versus KK Dhawan, (1993) 2 SCC 56; Zunjarrao Bhikaji Nagarkar Versus Union of India and Others, (1999) 7 SCC 409; Union of India And Another Versus Ashok Kumar Aggarwal, (2013) 16 SCC 147 and State of Orissa Versus Bimal Kumar Mohanty, (1994) 4 SCC 126

15. Upon consideration of submissions advanced by learned counsel for parties and perusal of material on record, the questions which are required to be adjudicated upon are, therefore, as follows:-

A) Whether recommendations of the Internal Complaint Committee made in terms of Section 13(3) of the Act of 2013 are mandatory or directory?

B) Whether the impugned orders of suspension from service are in consonance with Rule 4 of UP Government Servants (Discipline and Appeal) Rules of 1999”

Answer regarding question No. A

16. Upon consideration of submissions advanced by learned counsel for parties and perusal of material on record, for purposes of adjudication of this question, provisions of Sections 11, 13, 18 and 26 require examination along with Rules 7 and 9 of the Rules of 2013 framed under this Act.

17. The provisions are as follows:-

Section 11

" **11. Inquiry into complaint.** (1) Subject to the provisions of section 10, the Internal Committee or the Local Committee, as the case may be, shall, where the respondent is an employee, proceed to make inquiry into the complaint in accordance with the provisions of the service rules applicable to the respondent and where no such rules exist, in such manner as may be prescribed or in case of a domestic worker, the Local Committee shall, if prima facie case exist, forward the complaint to the police, within a period of seven days for registering the case under section 509 of the Indian Penal Code (45 of 1860), and any other relevant provisions of the said Code where applicable:

Provided that where the aggrieved woman informs the Internal Committee or the Local Committee, as the case may be, that any term or condition of the settlement arrived at under sub-section (2) of section 10 has not been complied with by the respondent, the Internal Committee or the Local Committee shall proceed to make an inquiry into the complaint or, as the case may be, forward the complaint to the police:

Provided further that where both the parties are employees, the parties shall, during the course of inquiry, be given an opportunity of being heard and a copy of the findings shall be made available to both the parties enabling them to make representation against the findings before the Committee.

(2) Notwithstanding anything contained in section 509 of the Indian Penal Code (45 of 1860), the court may, when the respondent is convicted of the offence, order payment of such sums as it may consider appropriate, to the aggrieved woman by the respondent, having regard to the provisions of section 15.

(3) For the purpose of making an inquiry under sub-section (1), the Internal Committee or the Local Committee, as the case may be, shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) when trying a suit in respect of the following matters, namely:-

- (a) summoning and enforcing the attendance of any person and examining him on oath,
 - (b) requiring the discovery and production of documents; and
 - (c) any other matter which may be prescribed.
- (4) The inquiry under sub-section (1) shall be completed within a period of ninety days."

Section 13

"13. Inquiry report (1) *On the completion of an inquiry under this Act, the Internal Committee or the Local Committee, as the case may be, shall provide a report of its findings to the employer, or as the case may be, the District Officer within a period of ten days from the date of completion of the inquiry and such report be made available to the concerned parties.*

(2) *Where the Internal Committee or the Local Committee, as the case may be, arrives at the conclusion that the allegation against the respondent has not been proved, it shall recommend to the employer and the District Officer that no action is required to be taken in the matter.*

(3) *Where the Internal Committee or the Local Committee, as the case may be, arrives at the conclusion that the allegation against the respondent has been proved, it shall recommend to the employer or the District Officer, as the case may be-*

(i) to take action for sexual harassment as a misconduct in accordance with the provisions of the service rules applicable to the respondent or where no such service rules have been made, in such manner as may be prescribed;

(ii) to deduct, notwithstanding anything in the service rules applicable to the respondent, from the salary or wages of the respondent such sum as it may consider appropriate to be paid to the aggrieved woman or to her legal heirs, as it may determine, in accordance with the provisions of section 15:

Provided that in case the employer is unable to make such deduction from the salary of the respondent due to his being absent from duty or cessation of employment it may direct to the respondent to pay such sum to the aggrieved woman:

Provided further that in case the respondent fails to pay the sum referred to in clause (ii), the Internal Committee or, as the case may be, the Local Committee may forward the order for recovery of the sum as an arrear of land revenue to the concerned District Officer.

(4) The employer or the District Officer shall act upon the recommendation within sixty days of its receipt by him."

Section 18

"18. Appeal. - (1) Any person aggrieved from the recommendations made under sub-section (2) of section 13 or under clause (i) or clause (ii) of sub-section (3) of section 13 or sub-section (1) or sub-section (2) of section 14 or section 17 or non-implementation of such recommendations may prefer an appeal to the court or tribunal in accordance with the provisions of the service rules applicable to the said person or where no such service rules exist then, without prejudice to provisions contained in any other law for the time being in force, the person aggrieved may prefer an appeal in such manner as may be prescribed.

(2) The appeal under sub-section (1) shall be preferred within a period of ninety days of the recommendations."

Section 26

"26. Penalty for non-compliance with provisions of Act (1) Where the employer fails to-

(a) constitute an Internal Committee under sub-section (1) of section 4;

(b) take action under sections 13, 14 and 22; and

(c) contravenes or attempts to contravene or abets contravention of other provisions of this Act or any rules made thereunder,

he shall be punishable with fine which may extend to fifty thousand rupees.
(2) *If any employer, after having been previously convicted of an offence punishable under this Act subsequently commits and is convicted of the same offence, he shall be liable to-*

(i) twice the punishment, which might have been imposed on a first conviction, subject to the punishment being maximum provided for the same offence: Provided that in case a higher punishment is prescribed under any other law for the time being in force, for the offence for which the accused is being prosecuted, the court shall take due cognizance of the same while awarding the punishment;

(ii) cancellation, of his licence or withdrawal, or non-renewal, or approval, or cancellation of the registration, as the case may be, by the Government or local authority required for carrying on his business or activity."

Rule 7

"7. Manner of inquiry into complaint. (1) *Subject to the provisions of section 11, at the time of filing the complaint, the complainant shall submit to the Complaints Committee, six copies of the complaint along with supporting documents and the names and addresses of the witnesses.*

(2) On receipt of the complaint, the Complaints Committee shall send one of the copies received from the aggrieved woman under sub-rule (1) to the respondent within a period of seven working days.

(3) The respondent shall file his reply to the complaints along with his list of documents, and names and addresses of witnesses, within a period not exceeding ten working days from the date of receipt of the documents specified under sub-rule (1).

(4) The Complaints Committee shall make inquiry into the complaint in accordance with the principles of natural justice.

(5) The Complaints Committee shall have the right to terminate the inquiry proceedings or to give an ex-parte decision on the complaint, if the complainant or respondent fails, within sufficient cause to present herself or himself for three consecutive hearings convened by the Chairperson or President Officer, as the case may be:

Provided that such termination or ex parte order may not be passed without giving a notice in writing, fifteen days in advance, to the party concerned.

(6) The parties shall not be allowed to bring in any legal practitioner to represent them in their case at any stage of the proceedings before the Complaints Committee

(7) In conducting the inquiry, a minimum of three Members of the Complaints Committee including the President Officer or the Chairperson, as the case may be, shall be present."

Rule 9

"9. Manner of taking action for sexual harassment.-Except in cases where service rules exist, where the Complaints Committee arrives at the conclusion that the allegation against the respondent has been proved, it shall recommend to the employer or the District Officer, as the case may be, to take any action including a written apology, warning, reprimand or censure, withholding of promotion, withholding of pay rise or increments, terminating the respondent from service or undergoing a counselling session or carrying out community service."

18. Section 11 of the Act of 2013 pertains to inquiry into complaint with sub section (1) indicating that the inquiry contemplated therein is to be in accordance with provisions of service rules applicable upon the delinquent or in case of absence of such rules, in such manner as may be prescribed. The Local Committee has also been granted a power to forward the complaint to police for registering case under Section 509 IPC, if prima facie case exists.

19. Section 11 (3) of the Act of 2013 indicates that Internal Committee or the Local Committee, as the case may be, for purposes of making an inquiry, shall have the same powers as vested in civil court under the Code of Civil Procedure 1908 pertaining to summoning, enforcing attendance and examination of any person, requiring discovery and production of documents and any other matter.

20. Section 13 pertains to the inquiry report with Section 13(3)(i) granting powers to the Internal Committee or the Local Committee to recommend to the employer or the district officer to take action for sexual harassment as a misconduct in accordance with provisions of service rules or in such manner as may be prescribed, where no such service rules have been made.

21. Thus the aforesaid provision indicates that upon submission of inquiry report, the only power vested in the employer or the district officer is to treat the sexual harassment as a misconduct in case the report is against the delinquent and to act in accordance with provisions of the service rules or in such manner as may be prescribed.

22. A conjoint reading of Sections 11 and 13 of the Act of 2013 therefore is indicative that once the inquiry has been conducted in terms of Section 11 of the Act of 2013, no further inquiry is contemplated under Rule 7 of the U.P. Government Servants (Discipline and Appeal) Rules 1999 which are applicable in the present case or even under any other service rules which may be applicable. The aforesaid sections also indicate that in case a report is submitted against the delinquent, the employer is vested only with the power to take action against the delinquent in accordance with provisions of service rules or as may be prescribed, treating the sexual harassment as a misconduct.

23. Rule 7 of the Rules of 2013 made in terms of the Act of 2013 contemplates the manner of inquiry into complaint and is analogous to the nature and procedure of inquiry contemplated under Rule 7 of the Rules of 1999.

24. Rule 9 of the aforesaid Rules of 2013 indicate the manner of taking action for sexual harassment and confers power upon the complaints committee to recommend the nature and type of action which is to be taken by the employer or the district officer including termination of such employee.

25. It is thus evident from perusal of aforesaid provisions that the nature of inquiry to be conducted into a complaint of sexual harassment by the Internal Committee or the Local Committee in terms of Sections 11, 13 read with rules 7 and 9 of the Rules is conclusive in nature, which does not warrant any further proceedings except for the employer to punish the delinquent employee treating such sexual harassment as a misconduct. The Act does not contemplate any further inquiry at the behest of the employer or the district officer concerned.

26. It is also relevant that Section 18(1) of the Act of 2013 provides for an appeal only against the recommendations made by the committee under Sections 13, 14, 17 or non implementation of the recommendations.

27. It is relevant that there is no appeal provided from any order or action taken by the employer or the district officer as the case may be.

28. Section 26(1)(b) of the Act of 2013 also provides for a penalty in case the employer fails to take action under Sections 13, 14, and 22. The aforesaid provisions again pertain to recommendations made by the committee under Sections 13 and 14 and for the employer to include information in annual report in terms of Section 22 of the Act.

29. The aspect of whether such provisions can be held to be mandatory or merely directory would therefore also require consideration which has been enunciated upon by Hon'ble Supreme Court in the case of May George versus Special Tehsildar and others (2010) 13 SCC 98 in the following manner:-

"25. The law on this issue can be summarised to the effect that in order to declare a provision mandatory, the test to be applied is as to whether non-compliance with the provision could render the entire proceedings invalid or not. Whether the provision is mandatory or directory, depends upon the intent of the legislature and not upon the language for which the intent is clothed. The issue is to be examined having regard to the context, subject-matter and object of the statutory provisions in question. The Court may find out as to what would be the consequence which would flow from construing it in one way or the other and as to whether the statute provides for a contingency of the non-compliance with the provisions and as to whether the non-compliance is visited by small penalty or serious consequence would flow therefrom and as to whether a particular interpretation would defeat or frustrate the legislation and if the provision is mandatory, the act done in breach thereof will be invalid."

30. The aforesaid aspect signifies that a statute or a provision must be construed with regard to its intent, which is meaningful and fulfills the object and purport of such intention. The doctrine also indicates that meaning of words used in a provision is required to be comprehended to advance the purpose of object and to remedy the mischief, if any, which it sought to remedy.

Context includes reading the statute or the provision as a whole with the surrounding circumstances so that its intention is in consonance with the policy in order to give it a meaningful object. Aforesaid proposition has been enunciated by Hon'ble the Supreme Court in Vivek Narayan Sharma and others (Demonetisation Case-5 J.) v. Union of India and others reported in (2023) 3 SCC 1 in the following manner:-

"137. A statute must be construed having regard to the legislative intent. It has to be meaningful. A construction which leads to manifest absurdity must not be preferred to a construction which would fulfil the object and purport of the legislative intent"

"148. It is thus clear that it is a settled principle that the modern approach of interpretation is a pragmatic one, and not pedantic. An interpretation which advances the purpose of the Act and which ensures its smooth and harmonious working must be chosen and the other which leads to absurdity, or confusion, or friction or contradiction and conflict between its various provisions, or undermines, or tends to defeat or destroy the basic scheme and purpose of the enactment must be eschewed. The primary and foremost task of the Court in interpreting a statute is to gather the intention of the legislature, actual or imputed. Having ascertained the intention, it is the duty of the Court to strive to so interpret the statute as to promote or advance the object and purpose of the enactment. For this purpose, where necessary, the Court may even depart from the rule that plain words should be interpreted according to their plain meaning. There need be no meek and mute submission to the plainness of the language. To avoid patent injustice, anomaly or absurdity or to avoid invalidation of a law, the court would be justified in departing from the so-called golden rule of construction so as to give effect to the object and purpose of the enactment. Ascertainment of legislative intent is the basic rule of statutory construction"

31. Similarly, in the case of X v. Principal Secretary, Health and Family Welfare Department, Government of NCT of Delhi and another reported in (2023) 9 SCC 433, the Rule of purposive interpretation has been indicated as follows:-

"31. The cardinal principle of the construction of statutes is to identify the intention of the legislature and the true legal meaning of the enactment. The intention of the legislature is derived by considering the meaning of the words used in the statute, with a view to understanding the purpose or object of the enactment, the mischief, and its corresponding remedy that the enactment is designed to actualise. [Justice G.P. Singh. Principles of Statutory Interpretation, (Lexis Nexis, 2016), at p. 12: State of H.P. v Kailash Chand Mahajan, 1992 Supp (2) SCC 351 1992 SCC (L&S) 874; Union of India v Elphinstone Spg. & Wvg Co. Ltd. (2001) 4 SCC 139] Ordinarily, the language used by the legislature is indicative of legislative intent. In Kanai Lal Sur v. Paramnidhi Sadhukhan (Kanai Lal Sur v. Paramnidhi Sadhukhan, 1957 SCC OnLine SC 8: AIR 1957 SC 907), Gajendragadkar, J. (as the learned Chief Justice then was) opined that "the first and primary rule of construction is that the intention of the legislature must be found in the words used by the legislature itself". But when the words are capable of bearing two or more constructions, they should be construed in light of the object and purpose of the enactment. The purposive construction of the provision must be "illuminated by the goal, though guided by the word". [Kanta Goel v. B.P. Pathak, (1977) 2 SCC 814] Aharon Barak opines that in certain circumstances this may indicate

giving "an unusual and exceptional meaning to the language and words used. [Aharon Barak, Purposive Interpretation in Law, (Princeton University Press, 2007), at p. 306.]"

32. Upon applicability of aforesaid judgments in the present facts and circumstances it thus transpires that the intent of legislature and the wordings of the Act confer complete power upon the complaints committee not only to inquire into the complaint of sexual harassment but also to make its recommendations in terms of Sections 13 and 14 of the Act of 2013 which are required to be complied with by the employer or the district officer, treating such a recommendation to be a misconduct. As indicated herein above, Section 26 (1)(b) of the Act also imposes penalty upon the employer for non-compliance of recommendations made by the complaint committee. As has also been discussed herein above, provision of appeal in Section 18 of the Act has been provided only against the recommendations of the complaints committee and not against action taken by the employer in terms thereof.

33. In terms of surrounding circumstances, as well as looking into the intention of legislature and to give a meaningful object to the Act of 2013 so that it ensures a smooth and harmonious working and is also reasonable, it can thus be deduced from the aforesaid provision that the recommendations made by the complaints committee under Section 13 or 14 of the Act of 2013 are mandatory in nature and not merely recommendatory or directory.

34. So far as submission of learned counsel for petitioner with regard to discrepancy in language used in Section 12 (3) read with Section 13 of the Act is concerned, no doubt under Section 12(3), it has been directed that the employer shall implement recommendations made under sub section (1) of Section 12 of the Act with the said words missing in Section 13 of the Act but nonetheless in view of surrounding circumstances as discussed herein above pertaining to appeal under Section 18 only from the recommendations of complaints committee and penalty clause under Section 26(1)(b), the nature of report submitted by committee under Sections 13 and 14 of the Act are conclusive and require implementation by the employer without any further action contemplated.

35. In view of discussion made herein above, the report submitted by complaints committee although indicated as recommendation, nonetheless is held to be mandatory in nature.

36. That question No.A therefore is answered against the petitioner and in favour of the opposite parties.

Answer regarding Question No. B

37. Apropos the said question regarding validity of the impugned order of suspension, learned counsel for petitioner has submitted that the order impugned has clearly been passed without application of mind since it does not address or record any prima facie satisfaction with regard to complicity of the petitioners regarding charges levelled against them. It is submitted that the report dated 31st July 2025 has included every fact pleaded before the committee including the objectionable conduct of the delinquent and it is only when the committee came to a definitive conclusion that the complaint did not fall within purview of definition of the term 'sexual

harassment' that the report was submitted accordingly. It is further submitted that had there been any intention to save the delinquent, objectionable behavior of the delinquent would not have required to be mentioned. It is further submitted that there is no allegation against the petitioners that report submitted or decision arrived at was on account of any extraneous consideration and therefore even if assumed, though not admitted, mere error in the manner of conducting inquiry or error of appreciation of facts cannot be a ground to initiate disciplinary proceedings.

38. It is further submitted that petitioners were nominated as members of the committee just one day before the inquiry i.e. 28th July 2025 and the committee was compelled to conclude the inquiry in two days on pressure being exerted by the head of office to conclude it within one day and it is in such compelling circumstances that the report was submitted on 31st July 2025 incorporating all the evidence which was taken during the inquiry proceedings.

39. Learned counsel further submits that the report has not been challenged by any party in appeal under Section 18 of the Act and on the contrary authorities have relied upon the said report while suspending the delinquent officer.

40. It is submitted that in case members of the Internal Complaint or the Local Committee are proceeded against departmentally only because the report was not according to wishes of the higher authorities, it would set a very dangerous precedent. He further submits that petitioners are unnecessarily being harassed for the past seven months and have also not been allowed to join their duties in compliance of interim order dated 13th August 2025 which clearly indicates that suspension is being resorted to as a mode of punishment since the report submitted was not in accordance with wishes of the authorities.

41. Mr. S.M. Singh Royekwar learned counsel for state has refuted submissions advanced by learned counsel for petitioners with the submission that petitioners are not being proceeded against with a view to harass them but on account of their deliberate and intentional acts to scuttle the proceedings. He submits that the committee has conveniently disregarded written testimony of Smt. Vibha Pandey, Joint Commissioner (Executive) State Tax, Aligarh-B who was earlier posted as Joint Commissioner (Executive) State Tax, Mathura in which she had verified allegations made by the complainant.

42. It is further submitted that the members of committee themselves were privy to the conduct of the delinquent and had the opportunity to know about sexual harassment being faced by the complainant on multiple previous occasions but despite the knowledge, members of the committee did not act in a fair manner and proceeded to protect the delinquent. He further submits that an audio recordings of proceedings of the committee was submitted by the complainant clearly indicating that members of the committee admitted multiple times with regard to the delinquent attempting to harass the complainant. He submits that in the audio recordings of the proceedings of the committee which was submitted by the complainant, the female members are clearly heard stating and verifying the aspect of harassment being suffered by the complainant. He further submits that on the contrary, the committee has relied upon testimonies of persons who were neither cited as eye witnesses to the incident by the victim or by the delinquent and it is in view of

gravity of charges that petitioners have been placed under suspension in contemplation of departmental proceedings in terms of Rule 4 of Rules of 1999.

43. Upon consideration of submissions advanced by learned counsel for the parties and perusal of material on record, it is thus evident that petitioners have been suspended from service pending departmental proceedings on the allegation of deliberately exonerating the delinquent.

44. For a better appreciation of the aforesaid dispute, it would be convenient to advert to Rule 4 of the Rules of 1999 which are as follows:-

" 4. Suspension (1) A Government Servant against whose conduct an in-quiry is contemplated, or is proceeding may be placed under suspension pending the conclusion of the inquiry in the discretion of the Appointing Authority:

Provided that suspension should not be resorted to unless the allegations against the Government Servant are so serious that in the event of their being established may ordinarily warrant major penalty:

Provided further that concerned Head of the Department empowered by the Governor by an order in this behalf may place a Government Servant or class of Government Servants belongs to Group "A" and "B" posts under suspension under this rule:

Provided also that in the case of any Government Servant or class of Gov. ernment Servants belonging to Group "C" and 'D' posts, the Appointing Authority may delegate its power under this rule to the next lower authority.

(2) A Government Servant in respect of, or against whom an investigation, inquiry or trial relating to a criminal charge, which is connected with his position as a Government Servant or which is likely to embarrass him in the discharge of his duties or which involves moral turpitude, is pending, may, at the discretion of the Appointing Authority or the Authority to whom the power of suspension has been delegated under these rules, be placed under suspension until the termination of all proceedings relating to that charge.

(3) (a) A Government Servant shall be deemed to have been placed or, as the case may be, continued, to be placed under suspension by an order of the Authority Competent to suspend, with effect from the date of his detention, if he is detained in custody, whether the detention is on criminal charge or otherwise, for a period exceeding forty-eight hours.

(b) The aforesaid Government Servant shall, after the release from the custody. inform in writing to the Competent Authority about his detention and may also make representation against the deemed suspension. The Competent Authority shall, after considering the representation in the light of the facts and circumstances of the case as well as the provision contained in this rule, pass appropriate order continuing the deemed suspension from, the date of release from custody or invoking or modifying it.(4) Government Servant shall be deemed to have been placed, or as the case may be, continued to be placed under suspension by an order of the Authority Competent to

suspend under these rules, with effect from the date of his conviction if in the event of a conviction for an offence he is sentenced to a term of imprisonment exceeding forty-eight hours and is not forthwith dismissed removed consequent to such conviction. "

45. The aforesaid rule therefore clearly prescribes that suspension of an employee can be resorted to in contemplation of departmental inquiry provided the charges levelled against the delinquent are serious enough to merit major penalty.

46. In the present case, the allegation levelled is that the petitioners made a concerted effort to exonerate the delinquent by not following their duties and responsibilities.

47. Thus it transpires that the entire gist of allegations levelled against petitioners is of making a concerted and deliberate effort for exonerating the delinquent against whom complaint had been filed. In the counter affidavit filed on behalf of state, it has been stated that the committee in its report dated 31st July 2025 has concealed several facts and relied upon irrelevant evidences to exonerate the delinquent. A procedural error has been indicated with regard to conduct of proceedings particularly for ignoring the letter issued by Smt. Vibha Pandey.

48. From the written submissions submitted on behalf of State of U.P., it appears that the complainant had been promoted as State Tax Officer on 27 February 2025 whereafter she was contacted by the delinquent by telephone on 28th February 2025 and upon her joining on 4th March 2025 as the State Tax Officer in Mathura, she faced multiple episodes of sexual harassment due to which a complaint was filed. Taking cognizance of the said complaint dated 27th July 2025, the state government, vide order dated 28th July 2025 directed the Commissioner, State Tax, to submit his report. Subsequently, the Internal Complaint Committee was constituted on 29th July 2025. The said order constituting the committee indicates a direction at the instance of the state government that the report was required to be submitted on the same day itself. However since the same was not possible, the committee required Smt. Vibha Pandey, Joint Commissioner to submit her testimony. In pursuance thereof, the said lady submitted her letter on 30th July 2025 and after taking testimony of various witnesses, report was submitted on 31st July 2025 exonerating the delinquent whereafter the complainant presented audio recording of the proceedings of the committee on 2nd August 2025 along with a letter and pen drive addressed to the Commissioner, State Tax, indicating hostile conduct by the members of committee whereafter the impugned proceedings have taken place.

49. From perusal of counter affidavit and the written submissions on behalf of State of UP., the primary gist of allegations appears to be that proceedings were conducted while ignoring the material testimony of Smt. Vibha Pandey and taking into account statements of irrelevant witnesses. With regard to disciplinary action being taken for exercise of quasi judicial power, the Supreme Court in the case of K.K. Dhawan (supra) has enunciated as follows:-

" 28. we are not concerned with the correctness or legality of the de-cision of the respondent but the conduct of the respondent in discharge of his duties as an officer. The legality of the orders with reference to the nine assessments may be questioned in appeal or revision under the Act. But we have no doubt in our mind that the Government is not precluded

from taking the disciplinary action for violation of the Conduct Rules. Thus, we conclude that the disciplinary action can be taken in the following cases:

(i) Where the officer had acted in a manner as would reflect on his reputation for integrity or good faith or devotion to duty.

(ii) if there is prima facie material to show recklessness or misconduct in the discharge of his duty,

(iii) if he has acted in a manner which is unbecoming of a Government servant;

(iv) if he had acted negligently or that he omitted the prescribed conditions which are essential for the exercise of the statutory powers;

(v) if he had acted in order to unduly favour a party.

(vi) if he had been actuated by corrupt motive, however small the bribe may be because Lord Coke said long ago "though the bribe may be small, yet the fault is great".

29. The instances above catalogued are not exhaustive. However, we may add that for a mere technical violation or merely because the order is wrong and the action not falling under the above enumerated instances, disciplinary action is not warranted. Here, we may utter a word of caution Each case will depend upon the facts and no absolute rule can be postulated."

50. The said aspect was thereafter elaborated in the case of Junjar Rao Bhikha Ji Nagarkar (supra) in the following manner:-

"40. When we talk of negligence in a quasi-judicial adjudication, it is not negligence perceived as carelessness, inadvertence or omission but as culpable negligence. This is how this Court in State of Punjab v. Ex-Constable Ram Singh 13 interpreted "misconduct" not coming within the purview of mere error in judgment, carelessness or negligence in performance of duty."

"42. Initiation of disciplinary proceedings against an officer cannot take place on information which is vague or indefinite. Suspicion has no role to play in such matter. There must exist reasonable basis for the disciplinary authority to proceed against the delinquent officer. Merely because penalty was not imposed and the Board in the exercise of its power directed filing of appeal against that order in the Appellate Tribunal could not be enough to proceed against the appellant. There is no other instance to show that in similar case the appellant invariably imposed penalty. 43. If every error of law were to constitute a charge of misconduct, it would impinge upon the independent functioning of quasi-judicial officers like the appellant. Since in sum and substance misconduct is sought to be inferred by the appellant having committed an error of law, the charge-sheet on the face of it does not proceed on any legal premise rendering it liable to be quashed. In other words, to maintain any charge-sheet against a quasi-judicial authority something more has to be alleged than a mere mistake of law, e.g., in the nature of some extraneous consideration influencing the quasi-judicial order. Since nothing of the sort is alleged herein the impugned

charge-sheet is rendered illegal. The charge-sheet, if sustained, will thus impinge upon the confidence and independent functioning of a quasi-judicial authority. The entire system of administrative adjudication whereunder quasi-judicial powers are conferred on administrative authorities, would fall into disrepute if officers performing such functions are inhibited in performing their functions without fear or favour because of the constant threat of disciplinary proceedings. "

51. Subsequently in the case of P.C. Joshi (supra) it has been held that the possibility on a given set of facts to arrive at a different conclusion is not a ground to indict a judicial officer for taking one view. The relevant paragraph is as follows:-

"7. That there was possibility on a given set of facts to arrive at a different conclusion is no ground to indict a judicial officer for taking one view and that too for alleged misconduct for that reason alone. The enquiry officer has not found any other material, which would reflect on his reputation or integrity or good faith or devotion to duty or that he has been actuated by any corrupt motive. At best, he may say that the view taken by the appellant is not proper or correct and not attribute any motive to him which is for extraneous consideration that he had acted in that manner. If in every case where an order of a subordinate court is found to be faulty a disciplinary action were to be initiated, the confidence of the subordinate judiciary will be shaken and the officers will be in constant fear of writing a judgment so as not to face a disciplinary enquiry and thus Judicial officers cannot act independently or fearlessly. Indeed the words of caution are given in K.K. Dhawan case and A.N. Saxena case that merely because the order is wrong or the action taken could have been different does not warrant initiation of disciplinary proceedings against the judicial officer. In spite of such caution, it is unfortunate that the High Court has chosen to initiate disciplinary proceedings against the appellant in this case."

52. In the case of R.R. Parekh versus High Court of Gujarat, 2016 (14) SCC 1, it has been held as follow:-

"16. The issue of whether a judicial officer has been actuated by an oblique motive or corrupt practice has to be determined upon a careful appraisal of the material on the record. Direct evidence of corruption may not always be forthcoming in every case involving a misconduct of this nature. A wanton breach of the governing principles of law or procedure may well be indicative in a given case of a motivated, if not reckless disregard of legal principle. In the absence of a cogent explanation to the contrary, it is for the disciplinary authority to determine whether a pattern has emerged on the basis of which an inference that the judicial officer was actuated by extraneous considerations can be drawn. Cases involving misdemeanours of a judicial officer have to be dealt with sensitivity and care. A robust common sense must guide the disciplinary authority. At one end of the spectrum are those cases where direct evidence of a misdemeanour is available. Evidence in regard to the existence of an incriminating trail must be carefully scrutinised to determine whether an act of misconduct is established on the basis of legally acceptable evidence. Yet in other cases, direct evidence of a decision being actuated by a corrupt motive may not be available. The issue which arises in such cases is whether there are circumstances which an considerations have actuated a judicial officer can legitimately be inference that extraneous drawn. Such an inference cannot obviously be drawn merely from a hypothesis that a decision is

erroneous. A wrong decision can yet be a bona fide error of judgment Inadvertence is consistent with an honest error of judgment A charge of misconduct against a judicial officer must be distinguished from a purely erroneous decision whether on law or on fact. The legality of a judicial determination is subject to such remedies as are provided. law for testing the correctness of the determination. It is not the correctness of the verdict but the conduct of the officer which is in question. The disciplinary authority has to determine whether there has emerged from the record one or more circumstances that indicate that the decision which forms the basis of the charge of misconduct was not an honest exercise of judicial power The circumstances let into evidence to establish misconduct have to be sifted and evaluated with caution. The threat of disciplinary proceedings must not demotivate the honest and independent officer Yet on the other hand, there is a vital element of accountability to society involved in dealing with cases of misconduct. There is on the one hand a genuine public interest in protecting fearless and honest officers of the District Judiciary from motivated criticism and attack Equally there is a genuine public interest in holding a person who is guilty of wrongdoing. responsible for his or her actions. Neither aspect of public interest can be ignored Both are vital to the preservation of the integrity of the administration of justice"

53. In the recent judgment of Nirbhay Singh Suliya(supra), it has been held as follows.:-

"My esteemed brother Justice K.V. Viswanathan has penned an ineffable judgment. This judgment will go a long way in protecting judicial officers of the district judiciary from being subjected to departmental action for alleged wrong or incorrect exercise of discretion in passing orders of bail without anything more. Brother Viswanathan has put it very pithily, saying that if the complaint of misconduct against the judicial officer is prima facie found to be true then. in such circumstances, disciplinary proceedings must be taken. and no leniency should be shown if the charges are established in an appropriate case, even criminal prosecution may be instituted against a Judicial officer Such action is necessary to weed out tainted judges from the judiciary It goes without saying that corruption in the Judiciary at any level is intolerable, as corruption severely undermines the core of the administration of justice and erodes public trust in the rule of law However, the High Court, which is vested with the supervisory control must keep in mind that a judicial officer of the district judiciary works mostly in a charged atmosphere. A mere wrong order or wrong exercise of discretion in grant of bail by itself without anything more, cannot be a ground to initiate departmental proceedings.

2 Initiation of departmental proceedings on mere suspicion is one of the primary causes why trial court judges are reluctant when it comes to exercising discretion for the purpose of grant of bail. It should not happen that because of the lurking fear in the mind of a trial court judge of some administrative action being taken that even in a deserving case, well within the principles of law, bail is declined. This is one reason why the High Courts are flooded with bail applications. The same is the scenario even so far as the Supreme Court is concerned. Over a period of time, the trial court judges have exhibited tendency to shirk from their solemn judicial function and responsibility when it comes to exercising discretion in matters relating to bail. Courts of the district judiciary wield powers necessary for the functioning of the justice delivery system in India and when their autonomy is compromised by higher courts and fear takes precedence over judicial duties, democracy and the rule of law suffer.3. For functioning of democracy, an independent

judiciary to dispense justice without fear and favour is paramount. As held by this Court in M.S. Bindra v. Union. (1998) 7 SCC 310 while evaluating the materials the authority should not altogether ignore the reputation in which the officer was held till recently The maxim "Nemo Firut Repente Turpissimus (no one becomes dishonest all of a sudden) is not unexceptional but still is a salutary guideline to judge human conduct, particularly in the field of Administrative Law The authorities should not keep the eyes totally closed towards the overall estimation in which the deliriquent officer was held in the recent past by those who were supervising him earlier. To dunk an officer into the puddle of doubtful integrity it is not enough that the doubt fringes on a mere hunch. That doubt should be of such a nature as would reasonably and consciously be entertainable by a reasonable man on the given material. Mere possibility is hardly sufficient to assume that it would have happened. There must be preponderance of probability for the reasonable man to entertain doubt regarding that possibility. Only then there is Justification to ram an officer with the label 'doubtful integrity.'"

54. Upon examination of aforesaid judgments, evidently, the law encapsulated is that judicial authorities have freedom to record and pass judgments as per material available before them in a free and impartial manner for which they cannot be proceeded against unless there is a prime facie material to show recklessness or misconduct in the discharge of such duty which is unbecoming of the post which is being held. The same would be applicable in case if such person has acted in order to unduly favour a party or is actuated by corrupt motive. The correctness or legality of the decision cannot be a ground to proceed departmentally against a person exercising quausi judicial power and it is only the conduct in discharge of duties which can form the basis.

55. Although majority of judgments cited herein above pertain to exercise of judicial powers but in the considered opinion of this court, since the Internal Complaints or Local Committee exercises quasi judicial powers and is expected to make its recommendations in a free, fair and impartial manner placing reliance on evidence available before them, the aforesaid judgments would be squarely applicable.

56. The aforesaid judgments also clearly enunciate the law that in such circumstances where a prima facie finding of misconduct is recorded, departmental proceedings can ensue.

57. In view of the aforesaid judgments, it is thus evident that although departmental proceedings can be initiated against an authority exercising judicial or quasi-judicial powers but there should be at least a prima facie satisfaction by the disciplinary authority before proceeding departmentally that the allegations levelled are not with regard to views taken by such an authority but is in fact based on any extraneous motive as indicated in the judgments herein above.

58. In the considered opinion of this Court, therefore, before proceeding departmentally against any such quasi-judicial power, it is incumbent and imperative upon the disciplinary authority to record a prima facie satisfaction with regard to such misconduct in discharge of such quasi-judicial duty which is required to be separated from the correctness or legality of the decision or recommendation as in the present case.

59. Such a prima facie satisfaction is imperative for the free, fair and impartial decision by the quasi-judicial authority particularly to ensure that such a quasi-judicial authority does not have the Sword of Damocles hanging over them to be proceeded against departmentally in case their recommendations do not find favour with the authorities.

60. In case such quasi-judicial authorities conduct proceedings under such fear, it would obviate the very purpose of the act itself and therefore it is essential that such quasi-judicial authorities as the internal complaints or the local committees act without such a fear

61. While this court lauds stand of State Government and there can be no gainsaying that aspect of sexual harassment in the workplace is required to be nipped in the bud by preventive and corrective steps being taken, at the same time it is also essential that the proceedings of the Internal Complaints or the Local Committee should be fair, transparent and without any aspect of fear or favour in the minds of the members of a committee.

62. It is pertinent to remember that the present proceedings pertained only to suspension of service of petitioners and not the initiation of disciplinary proceedings by issuance of charge-sheet and therefore, the impugned orders are required to be decided in terms of provisions of Rule 4 of Rules of 1999. Proviso to sub-section (1) thereof clearly indicates the conditions under which a government servant can be placed under suspension. The said proviso stipulates that suspension should not be resorted to unless allegations so serious that in the event of being established may ordinarily warrant major penalty.

63. A perusal of impugned orders will make it evident that there is absolutely no decision with regard to any such aspect or any subjective satisfaction of the authority as required to be contemplated and reason to be indicated in the impugned order.

64. This Court is also of the considered opinion that in cases, such as the present one, where suspension has been resorted to of the members of Internal Complaints Committee, the factors enumerated here-in-above pertaining to distinction in exercise of quasi-judicial powers and the conduct during such proceedings under the Act of 2013 are also required to be adverted to by the authority to record its subjective satisfaction.

65. Upon applicability of the aforesaid judgments and factors in the present facts and circumstances and perusal of the impugned suspension orders, it is evident that impugned orders have been passed in a very cursory manner without forming any prima facie satisfaction that suspension is being resorted to not with regard to the decision but with regard to the conduct of the members of the committee.

66. Here it is also relevant to keep in mind that under Rule 7 of the Rules of 2013, the manner of inquiry into complaint has been delineated with a time frame also being indicated, which appears to have been completely ignored by the opposite parties while constituting the committee vide order dated 28th July 2025 in which the direction of state government has been indicated to the committee that it should submit its report on the same day itself.

67. In view of discussion made herein above, this Court reaches a conclusion that the impugned orders of suspension have not made any differentiation between the correctness or legality of the decision vis-a-vis conduct of the petitioners in discharge of their duty as members of the committee. The order impugned is clearly cursory in nature and does not indicate any application of mind. The impugned orders dated 5th August 2025 and 6th August 2025 are therefore quashed by issuance of writ in the nature of Certiorari granting liberty to authority to pass orders afresh, if required, but only in accordance with observations and directions made here-in-above.

68. The question No. B therefore stands answered in favour of petitioners.

69. Writ petitions consequently stand allowed. Parties to bear their own costs.

(2026) 4 ILRA 2125
APPELLATE JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 27.04.2024

BEFORE

THE HON'BLE SYED QAMAR HASAN RIZVI, J.

First Appeal From Order No. 885 of 2012

Smt. Chandrawati & Ors.

...Appellants

Versus

Sri Vikas Pathak & Anr.

...Respondents

Issues for Consideration

- (i) Whether Rule 204(7) of the U.P. Motor Vehicle Rules, 2011, requiring impleadment of the driver as a necessary party in a claim petition under Section 166 of the Motor Vehicles Act, 1988, applies retrospectively to claims instituted prior to its enforcement?
- (ii) Whether the Motor Accident Claims Tribunal was justified in attributing 40% contributory negligence to the deceased cyclist on the basis of the site plan and other evidence on record?
- (iii) Whether, where the deceased left behind four dependent family members, deduction towards personal and living expenses ought to be one-fourth instead of one-third while computing loss of dependency?
- (iv) Whether the claimants were entitled to enhancement of compensation under the conventional heads in accordance with the principles laid down in *Pranay Sethi* and *Magma General Insurance Co. Ltd.*?
- (v) Whether the Tribunal was justified in directing investment of the major portion of the compensation in Fixed Deposit/Monthly Income Scheme for fifteen years despite the claimants having attained majority?

Headnotes

Motor Vehicles Act, 1988 — Section 166 — U.P. Motor Vehicle Rules, 2011 — Rule 204(7) — Claim petition — Necessary parties — Impleadment of driver — Retrospective operation.

HELD: Rule 204(7) of the U.P. Motor Vehicle Rules, 2011, making the driver of the offending vehicle a necessary party in a claim petition under Section 166 of the Motor Vehicles Act, 1988, operates prospectively. A claim petition instituted prior to the enforcement of the amendment cannot be held to be non-maintainable for non-impleadment of the driver. In the absence of express legislative intent conferring retrospective

operation, the amended Rule cannot affect pending proceedings instituted before its enforcement. The objection regarding maintainability raised for the first time in appeal was rightly rejected. [Paras 10 to 13]

Motor Vehicles Act, 1988 — Section 166 — Motor accident claim — Contributory negligence — Cyclist entering T-junction — Duty of care — Determination of negligence.

HELD: Though a cyclist entering a T-junction is required to exercise reasonable care for his own safety, the driver of a motor vehicle approaching such junction owes a higher degree of care and caution. Where the evidence on record, including the site plan and the nature of the collision, established that the offending vehicle was being driven at a high speed without slowing down at the junction, while no independent evidence was adduced by the respondents to substantiate their plea of exclusive negligence on the part of the deceased, attribution of 40% contributory negligence to the deceased was excessive. In the facts and circumstances of the case, contributory negligence attributable to the deceased was liable to be reduced to 20%. [Paras 23 to 29]

Motor Vehicles Act, 1988 — Section 166 — Rash and negligent driving — Burden of proof — Appreciation of evidence.

HELD: Rash and negligent driving constitutes the sine qua non for maintaining a claim under Section 166 of the Motor Vehicles Act, 1988. While determining negligence, the Tribunal is required to appreciate the entire evidence on record, including the circumstances of the accident, the site plan and oral evidence. Mere involvement of the offending vehicle does not by itself establish negligence; however, where the attendant circumstances demonstrate failure of the driver to exercise due care expected at a road junction, negligence can legitimately be inferred. [Paras 25 to 29]

Motor Vehicles Act, 1988 — Section 166 — Compensation — Deduction towards personal and living expenses — Four dependants — Loss of dependency.

HELD: Where the deceased left behind four dependants, namely, his widow and three children, deduction towards personal and living expenses ought to be one-fourth of the income of the deceased and not one-third. The Tribunal erred in deducting one-third towards personal expenses contrary to the principles laid down in *Sarla Verma*, as affirmed in *Pranay Sethi*. Consequently, the loss of dependency was liable to be recomputed by deducting one-fourth of the annual income. [Paras 30 to 33, 46 and 47]

Motor Vehicles Act, 1988 — Compensation — Conventional heads — Loss of consortium — Loss of estate — Funeral expenses — Determination.

HELD: Compensation under the conventional heads is required to be awarded in accordance with the principles laid down in *National Insurance Co. Ltd. v. Pranay Sethi* and *Magma General Insurance Co. Ltd. v. Nanu Ram*. Accordingly, the claimants were entitled to ₹40,000 each towards consortium, ₹15,000 towards loss of estate and ₹15,000 towards funeral expenses. The award made by the Tribunal under the conventional heads was liable to be suitably enhanced. [Paras 34 to 37, 48]

Motor Vehicles Act, 1988 — Compensation — Investment of compensation — Fixed Deposit Receipt (FDR) — Adult claimants — Release of amount.

HELD: The directions issued by the Tribunal requiring investment of the major portion of the compensation in Fixed Deposit/Monthly Income Scheme for fifteen years were appropriate when the award was passed, some of the claimants being minors or of young age. However, with the passage of time all the claimants had attained majority and were capable of managing their own affairs. The protective directions contained in Rule 220-B of the U.P. Motor Vehicle Rules, 1998 and the principles laid down in *General Manager, Kerala State Road Transport Corporation v. Susamma Thomas* are intended to safeguard vulnerable claimants and should

not be mechanically continued after the circumstances warranting such protection have ceased to exist. The restriction on release of the compensation amount was, therefore, liable to be removed. [Paras 39 to 45]

Motor Vehicles Act, 1988 — Section 173 — Enhancement of compensation — Modification of award.

HELD: Since the Tribunal had erroneously assessed contributory negligence at 40%, deducted one-third instead of one-fourth towards personal expenses, and awarded inadequate compensation under the conventional heads, the award required modification. The total compensation payable to the claimants was recalculated at ₹17,27,288/- with interest at the rate of 7% per annum from the date of institution of the claim petition till realization, after adjustment of the amount already paid or deposited. [Paras 46 to 49]

Appeal partly allowed. Judgment and award modified. Compensation enhanced to ₹17,27,288/- with interest at the rate of 7% per annum from the date of institution of the claim petition till realization. Directions regarding long-term investment of the compensation modified. (E-14)

Case Law Cited

Machindranath Kernath Kasar v. D.S. Mylarappa and Others, AIR 2008 SC 2545 — relied on; ICICI Lombard General Insurance Co. Ltd. v. Smt. Reena Tyagi and Others, FAFO No. 2190 of 2010 (Allahabad High Court, decided on 27.03.2017) — relied on; National Insurance Company Ltd. v. Chamundeswari and Others, (2021) 18 SCC 596 — referred to; Lachoo Ram and Others v. Himachal Road Transport Corporation, (2014) 13 SCC 254 — relied on; T.O. Anthony v. Karvarnan and Others, (2008) 3 SCC 748 — referred to; United India Insurance Co. Ltd. v. Sarita Rani Dhaka and Others, 1994 SCC OnLine All 684 — relied on; Sarla Verma (Smt.) and Others v. Delhi Transport Corporation and Another, (2009) 6 SCC 121 — relied on; National Insurance Co. Ltd. v. Pranay Sethi and Others, (2017) 16 SCC 680 — relied on; United India Insurance Co. Ltd. v. Satinder Kaur alias Satwinder Kaur and Others, 2020 SCC OnLine SC 410 — relied on; Magma General Insurance Co. Ltd. v. Nanu Ram and Others, (2018) 18 SCC 130 — relied on; Sunita Tokas and Another v. New India Insurance Co. Ltd. and Another, (2019) 20 SCC 688 — relied on; General Manager, Kerala State Road Transport Corporation v. Susamma Thomas, (1994) 2 SCC 176 — relied on; A.V. Padma and Others v. R. Venugopal and Others, (2012) 3 SCC 378 — relied on.

List of Acts / Statutes

Motor Vehicles Act, 1988; U.P. Motor Vehicle Rules, 1998; U.P. Motor Vehicle Rules, 2011.

List of Keywords

Motor accident claim; Contributory negligence; Rash and negligent driving; T-junction; U.P. Motor Vehicle Rules, 2011; Necessary party; Prospective operation; Loss of dependency; Personal and living expenses; Four dependants; Conventional heads; Loss of consortium; Loss of estate; Funeral expenses; Fixed Deposit Receipt (FDR); Just compensation.

Case Arising From

Judgment and award dated **11.04.2012** passed by the Additional District Judge/Sessions Judge-02, Motor Accident Claims Tribunal, Lucknow in **Claim Petition No. 241 of 2009, Smt. Chandravati Yadav and Others v. Vikas Pathak and Others.**

Appearance for Parties

For the Appellants: Sri Balendu Shekhar and Sri Mahesh Kumar Yadav.

For the Respondents: Sri A. Rafique and Sri Anil Kumar Srivastava

(Delivered by Hon'ble Syed Qamar Hasan Rizvi, J.)

1. Sri Balendu Shekar learned counsel for the appellants; Sri A. Rafique, learned counsel appearing for the respondent no. 1 and Sri Anil Kumar Srivastava, learned counsel for the respondent no. 2-ICICI Lombard General Insurance Limited are present.

2. By means of the present Appeal filed under Section 173 of the Motor Vehicles Act, 1988, the appellants/Claimants have assailed the judgment and award dated 11.04.2012 passed by the Court of Learned Additional District and Sessions Judge-02, Lucknow/Motor Accident Claims Tribunal, Lucknow (hereinafter referred to as the "Learned Tribunal") in Claim Petition No. 241/2009 (Smt. Chandravati Yadav and Others versus Vikas Pathak and Others).

3. The facts of the case that culled out from the pleadings are that in a road accident occurred on 15.04.2009 at 8:00 P.M. on Lucknow-Hardoi Road near Kushmora falling under the jurisdiction of Police Station Kakori, District Lucknow, the husband of appellant no. 1 and father of appellants no. 2 to 4 (Late) Suresh Chandra Yadav, lost his life. It is pleaded by the Appellants that the deceased was riding his bicycle in a careful and cautious manner at time and the place of accident, when the driver of Hyundai Santro Car bearing registration number U.P.32CM1065, insured by respondent no. 2 (hereinafter referred to as the "offending vehicle") and owned with respondent no. 1, drove the said offending vehicle in a rash and negligent manner caused the accident by hitting the bicycle of the deceased. As a result thereof, the deceased sustained grievous injuries and succumbed to death at the place of accident itself. The appellants/claimants filed Claim petition under Section 166 of the Motor Vehicles Act, 1988 that was registered as Claim Petition No. 241/2009 (Smt. Chandravati Yadav and Others versus Vikas Pathak and Others) before the Learned Tribunal, primarily on the ground that the deceased was a government employee and was earning monthly salary of Rs. 12,946/-, and had he survived, he would have continued to earn and maintain his family comprising of his wife (appellant no. 1) and three children (appellants no. 2 to 4). The appellants/claimants sought compensation to the tune of Rs. 33,00,000/- along with interest at the rate of 12% per annum before the learned Tribunal.

4. The learned Tribunal while deciding the aforesaid Claim Petition No. 241/2009, framed the following issues for determination:

1. क्या दिनांक 15.04.09 को रात को लगभग 08.00 बजे कुशमौरा मोड़ के पास अंतर्गत थाना क्षेत्र काकोरी, जिला लखनऊ में कार सं.यू.पी.32 सी.एम. 1065 के चालक द्वारा वाहन को तेजी व लापरवाही से चलाते हुए साइकिल पर टक्कर मारकर दुर्घटना कारित की गई, जिसके परिणामस्वरूप साइकिल चालक सुरेश कुमार यादव को गम्भीर चोटें आईं और और इन्हीं चोटों के कारण सुरेश कुमार यादव की दुर्घटनास्थल पर मृत्यु हो गई -

2. क्या दुर्घटना की तिथि पर उपरोक्त कार विपक्षी सं.2 आई.सी.आई.सी.आई. लोम्बार्ड जनरल इंश्योरेंस कम्पनी लि. से बीमित थी तथा बीमा पालिसी की शर्तों के अधीन परिचालित थी -

3. क्या दुर्घटना की तिथि पर उपरोक्त कार चालक के पास वैध एवं प्रभावी ड्राइविंग लाइसेंस था -

4. क्या याचीगण किसी प्रतिकर को पाने का अधिकारी है - यदि हाँ तो किससे और कितनी धनराशि -

5. The learned Tribunal vide Order dated 11.04.2021 passed in the aforesaid Claim Petition No. 241/2009 awarded compensation to a tune of Rs. 10,59,692/- to the appellants/claimants along with interest at the rate of 7% per annum. While deciding the Issue No. 1, the learned Tribunal held contributory negligence on the part of the deceased cyclist and the driver of the offending vehicle, thereby fixed negligence on the part of the deceased at 40% and that of the driver of the offending vehicle at 60%. While deciding Issue No. 4 regarding the quantification of compensation, the learned Tribunal determined the monthly income of the deceased at Rs. 12,946/- on the basis of the 'salary certificate' available on record and added 30% towards future prospects in view of the age factor of the deceased falling between the age group of 40-50 years. However, the learned Tribunal deducted 1/3rd towards personal and living expenses. By applying the multiplier of 13 as per the Second Schedule to the Motor Vehicles Act, 1988, the Learned Tribunal determined the compensation to a tune of Rs. 10,50,192/-. Further, an amount of Rs. 9500/- under conventional heads was also added. Thus, the learned Tribunal awarded compensation to the appellants/claimants aggregating to Rs. 10,59,692/-, with the direction that the said amount be disbursed in the following manner:

1. श्रीमती चन्द्रावती आयु लगभग 48 वर्ष पत्नी स्व. सुरेश चन्द्र यादव, को मु. 1,22,000.00 रूपए नगद जरिए रेखांकित चैक के माध्यम से अदा किया जाएगा, जो किसी राष्ट्रीयकृत बैंक की शाखा पर देय होगा। श्रीमती चन्द्रावती के नाम से मु. 4,87,692.00 रुपये (संग हानि को शामिल करते हुए) तथा सम्पूर्ण प्रतिकर की धनराशि पर मिलने वाला ब्याज एवं वाद व्यय किसी राष्ट्रीयकृत बैंक की मासिक आय 'जमा योजना' में 15 वर्ष के लिए इस न्यायाधिकरण के माध्यम से जमा किये जायेंगे, जिस पर मासिक ब्याज देय होगा।

2. मुकेश कुमार यादव आयु लगभग 27 वर्ष पुत्र स्व. श्री सुरेश चन्द्र यादव, प्रतिकर की धनराशि में से मु.30,000 रूपए नकद जरिए रेखांकित चैक प्राप्त करेगा जो किसी राष्ट्रीयकृत बैंक की शाखा पर देय होगा तथा शेष मु.1,20,000 रूपए की धनराशि 15 वर्ष की अवधि के लिए मासिक आय योजना में उसके नाम से जमा की जाएगी जिस पर प्रत्येक माह मिलने वाला ब्याज प्राप्त होगा, जिसे उसके भविष्य के लिए खर्च किया जा सकेगा और धन का दुरुपयोग नहीं हो पाएगा।

3. कमलेश कुमार यादव आयु लगभग 25 वर्ष पुत्र स्व. श्री सुरेश चन्द्र यादव, प्रतिकर की धनराशि में से मु.30,000 रूपए नकद जरिए रेखांकित चैक प्राप्त करेगा जो किसी राष्ट्रीयकृत बैंक की शाखा पर देय होगा तथा शेष मु.1,20,000 रूपए की धनराशि 15 वर्ष की अवधि के लिए मासिक आय योजना में उसके नाम से जमा की जाएगी जिस पर प्रत्येक माह मिलने वाला ब्याज

प्राप्त होगा, जिसे उसके भविष्य के लिए खर्च किया जा सकेगा और धन का दुरुपयोग नहीं हो पाएगा।

4. कु. सरला यादव आयु लगभग 20 वर्ष पुत्र स्व. श्री सुरेश चन्द्र यादव, प्रतिकर की धनराशि में से मु. 30,000 रूपए नकद जरिए रेखांकित चैक प्राप्त करेगी जो किसी राष्ट्रीयकृत बैंक की शाखा पर देय होगा तथा शेष मु.1,20,000 रूपए की धनराशि 15 वर्ष की अवधि के लिए मासिक आय योजना में उसके नाम से जमा की जाएगी जिस पर प्रत्येक माह मिलने वाला ब्याज प्राप्त होगा, जिसे उसके भविष्य के लिए शिक्षा दीक्षा पर खर्च किया जा सकेगा और धन का दुरुपयोग नहीं हो पाएगा।

6. Aggrieved by the aforesaid judgment and award dated 11.04.2012 passed in Claim Petition No. 241/2009, particularly with regard to the determination of 40% contributory negligence on the part of the deceased, deduction of 1/3rd of the deceased's monthly income towards personal and living expenses instead of 1/4th, inadequacy of compensation under conventional heads, and award of interest at the rate of 7% per annum instead of 12% per annum; the appellants/claimants have preferred the instant Appeal under Section 173 of the Motor Vehicles Act, 1988.

7. At the very outset, the learned counsel for the Respondent No. 2/ ICICI Lombard General Insurance Limited raised an objection to the effect that as per the amended Rule 204 of U.P. Motor Vehicle Rules, 2011, the driver of the vehicle involved in the accident should be made party in Claim petition and since the driver of the offending vehicle was not impleaded by the appellants in the aforesaid Claim Petition No. 241 of 2009, the same was liable to be rejected on this score alone being maintainable. Consequently, the present Appeal arising out of said Claim Petition No. 241/2009, is also non-maintainable and is liable to be dismissed.

8. Confronting the aforesaid preliminary objection regarding the maintainability of the present Appeal, the learned counsel for the Appellants/claimants submitted that the Respondent No. 2 did not raised the said objection before the Learned Tribunal and for the first time the same has been raised at this appellate stage. Further, he submitted that the Claim Petition No. 241 of 2009 was filed on 11.05.2009, while the mandatory requirement regarding impleadment of the driver as a necessary party was introduced by way of the Eleventh Amendment to the U.P. Motor Vehicles Rules, 2011, as Rule 204(7) to the said Rules of 2011. He contended that the said statutory requirement was introduced much after the filing of the Claim Petition and as such, the non-impleadment of the driver could not render the Claim Petition as non-maintainable. In support of his contention, the learned counsel has relied upon the judgment passed by the Hon'ble Supreme Court in the case of **Machindranath Kernath Kasar versus D. S. Mylarappa reported in AIR 2008 SC 2545**.

9. Before delving into the merits of the case, it would be apt to address the issue raised on behalf of respondent No. 2 regarding the maintainability of the present Appeal arising out of the Claim Petition No. 241 of 2009.

10. In so far as the objection raised by the learned Counsel for the Respondent No. 2 that non-fulfilment of the mandatory requirement stipulated under the amended Rule 204(7) of the U.P. Motor Vehicle Rules, 2011 rendered aforesaid Claim Petition non-maintainable before the Learned Tribunal; it is pertinent to mention that the said amendment to the Motor Vehicle Rules, 2011 has been published in official gazette dated 26.9.2019, whereas the Claim Petition in question was filed on 11.05.2009, i.e., much before the coming into force of said amendment to the Motor Vehicle Rules. It is well settled in law that a legislation is applicable prospectively unless specifically provided therein. It is trite in law that, in absence of anything in the enactment to show that it is to be operated with retrospective effect, it cannot be so construed as to have the effect of altering the law applicable to a claim in litigation at the time when the said act was passed.

11. For a ready reference, the Amended Rule 204(7) of the U.P. Motor Vehicle Rules, 2011 is reproduced herein below,

"4. Amendment of Rule 204.-In the said rules, for Rule 204, the following rule shall be substituted, namely--

"204. Application for compensation.-

(1) ...

-

(7) The driver of the vehicle, involved in the accident, shall be the necessary party in the application for compensation filed under Section 166 of the Act."

12. The Division Bench of this Court in the case of **ICICI Lombard General Insurance Co. Ltd. versus Smt. Reena Tyagi and Others** vide order dated 27.03.2017 in (FAFO No. 2190 of 2010) has held that the amendment in U.P. Motor Vehicle Rules making it mandatory to implead the driver of the vehicle involved in the accident shall not be retrospective in operation, however, only beneficial provision can have retrospective application.

13. In view of what has been discussed herein above establishing the the amended Rule 204(7) of the U.P. Motor Vehicle Rules, 2011, being prospective in nature, the objection raised by the learned counsel for the Respondent No. 2 regarding non-maintainability of the Claim Petition filed in the year 2009 and the present Appeal arising from the same; more particularly when the said objection/issue was never raised earlier before the learned Tribunal; stands demolished. Accordingly, the said objection raised by the Learned Counsel for the respondent No.2 is turned down.

14. Now, on the merits of the appeal, the contention of the learned counsel for the appellants/claimants is that the learned Tribunal committed grave error in solely relying upon the site plan of the place of accident submitted after a lapse of 20 days from the date of accident by the Investigating Officer and thereby drew conclusion that there was 40% contributory negligence on the part of the deceased. He pleaded that PW-2 (Sant Ram Yadav) categorically deposed that the deceased was riding the bicycle carefully and the accident occurred solely due to the rash and negligent driving of the offending vehicle. Further, on the other hand respondent Nos. 1 and 2 in their written statements, have denied the occurrence of the accident. The said contradiction itself unveils the truthfulness of the case of the respondents. It is vehemently argued by the learned

counsel for the appellant that there was no negligence on the part of the deceased and the entire compensation should be awarded to the appellants/claimants without any deduction on account of contributory negligence

15. Another ground taken by the appellants is that the learned Tribunal erred in deducting 1/3rd towards personal and living expenses while the deceased had four dependents, namely, his wife and three children, therefore, the deduction should have been 1/4th in the present case. It has further been contended that the learned Tribunal committed error in awarding a meagre sum of Rs. 9500/- under conventional heads, whereas each claimant is entitled to Rs. 1,00,000/- under the head of loss of love and affection, and Rs. 50,000/- towards funeral expenses. It has also been contended that the learned Tribunal erred in awarding interest at the rate of 7% per annum, whereas in the facts of the present case, it should have been at the rate of 12% per annum.

16. The next submission made on behalf of the appellants/claimants is that the direction of the learned Tribunal directing the major portion of the compensation amount awarded to the appellants/claimants should be deposited in Fixed Deposit Receipt (FDR) or Monthly Income Scheme for a long period of 15 years is erroneous as the accident occurred 17 years back, and all the appellants/claimants are by now become majors, who are capable to manage their own funds. In such circumstances, the entire amount or at least the major portion thereof is required be paid to them directly.

17. Finally, it has been contended by the learned counsel that the appellants/claimants are entitled to just and reasonable compensation even if they have not specifically claimed the enhanced amount of compensation before the learned Tribunal or before this Court. By placing reliance upon several judgments passed by the Hon'ble Supreme Court, he contended that it was incumbent upon the learned Tribunal to award just compensation in accordance with law, regardless of the amount claimed by the claimants.

18. Per contra, the, learned counsel appearing on behalf of the respondent no. 1, i.e., the owner of offending vehicle; vehemently argued that the impugned judgement and award suffers from no infirmity or perversity, as the learned Tribunal has analyzed the entire sequence of the accident very logically, on the basis of the material available on record.

19. The learned Counsel contended that the deceased was coming from a link-lane to the main-road, while reaching the main-road, he ought to have looked on both the sides. It was the sudden appearance of the deceased cyclist before the offending vehicle that resulted in the accident thereby forcing the offending vehicle to get dis-balanced and falling into a ditch. In this manner, the percentage of contributory negligence on the part of the deceased as 40% has been rightly determined by the learned Tribunal.

20. The learned counsel has vehemently argued that mere involvement of the driver of the offending vehicle in the accident does not ipso facto make him liable for the accident when the element of rash driving is absent. To buttress his argument, the learned counsel has relied upon several judgments of the Hon'ble Supreme Court. He has argued that in the case of **National Insurance Company Ltd. versus Chamundeshwari and Others reported in (2021) 18 SCC**

596, it was held that each case is judged having regard to facts of the case and evidence on record. Further, he relied upon the judgment of the Hon'ble Apex Court passed in **Lachoo Ram and Others versus Himachal Road Transport Corporation, reported in (2014) 13 SCC 254** wherein it was held that "*the involvement of the bus in the accident cannot make the respondent liable to pay compensation unless it can be held on the basis of materials on record that the accident was caused by rash and negligent act of the driver-respondent no.2...*". He argues that in the present case, the driver of the offending vehicle was neither rash nor negligent and therefore, he cannot be solely held liable for causing the accident.

21. Lastly, he submitted that the site plan/naksha nazri is an important piece of evidence, and the learned Tribunal has rightly passed the judgment and award dated 11.04.2012 by taking it into consideration the material on record particularly the naksha nazri; holding contributory negligence of the deceased in the accident in question. To support his contention, he placed reliance on the judgment passed by the Hon'ble Supreme Court in the case of **T.O. Anthony versus Karvarnan and Others, reported in (2008) 3 SCC 748**. For a ready reference, Paragraph 8 of the said judgment is reproduced herein-below,

"8. It is not in dispute that the Mahazar Ex. P-2 showed that the accident spot was at a distance of 2.26 meters from the Southern edge of the tarred road and 4.79 meters from the Northern edge of the tarred road. If the appellant was proceeding from Palakkad to Trichur (from East to West) and the accident occurred at a distance of 2.2 meters from the southern edge of the road and 4.79 meters from the Northern edge of the road, the inference is that the appellant was on the right side of the road and the private bus came partly to the wrong side of the road. But the fact that there was a head-on collision could not be ignored. The evidence shows that the appellant was not diligent, as he neither slowed down the bus nor swerved to his left, on seeing the oncoming bus. On the facts and circumstances we are of the view that the appellant was also partly responsible for the accident and we fix the responsibility at 25% on the appellant and 75% on the first respondent."

22. Heard the learned counsel for the respective parties and perused the material available on record. This Court now proceeds to examine the issues that arise for consideration in the present appeal. For the sake of convenience and clarity, the issues are addressed in seriatim.

23. The foremost question that falls for consideration before this Court is whether the learned Tribunal was justified in holding the deceased was guilty of 40% contributory negligence.

24. The learned Tribunal has based the above-mentioned finding of contributory negligence primarily, if not solely, on the basis of the site plan/naksha nazri which is marked as document C-15/8 placed on the record of Claim Petition. The learned Tribunal observed that the said naksha nazri reflects that the deceased was coming from a link-road and suddenly emerged on the main road without looking on both left and right sides, whereas the offending vehicle was proceeding on the main-road from Hardoi towards Lucknow. The relevant finding recorded by the learned Tribunal is extracted below:

"...इस मामले में दुर्घटना दिनांक 15.04.09 की रात 08.00 बजे की है और प्रथम सूचना रिपोर्ट थाने पर उसी दिन रात में 09.15 बजे अंकित हुई। जिसमें वाहन की नंबर दिया हुआ है। नक्शा नजरी सी-15/8 को देखने से स्पष्ट होता है कि मृतक कुशमौरा मार्ग से हरदोई-लखनऊ रोड की ओर जा रही थी अर्थात् वह उत्तर से दक्षिण की ओर आ रही थी। आक्रामक वाहन हरदोई से लखनऊ की ओर अर्थात् पश्चिम से पूरब की ओर जा रही थी। दुर्घटना जिस स्थान पर होना दिखाया गया है वह तिराहा है। नक्शा नजरी से स्पष्ट होता है कि मृतक हरदोई-लखनऊ मुख्य मार्ग पर आ रहा था। तभी हरदोई की ओर से आ रही कार ने साइकिल में टक्कर मारी जिससे मृतक उस स्थान से काफी आगे गिरा और साइकिल उससे दूर जाकर गिरी। इन परिस्थितियों से यह भी स्पष्ट है कि टक्कर जोरदार थी और यह तभी संभव है जब आक्रामक वाहन की गति काफी तेज हो। साइकिल से आने वाले व्यक्ति की गति काफी तेज नहीं हो सकती। वाहन चालक का दायित्व था कि वह गति पर नियंत्रण रखते हुए अपने वाहन को चलाता और तिराहे के पास वाहन को धीमा करता। इसी प्रकार साइकिल चालक का भी दायित्व था कि तिराहे पर आने के पूर्व अपनी बाईं ओर दाईं ओर देखता कि कोई वाहन तो नहीं आ रहा है। इस संबंध में यह प्रतीत होता है कि दोनों मृतक और वाहन चालक की योगदायी उपेक्षा दुर्घटना में रही है, किन्तु कार चालक का दायित्व साइकिल चालक की अपेक्षा अधिक है। जिस स्थान पर टक्कर लगी और जहाँ पर शव मिला उनमें काफी दूरी है, जो स्वयं दर्शाता है कि टक्कर के समय वाहन तेज गति में था। इन परिस्थितियों को देखते हुए इस मामले में वाहन कार चालक की उपेक्षा 60 प्रतिशत तथा मृतक साइकिल सवार की उपेक्षा 40 प्रतिशत निर्धारित की जाती है। बिन्दु सं. 1 तदनुसार निस्तारित किया जाता है।"

(Emphasis supplied by this court)

25. Needless to say that rash and negligent driving is sine quo non for deciding a Claim petition under section 166 of the Motor Vehicles Act, 1988. The Hon'ble Supreme Court in the case of Lachoo Ram (Supra) is has very explicitly held that the driver/owner of the vehicle causing the accident is not liable to pay compensation unless it can be held on the basis of materials on record, the accident was caused by rash and negligent act of the said driver of the vehicle. Moreover, it is necessary for the courts to appreciate the evidence on record, in order to ascertain whether the driver of the vehicle causing the accident was rash and negligent and in case he was rash and negligent, then, to ascertain as to the degree of the driver's negligence. In ascertaining the aforesaid negligence the facts speaks for itself. In this regard, it is worth noting that in the case of United India Insurance Company versus Sarita Rani Dhaka and Others reported in 1994 SCC OnLine All 684, the Hon'ble Supreme Court, after considering the facts of the said case, held that,

"4. -it is clear that driver of the oil tanker was negligent in driving the vehicle resulting in the accident by applying the principle of Res ipsa loquitor. Therefore, owner is vicariously liable for negligent act of the driver and insurer which has covered the risk of the owner in respect of the

vehicle has rightly been directed to pay compensation to the claimants who are dependents of the deceased."

26. Upon a careful reappraisal of the material available on record, this Court finds that the finding returned by learned Tribunal holding contributory negligence on the part of the deceased, to the extent of 40% requires reconsideration. The material on record, including the site plan/naksha nazri and the deposition of PW-2 namely, Sant Ram Yadav, indicates that the accident occurred at a T-junction on the main road, where it is obvious that a higher degree of caution was expected from the driver of the offending vehicle. The nature of the impact and the force of collision reasonably suggest that the offending vehicle was being driven at a high speed and that its driver failed to slow down his vehicle and did not followed due care while approaching the said T-junction (place of accident).

27. Further, it is relevant to note that the respondents had taken the specific plea in their written statement that the accident occurred due to the sole negligence of the deceased but failed to produce any independent evidence to substantiate their plea.

28. However, at the same time, it cannot be overlooked that the deceased, being a cyclist entering at the said T-junction, was also under duty to exercise reasonable care for his own safety. Although, the evidence that has been placed on record does not indicate any reckless or deliberate act on the part of the deceased, a lapse in vigilance on his part cannot be completely ruled out as well. In such circumstances, the principle of contributory negligence is attracted, though the extent (percentage) thereof as assessed by the learned Tribunal appears to be on the higher side.

29. After considering the aforesaid facts in its totality and having regard to the fact that the driver of the offending vehicle was under a greater obligation to anticipate and avoid harm at a T-junction, this Court is of the considered opinion that fixing negligence at 40% on the part of the deceased is disproportionate in the facts and circumstances of the case in hand, especially when there is no such evidence to substantiate the negligence on part of the deceased, except some lapse in vigilance. The ends of justice would be met by reducing the extent of the contributory negligence on part of the deceased to 20%, in place of 40%.

30. The second issue that falls for consideration before this court is regarding the deduction of 1/3rd of the deceased's income towards personal and living expenses.

31. The issue of deduction towards personal and living expenses of the deceased has been dealt in detail by the Hon'ble Supreme Court in the case of **Sarla Verma (Smt.) and others versus Delhi Transport Corporation and another, reported in (2009) 6 SCC 121**. The said judgment has been upheld by the Constitution Bench of the Hon'ble Supreme Court in the case of **National Insurance Company Ltd. versus Pranay Sethi and Others, reported in (2017) 16 SCC 680**, and, later on, followed in the case of **United India Insurance Company Ltd. versus Satinder Kaur alias Satwinder Kaur and others, reported in 2020 SCC OnLine SC 410**.

32. It would be apt to quote the relevant portion of the judgment passed in the case of **Sarla Verma (Supra)**, wherein the Hon'ble Apex Court was pleased to hold that,

"30. Though in some cases the deduction to be made towards personal and living expenses is calculated on the basis of units indicated in Trilok Chandra [(1996) 4 SCC 362], the general practice is to apply standardised deductions. Having considered several subsequent decisions of this Court, we are of the view that where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one-third (1/3rd) where the number of dependent family members is 2 to 3, one-fourth (1/4th) where the number of dependent family members is 4 to 6, and one-fifth (1/5th) where the number of dependent family members exceeds six."

[Emphasis supplied]

33. Taking into consideration the facts of the present case in light of the law laid down by the Hon'ble Apex Court in the case of **Sarla Verma (Supra)**, this Court is of the opinion that the learned Tribunal erred in deducting 1/3rd towards personal and living and expenses when the deceased had four dependents, namely his wife and three children. As such it would be lawfully justified that the said deduction should have been only 1/4th in the present case.

34. The third issue that falls for consideration before this Court is regarding the calculations of damages, loss of consortium and the multiplier under the conventional head of the Second Schedule appended with the Motor Vehicles Act, 1988 and as per the principles laid down by the Hon'ble Supreme Court. In the case of **National Insurance Company Ltd. versus Pranay Sethi and Others reported in (2017) 16 SCC 680**, the Hon'ble Apex Court observed that the conventional damage amount needs to be appositely determined and thereby the Hon'ble Apex Court revisited the practice of awarding compensation under conventional heads. For a ready reference, Paragraph 52 of the judgment passed in the case of **Pranay Sethi [Supra]** is reproduced herein-below,

"52. As far as the conventional heads are concerned, we find it difficult to agree with the view expressed in Rajesh[Rajesh v. Rajbir Singh, (2013) 9 SCC 54 : (2013) 4 SCC (Civ) 179 : (2013) 3 SCC (Cri) 817 : (2014) 1 SCC (L&S) 149] . It has granted Rs 25,000 towards funeral expenses, Rs 1,00,000 towards loss of consortium and Rs 1,00,000 towards loss of care and guidance for minor children. The head relating to loss of care and minor children does not exist. Though Rajesh [Rajesh v. Rajbir Singh, (2013) 9 SCC 54 : (2013) 4 SCC (Civ) 179 : (2013) 3 SCC (Cri) 817 : (2014) 1 SCC (L&S) 149] refers to Santosh Devi [Santosh Devi v. National Insurance Co. Ltd., (2012) 6 SCC 421 : (2012) 3 SCC (Civ) 726 : (2012) 3 SCC (Cri) 160 : (2012) 2 SCC (L&S) 167] , it does not seem to follow the same. The conventional and traditional heads, needless to say, cannot be determined on percentage basis because that would not be an acceptable criterion. Unlike determination of income, the said heads have to be quantified. Any quantification must have a reasonable foundation. There can be no dispute over the fact that price index, fall in bank interest, escalation of rates in many a field have to be noticed. The court cannot remain oblivious to the same. There has been a thumb rule in this aspect. Otherwise, there will be extreme difficulty in determination of the same and unless the thumb rule is applied, there will be immense variation lacking any kind of consistency as a consequence of which, the orders passed by the tribunals and courts are likely to be unguided. Therefore, we think it seemly to fix reasonable sums. It seems to us that reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs 15,000, Rs 40,000 and Rs 15,000 respectively. The principle of revisiting the said heads is an acceptable principle. But the revisit should not be fact-centric or

quantum-centric. We think that it would be condign that the amount that we have quantified should be enhanced on percentage basis in every three years and the enhancement should be at the rate of 10% in a span of three years. We are disposed to hold so because that will bring in consistency in respect of those heads."

(Emphasis supplied by this Court)

35. Further, the principles governing award of compensation under conventional heads with regard to award for loss of consortium, have also been laid down by the Hon'ble Supreme Court in the case of **Magma General Insurance Company Ltd. versus Nanu Ram and others, reported in (2018) 18 SCC 130** and for a ready reference, Paragraph 21 of the same is reproduced herein-below,

"21. - In legal parlance, "consortium" is a compendious term which encompasses "spousal consortium", "parental consortium", and "filial consortium". The right to consortium would include the company, care, help, comfort, guidance, solace and affection of the deceased, which is a loss to his family. With respect to a spouse, it would include sexual relations with the deceased spouse: [Rajesh v. Rajbir Singh, (2013) 9 SCC 54 : (2013) 4 SCC (Civ) 179 : (2013) 3 SCC (Cri) 817 : (2014) 1 SCC (L&S) 149]

21.1. Spousal consortium is generally defined as rights pertaining to the relationship of a husband-wife which allows compensation to the surviving spouse for loss of "company, society, cooperation, affection, and aid of the other in every conjugal relation". [Black's Law Dictionary (5th Edn., 1979).]

21.2. Parental consortium is granted to the child upon the premature death of a parent, for loss of "parental aid, protection, affection, society, discipline, guidance and training".

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22. Consortium is a special prism reflecting changing norms about the status and worth of actual relationships. ...

23. The Motor Vehicles Act is a beneficial legislation aimed at providing relief to the victims or their families, in cases of genuine claims. - Parental consortium is awarded to children who lose their parents in motor vehicle accidents under the Act. A few High Courts have awarded compensation on this count [Rajasthan High Court in Jagmala Ram v. Sohi Ram, 2017 SCC OnLine Raj 3848 : (2017) 4 RLW 3368; Uttarakhand High Court in Rita Rana v. Pradeep Kumar, 2013 SCC OnLine Utt 2435 : (2014) 3 UC 1687; Karnataka High Court in Lakshman v. Susheela Chand Choudhary, 1996 SCC OnLine Kar 74 : (1996) 3 Kant LJ 570]. However, there was no clarity with respect to the principles on which compensation could be awarded on loss of filial consortium.

24. The amount of compensation to be awarded as consortium will be governed by the principles of awarding compensation under "loss of consortium" as laid down in Pranay Sethi [National Insurance Co. Ltd. v. Pranay Sethi, (2017) 16 SCC 680 : (2018) 3 SCC (Civ) 248 : (2018) 2 SCC (Cri) 205]."

36. Moreover, the principles governing award of compensation with multiplier is accurately discussed by the Hon'ble Supreme Court in the case of **Sunita Tokas and Another versus New India Insurance Company Ltd and another, reported in 2019 (20) SCC 688** wherein after

considering a catena of its previous judgments, the Hon'ble Apex Court was pleased to hold as follows,

"(4) We have perused the judgments of the courts below, and found that the multiplier has been fixed on the basis of the age of the mother of the deceased boy. The issue with respect to whether the multiplier to be applied in the case of a bachelor, should be computed on the basis of the age of the deceased, or the age of the mother, is no longer *res integra*. There are a catena of judgments rendered by this Court, wherein it has been held that the multiplier has to be applied on the basis of the age of the deceased, and not on the basis of the age of the dependants.

(4.8) The Court after perusing all earlier judgments, observed that the judicial pronouncements had devised a standard formula for calculation of the compensation qua various components. The amount of compensation is to be paid to the claimants who are dependents in the event of the death of a person, based on what the deceased would have contributed to their support. The amount received by the dependants becomes a part of the estate, as they may live longer, or may be younger than the age-limits taken into account for calculation of the multiplier to be applied in such a situation. In the case of the death of a married person, it is an accepted norm that the age of the deceased would be taken into account. The Court held that even in the case of a bachelor, the same principle must be applied. The Court held that once the law is settled, it should not repeatedly be changed, since certainty of law is of crucial importance, to avoid any confusion."

37. Now, as the principles are well settled regarding the calculation of damages, loss of consortium and the multiplier under the conventional head of the Second Schedule appended with the Motor Vehicles Act, 1988, as have been encapsulated above, the same can be applied in view of the facts of the present case. As far as the conventional heads are concerned, namely Loss of Consortium (loss of love and affection), loss of estate, and funeral expenses, this Court is of the opinion that a reasonable sum should be fixed. Therefore, in the light of the law laid down by the Hon'ble Apex Court as discussed herein-above, for ensuring consistency and fairness in compensation, it is appropriate in the facts of the present case to enhance the amount falling under the Conventional Heads to Rs. 40,000/- to each claimant for loss of consortium, Rs. 15,000/- for loss of estate, and Rs. 15,000/- for funeral expenses.

38. The fourth issue that falls for consideration before this Court is regarding the correctness of the direction of the learned Tribunal to invest a major portion of the compensation in Fixed Deposit Receipt (FDR) that was fixed for a period of 15 years.

39. It would not be out of place to refer Rule 220-B as contained in U.P. Motor Vehicle Rules, 1998 which was added to the said Rules as a result of the guidelines issued by the Hon'ble Supreme Court in the case of **General Manager, Kerala State Road Transport Corporation versus Sushamma Thomas reported in, 1994 SCC (2) 176**. For a ready reference, the aforesaid Rule 220-B is reproduced herein below:

"220-B. Securing the interest of Claimants.-(1) Where any lump-sum amount of compensation, deposited with the Claims Tribunal is payable to a woman or a person under legal disability/ such sum may be invested, applied or otherwise dealt with for the benefit of the woman

or such person during his disability in such manner as the Claims Tribunal may direct to be paid to any dependent of the injured or heirs of the deceased or to any other person whom the Claims Tribunal thinks best fitted to provide for the welfare of the injured or the heir of the deceased.

(2) Where an application made to the Claims Tribunal in this behalf otherwise, the Claims Tribunal is satisfied that on account of neglect of the children on the part of the parents, or on account of the variation of the circumstances of any dependent, or for any other sufficient cause, an order of the Claims Tribunal as to the distribution of any sum paid as compensation or as to the manner in which any sum payable to any such dependent is to be invested applied or otherwise dealt with, ought to be varied, the Claims Tribunal may make such further orders for the variation of the former order as it thinks just in the circumstances of the case. the Claims Tribunal may consider such a request after being satisfied that the amount would be actually spent for the purpose and the demand is not a ruse to withdraw money.

(3) The Claims Tribunal shall, in the case of minor, order that amount of compensation awarded to such minor be invested in fixed deposits till such minor attains majority. The expenses incurred by the guardian or the next friend may be allowed to be withdrawn by such guardian or the next friend from such deposits before it is deposited : Provided that the interest payable on such deposits may be allowed to be utilized for education, maintenance and development of the minor with the permission of the Claims Tribunal.

(4) The Claims Tribunal shall, in the case of illiterate claimants, order that the amount of compensation awarded be invested in fixed deposits for a minimum period of three years, but if any amount is required for effecting purchase of any movable or immovable property for improving the income of the claimant, the Claims Tribunal may consider such a request after being satisfied that the amount would be actually spent for the purpose and the demand is not a ruse to withdraw money.

(5) The Claims Tribunal shall, in the case of semi-literate person resort to the procedure for the deposit or award amounts set out in sub-rule (4) unless if is satisfied, for reasons to be recorded in writing that the whole or part of the amount is required for the expansion of any existing business or for the purchase of some property as specified and mentioned, in sub- rule (4) in which case the Claims Tribunal shall ensure that the amount is invested for the purpose for which it is prayed for and paid.

(6) The Claims Tribunal may in the case of literate persons also resort to the procedure for deposit of awarded amount specified in sub-rules (4) and (5) if having regard to the age, fiscal background and state of society to which the claimant belongs and such other consideration/ the Claims Tribunal in the larger interest of the claimant and with a view to ensure the safety of the compensation awarded, thinks it necessary to order.

(7) The Claims Tribunal, may in personal injury cases, if further treatment is necessary, on being satisfied which shall be recorded in writing, permit the withdrawal of such amount as is necessary for the expenses of such treatment.

(8) The Claims Tribunal may, in the matter of investment of money, have regard to maximum return by ways of periodical income to the claimant, deposit with public sector undertaking of the State or Central Government which offers higher rate of interest.

(9) The Claims Tribunal shall, in investing money, direct that the interest on the deposits be paid directly to the claimants or the guardian of the minor claimants by the institution holding the deposits under intimation to the Claims Tribunal]."

40. The aforesaid Rule 220-B is a beneficial and protective framework for vulnerable claimants, i.e., claimants who are women, minors, illiterates, semi-illiterates or disabled. The purpose of the aforesaid Rule is to safeguard the funds that are awarded as compensation to the claimants so that it is securely invested and used for the long-term welfare of the claimants mentioned therein and not squandered or misused.

41. Further, the guidelines issued by the Hon'ble Supreme Court in the case of **General Manager, Kerala State Road Transport Corporation versus Sushamma Thomas (Supra)** were re-appreciated and clarified by the Hon'ble Apex Court in the case of **A.V. Padma and others versus R. Venugopal and others reported in (2012) 3 SCC 378**, wherein the Hon'ble Court was pleased to hold as follows:

"9. The guidelines cast a responsibility on the Tribunals to pass appropriate orders after examining each case on its own merits. However, it is seen that even in cases when there is no possibility or chance of the feed being frittered away by the beneficiary owing to ignorance, illiteracy or susceptibility to exploitation/investment of the amount of compensation in long term fixed deposit is directed by the Tribunals as a matter of course and in a routine manner, ignoring the object and the spirit of the guidelines issued by this Court and the genuine requirements of the claimants. Even in the case of literate persons, the Tribunals are automatically ordering investment of the amount of compensation in long term fixed deposit without recording that having regard to the age or fiscal background or the strata of the society to which the claimant belongs or such other considerations, the Tribunal thinks it necessary to direct such investment in the larger interests of the claimant and with a view to ensure the safety of the compensation awarded to him.

10. The Tribunals very often dispose of the claimant's application for withdrawal of the amount of compensation in a mechanical manner and without proper application of mind. This has resulted in serious injustice and hardship to the claimants. The Tribunals appear to think that in view of the guidelines issued by this Court, in every case the amount of compensation should be invested in long term fixed deposit and under no circumstances the Tribunal can release the entire amount of compensation to the claimant even if it is required by him. Hence a change of attitude and approach on the part of the Tribunals is necessary in the interest of justice."

42. From the law as laid down by the Hon'ble Supreme Court in the case of **A.V. Padma and Others versus R. Venugopal and Others (supra)**, it is clear that the guidelines were issued to keep the amount in Fixed Deposit or Monthly Income Scheme for a period of time only in the case of minors, illiterate claimants and widows requiring special protection.

43. In the present case, the appellants/claimants No.1 lost her husband while the other appellants/claimants No. 2 to 4 lost their father in the year 2009, and the award was passed in the year 2012. At present, all the claimants are undisputedly adult members. The guidelines issued by the Hon'ble Supreme Court in **General Manager, Kerala State Road Transport Corporation versus Susamma Thomas, (Supra)**, which have now been incorporated in Rule 220-B of the U.P. Motor Vehicle Rules of 1998, were only to safeguard the interest of the vulnerable claimants. These guidelines were not meant to be understood to mean that the Tribunal was supposed to take a rigid stand while considering the mode of disbursement of compensation to adult claimants who are capable of managing their own funds.

44. Therefore, considering the facts of the present case that the appellants/claimants are now major by age and adult members of the deceased family. The impugned award was passed in the year 2012 in respect of an accident which had taken place in the year 2009. Nearly 17 years have elapsed since the accident and the death of the deceased and 14 years have passed since the award was passed by the learned Tribunal; there is no reason to continue the FDR directed by the learned Tribunal and the restriction placed on release of compensation amount to the appellants/claimants.

45. This Court is of the opinion that the direction for investment in Fixed Deposit/Monthly Income Scheme for a period of 15 years, as contained in the judgment and award dated 11.04.2012 passed by the learned Tribunal, was appropriate at the time when the award was passed and when some of the appellants/claimants were minors or of young age. However, with the passage of considerable time, all the appellants/claimants are now mature adults capable of managing their own funds, and therefore, the continued restriction on release of the enhanced compensation amount is not at all justified at this stage.

46. The deceased namely Suresh Chandra Yadav has left behind four dependents, all of whom have claimed compensation. The dependents are: (i) Smt. Chandravati Yadav, wife of the deceased; (ii) Mukesh Yadav, son of the deceased; (iii) Kamlesh Kumar Yadav, son of the deceased; and (iv) Kumari Sarla Yadav, daughter of the deceased. There is no case that these family members were not dependent upon income the deceased. The deceased was employed in government service and was earning a monthly salary of Rs. 12,946/- and was providing for maintaining the entire family comprising of 4 people.

47. The learned Tribunal has deducted 1/3rd of the deceased's income towards personal and living expenses, which is contrary to the principles laid down by the Hon'ble Apex Court in the case of **Pranay Sethi (supra)**. Therefore, deduction towards personal and living expenses would be 1/4th, as the dependent family members being four in number. In this manner, the judgment and award dated 11.04.2012 passed by the learned Tribunal deserves to be modified.

48. Over and above the substantive compensation payable, the appellants/claimants are also entitled to compensation under the conventional heads determined in accordance with the principles laid down in Pranay Sethi (supra). The compensation payable to the appellants/claimants in the present First Appeal stands modified as under:

(i) Monthly Income (of the deceased)	= Rs. 12,946/-
(ii) Monthly Income + Future Prospects (monthly income x 30%)	= 12,946 + 3,884 = Rs. 16,830/-
(iii) Annual Income (of the deceased)	= 16,830 x 12 = Rs. 2,01,960/-
(Annual Income) – (1/4th deduction towards personal expenses of the deceased)	= 2,01,960 – 50,490

	= Rs. 1,51,470/-
(v) Total Dependency =	= 1,51,470 × 13
Annual Dependency *	= Rs. 19,69,110/-
Applied Multiplier	
vi) Claimants' entitlement towards conventional heads =	
• Loss of consortium (Rs. 40,000 × 4 dependents)	= 1,60,000 + 15,000 + 15,000 = Rs. 1,90,000/-
• Loss of estate (Rs. 15,000)	Rs. 19,69,110/- + Rs. 1,90,000/-
• Funeral expenses (Rs. 15,000)	= Rs. 21,59,110/-
v) Deduction on account of contributory negligence	20% × 21,59,110 = Rs. 4,31,822/- (round figure)
The total compensation works out as	Rs. 21,59,110 – Rs. 4,31,822 = Rs. 17,27,288/-

49. In view thereof, the judgment and award dated 11.04.2012 passed by the learned Tribunal in Claim Petition No. 241 of 2009 is modified and the compensation awarded is enhanced to a total amount of Rs. **Rs. 17,27,288/- (Rupees Seventeen Lacs Twenty Seven Thousand Two Hundred Eighty Eight only)**. The compensation would carry simple interest thereon at the rate of 7% per annum from the date of institution of the aforesaid Claim Petition No. 241 of 2009, until realization of the said amount of money. However, the sum of money already deposited (paid or invested in terms of the judgment and award dated 11.04.2012 passed by the learned Tribunal in Claim Petition No. 241 of 2009 or interim orders of this Court) shall be accordingly adjusted. The enhanced compensation shall be paid to the appellants/claimants within a period of eight weeks from the date of receipt of a certified copy of this judgment.

50. As a result and subject to the aforesaid modification, the appeal is **partly allowed**. There shall be no order as to costs.

51. The original record of the Claim Petition No. 241 of 2009 be transmitted back to the Tribunal concerned at the earliest.

52. Before parting, this Court deems it appropriate to place on record its deep appreciation for the invaluable assistance rendered by Mr. Rajat Srivastava, Research Associate, attached with me in drafting this judgment and finding out case laws applicable in the present case.

(2026) 4 ILRA 2143
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 23.04.2026

BEFORE

THE HON'BLE MANISH KUMAR NIGAM, J.

Matters Under Article 227 No. 1527 of 2025

Bhupendra Singh

...Petitioner

Versus

Smt. Namrata Saraswat

...Respondent

Issues for Consideration

(i) Whether an application under **Order XLI Rule 27 CPC** seeking permission to adduce additional evidence in appeal can be allowed merely because the evidence is relevant, or only when the conditions prescribed under clauses (a), (aa) or (b) of Rule 27(1) are satisfied?

(ii) Whether, while exercising power under **Order XLI Rule 27(1)(b) CPC**, the requirement to adduce additional evidence must be that of the appellate court itself for enabling it to pronounce judgment or for any other substantial cause, and not of the party seeking to fill up lacunae in its case?

(iii) Whether an application under **Order XLI Rule 27(1)(b) CPC** is ordinarily required to be considered at the stage of final hearing of the appeal after the appellate court has examined the evidence already on record?

(iv) Whether the lower appellate court committed any jurisdictional error in rejecting the petitioner's application under Order XLI Rule 27 CPC seeking to produce seventeen documents as additional evidence in an appeal arising from a suit for specific performance?

Headnotes

Code of Civil Procedure, 1908—Order XLI Rule 27—Additional evidence in appeal—General rule and exceptions.

HELD: The normal rule is that an appeal is to be decided on the evidence adduced before the trial court. Production of additional evidence at the appellate stage is an exception and is permissible only in the circumstances specifically enumerated in clauses (a), (aa) or (b) of Rule 27(1). A party has no vested right to adduce additional evidence in appeal merely because such evidence may be relevant or useful. The power under Rule 27 is required to be exercised sparingly and only in exceptional circumstances. [Paras 11 to 24]

Code of Civil Procedure, 1908—Order XLI Rule 27(1)(a), (aa) and (b)—Distinct fields of operation.

HELD: Clauses (a), (aa) and (b) of Rule 27(1) operate in different fields. Clause (a) applies where the trial court improperly refused to admit evidence; clause (aa) applies where, despite due diligence, the evidence was not within the knowledge of the party or could not be produced before the trial court; whereas clause (b) is attracted only when the appellate court itself requires additional evidence either to enable it to pronounce judgment or for any other substantial cause. The conditions governing each clause are separate and cannot be interchanged. [Paras 19 to 24]

Code of Civil Procedure, 1908—Order XLI Rule 27(1)(b)—Requirement of appellate court—Scope.

HELD: The expression "requires" occurring in clause (b) denotes the requirement of the appellate court and not the desire or convenience of the litigating party. Additional evidence cannot be permitted merely because a party considers it necessary to strengthen its case. The jurisdiction under clause (b) arises only where the appellate court, upon examining the evidence already on record, forms an independent opinion that such evidence is necessary for pronouncing a satisfactory judgment or for any other substantial cause. [Paras 23 to 35]

Code of Civil Procedure, 1908—Order XLI Rule 27—Additional evidence—Cannot be permitted to fill lacunae.

HELD: The provisions of Order XLI Rule 27 are not intended to afford an unsuccessful litigant an opportunity to patch up the weak parts of its case or to fill omissions left during trial. The appellate court must guard against permitting additional evidence merely because a party failed to adduce available evidence before the trial court. Such jurisdiction is intended to subserve the ends of justice and not to cure deficiencies in the evidence of an unsuccessful party. [Paras 26 to 31 and 59 to 60]

Code of Civil Procedure, 1908—Order XLI Rule 27(1)(b)—Stage for consideration of application.

HELD: Although an application under Order XLI Rule 27 may be filed before the appeal is finally heard, the question whether additional evidence is required under clause (b) ordinarily arises when the appellate court examines the evidence already on record during hearing of the appeal. At that stage alone can the court effectively determine whether the existing material is sufficient for pronouncing judgment or whether additional evidence is genuinely required. [Paras 32 to 35 and 49]

Code of Civil Procedure, 1908—Order XLI Rule 27—Recording of reasons—Rejection of application.

HELD: Rule 27(2) expressly requires recording of reasons when additional evidence is admitted. There is no corresponding statutory mandate requiring elaborate reasons while rejecting an application under Rule 27. Nevertheless, the order rejecting such application must disclose application of mind to the facts of the case, the evidence already on record and the relevance of the proposed additional evidence. [Paras 42 to 44]

Specific Relief—Suit for specific performance—Appeal—Application for additional evidence—Relevance of proposed documents.

HELD: The documents sought to be produced by the defendant principally related to allotment of plots by the Ghaziabad Development Authority to the Society, correspondence regarding demarcation, possession and internal transactions between the Society and the Development Authority, proceedings in an independent suit concerning penal interest, an affidavit already forming part of the record and a cheque issued in purported compliance with the trial court decree. Since the execution of the agreement to sell and allotment of the plot were not in dispute and the proposed documents had no bearing on the real controversy in appeal, the appellate court rightly held that they were unnecessary for deciding the appeal. [Paras 45 to 47]

Code of Civil Procedure, 1908—Order XLI Rule 27(1)(aa)—Due diligence—Plea of oversight by counsel.

HELD: A vague plea that relevant documents could not be produced before the trial court due to oversight of the advocate or that efforts were made to obtain copies thereof, unsupported by proper pleadings and material establishing due diligence, does not satisfy the requirements of clause (aa) of Rule 27(1). Such assertions are insufficient to invoke the exceptional jurisdiction for production of additional evidence. [Paras 45 and 55]

Constitution of India—Article 227—Order refusing additional evidence—Scope of interference.

HELD: The power to admit or refuse additional evidence under Order XLI Rule 27 is discretionary and judicial. The High Court, while exercising supervisory jurisdiction under Article 227, would not interfere merely because another view is possible. Interference is warranted only where the discretion has been exercised arbitrarily or contrary to settled principles. Where the appellate court has considered the proposed documents, assigned cogent reasons for their irrelevance and exercised its discretion in accordance with law, no interference is called for. [Paras 63 to 67]

Code of Civil Procedure, 1908—Order XLI Rule 27—Expression "additional evidence"—Meaning.

HELD: The expression "additional evidence" does not imply that only a party which has adduced some evidence before the trial court can invoke Rule 27. Even where no evidence was led before the trial court, the application is maintainable, subject to fulfilment of the statutory conditions prescribed by Rule 27. [Paras 61 and 62]

Article 227 Petition—Order rejecting application under Order XLI Rule 27 CPC—No arbitrariness found—Petition dismissed.

HELD: Since the lower appellate court had considered each category of documents sought to be introduced, found them irrelevant to the controversy involved in the appeal and exercised its discretion on settled principles governing Order XLI Rule 27 CPC, the impugned order suffered from no illegality warranting interference under Article 227 of the Constitution. The petition was accordingly dismissed without costs. [Paras 67 and 68]

Petition dismissed. (E-14)

Case Law Cited

Parsotim Thakur and Others v. Lal Mohar Thakur and Others, 1931 SCC OnLine PC 35 — relied on; Kessowji Issur v. G.I.P. Railway, 1907 SCC OnLine PC 9 — referred to; Venkata Seshavatharam and Others v. Chapalamadugu Venkata Rangayya and Others, (1946) 14 ITR 722 (PC) — referred to; Arjan Singh alias Puran v. Kartar Singh and Others, AIR 1951 SC 193 — relied on; Sangram Singh v. Election Tribunal, Kotah and Another, AIR 1955 SC 425 — referred to; K. Venkataramiah v. A. Seetharama Reddy and Others, AIR 1963 SC 1526 — relied on; Deputy Registrar, Co-operative Societies, U.P., Lucknow v. Chaudhary Sarfaraz-un-Zaman and Another, 1971 SCC OnLine All 361 — relied on; State Bank of India v. M/s Ashok Stores and Others, 1981 SCC OnLine Ori 69 — not followed; Chinnammal and Others v. P. Arumugham and Another, (1990) 1 SCC 513 — referred to; Dondapati Narayana Reddy v. Duggireddy Venkatanarayana Reddy and Others, (2001) 8 SCC 115 — referred to; K.R. Mohan Reddy v. Net Work Inc., (2007) 14 SCC 257 — relied on; State of Gujarat v. Mahendrakumar Parshottambhai Desai, (2006) 9 SCC 772 — relied on; Commissioner, Mysore Urban Development Authority v. S.S. Sarvesh, (2019) 5 SCC 419 — relied on; Sanjay Kumar Singh v. State of Jharkhand, (2022) 7 SCC 247 — relied on; Gobind Singh and Others v. Union of India and Others, AIR 2026 SC 1303 — relied on; Mahavir Singh v. Naresh Chandra (as cited in the judgment) — referred to; Gurdev Singh v. Mehnga Ram (as cited in the judgment) — referred to.

List of Acts / Statutes/Books

Code of Civil Procedure, 1908

List of Keywords

Additional evidence; Appellate Court; Due diligence; Substantial cause; Requirement of Court; Specific performance; Appellate jurisdiction; Discretion; Additional documents; Appeal.

Case Arising From

Petition under Article 227 of the Constitution challenging the judgment and order dated **04.01.2025** passed by the **Additional District Judge, Court No. 12, Ghaziabad** in **Civil Appeal No. 117 of 2010, Smt. Namrata Saraswat v. Bhupendra Singh**, whereby the petitioner's application (Paper No. 153-Ga) under **Order XLI Rule 27 CPC** for adducing additional evidence was rejected. The appeal arose out of the judgment and decree dated **18.09.2010** passed by the **Civil Judge (Senior Division), Ghaziabad**, in **Original Suit No. 1501 of 1998** for specific performance.

Appearance for Parties

For the Revisionist: Sri Ritvik Upadhya.

For the Respondents: Sri Bablu Singh; Ms. Vishakha Pande.

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

1. This petition has been filed challenging the order dated 04.01.2025 passed by the Additional District Judge, Court No. 12, Ghaziabad in Civil Appeal No. 117 of 2010, Smt. Namrata Saraswat vs. Bhupendra Singh, rejecting the application filed by the defendant-respondent (petitioner), under Rule 27 of Order XLI C.P.C.

2. Brief facts of the case are that plaintiff-respondent (hereinafter referred to as 'respondent'), Smt. Namrata Saraswat, instituted Original Suit No. 1501 of 1998, Smt. Namrata Saraswat vs. Sri Bhupendra Singh, Advocate, in the court of Civil Judge, Senior Division, Ghaziabad for a decree of specific performance of an agreement to sell dated 14.10.1992 executed by the defendant-petitioner (hereinafter referred to as 'petitioner'), in favour of the respondent of the property in question. It was pleaded inter alia in the plaint that on 13.08.1990 petitioner was allotted residential plot (property in dispute) by the Ghaziabad Development Authority, Ghaziabad, and the petitioner on 15.10.1992 executed an agreement to sell in favour of the respondent for a sum of Rs.43,620/-. Rs. 43,000/- was paid in advance as part payment of the consideration and respondent was put in possession over the property in dispute. In the said agreement for the sell, it was provided that the sale deed was to be executed by the petitioner within one month after first getting the lease deed executed in his favour from the Ghaziabad Development Authority through Adhivakta Sahakari Awas Samiti Limited (hereinafter referred to as 'Samiti') and thereafter obtaining the permission to sell the plot in question from the Samiti. After being noticed, the petitioner appeared and contested the suit by filing written statement, wherein the petitioner pleaded that after the execution of the lease deed in his favor by the Ghaziabad Development Authority, defendant was declared to be sub-lessee and the agreement to sell the property in dispute was under misconception. The permission sought by the petitioner to transfer the plot in favour of the respondent was refused by the Samiti. It was also pleaded that being sub-lessee, the petitioner was not competent to transfer the plot and as such the agreement to sell was not enforceable. Both the parties led their evidence to prove their case. The two important issues apart from other framed by the trial court, on the basis of pleadings of the parties, were whether the respondent as per the facts of the case, was entitled for decree of specific performance and whether the respondent was ready and willing to perform his part of the agreement. The petitioner though filed his evidence paper No. 22-Ga, but thereafter remained absent and his opportunity to lead evidence was closed. The trial court decided the issue of willingness and readiness against the respondent and the suit filed by the respondent was partly decreed by the judgment and decree dated 18.09.2010 passed by Civil Judge, Senior Division Ghaziabad for refund of earnest money along with the interest, but the decree of specific

performance was refused. Being aggrieved, the respondent filed first appeal under Section 96 C.P.C before the Additional District Judge, Ghaziabad being Civil Appeal No. 117 of 2010, Smt. Namrata Saraswat Vs. Shri Bhupendra Singh. The appeal filed by the defendant was allowed by the appellate court on 09.3.2011. The petitioner filed an application under Order XLI Rule 21 C.P.C for restoration of appeal, which was rejected by the court below by order dated 19.10.2011. The order dated 19.10.2011 was challenged before this court in FAFO No. 42 of 2012, which was allowed by this Court by judgment and order dated 01.11.2022, and the matter was remitted to the first appellate court to decide the appeal within a period of six months. After the remand, the matter was taken by the first appellate court, and an application was filed by the petitioner for framing additional issue as to non-joinder of necessary party. The said application was rejected by the lower appellate court by order dated 10.04.2023. On 24.07.2023, the petitioner moved an application, paper No. 153- Ga, under Order XLI Rule 27 for taking additional evidence in the said appeal, to which objections were filed by the respondent. Lower appellate court by order dated 19.07.2024 rejected the application No. 153 Ga. Order dated 19.07.2024 was challenged by the petitioner before this Court by filing a petition under Article 227 of the Constitution of India being Matters Under Article 227 No. 11479 of 2024. The petition under Article 227 of the Constitution of India was allowed by this Court vide judgment and order dated 18.09.2024 directing the appellate court to decide the application afresh considering the judgment of Hon'ble Supreme Court in case of **Sanjay Kumar Singh Vs. State of Jharkhand; (2022) 7 SCC 247**. The lower appellate court, i.e. Additional District Judge, Ghaziabad, after remand by judgment and order dated 04.01.2025, rejected the application filed by the petitioner under Order XLI Rule 27 of C.P.C. Hence the present writ petition.

3. Contention of Sri Ritvik Upadhya, learned counsel for the petitioner is that the documents sought to be produced by the petitioner had a direct and significant bearing with the controversy to be decided in the appeal. It has been submitted by learned counsel for the petitioner that the lower appellate court ought to have admitted the evidence which was sought to be produced by the petitioner as an additional evidence, as the same was directly connected with the controversy to be decided in appeal and was necessary to be considered for rendering correct judgment. Learned counsel for the petitioner relied upon judgments of the Supreme Court in cases of :-**Venkata Seshavatharam & Ors Vs. Chapalamadugu Venkata Rangayya & Ors.;**(1946) 14 ITR 722, **Arjan Singh Alias Puran Vs. Kartar Singh & Ors;** 1951 SCC 178, **K. Venkataramiah Vs. Seetharama Reddy & Ors.;**1963 SCC OnLine SC 216, **Deputy Registrar, Co-operative Societies, U.P., Lucknow Vs. Chaudhari Sarfaraz-un-Zaman & Anr.;** 1971 SCC Online All 367, **State Bank of India Vs. M/s Ashok Stores & Ors.;**1981 SCC OnLine Ori 69, **Akash Ganga Builders & Engineers (P) Ltd. Vs. G.P. Seth HUF & Anr.,** 1999 (50) DRJ (DB), **K.R. Mohan Reddy Vs. Net Work INC;**(2007) 14 SCC 257, **Sangram Singh Vs. Election Tribunal, Kotah & Anr.;** (1955) 1 SCC 323, **Chinnamal & Ors. Vs. P. Arumugham & Anr.;**(1990) 1 SCC 513, **Dondapati Narayana Reddy Vs. Dugireddy Venkatanarayana Reddy & Ors.;**(2001) 8 SCC 115, **Commissioner Mysore Urban Development Authority Vs. S.S. Sarvesh;** (2019) 5 SCC 144, **Sanjay Kumar Singh Vs. State of Jharkhand; (2022) 7 SCC 247**.

4. *Per contra*, Ms. Vishakha Pandey, learned counsel for the respondent submitted that the application filed by the petitioner under Order XLI Rule 27 of C.P.C. was not maintainable as none of the conditions contemplated under Sub-rule (1) of Rule 27 of Order XLI existed. Learned

counsel further contended that it is for the court to decide whether any evidence is required to be produced as additional evidence for pronouncement of judgment or for any other sufficient cause, and it is not open for the party applying for additional evidence to direct the court to consider the evidence for the said purpose. It has also been submitted by learned counsel for the respondent that the court below has rightly rejected the application filed by the petitioner after holding that the evidence was not necessary for the controversy in dispute. Lastly, it was submitted by Ms. Vishakha Pandey, learned counsel appearing for the respondent, that since opportunity to lead evidence of the defendant was closed by the trial court, therefore, there was no evidence on behalf of the petitioner before the trial court, and as such, in absence of any evidence before the trial court, additional evidence could not be filed by the petitioner under Order XLI Rule 27 C.P.C as the word "additional evidence" presupposes the existence of some evidence. It has been further submitted that the expression "additional evidence" implies leading of some evidence by the party and only in such cases the petitioner may apply to produce additional evidence and not otherwise.

5. Learned counsel for the respondents relied upon the judgment in cases of:- **Kessowji Issur Vs. Great Indian Peninsula Railway Company**; [1907 SCC Online PC 9], **Parsotim Thakur & Others Vs. Lal Mohar Thakur & Others** ; [1931 SCC Online PC 35], **Arjan Singh @ Puran Vs. Kartar Singh & Others** [1951 SCC 178], **State of U.P. Vs. Manbodhan Lal Srivastava** ; [1957 SCC Online SC 4], **The Municipal Corporation Greater Bombay Vs. Lala Pancham & Others**; [AIR 1965 SC 1008].

6. Before considering the rival submissions of the party, it would be appropriate to note the relevant statutory provisions for adducing the additional evidence.

7. Normally, the evidence whether oral or documentary is filed before the trial court. Rule 14 of Order VII of CPC provides, where a plaintiff sues upon a document or relies upon a document in his possession or power in support of his claim, he shall enter such documents in a list, and shall produce it in court when the plaint is presented by him and shall, at the same time deliver the document and a copy thereof, to be filed with the plaint. Sub-rule (2) of Rule 14 of Order VII provides, where any such document is not in the possession or power of the plaintiff, he shall, wherever possible, state in whose possession or power it is. Sub-rule (3) of Rule 14 provides, a document which ought to be produced in court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint, but is not produced or entered accordingly, shall not, without the leave of the court, be received in evidence on his behalf at the hearing of the suit.

8. Similarly, Order VIII, Rule 1-A, (inserted by Act 46 of 1999, w.e.f. 01.07.2002), where the defendant bases his defence upon a document or relies upon any document in his possession or power in support of his defence or claim for set-off or counterclaim, he shall enter such document in a list and shall produce it in court when the written statement is presented by him and, at the same time, deliver the document and a copy thereof to be filed with the written statement. Sub-rule (2) of Rule 1-A of Order VIII provides, where any such document is not in possession or power of the defendant, he shall, wherever possible, state in whose presence or power it is. Sub-rule (3) of Rule 1-A provides a document which ought to be produced in court by the defendant under this

rule, but, is not so produced, shall not, without the leave of the court, be received in evidence on his behalf at the hearing of the suit.

9. Order XIII, Rule 1 of C.P.C. provides parties or their pleader shall produce, on or before the settlement of issues, all the documentary evidence in original where the copies thereof have been filed along with plaint or written statement. Sub-rule (2) of Order XIII provides, the court shall receive the documents so produced, provided they are accompanied by an accurate list prepared in such form as the High Court directs.

10. Order XVI Rule 1 provides, on or before such date as the court may appoint, and not later than fifteen days after the date on which issues are settled, the parties shall present in court a list of witnesses whom they propose to call either to give evidence or to produce documents and obtain summonses to such persons for their attendance in court. Sub-rule (3) of Rule 1 of Order XVI provides that the Court may, for reasons to be recorded, permit a party to call, whether by summoning through court or otherwise, other than those whose names appear in the list referred to in sub-rule (1), if such party shows sufficient cause for omission to mention the name of such witness in the said list. Rule 1-A of Order XVI provides, subject to the provisions of sub-rule (3) of Rule 1, any party to a suit may, without applying for summons under Rule 1, bring any witness to give evidence or to produce documents.

11. Thus, from the reading of the aforesaid provisions of the C.P.C, it is clear that normal rule is that evidence, whether oral or documentary, has to be produced before the trial Court in accordance with the provisions of the C.P.C referred above.

12. Section 107 C.P.C. provides for powers of appellate court. Sub-section 1(d) of Section 107 authorizes the appellate court to take additional evidence or to require such evidence to be taken. Section 107 of C.P.C. is quoted as under:-

“107. Powers of Appellate Court.-(1) Subject to such conditions and limitations as may be prescribed, an Appellate Court shall have power-

(a) to determine a case finally;

(b) to remand a case;

(c) to frame issues and refer them for trial;

(d) to take additional evidence or to require such evidence to be taken.

(2) Subject as aforesaid, the Appellate Court shall have the same powers and shall perform as nearly as maybe the same duties as are conferred and imposed by this Code on Courts of original jurisdiction in respect of suits instituted therein. ”

13. The power to take additional evidence by the appellate court is subjected to such conditions and limitations as may be prescribed. Section 107(1)(d) enables the appellate court to admit additional evidence, Order XLI Rule 27 furnishes grounds on which additional evidence may be admitted. Order XLI Rule 27 of C.P.C. is quoted as under:-

“27. Production of additional evidence in Appellate Court.-

(1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if-

(a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause,

the Appellate Court may allow such evidence or document to be produced or witness to be examined.

(2) Whenever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission."

14. The provisions of Rule 27 of Order XLI shall be read with Section 107(1)(d). The underlying object of these provisions is to permit parties to adduce complete evidence in support of their case and to allow such evidence which would completely adjudicate the dispute between the parties and would do full justice to the cause.

15. Sub-rule (1) of Rule 27 begins with a negative condition. The words ("the parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the appellate court") clearly indicate the legislative intent. It also lays down a general rule that an appellate court should decide an appeal on evidence led by the parties before the trial court and should not admit additional evidence in appeal. Sub-rule (1) of Rule 27 should be read with clause (a) of sub-section (1) of Section 107. The said clause also require the appellate court "to determine a case finally". Rule 24 of Order XLI, too, enjoins the appellate court to determine the case finally where evidence on record is sufficient for such determination. Thus, normally an appellate court should not allow additional evidence to be produced and should decide an appeal on the basis of material on record. Sub-rule (1) of Rule 27 of Order XLI, having laid down a general rule as to leading of additional evidence in negative form, proceeds to carve out exceptions and enumerate circumstances in which the appellate court is allowed to admit additional evidence under clause (a), (aa) or (b) of sub-rule (1) of Rule 27.

16. Constitution Bench of the Supreme Court in case of **K. Venkataramaih v. Seetharama Reddy (supra)** while interpreting Section 107 read with sub-rule (1) of Rule 27 of Order XLI, stated, "*Section 107 of the Code of Civil Procedure empowers the appellate court 'to take additional evidence or to require such evidence to be taken, 'subject to such conditions and limitations as may be prescribed'. Rule 27 of Order XLI of the Code of Civil Procedure prescribes the conditions and limitations in the matter. The rule first lays down that the parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the appellate court. It then proceeds to lay down two classes of cases where the appellate court may allow additional evidence to be produced.*"

Note- Clause (aa) of sub-rule (1) of Rule 27 of Order XLI was added by Act 104 of 1976 w.e.f 01.02.1977.

17. Order XLI, Rule 27, as enacted originally, had only two sub-clauses, i.e. 1 (a) and (b). Sub-clause (aa) was added by Act 104 of 1976 w.e.f 01.02.1977.

18. Before proceeding further, it would be relevant to look into the provisions contained in Code of Civil Procedure, 1882. Section 568 and Section 623 of C.P.C., 1882 are quoted as under:

“568. The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if

(a) the Court against whose decree the appeal is made refuses to admit evidence which ought to have been admitted, or

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause,

the Appellate Court may allow such evidence to be produced, or document to be received, or witness to be examined.

Whenever additional evidence is admitted by an Appellate Court, the Court shall record on its proceedings the reason for such admission.

623. Any person considering himself aggrieved-

(a) by a decree or order from which an appeal is hereby allowed, but from which no appeal has been preferred;

(b) by a decree or order from which no appeal is hereby allowed; or

(c) by a judgment on a reference from a Court of Small Causes,

and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him...”

19. Rule 27 of Order XLI enumerates circumstances wherein an appellate court may admit additional evidence, whether oral or documentary, in appeal. They are as under:

(i) where the lower court has improperly refused to admit evidence which ought to have been admitted; or

(ii) where such additional evidence was not within the knowledge of the party or could not, after exercise of due diligence, be produced by him at the time when the lower court passed the decree or made the order, or

(iii) where the appellate court itself requires such evidence either (a) to enable it to pronounce judgment; or (b) for any other substantial cause.

20. Clauses (a), (aa) and (b) of sub-rule (1) of Rule 27 are different; they deal with different situations and operate in different fields.

21. So far as clause (a) is concerned, it covers cases where the lower court has improperly refused to admit evidence which ought to have been admitted.

22. Clause (aa), as inserted by the Amendment Act, 1976, applies to production of additional evidence which was not within the knowledge of the party, or could not, even after exercise of due diligence, be produced by him at the time when the lower court passed the decree or made the order.

23. Clause (b) deals with totally different situation. Here, it is the court, i.e. the appellate court which requires additional evidence to be allowed on one of the two grounds, viz.

(i) for pronouncement of judgment; or

(ii) for any other substantial cause.

In either case, it is the requirement of the appellate court. Nothing more but nothing less.

24. Conditions precedent for application of clause (a) and clause (aa) of sub-rule (1) of Rule 27 of Order XLI are different from that of clause (b). In the event, the former is to be applied, it would be for the applicant to show that the ingredients or conditions precedent mentioned therein are satisfied. On the other hand, if clause (b) to sub-rule (1) of Rule 27 of Order XLI C.P.C. is to be taken recourse to, the appellate court is bound to consider the entire evidences on record and come to an independent finding for arriving at a just decision; adduction of additional evidence as has been prayed by the appellant or respondent was necessary in an appeal.

25. In the present case, we are mainly concerned with clause (b) to sub-rule (1) of Rule 27 of Order XLI C.P.C. Clause (b) covers cases wherein the appellate court may itself require additional evidence (production of document or examination of witness) either (i) for pronouncement of judgment; or (ii) for any other substantial cause. "Requires" means "Needs" or "finds needful". As seen above, even under the old Code of 1882, Section 562 enabled the trial court to produce additional evidence, if the appellate court required.

26. The privy council in **Parsotim Thakur and others Vs. Lal Mohar Thakur and others; 1931 SCC Online PC 35** has held at page No. 87 as under:-

"In their Lordships' opinion this additional evidence ought not to have been admitted. If the respondents desired to give evidence as to the thumb-impression they had ample opportunity to do so in the trial Court. The provisions of Sect. 107, Civil Procedure Code, as elucidated by O. 41, R. 27, are clearly not intended to allow a litigant who has been unsuccessful in the the lower Court to patch up the weak parts of his case and fill up omissions in the Court of Appeal.

Turning to the provisions of R. 27, Cl. (1) (a) has no application in the present case. Under Cl. (1) (b), it is only where the appellate Court "requires" it, (i.e., finds it needful) that additional evidence can be admitted. It may be required to enable the Court to pronounce judgment or for any other substantial cause, but in either case it must be the Court that requires it. This is the plain grammatical reading of the sub-clause. The legitimate occasion for the exercise of this

discretion is not whenever before the appeal is heard a party applies to adduce fresh evidence, but "when on examining the evidence as it stands some inherent lacuna or defect becomes apparent." This is laid down in the most positive terms by Lord Robertson In Kessowji Issur v. G.I.P. Ry [1907 SCC Online PC 9]. He was dealing with the words of Sect. 568 of the Code of 1882, but they are substantially the same as those of O. 41, R. 27, of the present Code. It may well be that the defect may be pointed out by a party, or that a party may move the Court to supply the defect, but the requirement must be the requirement of the Court upon its appreciation of the evidence as it stands. Wherever the Court adopts this procedure it is bound by R. 27(2) to record its reasons for so doing and under R. 29 must specify the points to which the evidence is to be confined and record on its proceedings the points so specified. Their Lordships regret to find that so far as the record discloses, none of these conditions was complied with in the present case. "

27. The Supreme Court in **Arjan Singh @ Puran Vs. Kartar Singh and others; 1951 SCC 178** referring to above mentioned privy council decision, stated: "The true test, therefore, is whether the appellate court is able to pronounce judgment on the materials before it without taking into consideration the additional evidence sought to be adduced."

28. In case of **K. Venkataramiah Vs. Seetharama Reddy (supra)**, the Supreme Court held the ability to pronounce a judgment does not mean or confine to the ability to pronounce any judgment, but the ability to pronounce a judgment satisfactory to the mind of the court delivering or pronouncing it. An appellate court may be able to pronounce judgment on the basis of material on record, but may still consider additional evidence to pronounce correct, satisfactory, or effective judgment. Additional evidence may be allowed in such cases.

29. However, in case of **The Municipal Corporation of Greater Bombay Vs. Lala Pancham and others; AIR 1965 SC 1008**, it has been held by the Supreme Court that the appellate court cannot allow additional evidence only for the purpose of pronouncing judgment in a particular way.

30. The appellate court may admit additional evidence, "for any other substantial cause." The words "for any other substantial cause" should be construed liberally and they do not need to confine on the rule of ejusdem generis with the cause stated in earlier part of the provision, (i.e., "to pronounce"). The words ("for any other substantial cause") confer very wide discretion on the appellate court to admit additional evidence where end of the justice require admission of such evidence. Normally, the test applied for the purpose is the question whether the material, i.e. additional evidence, would alter the decision that was rendered without the material. The word "substantial" indicates that it must positively point to the fact that the record on the basis of which the suit has been decided was incomplete in the sense that had this material "additional evidence" been before the court, the result would have been inevitably been different.

31. In case of **K. Venkataramiah (supra)**, Supreme Court clearly and univocally held that requirement must be of the appellate court alone but the power to allow additional evidence in appeal has to be exercised cautiously, sparingly, and only in exceptional circumstances. The requirement must be the requirement of the court and not that of a party who had lost the litigation. Additional evidence cannot be allowed to enable the applicant to fill in lacuna or to strengthen his case in appeal.

32. Another question which has to be considered is when the application for additional evidence may be decided. Rule 27(1) of Order XLI contemplates three different situations which have been enumerated in separate clauses (a), (aa), and (b). So far as clause (a) is concerned, it covers cases lower court has refused to admit evidence which ought to have been admitted. The applicant may file an application before the appellate court for production of evidence said to have been wrongly and erroneously refused by the lower court. Such an inquiry is independent of hearing of the main matter i.e. appeal and hence the question can be decided by the appellate court on the basis of the complaint made or grievance raised by the applicant in the light of relevant provision of law and it can pass appropriate order in accordance with law.

33. Clause (aa) gets attracted in those cases where the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, (I) such evidence was not within his knowledge or (II) could not be produced by him in lower court. In support of this clause, the limited inquiry the appellate court is required to make is whether the applicant is right in his submission that he had exercised due diligence and in support of such due diligence, either he could not come to know of such evidence, or he could not produce it before the lower court. Onus of proof is on the applicant to satisfy the court as to the applicability of clause (a) or (aa). If applicant is able to convince the court of his claim, the appellate court would allow the application.

34. Clause (b) applies in those cases where the court, i.e., the appellate court requires additional evidence to enable it either (I) to pronounce judgment, or (II) for any other substantial cause. Under clause (b), the requirement is the requirement of the court and such requirement should be either of the two purposes specified in the clause, i.e, either for pronouncement of judgment or for any other substantial cause. Such an exercise is possible when the appeal is taken up for hearing. Under clause (b), additional evidence can be admitted by the appellate court when it requires such evidence for the purposes mentioned in clause (b), which can be ascertained by the court on examining evidence produced and material placed by the parties on record and the need or necessity of additional evidence in the form of a document or oral testimony.

35. In my view, the prayer for admission of additional evidence under clause (b) cannot be decided before the appeal is taken up for hearing. In case the power as contemplated under clause (b) is exercised before hearing of the appeal, then the appellate court has to look into evidence and material placed before the court at an intervening stage, which in my opinion is not practical as the exercise of examining evidence will have to be taken by the appellate court, firstly at the time of considering the application under Order XLI Rule 27(1)(b) and thereafter again at the time of hearing of the appeal on merits. The proper course is to consider the application under Order XLI Rule 27(1)(b) at the time of hearing of appeal when the court applies its mind and examine the evidence on record and if it comes to the conclusion that evidence is required, the application may be decided at that stage.

36. Elaborating his submissions, Sri Ritvik Upadhya, learned counsel for the petitioner submitted that the lower appellate court has erred in law in rejecting the application filed by the petitioner under Order XLI, Rule 27 C.P.C. It has also been submitted by learned counsel for the petitioner that in view of judgment in case of Sanjay Kumar Singh (supra), and judgment of this

Court dated 18.09.2024 in Matters under Article 227 No. 11479 of 2024, the court below has not recorded any reason for rejecting the application.

37. It has been further submitted that the reasons recorded by the court below are sketchy and cannot be said to be passed in compliance of order dated 18.09.2024 passed in Matters under Article 227 No. 11479 of 2024 and Sanjay Kumar Singh (supra).

38. Refuting the submissions of learned counsel for the petitioner, Ms. Vishakha Pandey, counsel appearing for the respondent, submitted that as per sub-rule (2) of Rule 27 of Order XLI, the appellate court has to record the reasons in case the appellate court is taking additional evidence on record, and by any stretch of imagination, it cannot be said that for rejecting an application under Order XLI Rule 27 C.P.C, reasons are to be recorded. Learned counsel for the respondent further submitted that in case of Sanjay Kumar Singh (supra) there was no dictum of the Supreme Court for recording of reasons for rejecting an application under Order XLI, Rule 27 C.P.C.

39. The Supreme Court in case of **Sanjay Kumar Singh (supra)** has held in paragraph Nos. 4 to 9 as under:-

“4. At the outset, it is required to be noted that before the Reference Court as well as before the High Court, the only evidence produced on record was the sale deed dated 29-12-1987 which was rejected from being considered. Hence, as such, there was no other evidence/material on record to arrive at a fair market value for the acquired land. Therefore, before the High Court, the appellant filed an application under Order 41 Rule 27 CPC for additional evidence to bring on record the sale deeds and certified copy of the judgment and award passed by the Reference Court which, according to the appellant, would have a direct bearing on the determination of the fair market value of the acquired land.

5 . The High Court has rejected the said application by observing that the application does not satisfy the requirement of Order 41 Rule 27 read with Section 96 CPC. The High Court has also observed that the appellant has failed to establish that notwithstanding exercise of due diligence, such additional evidence was not within his knowledge and could not after exercise of due diligence be produced before the courts below.

6. However, the High Court while considering the application for additional evidence has not appreciated the fact that the documents which were sought to be produced as additional evidence might have a bearing on determination of the fair market value of the acquired land. It is to be noted that except the sale deed dated 29-12-1987, which was rejected by the courts below, no further evidence was on record to determine the fair market value of the acquired land. It was a case of awarding of fair compensation to the landowner whose land has been acquired for public purpose. It cannot be disputed that the claimant whose land is acquired is entitled to the fair market value of his land.

7. It is true that the general principle is that the appellate court should not travel outside the record of the lower court and cannot take any evidence in appeal. However, as an exception, Order 41 Rule 27 CPC enables the appellate court to take additional evidence in exceptional circumstances. It may also be true that the appellate court may permit additional evidence if the conditions laid down in this Rule are found to exist and the parties are not entitled, as of right, to the admission of such evidence. However, at the same time, where the additional evidence sought

to be adduced removes the cloud of doubt over the case and the evidence has a direct and important bearing on the main issue in the suit and interest of justice clearly renders it imperative that it may be allowed to be permitted on record, such application may be allowed. Even, one of the circumstances in which the production of additional evidence under Order 41 Rule 27 CPC by the appellate court is to be considered is, whether or not the appellate court requires the additional evidence so as to enable it to pronounce judgment or for any other substantial cause of like nature.

8. As observed and held by this Court in A. Andisamy Chettiar v. A. Subburaj Chettiar, the admissibility of additional evidence does not depend upon the relevancy to the issue on hand, or on the fact, whether the applicant had an opportunity for adducing such evidence at an earlier stage or not, but it depends upon whether or not the appellate court requires the evidence sought to be adduced to enable it to pronounce judgment or for any other substantial cause. It is further observed that the true test, therefore is, whether the appellate court is able to pronounce judgment on the materials before it without taking into consideration the additional evidence sought to be adduced.

9. Applying the law laid down by this Court in the aforesaid decision to the facts of the case on hand, we are of the opinion that while considering the application for additional evidence, the High Court has not at all adverted to the aforesaid relevant consideration i.e, whether the additional evidence sought to be adduced would have a direct bearing on pronouncing the judgment or for any other substantial cause. As observed hereinabove, except sale deed 29-12-1987, which as such was rejected, there was no other material available on record to arrive at a fair market value of the acquired land. Therefore, in the facts and circumstances of the case, the High Court ought to have allowed the application for additional evidence. However, at the same time, even after permitting to adduce the additional evidence, the applicant has to prove the existence, authenticity and genuineness of the documents including contents thereof, in accordance with law and for the aforesaid purpose, the matter is to be remanded to the Reference Court. "

40. In the case of Sanjay Kumar Singh (supra), the Supreme Court has laid down that normal rule is that additional evidence should not be permitted to be taken before the appellate court, and the provisions of sub-Rule (1) of Rule 27 of Order XLI are exceptions to the general rule. The judgment in case of Sanjay Kumar Singh (supra) has been given on peculiar facts of the case and there is no dispute to the proposition of law as laid down by the Apex Court that additional evidence can be accepted under clause (b) of sub-Rule (1) of Rule 27 of Order XLI, but the requirement is of the court so as to pronounce the judgment on the material available on record or not.

41. The Supreme Court in the case of Arjun Singh @ Puran (supra) held "the discretion to receive and admit additional evidence is not an arbitrary one, but a judicial one circumscribed by the limitations specified under Order XLI Rule 27 of the C.P.C."

42. Further, in the case of **K. Venkataramiah**(supra), the Supreme Court was of the view that courts of appeal should not overlook the provisions of clause 2 of Rule and should record their reasons for admitting additional evidence. The Supreme Court further held, we are not prepared, however, to accept the contention of counsel for the appellant that omission to record reason vitiates the admission of evidence. (para No. 13)

43. Though this Court in earlier round of litigation by order dated 18.9.2024 has set aside the earlier order dated 19.07.2024 passed by the appellate court on the ground that no reasons have been recorded by the appellate court for rejecting the application for additional evidence and directed the appellate court to decide the application keeping in view the judgment of Hon'ble Supreme Court in case of Sanjay Kumar Singh (supra). I am unable to persuade myself to the law laid down and direction given by this court, as in view of the law discussed above, there is no mandate that reasons have to be recorded while rejecting an application under Rule 27 sub-Rule (1)(b) of C.P.C. The requirement of law is that while accepting an additional evidence, the appellate court is required to record reasons. It is true that every judicial order is to be supported by reasons but in my view while rejecting an application for additional evidence, court is not required to give very detailed reason for rejecting the application, sufficient compliance of law will be if from the order it is reflected that court has applied its minds to facts of the case, evidence on record, and to the relevance of evidence sought to be produced at appellate stage.

44. Since the earlier judgment dated 18.9.2024 passed by this Court was an inter-party judgment directing the court below to decide the application as directed by this Court, I have perused the order impugned and from the perusal of order, I am of the view that lower appellate court has recorded reasons for rejecting the application. The contention of learned counsel for the petitioner that no reasons were recorded by the appellate court is misconceived.

45. Learned counsel for the petitioner has invited attention of this Court to the application under Order XLI Rule 27 C.P.C filed by the petitioner. From the perusal of the application, it appears that a feeble attempt was made by the petitioner for admission of additional evidence on the ground that due to oversight of petitioner's advocate, who conducted the trial, relevant documents could not be placed before the trial court (Paragraph No. 22 of the application). In paragraph No. 23, he has again made a feeble attempt by averting that the petitioner made efforts and tried his best to secure copy of the same, but he could not secure the copy of the same to produce it before the trial court. And lastly, it has been stated in the application that the documents referred above are necessary for disposal of the appeal. The defense as set up by the petitioner in his written statement was that after execution of lease deed by the Ghaziabad Development Authority in his favor, the status of the petitioner was of a sub-lessee and therefore, the petitioner was not competent to execute the sale deed and thus, agreement to sell was executed by the petitioner under misconception of law. It was also the case of the petitioner that the Society has refused permission to the petitioner to execute the sale deed. Certain evidence was filed before the court below by the petitioner, but because the petitioner never proved the said evidences as he was absent and therefore, his right to adduce evidence was forfeited by the court below and the order become final.

46. I have also perused the documents which are being sought to be filed along with the application under Order XLI Rule 27 C.P.C. The document mentioned at serial No. 1 dated 20.12.1983 is an application moved by the Society before the Ghaziabad Development Authority for allotment of plots. Item No. 2 dated 23.04.1984 is the acceptance of the application of the Society by the G.D.A. Item No. 3 dated 28.04.1986 is the allotment letter by which Ghaziabad Development Authority has allotted 152 plots measuring 250 square meters in Sector 12 of Vidhi Vihar Colony to the Society. Item No. 4 dated 29.04.1986 is the application moved by the

petitioner to become member of the Society. Item No. 5 dated 27.05.1986, is a receipt of Rs. 11,90,550 being 20% of the cost being paid to Ghaziabad Development Authority. Item No. 6 dated 27.05.1986 is the letter of Ghaziabad Development Authority directing the Society to get the land demarcated. Item No. 7 dated 28.05.1986 is the letter by the Ghaziabad Development Authority informing the Society that development work has not completed yet and therefore, demarcation will not be possible. Item No. 8 dated 29.01.1988 and 11.06.1989 and 25.01.1990 are the letters of the Society to the G.D.A., reminding the G.D.A. and for possession of the land to the Society. Item No. 9 dated 14.06.1990 is the letter of G.D.A. informing Society that development work has completed and they should meet Joint Secretary of G.D.A. Item No. 10 dated 24.07.1990 is the letter of G.D.A. informing the Society that 30.07.1990 has been fixed for demarcation and measurement of plots. Item No. 11 dated 30.7.1990 is the memo of transfer of the land to the Society by the G.D.A. Item No. 12 dated 13.08.1990 is the letter of allotment of plot No. 122 to the petitioner. Item No. 13 dated 19.8.1990 is the possession letter issued to the petitioner. Item Nos. 14 and 15 are the orders dated 19.01.1993 and 24.09.2004 passed in Original Suit No. 634 of 1992. The Original Suit No. 634 of 1992 was filed by the Society for a declaratory decree that the G.D.A. is not entitled any amount except the amount of interest of Rs. 12,83,529/- admitted by letter dated 04.10.1991. The said suit filed by the Society was decreed by the trial court by order dated 25.09.2004. Item No. 16 is copy of an affidavit filed by the petitioner in the suit itself and item No. 17 is cheque for return of consideration in compliance of judgment passed by the trial court.

47. Item Nos. 1 to 13 in the list of documents, which are being sought by the petitioner to be adduced as additional evidence relates to application, allotment, demarcation of the land to the Society and thereafter to the petitioner. These documents are not at all relevant for disposal of the suit as the plaintiff himself in the suit has pleaded that after the allotment, an agreement to sell has been executed which has not been denied by the petitioner in his written statement, therefore, any preceding proceedings are not relevant and are also not necessary for the disposal of the controversy in hand. Similarly item Nos. 14 and 15 are the interim order as well as final order passed in Civil Suit No. 634 of 1992 are also of no use as the same relate to charging of panel interest by the G.D.A. from the Society. Item No. 16 is an affidavit which was filed by the petitioner in the present suit itself is also of no relevance as the said affidavit has already been filed in the suit. Since right to adduce evidence of the petitioner has been closed by the trial court for his absence, such affidavit cannot be filed as additional evidence and lastly, the cheque of amount of Rs. 47,200/- is also not relevant for the reason the said cheque has been issued for compliance of the judgment of trial court which is under challenge in appeal as the respondent was not agreeable to the refund of money and has filed the present appeal for decree of specific performance in pursuance to the agreement of sell in question.

48. Learned counsel for the petitioner relied upon judgment of **Deputy Registrar, Cooperative Societies vs. Chaudhary Sarfaraz-un-Zaman and others; 1971 SCC online Allahabad 361**. In the said case, it was argued before this Court that appellate court could not have exercised jurisdiction under clause (b) of Rule 27(1) earlier than hearing of arguments in the appeal itself. It was argued that the appeal admittedly was not being heard by the Civil Judge who permitted reception of this additional evidence, although it may have been heard by his predecessor, and this additional evidence having been permitted to be produced anterior to such a stage, it was not a case where the appellate court could decide as to whether these documents were

required by it to enable it to pronounce judgment. The submission noted above was not accepted by this Court and it was held that application under Order XLI Rule 27 of CPC may be moved by the parties in some cases, as in the present case, some time before the date of arguments in the appeal is fixed and in connection with the hearing of such application before the appeal, the appellate court may consider not only the issue or issues on which the additional evidence is sought to be produced, and in that connection examine the evidence bearing on the matter in controversy. If upon such examination of the evidence with reference to issue or issues before it the Court comes to the conclusion that the document sought to be produced at that late stage will be required to enable it to pronounce judgment on the issue or issues then the requirements of clause (b) of Rule 27(1) of Order XLI of the Code, as amended by this Court, to my mind, will stand satisfied and it is immaterial that such a decision has not been contemporaneous with the hearing of the appeal itself. The material point is that a decision under clause (b) of Rule 27(1) must be taken by the Court on an examination of the evidence as observed by the Privy Council in the case of *Parsotim* (supra). This has happened in this case and therefore the argument that there was improper exercise of jurisdiction by the appellate Court under clause (b) of Rule 27 as the appeal itself was not heard by the time the application under Order XLI, Rule 27 was allowed cannot be accepted.

49. There is no dispute to the proposition of law laid down by this Court. The court may exercise the power to receive additional evidence at an intermittent stage of the appeal also but since for exercise of power under sub-clause (b) of sub- Rule 1 of Rule 27, the court has to consider the evidence on record for coming to the conclusion of its requirement as contemplated under sub-clause (b), it is more practical to consider the application at the stage of hearing otherwise examining of evidence has to be undertaken by the appellate court twice.

50. Learned counsel for the petitioner also relied upon judgment of Supreme Court in case of **State Bank of India versus Messrs Ashok Stores and Others;1981 SCC online Orissa 69**. In that case, in exercise of power, clause (b) of sub-rule (1) of Rule 27 was challenged on the ground that appellate court should decide whether the document is required by it, is reached after the commencement of the hearing of the appeal when the court apprises itself of the facts and circumstances of the case. At that stage only the appellate court would be in a position to adjudge the requirement. The record of the appeal does not disclose that the appellate court had by the time of disposal of the application filed by the petitioner for adducing additional evidence apprised itself of the facts of the case and it was also submitted that order of appellate court rejecting the petition of the petitioner for additional evidence is unsustainable. The Orissa High Court held as the hearing of the appeal in the present case had not commenced before the appellate court nor did the appellate court examined the evidence to adjudge the requirements of the provisions of clause (b), it was inappropriate to deal with the application for additional evidence. The order of rejection is, therefore, not sustainable and is set aside.

51. In view of the law laid down by this Court as well as by the Hon'ble Supreme Court, I am unable to persuade myself to the view taken by the Orissa High Court. The judgment of the Orissa High Court is not applicable to the facts of the present case as the grievance of the petitioner is that the court below ought to have recorded reasons for rejecting the application filed by the petitioner and not that the said application has been rejected at the stage prior to hearing of the appeal.

52. Learned counsel also relied upon judgment in case of Akash Ganga Builders and Engineers (supra), wherein the Delhi High Court has held that it is not that a document can be called at the appellate stage at the instance of a party only. The Court in order to do substantial justice can also call for a document. Rule 27(1)(b) empowers the Court to call for a document without the aid of any party.

53. There is no dispute as to the proposition of law laid down by the Delhi High Court in the aforesaid judgment, but as held by this Court as well as by the Supreme Court that under clause (b), the requirement is of the Court itself, and if the Court finds that a particular document is required for pronouncement of judgment or for any other substantial cause, the same can be admitted as additional evidence.

54. Learned counsel for the petitioner also relied upon judgment of K.R. Mohan Reddy (supra). The Supreme Court in paragraph No. 15, 16, and 17 of the judgment has held as under:-

“(15) The High Court, in our opinion, failed to apply the provisions of Order 41 Rule 27 of CPC in its correct perspective. Clauses (a), (aa) and (b) of Sub-rule (1) of Rule 27 of Order XLI refer to three different situations. Power of the appellate court to pass any order thereunder is limited. For exercising its jurisdiction thereunder, the appellate Court must arrive at a finding that one or the other conditions enumerated thereunder is satisfied. A good reason must also be shown as to why the evidence was not produced in the trial Court.

(16) Respondent in its application categorically stated that the books of accounts had been misplaced and the same were discovered a few days prior to the filing of the said application while the office was being shifted. The High Court, unfortunately did not enter into the said questions at all. As indicated hereinbefore, the High Court proceeded on the basis as if clause(b) of Sub-rule (1) of Rule 27 of Order XLI of CPC was applicable.

(17) It is now a trite law that the conditions precedent for application of clause (aa) of Sub-rule (1) of Rule 27 of Order XLI is different from that of clause(b). In the event the former is to be applied, it would be for the applicant to show that the ingredients or conditions precedent mentioned therein are satisfied. On the other hand clause(b) to Sub-rule (1) of Rule 27 of Order XLI of CPC is to be taken recourse to, the appellate Court was bound to consider the entire evidences on record and come to an independent finding for arriving at a just decision; adduction of additional evidence as has been prayed by the appellant was necessary. The fact that the High Court failed to do so, in our opinion, amounts to misdirection in law.”

55. There is no dispute to the law laid down by the Hon;ble Apex Court as noted above but the said judgment is not applicable to the facts of the present case as in the present case the scope of enquiry is applicability of sub-clause (b) of sub-Rule 1 of Rule 27. Though in the application filed by the petitioner for additional evidence, feeble attempt was made by the petitioner to bring his case within the parameter of sub-clause (aa) of sub-Rule 1 of Rule 27, but without the relevant pleading and material for the same.

56. Learned counsel for the petitioner also relied upon judgment in the cases of Sangram Singh (supra), Chinnamal and others (supra), Dondapati Narayana Reddy (supra) and Commissioner Mysore Urban Development Authority (supra) to contend that C.P.C. is a body of

procedural law designed to facilitate justice and it should not be treated as an enactment providing for punishment and penalties. The law of procedure should be so construed as to render justice wherever reasonably possible. There is no dispute with the proposition of law laid down by the Supreme Court in the aforesaid judgments, but the situation in case of additional evidence is slightly different.

57. The Supreme Court in case of **State of Gujarat versus Mahendarkumar Parshottambhai Desai; 2006 (9) SCC 772** has held as under:-

"10.... though the appellate court has the power to allow a document to be produced and a witness to be examined under Order 41 Rule 27 CPC, the requirement of the said Court must be limited to those cases where it found it necessary to obtain such evidence for enabling it to pronounce judgment. This provision did not entitle the appellate court to let in fresh evidence at the appellate stage where even without such evidence it can pronounce judgment in the case. It does not entitle the appellate court to let in fresh evidence only for the purposes of pronouncement of judgment in a particular way."

58. Recently, in case of **Gobind Singh and others Vs. Union of India; 2026 AIR SC 1303**, Hon'ble Supreme Court in paragraph No. 11.7 has held as under:

"11.7. The procedural framework under Order XLI of CPC makes it abundantly clear that an appeal is ordinarily to be decided on the evidence adduced before the Trial Court. The Appellate Court is not expected to embark upon a fresh fact-finding exercise or permit production of additional evidence as a matter of routine. Where the Appellate Court is satisfied that the material already available on record is sufficient to enable it to pronounce judgment, it is well within its jurisdiction to confine its consideration to the evidence forming part of the record of the courts below. "

59. In case of **K.R. Mohan Reddy (supra)** the appellate court has held as under in paragraph No. 19:-

"19. The appellate court should not pass an order so as to patch up the weakness of the evidence of the unsuccessful party before the trial Court, but it will be different if the Court itself requires the evidence to do justice between the parties. The ability to pronounce judgment is to be understood as the ability to pronounce judgment satisfactorily to the mind of the Court. But mere difficulty is not sufficient to issue such direction. While saying so, however, we do not mean that the court at an appropriate stage would be precluded from considering the applicability of clause (b). "

60. In my view, the appellate court should not pass an order as to patch up the weaknesses of the evidence of the unsuccessful party before the trial court, but it will be different if the court itself requires evidence to do justice between the parties. The ability to pronounce judgment is to be understood as the ability to pronounce judgment satisfactorily to the mind of the court.

61. So far as contention of learned counsel for the respondent that since the opportunity of leading evidence of the petitioner was closed by the trial court, in fact, no evidence was led by the

petitioner before the trial court and therefore he cannot be permitted to lead additional evidence at the stage of appeal, as the expression "additional evidence" in Rule 27 of Order XLI the Code implies leading of some evidence by the party, only where the party has led some evidence, then only party can be permitted to lead additional evidence.

62. The argument of learned counsel for the respondent appears to be very attractive, but this controversy has been settled by the Supreme Court in the case of **Jaipur Development Authority vs. Kailash Pati Devi, 1997 (7) SCC 297**, the Supreme Court held that the term "additional evidence" does not mean that parties seeking to produce additional evidence must have adduced some evidence in the lower court. Such a view amounts to introducing an additional condition not contemplated by sub-rule. There is no distinction between a party who has led some evidence and a party who has not led any evidence at all.

63. Learned counsel for the respondent submitted that power to receive additional evidence or refuse is a discretionary power vested with the appellate court. Once such a discretion has been exercised by the appellate court, the superior court should not normally interfere with such in exercise of powers under Section 115 C.P.C. or in exercise of power under Article 226 or Article 227 of the Constitution of India. It has also been submitted by learned counsel for the respondent that appellate court while deciding the question whether it requires the evidence as additional evidence comes to the conclusion after examining the entire evidence available on record and the superior court, while exercising the jurisdiction, normally does not have the record before it, under Section 115 C.P.C. or exercising powers under Article 226 or 227 of the Constitution of India.

64. Learned counsel for the respondent relied upon the judgment of Apex Court in the case of **Mahaveer Singh vs. Naresh Chandra, 2001 (1) SCC 309**. Paragraph No. 5 of the said judgment is quoted as under:-

"5.... The words 'or for any other substantial cause' must be read with the word 'requires'", which is set out at the commencement of the provision,so that it is only where, for any other substantial cause, the appellate court requires additional evidence, that this rule would apply as noticed by the Privy Council in Kessowji Issur v. Great Indian Peninsula Railway Co. It is under these circumstances such a power could be exercised Therefore, when the first appellate court did not find the necessity to allow the application, we fail to understand as to how the High Court could, in exercise of its power under Section 115 CPC, have interfered with such an order, particularly when the whole appeal is not before the Court. It is only in the circumstances when the appellate court requires such evidence to pronounce the judgment the necessity to adduce additional evidence would arise and not in any other circumstances. When the first appellate court passed the order on the application filed under Order 41 Rule 27 CPC, the whole appeal was before it and if the first appellate court is satisfied that additional evidence was not required, we fail to understand as to how the High Court could interfere with such an order under Section 115 CPC."

65. Learned counsel for the respondent also relied upon the judgment in the case of **Gurudev Singh vs. Mehanga Ram, 1997 (6) SCC 507**. In paragraph No. 2 of the **Gurudev Singh (supra)**, the Apex Court has held as under:-

"2. We have heard the learned counsel for the parties. The grievance of the appellants before us is that in an appeal filed by them before the learned Additional District Judge, Ferozepur, in an application under Order 41 Rule 27(b) of the Code of Civil Procedure (CPC) the learned Additional District Judge at the final hearing of the appeal wrongly felt that additional evidence was required to be produced as requested by the appellants by way of examination of a handwriting expert. The High Court in the impugned order exercising jurisdiction under Section 115 CPC took the view that the order of the appellate court could not be sustained. In our view the approach of the High Court in revision at that interim stage when the appeal was pending for final hearing before the learned Additional District Judge was not justified and the High Court should not have interfered with the order which was within the jurisdiction of the appellate court. The reason is obvious. The appellate court hearing the matter finally could exercise jurisdiction one way or the other under Order 41 Rule 27 specially clause (b). If the order was wrong on merits, it would always be open for the respondent to challenge the same in accordance with law if an occasion arises to carry the matter in second appeal after an appellate decree is passed. But at this interim stage, the High Court should not have felt itself convinced that the order was without jurisdiction. Only on this short question, without expressing any opinion on the merits of the controversy involved and on the legality of the contentions advanced by both the learned counsel for the parties regarding additional evidence, we allow this appeal, set aside the order of the High Court."

66. There is no dispute as to the proposition of law that it is the discretion of the appellate court either to admit or refuse the additional evidence in exercise of powers under Rule 27(1)(b), but the discretion is not to be exercised arbitrarily but has to be exercised on settled judicial principles. The judgments in case of Mahavir Singh (supra) and Gurudev Singh (supra) relied upon by the respondents arose where the High Court, in exercise of powers under Section 115 C.P.C, has interfered with the discretion exercised by the appellate court. Though, the jurisdiction of the Court exercising power under Article 227 of the Constitution of India, is wider than the jurisdiction as provided under Section 115 C.P.C, but still the Superior Court should not interfere with the discretionary power exercised by the appellate court unless the discretion exercised by the appellate court is found to be arbitrary.

67. I have also perused the judgment passed by the court below wherein the court below has considered the documents and has come to the conclusion that these documents are not at all relevant for disposal of the appeal. In the present case, cogent reasons have been given by the appellate court while rejecting application filed by the petitioner under Order XLI Rule 27 C.P.C. which cannot be said to be arbitrary. I find no illegality in the order passed by the court below as from the discussions made above the documents are not at all necessary for the controversy involved in the appeal. The court below has rightly rejected the application filed by the petitioner.

68. Consequently, the petition fails and is dismissed. No orders as to cost.

BEFORE

THE HON'BLE DR. YOGENDRA KUMAR SRIVASTAVA, J.

Matters Under Article 227 No. 2913 of 2026

Mohd Nasir @ Nasir Ahmad ...Petitioner
Versus
Anupam Vijay @ Anupam Vijay Gupta ...Respondent

Issues for Consideration

- (i) Whether the requirement of pre-deposit of fifty per cent of the entire payable amount under the proviso to Section 35(1) of the Uttar Pradesh Regulation of Urban Premises Tenancy Act, 2021 is a mandatory jurisdictional condition precedent for institution of an appeal before the Rent Tribunal?
- (ii) Whether an appeal presented without the prescribed pre-deposit is non est in the eye of law and whether a deposit made after expiry of the prescribed period of limitation can retrospectively validate such appeal?
- (iii) Whether the Rent Authority becomes *functus officio* after passing the eviction order and consequently lacks jurisdiction to entertain an application seeking deposit of the statutory pre-deposit?
- (iv) Whether, in the absence of any statutory provision prescribing the mode and forum for making the pre-deposit under Section 35(1), the High Court, in exercise of its supervisory jurisdiction under Article 227 of the Constitution, can evolve a procedural mechanism to operationalise the statutory mandate?

Headnotes

Uttar Pradesh Regulation of Urban Premises Tenancy Act, 2021 — Section 35(1) proviso — Appeal — Pre-deposit — Condition precedent — Nature of requirement.

HELD: The proviso to Section 35(1) of the Uttar Pradesh Regulation of Urban Premises Tenancy Act, 2021, employing the expression "no appeal shall lie", makes the deposit of fifty per cent of the entire payable amount under the impugned order a mandatory and jurisdictional condition precedent for institution of an appeal. The requirement is substantive in nature and goes to the very competence of the appeal. In the absence of such pre-deposit, the appeal is not merely defective but non est in the eye of law. [Paras 26 to 30]

Uttar Pradesh Regulation of Urban Premises Tenancy Act, 2021 — Section 35(1) proviso — Pre-deposit — Limitation — Interplay.

HELD: The statutory requirement of pre-deposit and the prescribed period of limitation are cumulative and inseparable conditions governing the institution of an appeal. A deposit made after expiry of the prescribed period of limitation does not relate back to the date of presentation of the memorandum of appeal so as to validate an otherwise incompetent appeal. Where pre-deposit is effected beyond limitation, the appeal would be treated as having been instituted only on the date of compliance, thereby necessitating consideration of delay and condonation in accordance with law. [Paras 31 to 42, 52 to 56]

Uttar Pradesh Regulation of Urban Premises Tenancy Act, 2021 — Section 35(1) proviso — Appeal filed without pre-deposit — Effect.

HELD: An appeal preferred without compliance with the statutory requirement of pre-deposit does not confer jurisdiction upon the Rent Tribunal. Such an appeal remains inchoate and incompetent until the mandatory

condition is fulfilled. Compliance with the requirement of pre-deposit cannot substitute compliance with limitation, nor can fulfilment of one statutory condition cure non-compliance with the other. [Paras 32 to 40, 53 to 56]

Uttar Pradesh Regulation of Urban Premises Tenancy Act, 2021 — Rent Authority — Doctrine of *functus officio* — Scope.

HELD: The doctrine of *functus officio* applies only where an authority seeks to reopen or review its adjudication on merits after finally deciding the lis. Rejection by the Rent Authority of a subsequent application seeking permission to deposit the statutory amount does not amount to review or modification of the eviction order but relates merely to an ancillary matter arising subsequent to the adjudication. The Rent Authority, therefore, cannot be said to have acted without jurisdiction in rejecting such application. [Paras 22 to 25]

Uttar Pradesh Regulation of Urban Premises Tenancy Act, 2021 — Section 35(1) proviso — Pre-deposit — Substantive requirement — Mode and forum of deposit — Procedural aspect.

HELD: While the obligation to deposit fifty per cent of the entire payable amount under the impugned order is substantive and mandatory, the mode, forum and manner of making such deposit are procedural in nature. The statutory silence regarding the procedural mechanism cannot be construed so as to defeat the statutory right of appeal or to frustrate the legislative intent underlying Section 35(1). The substantive requirement must be strictly enforced, whereas the procedural aspects are liable to be regulated in a manner that advances the object of the enactment. [Paras 43 to 52]

Constitution of India — Article 227 — Uttar Pradesh Regulation of Urban Premises Tenancy Act, 2021 — Section 35(1) — Statutory silence — Power of High Court to evolve procedural mechanism.

HELD: Where a statute clearly mandates performance of an act but remains silent as to the procedure for its implementation, the High Court, in exercise of its supervisory jurisdiction under Article 227 of the Constitution, is competent to evolve a workable procedural framework to operationalise the legislative mandate until appropriate rules are framed. Such judicial supplementation is confined to procedural matters and does not amount to supplying a substantive *casus omissus*. [Paras 46 to 52]

Uttar Pradesh Regulation of Urban Premises Tenancy Act, 2021 — Section 35(1) — Pre-deposit — Procedure — Guidelines.

HELD: To ensure uniformity in the administration of the Act, the Court laid down the following procedural guidelines until statutory rules are framed:

- (i) the memorandum of appeal may be presented before the Rent Tribunal along with the requisite pre-deposit by demand draft or any other legally permissible mode, whereupon the Tribunal may retain the amount in its registry or direct its deposit before the Rent Authority;
- (ii) alternatively, the appellant may deposit the amount before the Rent Authority, which shall function only as a ministerial repository for receiving the deposit and issuing a receipt or certificate to be filed before the Rent Tribunal;
- (iii) an appeal shall be treated as duly instituted where proof of such deposit is furnished before the Tribunal within the prescribed period; and
- (iv) where the pre-deposit is defective or has not been made at the time of filing the appeal, the appellant may seek time and, where necessary, condonation of delay before the Rent Tribunal, failing which the appeal shall be liable to be dismissed as not maintainable. These directions regulate only the procedural modality of compliance and do not dilute the mandatory nature of the statutory pre-deposit. [Paras 57 to 59]

Constitution of India — Article 227 — Supervisory jurisdiction — Interference with order of Rent Authority.

HELD: Since the petitioner neither complied with the mandatory requirement of pre-deposit within the prescribed period of limitation nor sought condonation of delay before the appellate forum, the impugned

order rejecting the application for deposit did not suffer from any jurisdictional error warranting interference under Article 227 of the Constitution. **[Paras 56 to 62]**

Petition dismissed. Procedural guidelines issued for future compliance with the requirement of pre-deposit under Section 35(1) of the Uttar Pradesh Regulation of Urban Premises Tenancy Act, 2021 to operate until appropriate rules are framed. (E-14)

Case Law Cited

Anant Mills Co. Ltd. v. State of Gujarat, (1975) 2 SCC 175 — relied on; *Vijay Prakash D. Mehta v. Collector of Customs (Preventive), Bombay*, (1988) 4 SCC 402 — relied on; *Gujarat Agro Industries Co. Ltd. v. Municipal Corporation of the City of Ahmedabad*, (1999) 4 SCC 468 — relied on; *Har Devi Asnani v. State of Rajasthan and Others*, (2011) 14 SCC 160 — relied on; *M/s Tecnimont Pvt. Ltd. v. State of Punjab and Others*, (2021) 12 SCC 477 — relied on; *Prathama U.P. Gramin Bank v. Union of India and Others*, 2019 SCC OnLine All 3833 — relied on; *S. Sundaram Pillai v. V.R. Pattabiraman*, (1985) 1 SCC 591 — relied on; *Shah Bhojraj Kuverji Oil Mills and Ginning Factory v. Subhash Chandra Yograj Sinha*, AIR 1961 SC 1596 — relied on; *Raza Buland Sugar Co. Ltd. v. Municipal Board, Rampur*, AIR 1965 SC 895 — referred to.

List of Acts / Statutes/Books

Constitution of India; Uttar Pradesh Regulation of Urban Premises Tenancy Act, 2021; Limitation Act, 1963.

List of Keywords

Rent Appeal; Pre-deposit; Condition precedent; Limitation; Institution of appeal; Functus officio; Statutory silence; Procedural guidelines; Mandatory requirement; Casus omissus; Rent Tribunal; Rent Authority.

Case Arising From

Order dated **17.02.2026** passed by the **Rent Authority/Civil Judge (Senior Division), Gautam Buddh Nagar** rejecting the petitioner's application seeking permission to deposit fifty per cent of the decretal amount under the proviso to Section 35(1) of the Uttar Pradesh Regulation of Urban Premises Tenancy Act, 2021 after passing of the eviction order, in proceedings arising out of **Case No. 361 of 2024, Anupam Vijay @ Anupam Vijay Gupta v. Mohd. Nasir @ Nasir Ahmad**

Appearance for Parties

For the Appellants: Anurag Shrivastava, Archit Mandhyan.

For the Respondents: Ashish Agrawal.

(Delivered by Hon'ble Dr. Yogendra Kumar Srivastava, J.)

1. Heard Sri Archit Mandhyan, learned counsel appearing along with Sri Anurag Srivastava, for the petitioner and Sri Ashish Agrawal, learned counsel for the respondent. Sri Rahul Agrawal, learned Additional Advocate General appearing along with Sri Gaurav Singh, learned Standing Counsel for the State of U.P., has also been heard on the question relating to interpretation of the statutory provisions and the rules framed thereunder.

2. The present petition under Article 227 of the Constitution of India has been filed questioning the correctness of the order dated 13.11.2025 passed by the Additional District Magistrate (Finance & Revenue), Bijnor, acting as Rent Authority, whereby the application moved by the petitioner on 07.11.2025 seeking to deposit fifty percent of the adjudicated amount in terms of Section 35(1) of the Uttar Pradesh Regulation of Urban Premises Tenancy Act, 2021 has been rejected.

3. The facts giving rise to the present petition are not in dispute. The petitioner is a tenant in respect of Shop No. 20 situated at Ramesh Super Bazar, Mandi Pamarganj, Bijnor. Proceedings initiated by the respondent-landlord under Sections 21(2) and 23 of the Act, 2021 culminated in an order dated 07.08.2025 passed by the Rent Authority directing eviction of the petitioner and payment of arrears, compensation and costs. The petitioner preferred an appeal under Section 35(1) of the Act before the Rent Tribunal on 08.09.2025. Admittedly, the appeal was not accompanied by deposit of fifty percent of the adjudicated amount. Thereafter, the petitioner moved an application before the Rent Authority on 07.11.2025, nearly 90 days after the eviction order, seeking to deposit the said amount, which application has been rejected by the impugned order.

4. Learned counsel for the petitioner submits that upon passing of the final order dated 07.08.2025, the Rent Authority became functus officio and was divested of jurisdiction to entertain or decide any application touching upon the appellate process, including the question of limitation. It is submitted that the issue whether the appeal was within time or otherwise could only have been examined by the Rent Tribunal, and the Rent Authority acted wholly without jurisdiction in rejecting the application on that ground.

5. It is further contended that the Act, 2021 and the Rules framed thereunder do not prescribe the forum or mechanism for making the pre-deposit. In the absence of any statutory guidance, the petitioner cannot be penalized for having approached the Rent Authority, which had determined the liability and was the natural repository of the amount. It is urged that procedural uncertainty ought not to defeat a substantive right of appeal.

6. Placing reliance upon **Union of India v. Association for Democratic Reforms**, it is contended that where the statute and the rules are silent on procedure, constitutional courts are empowered to issue appropriate directions to ensure that the legislative intent is not defeated.

7. Per contra, learned counsel appearing for the respondent-landlord has supported the impugned order and has contended that the requirement of pre-deposit under Section 35(1) is mandatory and jurisdictional in nature. It is submitted that the proviso to Section 35(1) employs the expression "no appeal shall lie," which makes the deposit a condition precedent for the very existence of the appeal. In the absence of such deposit, the appeal is non-est and cannot be entertained.

8. It is further contended that the petitioner, having voluntarily approached the Rent Authority for making the deposit, cannot now turn around and challenge its jurisdiction after having suffered an adverse order. The principle that a party cannot approbate and reprobate is invoked to submit that the petitioner is estopped from raising such a plea.

9. Referring to Section 41 of the Act, 2021, it is urged that the provisions of Section 5 of the Limitation Act, 1963 are applicable, and it was open to the petitioner to seek condonation of delay, which was not done. Reliance is also placed on Rule 11(d) to submit that the statutory authorities are empowered to pass appropriate orders to meet the ends of justice.

10. Learned counsel for the respondent has further drawn attention to the certified copy of the order sheet of the appeal to point out that several dates were fixed in the proceedings and the petitioner had sought repeated adjournments; however, no steps were taken either to tender the requisite pre-deposit before the Rent Tribunal or to seek condonation of delay.

11. It is also submitted that the Act, 2021 has been enacted with the object of providing speedy and time-bound remedies in landlord-tenant disputes. The requirement of pre-deposit is integral to this object. A delay of nearly 90 days in seeking to comply with a mandatory condition precedent defeats the legislative intent and cannot be condoned on the ground of procedural uncertainty.

12. In view of the recurring nature of the issue and the apparent statutory silence on the procedural aspect of pre-deposit, this Court requested the learned Additional Advocate General to assist on the broader question relating to statutory interpretation and the permissibility of judicially evolving a procedural framework.

13. Learned Additional Advocate General has submitted that the scheme of the Act, 2021 clearly demonstrates that the requirement of pre-deposit under Section 35(1) is substantive and mandatory in nature. Placing reliance upon **Commissioner of Income Tax v. Filmistan Ltd.**, it is urged that where a statute provides that "no appeal shall lie" unless a specified condition is fulfilled, the appeal cannot be regarded as properly instituted in the absence of such compliance. It is further contended that where the pre-deposit is made after the expiry of the prescribed period of limitation, the appeal would, in effect, be treated as having been instituted only on the date on which such deposit is made, notwithstanding that the memorandum of appeal may have been presented earlier within time. In such a situation, the question of limitation would necessarily fall for consideration with reference to the date of compliance with the mandatory condition, and the appellant would be required to establish sufficient cause for condonation of delay.

14. Further reliance is placed upon **Prathama U.P. Gramin Bank v. Union of India** to reiterate that the right of appeal is a creature of statute and may be conditioned or qualified by the legislature, and that strict adherence to such conditions is essential for maintaining the appeal.

15. The learned Additional Advocate General does not dispute that the Act and the Rules do not expressly delineate the forum before which such deposit is to be made or the precise manner in which compliance is to be effected. It is, however, submitted that the absence of such procedural specification ought not to be construed in a manner that frustrates the operation of the statute or impairs the exercise of the appellate remedy, particularly when the substantive requirement of pre-deposit stands clearly mandated.

16. It has been urged that while courts cannot supply omissions in substantive provisions, they are not precluded from filling in procedural gaps where such supplementation is necessary to give effect to the legislative intent. The distinction between substantive and procedural omissions has been emphasized, and it is submitted that the present case falls squarely within the latter category.

17. The learned Additional Advocate General has further submitted that in the absence of rules, courts have, on several occasions, evolved procedures to operationalize statutory mandates,

particularly where failure to do so would result in uncertainty or arbitrary application. It is contended that the power under Article 227 of the Constitution enables this Court to issue appropriate directions to subordinate courts and tribunals to ensure uniformity and consistency in practice.

18. It is also submitted that any such procedural framework must preserve the mandatory nature of the pre-deposit while providing reasonable flexibility in the mode and forum of compliance. The guiding principle, according to the learned Additional Advocate General, should be that the substance of the requirement—namely, the actual deposit of fifty percent of the adjudicated amount within the permissible time—must be strictly enforced, while the procedural aspects should be construed in a manner that advances the object of the statute.

19. The learned Additional Advocate General has, therefore, suggested that this Court may consider laying down broad guidelines indicating that the deposit may be made either before the Rent Tribunal at the time of filing the appeal or before the Rent Authority as a ministerial repository, with proof thereof being furnished before the Tribunal. It is further suggested that the Tribunal may be vested with the discretion to regulate compliance in cases where the deposit is defective or delayed, subject to the statutory mandate.

20. The rival submissions advanced by the learned counsel for the parties, as well as the assistance rendered by the learned Additional Advocate General, bring to the fore two interrelated questions: first, the nature and effect of the requirement of pre-deposit under Section 35(1), particularly in its interplay with limitation; and second, the extent to which this Court may evolve a procedural mechanism in the face of statutory silence.

21. These issues, having wider ramifications beyond the facts of the present case, require careful consideration not only in the context of the statutory language but also in light of the principles of statutory construction, the object of the enactment, and the need to ensure uniformity in the administration of justice under the Act, 2021.

22. Before advertent to the larger issue, it would be appropriate to first deal with the preliminary objection raised on behalf of the petitioner with regard to the jurisdiction of the Rent Authority.

23. The doctrine of *functus officio* is attracted where an authority, having finally adjudicated upon a *lis*, seeks to revisit, review or alter its decision on merits. The underlying rationale of the doctrine is to ensure finality in adjudication and to prevent re-opening of issues that have already attained conclusiveness. However, the said doctrine cannot be stretched to encompass situations where the authority is called upon to deal with matters which are merely incidental or consequential to the order already passed.

24. In the present case, the Rent Authority has neither reviewed nor modified its earlier eviction order dated 07.08.2025. The rejection of an application seeking to deposit money at a belated stage does not amount to re-adjudication of the dispute. The impugned order is confined to

the consideration of a subsequent application moved by the petitioner and is ancillary in nature. It does not trench upon the merits already determined between the parties.

25. Viewed thus, the Rent Authority cannot be said to have exercised a jurisdiction not vested in it merely by declining to entertain an application which, on the face of it, was moved beyond the permissible period. The plea founded on the doctrine of *functus officio* is, therefore, misconceived and is rejected.

26. The provision for statutory appeal against an order passed by the Rent Authority is under Section 35(1) of the U.P. Act No. 16 of 2021. It reads as follows:

“35. Appeal to Rent Tribunal.-(1) Any person aggrieved by an order passed by the Rent Authority may prefer an appeal along with a certified copy of such order to the Rent Tribunal within the local limits of which the premises is situated, within a period of thirty days from the date of that order:

Provided that no appeal shall lie unless the appellant pre-deposits fifty percent of the entire payable amount under the impugned order of the Rent Authority.”

27. A plain reading of the provision makes it evident that no appeal shall lie unless the appellant deposits fifty percent of the entire payable amount under the impugned order of the Rent Authority. The language employed by the legislature is clear, categorical and admits of no dilution. The use of the expression “no appeal shall lie” is of decisive import, as it renders the deposit a condition precedent for the very institution of the appeal. In the absence of such deposit, the appeal is not merely defective but incompetent at its inception and is liable to be treated as non-est in the eye of law. This position finds support in **Commissioner of Income Tax v. Filmistan Ltd.** wherein it was held that where a statute provides that no appeal shall lie unless the prescribed condition is fulfilled, the appeal cannot be regarded as properly instituted in the absence of such compliance.

28. A distinction is well recognized in law between provisions which declare that an appeal shall not be “entertained” and those which provide that no appeal shall “lie”. In the former category, the defect is capable of being cured at a later stage and the appeal, though initially defective, is not void ab initio. In the latter category, however, the very right to prefer an appeal is made conditional. Unless the condition is fulfilled, the appeal does not come into existence in the eye of law.

29. The provision in question clearly falls in the latter category. The requirement of pre-deposit is not procedural but jurisdictional. It constitutes a condition precedent for the invocation of the appellate jurisdiction of the Rent Tribunal. In its absence, the appeal is non-est and cannot be treated as a validly instituted proceeding.

30. The Supreme Court has consistently upheld such statutory conditions. In **Anant Mills Co. Ltd. v. State of Gujarat**, it was held that the right of appeal being a creature of statute, the legislature is competent to impose conditions for its exercise, including the requirement of pre-deposit. Similarly, in **Vijay Prakash D. Mehta v. Collector of Customs**, the Court emphasized

that where a statute imposes a condition precedent for the maintainability of an appeal, such condition must be strictly complied with and cannot be circumvented. The same principle has been reiterated in **Shyam Kishore v. Municipal Corporation of Delhi**, wherein it was observed that the requirement of deposit is intended to balance the right of appeal with the need to secure the demand and prevent frivolous litigation. A similar exposition of the law is to be found in **Prathama U.P. Gramin Bank v. Union of India** wherein, upon a comprehensive survey of precedents, it was held that the right to appeal being a creature of statute can be qualified by imposing a condition of pre-deposit.

31. The requirement of pre-deposit must also be read in conjunction with the limitation prescribed for filing the appeal. The statute unequivocally provides that the right of appeal is available only within the prescribed period and subject to fulfillment of the condition of pre-deposit.

32. It follows, therefore, that for an appeal to be competent in law, the deposit must exist at the time when the appeal is preferred, or at the very least within the period of limitation, subject to orders of the appellate forum in appropriate cases. A deposit made beyond the prescribed period does not relate back so as to validate an otherwise incompetent appeal.

33. Where an appeal is filed without deposit, it is not merely defective but fundamentally incompetent. Where, in addition, the deposit itself is sought to be made after the expiry of the period of limitation, the defect is compounded. In such a situation, there is neither a valid appeal in existence nor a subsisting right to create one.

34. Even in cases where delay in filing the appeal is sought to be condoned, the position does not materially alter. The appeal remains inchoate until delay is condoned and the statutory condition is fulfilled. Any deposit made in the interregnum is necessarily conditional and subject to the outcome of the application for condonation. If delay is not condoned, the deposit does not breathe life into the appeal.

35. The legislative intent behind employing the expression "no appeal shall lie" is to create a strict juristic threshold-a gateway condition-designed to ensure that the tenant demonstrates bona fides by securing a substantial part of the adjudicated liability before invoking the appellate jurisdiction. To permit compliance with this condition at any indefinite point of time would be to defeat the object of the provision and dilute its mandatory character.

36. The statutory scheme thus contemplates that two foundational requirements must co-exist for an appeal to be competent: first, it must be filed within limitation, and second, it must be accompanied by the prescribed pre-deposit, being fifty percent of the entire payable amount under the impugned order of the Rent Authority. These conditions are cumulative and inseparable. Compliance with one does not cure non-compliance with the other.

37. This interpretation is also in consonance with the underlying object of the Act, 2021, which has been enacted to ensure speedy, efficient and time-bound adjudication of landlord-tenant disputes. The requirement of pre-deposit, read with the strict timeline for filing an appeal,

constitutes a deliberate legislative design to prevent dilatory tactics and to ensure that the tenant does not continue in possession without securing the adjudicated liability. The principles enunciated by the Supreme Court in **Anant Mills Co. Ltd., Vijay Prakash D. Mehta and Shyam Kishore** reinforce that such statutory conditions are neither ornamental nor procedural formalities, but substantive safeguards integral to the scheme of the enactment. Any interpretation permitting belated or indefinite compliance would not only dilute the mandatory character of the provision but also undermine the legislative intent of expeditious resolution embodied in the Act, 2021.

38. Viewed in the aforesaid statutory and legal framework, the chronology of events assumes significance. The eviction order was passed on 07.08.2025, and the appeal was filed on 08.09.2025 without the requisite pre-deposit. The attempt to deposit the amount was made only on 07.11.2025, well beyond the prescribed period of limitation. The petitioner not only failed to accompany the appeal with the requisite deposit but also sought to comply with the condition after a lapse of nearly 90 days. By that time, the statutory period for preferring the appeal had long expired. The initial filing of the appeal without deposit did not give rise to a valid proceeding, and the subsequent attempt to deposit the amount cannot retrospectively validate what was non-existent in law.

39. In dealing with such a situation, the Court must strike a balance between two competing considerations. On the one hand, the condition of pre-deposit is mandatory and cannot be diluted. On the other hand, procedural ambiguity cannot be permitted to defeat a substantive statutory right. The distinction between substantive and procedural requirements assumes significance in this context. While substantive conditions must be strictly complied with, procedural prescriptions are to be construed in a manner that advances the cause of justice.

40. The legal position in this regard is clear. Pre-deposit is not a substitute for limitation. Where an appeal is time-barred, compliance with the requirement of deposit does not revive or validate the appeal. Conversely, even where delay is condoned, the appeal cannot proceed unless the pre-deposit condition is satisfied. Both requirements are jurisdictional and cumulative.

41. In a situation where an appeal is filed beyond limitation, the only manner in which it can survive is if an application for condonation of delay is filed and allowed. Until such condonation, the appeal remains inchoate. Any deposit made in such circumstances can, at best, be treated as conditional or provisional, subject to the outcome of the application for condonation of delay. If delay is not condoned, the deposit does not cure the defect and the appeal remains non-maintainable.

42. The deposit, in the instant case, was not even tendered within the period of limitation, nor was it made contemporaneously with any application for condonation of delay before the appellate forum. The attempt to deposit the amount after nearly 90 days cannot be treated as substantial compliance with the statutory mandate.

43. The contention that the Act does not prescribe the forum for deposit also does not advance the petitioner's case. The absence of a specified procedure pertains only to the mode or channel of deposit. Such procedural silence can be addressed by adopting a purposive approach so as to make the statute workable.

44. In this regard, reference may be made to the decision of this Court in **Mayank Mittal v. District Judge/Rent Tribunal**, wherein it was held that a direction issued by the Rent Tribunal requiring the appellant to deposit the amount before the Rent Authority and to file the receipt thereof along with the memorandum of appeal could not be faulted. The said decision implicitly recognizes that the Rent Authority may act as a ministerial repository for the purpose of receiving the deposit, even though the appellate jurisdiction is exercised by the Rent Tribunal.

45. The controversy, therefore, does not lie in the existence or nature of the obligation, which is unequivocal, but in the absence of a prescribed procedural mechanism for its fulfillment. The distinction between substantive and procedural requirements assumes significance in this context. The requirement of pre-deposit is substantive and mandatory, going to the root of the maintainability of the appeal; the mode, forum and manner of effectuating such deposit are essentially procedural in nature.

46. While the mandatory nature of the requirement of pre-deposit thus admits of no ambiguity, the present case also highlights a recurring and systemic difficulty arising under the Act, 2021. Although the statute unequivocally mandates the deposit, it remains silent as to the forum before which such deposit is to be made and the manner in which compliance is to be demonstrated. This statutory silence has led to divergent practices across forums, at times resulting in rejection of appeals on technical grounds. Such an approach, if left unaddressed, is likely to generate avoidable litigation and uncertainty, and may, in given circumstances, impede the effective exercise of the statutory right of appeal.

47. It is a settled principle of statutory construction that while courts cannot supply a *casus omissus* in respect of substantive provisions, they are not powerless to evolve procedures to give effect to a statutory mandate where the statute and the rules framed thereunder are silent. The doctrine that procedure is the handmaid of justice requires that procedural prescriptions be interpreted and, where necessary, supplemented in a manner that advances the cause of justice rather than defeats it.

48. The Supreme Court in **Mangalore Chemicals & Fertilizers Ltd. v. Deputy Commissioner** has emphasized that procedural requirements ought not to be construed in a manner that defeats substantive rights where compliance, in essence, is established. The principle that procedural law is intended to facilitate, and not obstruct, the course of justice also informs the approach to situations where the statutory framework is silent on the manner of compliance.

49. In this context, reliance placed upon **Union of India v. Association for Democratic Reforms** is apposite, wherein it was held that in a situation where the Act or the Rules do not prescribe the procedure to be followed, the Court, in exercise of its constitutional powers, is competent to issue appropriate directions so as to effectuate the legislative intent until suitable provisions are framed.

50. A similar approach has been adopted in **M.V. Elisabeth v. Harwan Investment and Trading Pvt. Ltd.**, wherein the Supreme Court held that where statutes are silent and a remedy has to be effectuated, it is the duty of the court to devise appropriate procedural rules by drawing upon

analogy and expediency so as to render justice in accordance with substantive law. It was further emphasized that where substantive law demands justice for the aggrieved party but the statute does not provide the procedural mechanism, the court may evolve suitable procedures to give effect to such rights.

51. Applying these principles, it becomes evident that the omission in the Act, 2021 is procedural and not substantive. The legislature has clearly mandated what is to be done, namely, deposit of fifty percent of the adjudicated amount, but has not specified how it is to be done. In such a situation, it is both permissible and necessary for the Court, in exercise of its supervisory jurisdiction, to evolve a workable procedural mechanism so as to ensure uniformity and avoid arbitrary or technical rejections.

52. However, before doing so, it must also be clarified that the requirement of pre-deposit operates in conjunction with the law of limitation. The two conditions-filing within limitation and compliance with pre-deposit-are cumulative. Pre-deposit does not cure limitation, nor does limitation dispense with pre-deposit. The requirement of pre-deposit cannot be diluted. The correct approach lies in maintaining the mandatory nature of the deposit while permitting reasonable flexibility in the mode and forum of such deposit in the absence of statutory rules.

53. In a case where an appeal is time-barred, the deposit of fifty percent amount does not, by itself, validate the appeal. If an appeal is filed beyond limitation without an application for condonation of delay, it remains non-maintainable notwithstanding any deposit. Where an application for condonation of delay is filed, the appeal remains inchoate until such delay is condoned. Any deposit made in such a situation is necessarily conditional and subject to the outcome of the application for condonation. If delay is not condoned, the deposit does not revive the appeal.

54. Thus, pre-deposit is not a substitute for limitation, nor does compliance with limitation dispense with the requirement of pre-deposit. Both conditions must co-exist for the appeal to be competent.

55. The requirement of pre-deposit of fifty percent of the entire payable amount under the impugned order of the Rent Authority under Section 35(1) is a mandatory and jurisdictional condition precedent to the institution of an appeal, and in its absence, no appeal can be said to "lie" in the eye of law. Where such deposit is made beyond the prescribed period of limitation, the appeal would be treated as having been instituted only on the date of compliance, necessitating consideration of delay and condonation.

56. In the present case, the petitioner neither complied with the requirement of pre-deposit within the prescribed period nor ensured that the appeal was accompanied by such deposit. The attempt to deposit the amount after approximately 90 days cannot be treated as substantial compliance. The defect in the present case is not merely procedural but substantive, going to the root of the maintainability of the appeal.

57. The recurring nature of the issue and the statutory silence noticed hereinabove, necessitates that a clear procedural framework be laid down for future guidance so that litigants are not left in uncertainty and authorities adopt a uniform approach.

58. Accordingly, in exercise of supervisory jurisdiction under Article 227 of the Constitution of India, and to operationalize the mandate of Section 35(1) of the Act, this Court lays down the following **procedure to govern compliance with the requirement of pre-deposit**:

58.1 An appellant may file the memorandum of appeal before the Rent Tribunal along with fifty percent of the entire payable amount under the impugned order of the Rent Authority, by way of demand draft or any other legally permissible mode. Upon such filing, the Rent Tribunal may either accept and retain the deposit in its registry or direct the appellant to deposit the amount before the Rent Authority within a specified time and to place on record proof thereof.

58.2 Alternatively, the appellant may deposit the required amount before the Rent Authority, which shall act as a ministerial repository for the limited purpose of receiving such deposit and issuing a certificate or receipt. Such certificate shall be filed along with the memorandum of appeal before the Rent Tribunal as proof of compliance.

58.3 An appeal shall be treated as duly instituted if the pre-deposit is made by either of the aforesaid modes and proof of such deposit is furnished before the Tribunal within the prescribed period.

58.4 In cases where the pre-deposit is not made at the time of filing, or is defective or incomplete, it shall be open to the appellant to move an application before the Rent Tribunal seeking time to comply and, where necessary, condonation of delay. The Tribunal may, in appropriate cases, grant reasonable time to cure such defect. Failure to comply within the time granted shall render the appeal liable to be dismissed as not maintainable.

59. It is clarified that these directions regulate only the procedure and modality of compliance in the absence of statutory rules. The requirement of pre-deposit under Section 35(1) remains mandatory and cannot be diluted. These directions shall operate until appropriate rules are framed under the Act.

60. All Rent Authorities and Rent Tribunals functioning under the Uttar Pradesh Regulation of Urban Premises Tenancy Act, 2021 shall adhere to the procedure laid down herein in regard to compliance with the requirement of pre-deposit under Section 35 (1).

61. In so far as the present case is concerned, the petitioner having failed to comply with the mandatory requirement of pre-deposit within the prescribed period of limitation, and having also not sought condonation of delay in accordance with law, no case for interference is made out. The impugned order does not suffer from any jurisdictional error warranting exercise of supervisory jurisdiction under Article 227 of the Constitution of India.

62. The petition is, accordingly, dismissed. No order as to costs.

(2026) 4 ILRA 2176
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 10.04.2026

BEFORE

THE HON'BLE HARVIR SINGH, J.

Matters Under Article 227 No. 9426 of 2025

Amit Kumar Rana

...Petitioner

Versus

State of U.P. & Anr.

...Respondents

Issues for Consideration

(i) Whether proceedings under Sections 127 and 128 of the Code of Criminal Procedure, 1973 (corresponding Sections 146 and 147 of the Bharatiya Nagarik Suraksha Sanhita, 2023), arising out of a maintenance order passed by a Family Court, can validly be transferred to and decided by a Gram Nyayalaya?

(ii) Whether, notwithstanding the concurrent jurisdiction conferred upon Gram Nyayalayas in respect of proceedings under Chapter IX of the Code of Criminal Procedure, 1973, a Gram Nyayalaya can exercise jurisdiction over proceedings seeking modification, cancellation or execution of an order passed by a Family Court?

(iii) Whether the impugned orders passed by the Gram Nyayalaya under Sections 127 and 128 CrPC were liable to be set aside on account of inconsistency between the Family Courts Act, 1984 and the Gram Nyayalayas Act, 2008?

Headnotes

Family Courts Act, 1984 — Sections 7 and 8 — Gram Nyayalayas Act, 2008 — Sections 11, 12 and First Schedule — Chapter IX, Code of Criminal Procedure, 1973 — Concurrent jurisdiction — Scope.

HELD: Though the Gram Nyayalayas Act, 2008 confers jurisdiction upon Gram Nyayalayas to entertain proceedings relating to maintenance of wives, children and parents under Chapter IX of the Code of Criminal Procedure, 1973, the jurisdiction vested in the Family Courts under Sections 7 and 8 of the Family Courts Act, 1984 continues to operate in respect of matters adjudicated by the Family Courts. The conferment of jurisdiction upon Gram Nyayalayas does not authorise a Gram Nyayalaya to exercise supervisory or corrective jurisdiction over orders already passed by a Family Court.

Family Courts Act, 1984 — Sections 7 and 8 — Gram Nyayalayas Act, 2008 — Sections 11, 12 and 18 — Transfer of proceedings — Proceedings under Sections 127 and 128 CrPC — Validity.

HELD: Proceedings under Sections 127 and 128 of the Code of Criminal Procedure, 1973 are continuation of proceedings arising out of an order already passed under Section 125 CrPC. Where the original order determining the rights of the parties has been passed by a Family Court, subsequent proceedings seeking alteration, cancellation or enforcement thereof cannot be transferred to a Gram Nyayalaya for adjudication, as such transfer would result in a Judicial Officer of the rank of Civil Judge (Junior Division) effectively exercising jurisdiction over an order passed by a Court constituted under the Family Courts Act, 1984 and presided over by an officer of the Higher Judicial Service. Such an interpretation would be inconsistent with the scheme of the Family Courts Act.

Gram Nyayalayas Act, 2008 — Sections 11, 12 and 18 — Family Courts Act, 1984 — Jurisdiction — Overlapping statutory provisions — Harmonious construction.

HELD: The provisions of the Gram Nyayalayas Act, 2008 and the Family Courts Act, 1984 are required to be harmoniously construed. While Gram Nyayalayas are competent to exercise jurisdiction over matters falling within Chapter IX of the Code of Criminal Procedure, 1973 in accordance with the jurisdiction conferred by the Act, such jurisdiction cannot be construed to permit review, recall, modification or execution of an order passed by a Family Court. To that extent, transfer of pending proceedings would be inconsistent with the statutory scheme governing Family Courts.

Constitution of India — Article 227 — Gram Nyayalaya — Orders under Sections 127 and 128 CrPC — Supervisory jurisdiction.

HELD: The orders passed by the Gram Nyayalaya entertaining proceedings under Sections 127 and 128 CrPC arising out of a maintenance order passed by the Family Court were without jurisdiction and liable to be quashed. However, the maintenance order originally passed by the Family Court remained unaffected, leaving it open to the parties to pursue such remedies as are available within the framework of the Family Courts Act, 1984.

Code of Criminal Procedure, 1973 — Sections 125, 127 and 128 (corresponding Sections 144, 146 and 147, Bharatiya Nagarik Suraksha Sanhita, 2023) — Maintenance proceedings — Transfer to Gram Nyayalaya — Distinction between original proceedings and post-adjudication proceedings.

HELD: While proceedings under Section 125 CrPC, in appropriate cases, may be instituted and entertained before the Gram Nyayalaya in accordance with the jurisdiction conferred by the Gram Nyayalayas Act, 2008, a different consideration arises where the rights of the parties have already been adjudicated by a Family Court. Proceedings under Sections 127 and 128 CrPC seeking alteration, cancellation or enforcement of such adjudicated rights constitute a continuation of the original proceedings and cannot be transferred to the Gram Nyayalaya, as that would permit a Court of coordinate statutory jurisdiction, though presided over by an officer of a different cadre, to deal with matters arising out of a concluded adjudication by the Family Court.

Code of Criminal Procedure, 1973 — Section 127 (corresponding Section 146, Bharatiya Nagarik Suraksha Sanhita, 2023) — Cancellation or alteration of maintenance — Remarriage of wife — Competent forum.

HELD: Remarriage of the wife constitutes a change in circumstances entitling the husband to seek cancellation or alteration of the maintenance order under Section 127 CrPC. However, where the maintenance order has been passed by the Family Court, such question is required to be adjudicated within the framework of the Family Courts Act by the competent Family Court. The High Court, while exercising jurisdiction under Article 227 of the Constitution, declined to determine the disputed question of remarriage on merits, leaving the parties to pursue the statutory remedy before the competent forum.

Family Courts Act, 1984 — Gram Nyayalayas Act, 2008 — Transfer of pending proceedings — Limitation on transfer.

HELD: Cases pending before the Family Court may be transferred to the Gram Nyayalaya only so long as no order determining the substantive rights of the parties has been passed and no question arises requiring reconsideration, execution or modification of such adjudication. Proceedings under Sections 126(2), 127 and 128 CrPC (corresponding Sections 145(2), 146 and 147 BNSS, 2023), arising after adjudication by the Family Court, are not liable to be transferred to the Gram Nyayalaya.

Petition allowed. Orders dated 01.10.2024 and 25.03.2025 passed by the Gram Nyayalaya, Dhampur, District Bijnor quashed. Order dated 06.03.2019 passed by the Family Court awarding maintenance to respondent No. 2 to remain operative till the date of her remarriage. Liberty reserved to the parties to pursue remedies before the competent Family Court in accordance with law. (E-14)

Case Law Cited

Nil

List of Acts / Statutes/Books

Constitution of India; Family Courts Act, 1984; Gram Nyayalayas Act, 2008; Code of Criminal Procedure, 1973; Bharatiya Nagarik Suraksha Sanhita, 2023

List of Keywords

Family Court; Gram Nyayalaya; Maintenance; Transfer of proceedings; Concurrent jurisdiction; Jurisdictional conflict; Execution of maintenance order.

Case Arising From

Orders dated **01.10.2024** and **25.03.2025** passed by the **Gram Nyayalaya, Dhampur, District Bijnor** in proceedings under **Sections 127 and 128 of the Code of Criminal Procedure, 1973**, arising out of the maintenance order dated **06.03.2019** passed by the **Principal Judge, Family Court, Bijnor** in proceedings under **Section 125 CrPC**.

Appearance for Parties

For the Appellants: Sri Ram Bilas Prasad.

For the Respondents: Sri Anoop Singh, learned Government Advocate, and Sri Janardan Singh.

(Delivered by Hon'ble Harvir Singh, J.)

1. Heard learned counsel for the parties and perused the material available on record.
2. The instant petition has been filed against the impugned orders dated 25.3.2025 and 1.10.2024 under Section 127 Cr.PC, passed by the Gram Nyayalaya, Dhampur, District Bijnor.
3. Learned counsel for the petitioner submits that initially, an order dated 6.3.2019 was passed by Principal Judge, Family Court, Bijnor, under Section 125 of the Code of Criminal Procedure, 1973 (corresponding Section 144 of Bharatiya Nagarik Suraksha Sanhita, 2023), wherein the learned Principal Judge, Family Court, Bijnor has awarded a sum of Rs. 3,000/- to respondent No.2, as monthly maintenance, to be paid from the date of filing of application i.e. 28.4.2016. Thereafter, aggrieved by order dated 6.3.2019, the petitioner moved a Criminal Revision No.1804/2019, challenging the order dated 6.3.2019 on various grounds taken in the petition, wherein an order was passed by this Court on 3.5.2019. The relevant/ operative portion of the said order dated 3.5.2019 passed by this Court is reproduced herein-under:-

"The operation of impugned order dated 06.3.2019 shall remain stayed provided and with the condition that the applicant shall continue to pay the maintenance amount Rs.3000/- to the opposite party no.2 per month regularly from the date of order and not from the date of filing of application, during the pendency of this application or till further orders of this Court.

It is clarified that only the payment of arrears amount, accruing for the period in between the date of application and the date of order, is being stayed by this Court till further orders of this Court.

It is observed that if the applicant fails to comply with the aforesaid condition, the interim order of stay passed by this Court shall be deemed to have been vacated automatically."

4. Thereafter, the only point stressed before the Court by the petitioner is that the respondent no.2, i.e. his wife, got remarried on 26.01.2020, with one Manoj Kumar, therefore, she is not entitled for any maintenance amount. On the other hand, it may usefully be noted that respondent no.2 filed an application under Section 125 of the Code of Criminal Procedure, 1973 (corresponding Section 144 of Bharatiya Nagarik Suraksha Sanhita, 2023) on 28.04.2016 i.e. much earlier than the date of alleged marriage and that, she was granted maintenance from the date of application only. It may be noted that, under the provision of Section 127 of the Code of Criminal Procedure, 1973, on proof of change in the circumstances of the income of a person, who is receiving any monthly maintenance under Section 125 of the Code of Criminal Procedure, 1973 (corresponding Section 144 of Bhartiya Nagrik Suraksha Sanhita, 2023), the Magistrate/ Court concerned may make such alteration in the order of maintenance, as he thinks fit. The Court concerned has power to cancel any order, which was passed by it, (under Section 125 of the Code of Criminal Procedure, 1973) in respect of a woman, from the date of her remarriage. Thus it is clear from the above provision, that in case of such an eventuality, husband may approach the Court concerned for recall/ cancellation of the order. This fact can not be decided in the instant petition, there being an alternate efficacious statutory remedy available under law.

5. Learned counsel for the petitioner further submits, that the petitioner herein filed a Miscellaneous Application No. 375 of 2021, under Section 127 of the Code of Criminal Procedure, 1973 before the learned Principal Judge, Family Court, Bijnor on the ground that, the circumstances have changed, as the respondent No. 2, the wife of the petitioner, got remarried, with the third person and in that event, the petitioner was not obliged to pay any amount of maintenance. The said Miscellaneous Application No. 375 of 2021 was limited to the extent, that circumstances have changed and because of the change in circumstances, i.e., the alleged remarriage of respondent No. 2, with a third person, the order dated 6.3.2019 was prayed to be recalled. Respondent No. 2/ wife of the petitioner filed an objection in respect of Miscellaneous Application No. 375 of 2021, before learned Principal Judge, Family Court. However, the said Miscellaneous Application No. 375 of 2021 has taken a different turn at that stage, as much as, all the cases pending before the learned Principal Judge, Family Court/ learned Additional Principal Judge, Family Court, Bijnor, pertaining to Chapter IX of the Code of Criminal Procedure, 1973 (now Bharatiya Nagarik Suraksha Sanhita, 2023), were directed to be transferred to Gram Nyayalaya and the said order was passed by the then District Judge, Bijnor vide Administrative Order No.821/ 2024, dated 22.2.2024, in furtherance of Notification No.331/ Admin. (Services)/2024, dated 15.2.2024 issued by this Court, on the administrative side and pursuant to Notification Nyay Anubhag-2 (Subordinate Courts) No. 4/2024/89/ VII-Nyay-2-2024-216 G/2007 T.C.-II, Lucknow, dated 14.2.2024 issued by State Government. By this notification dated 14th February 2024, the then Additional Civil Judge (Junior Division), Bijnor was appointed/ posted as Nyayadhikari, Gram Nyayalaya at Tehsil Dhampur, District Bijnor, in the newly created Court vide G.O. No. 25/ 2015/ 1462/ VII-Nyay-2-2015-2160/ 2007 dated 24.11.2015. By the Administrative Order No.821/ 2024,

dated 22.2.2024, the then District Judge directed all the Civil Judges (Junior Division) and Judicial Magistrates of the District Court, Bijnor to prepare a list of relevant civil and criminal cases falling under Tehsil Dhampur area, to be transferred to newly created Gram Nyayalaya, Dhampur, pursuant to Notification Nyay Anubhag-2 (Subordinate Courts) No. 4/2024/89/VII-Nyay-2-2024-216 G/2007 T.C.-II, Lucknow, dated 14.02.2024 issued by State Government and as per the jurisdiction mentioned in Gram Nyayalaya Act, 2008 and also, to make it available in the office of District Judge. In the said order dated 22.2.2024, a reference was made to the First Schedule and Second Schedule of Gram Nyayalaya Act 2008, stating therein, that Gram Nyayalaya has jurisdiction over the subjects mentioned in the said Schedule 1 and 2. Part I and Part II of the First Schedule and Part I of the Second Schedule are reproduced below:-

"THE FIRST SCHEDULE

(See Sections 12 and 14)

PART I

OFFENCES UNDER THE INDIAN PENAL CODE (45 OF 1860), ETC.

- (i) offences not punishable with death, imprisonment for life or imprisonment for a term exceeding two years;*
- (ii) theft, under Section 379, Section 380 or Section 381 of the Indian Penal Code (45 of 1860), where the value of the property stolen does not exceed rupees twenty thousand;*
- (iii) receiving or retaining stolen property, under Section 411 of the Indian Penal Code (45 of 1860), where the value of the property does not exceed rupees twenty thousand;*
- (iv) assisting in the concealment or disposal of stolen property, under Section 414 of the Indian Penal Code (45 of 1860), where the value of such property does not exceed rupees twenty thousand;*
- (v) offences under Sections 454 and 456 of the Indian Penal Code (45 of 1860);*
- (vi) insult with intent to provoke a breach of the peace, under Section 504, and criminal intimidation, punishable with imprisonment for a term which may extend to two years, or with fine, or with both, under Section 506 of the Indian Penal Code (45 of 1860);*
- (vii) abetment of any of the foregoing offences;*
- (viii) an attempt to commit any of the foregoing offences, when such attempt is an offence.*

PART II

OFFENCES AND RELIEF UNDER THE OTHER CENTRAL ACTS

- (i) any offence constituted by an act in respect of which a complaint may be made under Section 20 of the Cattle-trespass Act, 1871(1 of 1871);*
- (ii) the Payment of Wages Act, 1936 (4 of 1936);*
- (iii) the Minimum Wages Act, 1948 (11 of 1948);*

- (iv) the Protection of Civil Rights Act, 1955 (22 of 1955);*
- (v) order for maintenance of wives, children and parents under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974);*
- (vi) the Bonded Labour System (Abolition) Act, 1976 (19 of 1976);*
- (vii) the Equal Remuneration Act, 1976 (25 of 1976);*
- (viii) the Protection of Women from Domestic Violence Act, 2005 (43 of 2005).*

THE SECOND SCHEDULE

(See Sections 13 and 14)

PART I **SUITS OF A CIVIL NATURE WITHIN THE JURISDICTION OF** **GRAM NYAYALAYAS**

(1) Civil Disputes:

- (a) right to purchase of property;*
- (b) use of common pasture;*
- (c) regulation and timing of taking water from irrigation channel.*

(2) Property Disputes:

- (a) village and farm houses (Possession);*
- (b) water channels;*
- (c) right to draw water from a well or tube well.*

(3) Other Disputes:

- (a) claims under the Payment of Wages Act, 1936 (4 of 1936);*
- (b) claims under the Minimum Wages Act, 1948 (11 of 1948);*
- (c) money suits either arising from trade transaction or money lending;*
- (d) disputes arising out of the partnership in cultivation of land;*
- (e) disputes as to the use of forest produce by inhabitants of Gram Panchayats."*

6. Hence, the then Principal Judge, Family Court, vide letter No. 844/ Family Court/ Bijnor, dated 28.01.2026, has transferred, all such cases pertaining to sub-clause (v) of part II of the First Schedule of Gram Nyayalaya Act, 2008, i.e. order for maintenance of wives, children and parents, under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974), and consequently, the Miscellaneous Application No. 375 of 2021, which was pending disposal before the learned Additional Principal Judge, also got transferred to Gram Nyayalaya, Dhampur, Bijnor.

7. Learned counsel for the petitioner has raised a legal issue that the Gram Nyayalaya was not competent to pass any order, if a subject matter has been adjudicated and decided by the Family Court Judge i.e. learned Principal Judge/ learned Additional Principal Judge, Family Court, who is

an officer of the rank of Higher Judicial Service Cadre, even if, jurisdiction has been conferred upon the Gram Nyayalaya to decide the cases, pertaining to sub-clause (v) of part II of the first Schedule of Gram Nyayalaya Act, 2008, but continues to be exercised by the Family Courts as well, on concurrent basis i.e. both the Gram Nyayalaya and Family Court will have jurisdiction over Chapter IX of the Code of Criminal Procedure, 1973 (now Bharatiya Nagarik Suraksha Sanhita, 2023), concurrently.

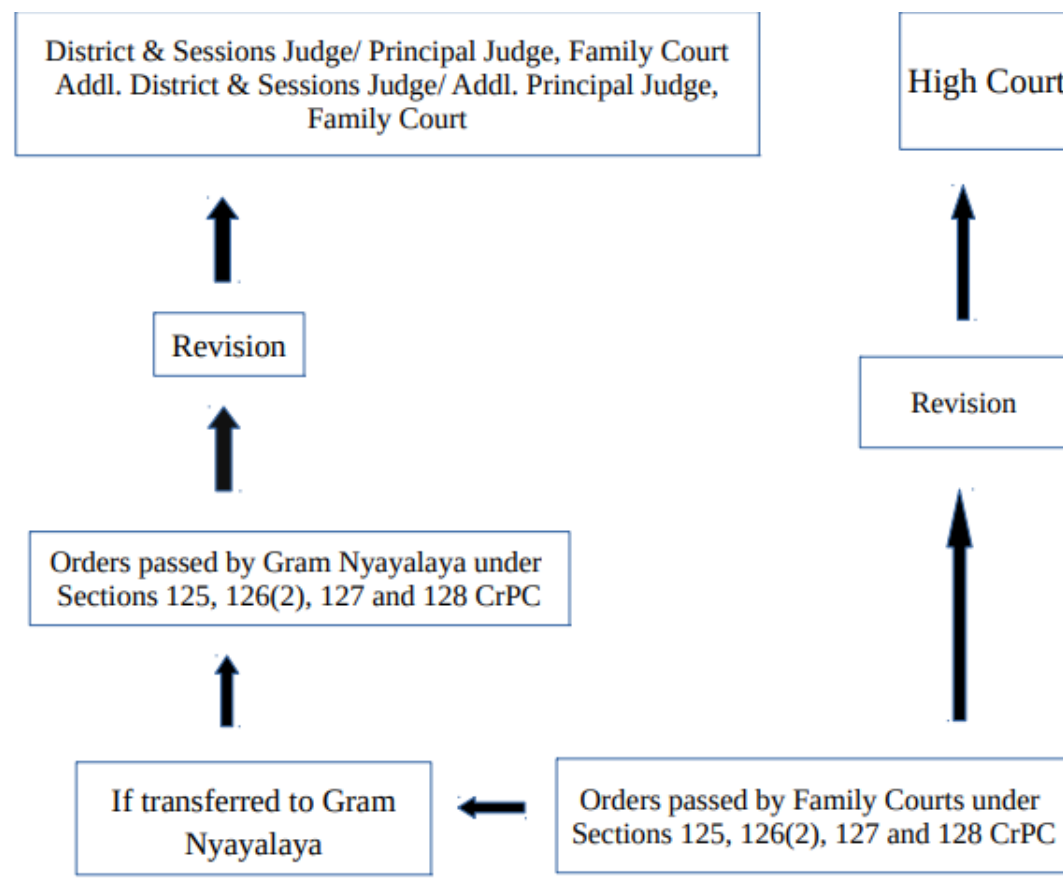
8. On the other hand, respondent No. 2 has moved an application No. 62 of 2024, under Section 128 of the Code of Criminal Procedure, 1973 (now Bharatiya Nagarik Suraksha Sanhita, 2023), seeking the execution of the order dated 6.3.2019 passed by the learned Principal Judge, Family Court, Bijnor. After hearing the parties, the learned Gram Nyayalaya passed the order dated 25.3.2025, thereby directing the petitioner to comply with the order dated 6.3.2019 passed by learned Family Court, by which a sum of Rs. 3,000/- was fixed as monthly maintenance and issued recovery warrant to the petitioner and hence, the instant petition under Article 227 of Constitution of India, before this Court against the order dated 1.10.2024 and 25.03.2025 passed by learned Gram Nyayalaya, Dhampur.

9. Besides deciding the case on merit, the petitioner has raised a legal issue that, even if the jurisdiction has been conferred upon the Gram Nyayalaya, then also Gram Nyayalaya was not competent to review/ uphold/ set aside/ modify or entertain any application or execution, against an order passed by learned Principal Judge/ learned Additional Principal Judge, Family Court i.e. an officer of Higher Judicial Service Cadre, whereas the Gram Nyayalaya is headed by an officer of the cadre of Civil Judge (Junior Division) and referred to the scheme of Family Courts Act 1984, wherein the Family Courts still continued to exercise the jurisdiction over Chapter IX of the Code of Criminal Procedure, 1973 (now Bharatiya Nagarik Suraksha Sanhita, 2023). Learned counsel submitted, that both the Family Court, as well as Gram Nyayalaya, as of now, exercises concurrent jurisdiction over Chapter IX of the Code of Criminal Procedure, 1973 (now Bharatiya Nagarik Suraksha Sanhita, 2023).

10. Learned counsel for the petitioner further submits that, as per the hierarchy of the Courts within the districts, the normal nomenclature is as under:-

Highest Judicial Officer being in district, District and Sessions Judge/ Principal Judge, Family Court; Additional District and Sessions Judge/ Additional Principal Judge, Family Court; Chief Judicial Magistrate, Civil Judge (Senior Division)/ Additional Civil Judge (Senior Division); Additional Chief Judicial Magistrate; Civil Judge (Junior Division)/ Additional Civil Judge (Junior Division); Judicial Magistrate, Gram Nyayalaya Adhikari.

Remedy of orders passed by the Gram Nyayalaya and Family Courts.



11. Learned counsel for the petitioner further submits that the Judicial Officers of the Districts, discharge their duties as per the jurisdiction assigned to them, either under common law, such as Indian Penal Code, Civil Procedure Code or any other law, for the time being in force and the Gram Nyayalaya headed by an officer of the rank of Civil Judge (Junior Division) exercises jurisdiction under Gram Nyayalaya Act, 2008, on the subjects and other Acts, conferred upon, by the jurisdiction in this behalf.

12. Learned counsel for the petitioner further submits that the Family Courts Act, 1984, as constituted by the Uttar Pradesh State Government, vide Notification No.79/11/86-Jus., dated September 4, 1986, has conferred the jurisdiction upon Family Courts, initially exercised by a Ist-Class Magistrate and the Gram Nyayalaya Act, 2008 has conferred the jurisdiction upon the Gram Nyayalaya as per part II of first Schedule, thereby empowered the Gram Nyayalaya to exercise jurisdiction on the subjects and Sections under Chapter IX of the Code of Criminal Procedure, 1973 (now Bharatiya Nagarik Suraksha Sanhita, 2023). Learned counsel for the petitioner further submits that, as far the jurisdiction assigned to Family Courts, as per Family Court Act, 1984 is concerned, the Family Courts have been given jurisdiction to entertain and adjudicate upon the matters, with respect to Chapter IX of the Code of Criminal Procedure, 1973 (now Bharatiya Nagarik Suraksha Sanhita, 2023) and further submits that, there is an overlapping, as far as

jurisdiction under Chapter IX of the Code of Criminal Procedure, 1973 (now Bharatiya Nagarik Suraksha Sanhita, 2023) as conferred upon Family Courts, as well as the Gram Nyayalaya Act, 2008. Hence, there is not only disparity, but the same leads to a situation, wherein an order passed by an officer of the cadre of Higher Judicial Service or to say Principal Judge, Family Court/ Additional Principal Judge, Family Court, then the same cannot be subjected to review/ recall or set aside by the Gram Nyayalaya, which has happened in the present case i.e to say, that in the beginning, an order was passed by learned Principal Judge, Family Court under Section 125 the Code of Criminal Procedure, 1973 (now Bharatiya Nagarik Suraksha Sanhita, 2023) and thereafter, the respondent in the present case, filed an application under Section 127 of the Code of Criminal Procedure, 1973 (now Bharatiya Nagarik Suraksha Sanhita, 2023), bearing No,375 of 2021, which was transferred for disposal to Gram Nyayalaya, Dhampur, Bijnor. Hence, learned Civil Judge (Junior Division)/ Presiding Officer, Gram Nyayalaya exercised jurisdiction over and above the order passed by learned Additional Principal Judge, Family Court, an officer of the Higher Judicial Service cadre, which has no parallel or does not enjoy any parity with respect to the Code of Criminal Procedure or the matters being adjudicated upon by the Family Courts. As on date, the Family Courts comprises the officer of Higher Judicial Service cadre only and there is nobody, who is an officer of the rank of Civil Judge (Junior Division)/ Judicial Magistrate or Civil Judge (Senior Division)/ Chief Judicial Magistrate, either attached or posted, within the scheme of Family Courts Act, 1984.

13. Learned counsel for the petitioner further submitted that, the legislature by conferring the concurrent jurisdiction i.e. one under Family Court Act, 1984 and another under Gram Nyayalaya Act, 2008, the former being exercised by the officers of the Higher Judicial Service cadre and the later being exercised by the officers of the Civil Judge (Junior Division) cadre, has led to disparity, and anomaly, within the cadre of the District Courts. Hence, the arrangement has not only created a fuss, but has also led to disparity, judicial impropriety and overlapping in exercising jurisdiction, over one and the single subject i.e. Chapter IX of the Code of Criminal Procedure, 1973 (now Bharatiya Nagarik Suraksha Sanhita, 2023) by two different judicial officers in the hierarchy and therefore, the subject matter of Chapter IX of the Code of Criminal Procedure, 1973 (now Bharatiya Nagarik Suraksha Sanhita, 2023) ought not to have been included in Part II of the first Schedule of Gram Nyayalaya Act, 2008, as the same was fully operating under the scheme of Family Courts Act, 1984, prior to the passage of Gram Nyayalaya Act, 2008 and the system is still operating within the Family Courts, concurrently.

14. Learned counsel for the petitioner submitted that, at the time of framing of the Gram Nyayalaya Act, 2008, either the matter of adjudication by Family Courts in respect of Chapter IX of the Code of Criminal Procedure, 1973 (now Bharatiya Nagarik Suraksha Sanhita, 2023) could not be brought to the notice of the concerned Committee, which formulated Gram Nyayalaya Act, 2008 or it skipped the attention of the lawmakers, that two different Courts of judicial officers from two different cadres, within the District have been assigned jurisdiction to adjudicate upon the same subject matter i.e. Chapter IX of the Code of Criminal Procedure, 1973 (now Bharatiya Nagarik Suraksha Sanhita, 2023). Consequently, within the local jurisdiction of District Courts, the Judicial Magistrate, Ist Class and Sessions Judge/ Addl. Sessions Judge/ Principal Judge, Family Court/ Addl. Principal Judge, Family Court are exercising powers on the one and same Chapter IX of the Code of Criminal Procedure, 1973 (now Bharatiya Nagarik Suraksha Sanhita, 2023).

15. Learned counsel for the petitioner further submits that, Section 7(2) and 8(b) of Family Courts Act, 1984 reads as follows:-

7. Jurisdiction.-

(2) Subject to the other provisions of this Act, a Family Court shall also have and exercise-

(a) the jurisdiction exercisable by a Magistrate of the first class under Chapter IX (relating to order for maintenance of wife, children and parents) of the Code of Criminal Procedure, 1973 (2 of 1974); and

(b) such other jurisdiction as may be conferred on it by any other enactment.

8. Exclusion of jurisdiction and pending proceedings.-

Where a Family Court has been established for any area,-

(b) no magistrate shall, in relation to such area, have or exercise any jurisdiction or powers under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974);

Therefore, on the one hand, the Family Courts excluded the jurisdiction to be exercised by a first class Magistrate, as far as Chapter IX of the Code of Criminal Procedure, 1973 (now Bharatiya Nagarik Suraksha Sanhita, 2023) is concerned and prohibited the first class Magistrate to exercise jurisdiction over subject matter of Chapter IX of the Code of Criminal Procedure, 1973 (now Bharatiya Nagarik Suraksha Sanhita, 2023) and on the other hand, part II of the first Schedule conferred jurisdiction upon a first class Magistrate to adjudicate upon subject matter of Chapter IX of the Code of Criminal Procedure, 1973 (now Bharatiya Nagarik Suraksha Sanhita, 2023), under the Gram Nyayalaya Act, 2008. Therefore, there is a disparity, dissimilarity and overlapping and anomaly in two jurisdictions, on the same subject of Chapter IX of the Code of Criminal Procedure, 1973 (now Bharatiya Nagarik Suraksha Sanhita, 2023) and therefore, any matter being decided or adjudicated by the Presiding Officer Gram Nyayalaya shall be in contravention of Section 8(b) of Family Courts Act, 1984. Hence the orders dated 25.3.2025 and 1.10.2024 are liable to be quashed and set aside.

16. Learned counsel for the petitioner further submits that Section 18, Chapter IV of Gram Nyayalayas Act, 2008 reads as under:-

"18. Overriding effect of Act in criminal trial.- The provisions of this Act shall have effect notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) or any other law, but save as expressly provided in this Act, the provisions of the Code shall, in so far as they are not inconsistent with the provisions of this Act, apply to the proceedings before a Gram Nyayalaya; and for the purpose of the said provisions of the Code, the Gram Nyayalaya shall be deemed to be a Court of Judicial Magistrate of the first class."

From perusal of the aforesaid, Section 18 of the Gram Nyayalaya Act, 2008, it is evident **that, the Presiding Officer Gram Nyayalaya will not adjudicate upon any matter, if the same is inconsistent with the Act itself, for the time being in force.** In the present case, not only the order

dated 1.10.2024 and 25.3.2025 have been passed by the Gram Nyayalaya, Dhampur, Bijnour, but also in contravention of Section 8 (b) of the Family Courts Act, 1984, the learned Gram Nyayalaya has exercised power and jurisdiction both, over and above an order, passed by Family Court, comprising a Judicial Officer of Higher Judicial Service cadre i.e. Sessions Judge/ Addl. Sessions Judge/ Principal Judge, Family Court/ Addl. Principal Judge, Family Court, and hence, both the orders dated 1.10.2024 and 25.3.2025 are liable to be quashed and set aside.

17. Learned counsel for the petitioner further submits that, as far as Section 7(2)(a) and Section 8(b) of Family Courts Act, 1984 are concerned, they are separate and Section 7(2)(a) has itself given power to first class Magistrate to exercise jurisdiction over Chapter IX of Bharatiya Nagarik Suraksha Sanhita, 2023, however, the same is not the issue before this Court and if there is any anomaly within the framework of Family Courts Act, 1984, the same can be a separate subject matter of adjudication and cannot be dealt with here in this case, as the petitioner has confined his relief with respect to the orders passed by Gram Nyayalaya under Gram Nyayalaya Act, 2008.

18. On the other hand, learned counsel appearing on behalf of respondent No.2 submits that the order passed by learned Additional Principal Judge, Family Court, under Section 125 of the Code of Criminal Procedure, 1973 (corresponding Section 144 of Bhartiya Nagrik Suraksha Sanhita, 2023) awarding a sum of Rs. 3,000/- per month to respondent No.2 is in accordance with law. Learned counsel for respondent No.2 further submits that the jurisdiction conferred upon the Gram Nyayalaya has been done by a careful consideration by the legislature and the same cannot be questioned before these proceedings and further submits that order dated 1.10.2024 and 25.3.2025 have been passed in accordance with law.

19. Learned counsel for the respondent No.2 submits that every officer, say Additional Principal Judge, Family Court, has exercised the jurisdiction under Family Court Act, 1984, a separate statute, whereas the Gram Nyayalaya has exercised the jurisdiction under a separate statute i.e. Gram Nyayalaya Act, 2008 and therefore, unless and until a particular Section or part of the Act is declared as redundant or overlapping, till then, every order passed by the Judicial Officer(s) under two different Acts separately, cannot be termed as illegal or arbitrary. Learned counsel for the respondent no.2 prays that the instant petition is liable to be dismissed, being devoid of merits.

20. Having considered the rival contentions and after having perused the relevant Sections of the Gram Nyayalaya Act, 2008 and the Family Courts Act, 1984, a further analysis is required with respect to the anomaly and overlapping of the jurisdiction between the two Acts i.e. Gram Nyayalaya Act, 2008 and the Family Courts Act, 1984.

Gram Nyayalaya Act, 2008	Family Courts Act, 1984
11. Jurisdiction of Gram Nyayalaya.- <i>Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) or the Code of Civil Procedure, 1908 (5 of 1908) or any other law for the time being in force, the Gram Nyayalaya shall exercise both</i>	7. Jurisdiction.- <i>(2) Subject to the other provisions of this Act, a Family Court shall also have and exercise-</i> <i>(a) the jurisdiction exercisable by a Magistrate of the first class under Chapter IX (relating to order for maintenance of wife, children and</i>

<i>civil and criminal jurisdiction in the manner and to the extent provided under this Act.</i>	<i>parents) of the Code of Criminal Procedure, 1973 (2 of 1974); and</i> <i>(b) such other jurisdiction as may be conferred on it by any other enactment.</i>
12. Criminal jurisdiction.- <i>(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force, the Gram Nyayalaya may take cognizance of an offence on a complaint or on a police report and shall-</i> <i>(a) try all offences specified in Part I of the First Schedule; and</i> <i>(b) try all offences and grant relief, if any, specified under the enactments included in Part II of that Schedule.</i> <i>(2) Without prejudice to the provisions of sub-Section (1), the Gram Nyayalaya shall also try all such offences or grant such relief under the State Acts which may be notified by the State Government under sub-Section (3) of Section 14.</i>	8. Exclusion of jurisdiction and pending proceedings.-<i>Where a Family Court has been established for any area,-</i> <i>(b) no magistrate shall, in relation to such area, have or exercise any jurisdiction or powers under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974);</i>
14. Power to amend Schedules.- <i>(1) Where the Central Government is satisfied that it is necessary or expedient so to do, it may, by notification, add to or omit any item in Part I or Part II of the First Schedule or Part II of the Second Schedule, as the case may be, and it shall be deemed to have been amended accordingly.</i> <i>(2) ..</i> <i>(3) If the State Government is satisfied that it is necessary or expedient so to do, it may, in consultation with the High Court, by notification, add to any item in Part III of the First Schedule or Part III of the Second Schedule or omit from it any item in respect of which the State Legislature is competent to make laws and thereupon the First Schedule or the Second Schedule, as the case may be, shall be deemed to have been amended accordingly.</i>	20. Act to have overriding effect.-<i>The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.</i>

21. Learned counsel for the petitioner submitted that, if a matter was to be transferred from Family Court to Gram Nyayalaya, then in that event, both the Courts would have been headed by the Judicial Officer of the same cadre, say Higher Judicial Services cadre or the Junior Division cadre, but there is disparity and inequality, between the two posts, hence, a Judicial Officer of the rank of Junior Division, who is much below the rank of Higher Judicial Services cadre, cannot review/ recall or adjudicate upon the order passed by the Family Court, having the rank of District Judge/ Principal Judge, Family Court. Learned counsel for the petitioner further submitted that, if a case is transferred from Family court to Gram Nyayalaya and the Gram Nyayalaya, has dealt with such a case, then an appeal can always be filed before the District Judge/ Additional District Judge and consequently, an order passed by the Family Court, would further be a subject matter of appeal before the District Judge, Additional District Judge. Then the petitioner prayed that, once an order has been passed by the learned Family Court, deciding the rights between the parties, the said case cannot be transferred to the Gram Nyayalaya. However, there is no bar in fresh filing of cases before the Gram Nyayalaya.

22. A reference was also made to the Circular letter of High Court No. 14806/ Main-B/ G.N./ Admin. (A-3)/ Allahabad: Dated 16.12.2021, wherein the matter of jurisdiction has been dealt with in the said circular letter, conferring jurisdiction of Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974) and clarified that, the Gram Nyayalaya Act, 2008 would have an overriding effect over the (conflicting) provisions of Family Courts Act, 1984, however, the same does not deal with the disparity to the extent of disposal of cases pertaining to maintenance of wives, children and parents under Chapter IX of the Code of Criminal Procedure, 1973 (now Bharatiya Nagarik Suraksha Sanhita, 2023) i.e. in one hand, a First Class Magistrate exercises such powers under the Gram Nyayalaya Act, 2008, on the other hand, the same power, to try cases for maintenance of wives, children and parents under Chapter IX of the Code of Criminal Procedure, 1973 (now Bharatiya Nagarik Suraksha Sanhita, 2023) is being exercised by the officers of Higher Judicial Service cadre, i.e. Session Judge/ Additional Sessions Judge/ Additional District Judge, therefore, the disparity still continues and if an order with respect to Chapter IX of the Code of Criminal Procedure, 1973 (now Bharatiya Nagarik Suraksha Sanhita, 2023) is passed by Sessions Judge/ Additional Sessions Judge, in that event, the affected party from either side has lost a valuable remedy, which has not been provided under the Family Court Act, 1984, that an order passed by Gram Nyayalaya is appealable or revisable, as the case may be, before the Court of Sessions Judge/ Additional Sessions Judge. Hence, the disparity, which has been created by creation of Gram Nyayalaya under the Gram Nyayalaya Act, 2008, still continues and therefore, Section 18 of Gram Nyayalaya Act, 2008, is explicitly clear that, if the jurisdiction conferred upon Gram Nyayalaya with respect to Chapter IX of the Code of Criminal Procedure, 1973 (now Bharatiya Nagarik Suraksha Sanhita, 2023) is inconsistent with the proviso of this Act, the same can be rectified. Hence, Section 18 of Gram Nyayalaya Act and Section 20 of Family Courts Act, 1984 are overlapping with each other, as far as jurisdiction of Chapter IX of the Code of Criminal Procedure, 1973 (now Bharatiya Nagarik Suraksha Sanhita, 2023) is concerned, and the subject of maintenance of wives, children and parents is more akin and related to scheme of Family Courts and should continue to remain within the framework of the Family Courts, therefore, conferring jurisdiction upon Gram Nyayalaya, becomes redundant. The said circular letter of the High Court dated 16.12.2021 is read as under:-

“From;

*Ashish Garg, H.J.S.
Registrar General
High Court of Judicature at
Allahabad.*

To

*The District Judge,
Budaun & Sitapur.*

No. 14806 /Main-B/G.N./Admin. (A-3)/ Allahabad: Dated: 16-12-2021.

***Subject:- Regarding provisions mentioned in the Family Court Act, 1984 and
Gram Nyayalaya Act, 2008 related to trial of cases u/s 125 of Cr.P.C.***

Sir,

I have been directed to say that upon consideration of letter no. 2513/XV, dated 21.09.2020 of the District Judge, Budaun and representation dated 12.08.2021 of the General Secretary of Association, Sitapur (copy enclosed for ready reference), the Hon'ble Court has been pleased to communicate the following on the above-noted subject:-

“i). The Gram Nyayalayas Act, 2008 has been enacted for a special purpose and intention, and with a more laudable objective- "of providing access to justice to the citizens at their doorsteps" and to ensure that opportunities for securing justice to any citizen are not denied due to social, economic or other disabilities.

ii). The Gram Nyayalayas Act, 2008 is a later enactment than the Family Courts Act, 1984.

iii). Section 3 (3) of the Gram Nyayalayas Act, 2008 provides for establishment of Gram Nyayalayas in addition to other courts already functioning within the district under any other law for the time being in force, thereby indicating the intention of the legislature to include the Gram Nyayalayas in the hierarchy of Courts.

(the provisions of Gram Nyayalaya Act, 2008 would have an over-riding effect over the (conflicting) provisions of the Family Courts Act and the Gram Nyayalaya, Tehsil- Bilsa, District Budaun would have the exclusive jurisdiction to try cases for maintenance of wives, Children and parent under Chapter-IX of the Code of Criminal Procedure, 1973 (2 of 1974)."

This is for your kind information and further necessary action.

With regards,

Encl: As above.

Your Sincerely,

Sd/-

Registrar General"

23. The argument raised on behalf of learned counsel appearing on behalf of respondent No.2 that, even if a matter is transferred from Family Court to Gram Nyayalaya for appropriate disposal, then the same falls within the jurisdiction of Gram Nyayalaya, as conferred in Part II of the First Schedule and therefore, the Gram Nyayalaya will have the power to review/ decide, dispose any matter as far Sections 126(2), 127 and 128 of the Code of Criminal Procedure, 1973 (Corresponding Sections 145(2), 146 and 147 of Bhartiya Nagrik Suraksha Sanhita, 2023), even if passed by Sessions Judge/ Additional Sessions Judge i.e. officer of Higher Judicial Service cadre and therefore, the impugned orders dated 25.3.2025 and 1.10.2024 have been passed in accordance with law and by way of jurisdiction conferred upon Gram Nyayalaya Act, 2008 with respect to Chapter IX of the Code of Criminal Procedure, 1973 (now Bharatiya Nagarik Suraksha Sanhita, 2023). The said arguments do not carry any weight, for the reason of disparity and overlapping of the jurisdiction.

24. Under such circumstances and from the above discussion, it can fairly be concluded that:-

(i) the impugned orders dated 25.3.2025 and 1.10.2024 passed by learned Judicial Officer, Gram Nyayalaya Dhampur, District Bijnor are liable to be quashed and set aside, the same being inconsistent with the Family Court Act, hence, the aforesaid orders dated 1.10.2024 and 25.3.2025 are quashed and set aside. However, it shall remain open to either of the parties to take up the matter within the framework of Family Court scheme, availing any remedy, provided under law. As far as order dated 6.3.2019 is concerned, the same shall remain in force and till the date, the respondent No.2 got re-married.

(ii) The cases filed before the Family Courts can be transferred to the Gram Nyayalaya, to the extent and with a rider that, all such cases, where no such order, deciding the rights of the parties, has been passed, (say grant of interm maintenance), and the same order is not revisable or appealable before the Higher Court.

(iii) It is further held that, the cases pending before the Family Courts to be decided under Sections 126(2), 127 and 128 of the Code of Criminal Procedure, 1973 (Corresponding Sections 145(2), 146 and 147 of Bhartiya Nagrik Suraksha Sanhita, 2023) cannot be transferred to Gram Nyayalaya.

25. With the aforesaid observations/ directions, the instant petition stands **disposed of**.

(2026) 4 ILRA 2190
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 23.04.2026

BEFORE

THE HON'BLE VINOD DIWAKAR, J.

Matters Under Article 227 No. 12198 of 2025

Ranjeet Singh

...Petitioner

Versus

Neetu Singh

...Respondent

Issues for Consideration

- (i) Whether a husband, having already obtained interim maintenance under Section 24 of the Hindu Marriage Act, 1955, is entitled to invoke the supervisory jurisdiction of the High Court under Article 227 of the Constitution seeking expeditious disposal of a subsequent maintenance proceeding instituted under Section 144 of the Bharatiya Nagarik Suraksha Sanhita, 2023?
- (ii) Whether a petitioner invoking equitable and discretionary jurisdiction under Article 227 is entitled to relief after suppressing material facts, including the pendency and stay of connected proceedings and the receipt of interim maintenance under Section 24 of the Hindu Marriage Act, 1955?
- (iii) Whether the High Court, while declining relief under Article 227, is justified in imposing compensatory costs for abuse of the process of Court and issuing consequential directions to ensure expeditious disposal of the pending matrimonial proceedings?

Headnotes

Constitution of India — Article 227 — Supervisory jurisdiction — Equitable and discretionary relief — Suppression of material facts — Effect.

HELD: Exercise of supervisory jurisdiction under Article 227 is governed by equitable principles. A litigant who approaches the Court by suppressing material facts, making false statements on oath, or concealing orders having a direct bearing on the relief claimed is not entitled to invoke the discretionary jurisdiction of the High Court. Suppression of the fact that proceedings sought to be expedited had already been stayed by a coordinate Bench, coupled with concealment of the order granting interim maintenance under Section 24 of the Hindu Marriage Act, 1955, disentitles the petitioner to any equitable relief. [Paras 13, 14, 17 and 32]

Bharatiya Nagarik Suraksha Sanhita, 2023 — Section 144 — Maintenance proceeding by husband — Parallel claim under Section 24, Hindu Marriage Act, 1955 — Effect of concealment.

HELD: Where the husband had already obtained an order awarding interim maintenance and litigation expenses under Section 24 of the Hindu Marriage Act, 1955 in pending matrimonial proceedings, and failed to disclose the same while instituting proceedings under Section 144 of the Bharatiya Nagarik Suraksha Sanhita, 2023 as well as in the petition under Article 227, such suppression constituted a material circumstance disentitling him to the discretionary relief sought before the High Court. [Paras 7, 9.4, 13 and 14]

Constitution of India — Article 227 — Prayer for expeditious disposal — Proceedings stayed by coordinate Bench — Maintainability.

HELD: Where further proceedings in the maintenance case under Section 144 BNSS, 2023 had already been stayed by a coordinate Bench of the High Court in transfer proceedings, the prayer seeking expeditious disposal of such proceedings became infructuous and legally unsustainable. The High Court cannot direct expeditious disposal of proceedings whose further conduct stands interdicted by a subsisting judicial order. [Para 13]

Constitution of India — Article 227 — Abuse of process of Court — Compensatory costs.

HELD: Where the Court finds that the petition lacks bona fides and has been instituted by suppressing material facts and pursuing parallel remedies with a view to obtain equitable relief, it is justified in dismissing the petition with realistic and substantial compensatory costs. Award of such costs serves the dual purpose of compensating the opposite party and discouraging frivolous and vexatious litigation amounting to abuse of the judicial process. [Paras 18 to 32]

Constitution of India — Article 227 — Equitable jurisdiction — Clean hands doctrine — Duty of candour and full disclosure.

HELD: A litigant invoking the extraordinary supervisory jurisdiction of the High Court is under a solemn obligation to disclose all material facts having a bearing on the relief claimed. Suppression of pending connected proceedings, subsisting interim orders or previous adjudications affecting the controversy amounts to abuse of the process of Court. A party guilty of concealment cannot claim equitable or discretionary relief merely because a legal remedy may otherwise be available. **[Paras 13 to 18]**

Constitution of India — Article 227 — Supervisory jurisdiction — Exercise of discretion — Abuse of process — Consequential directions.

HELD: While declining to exercise jurisdiction under Article 227 on account of suppression of material facts, the High Court is not precluded from issuing appropriate consequential directions for effective administration of justice. Such directions, including expeditious disposal of pending matrimonial proceedings, are intended to avoid multiplicity of litigation and secure an early resolution of disputes between the parties. **[Paras 29 to 32]**

Family Courts Act, 1984 — Hindu Marriage Act, 1955 — Pendency of matrimonial proceedings — Expeditious disposal.

HELD: Matrimonial disputes involving interconnected proceedings should be concluded with due expedition. Where several proceedings between the spouses are pending before the Family Court, the Court may appropriately direct their early disposal so that the parties are not subjected to prolonged litigation and repeated interlocutory proceedings. **[Paras 30 to 32]**

Petition dismissed with costs of ₹50,000/-(E-14)

Case Law Cited

K.D. Sharma v. Steel Authority of India Ltd. and Others, (2008) 12 SCC 481 — relied on; *Dalip Singh v. State of Uttar Pradesh and Others*, (2010) 2 SCC 114 — relied on; *Oswal Fats and Oils Ltd. v. Additional Commissioner (Administration), Bareilly Division, Bareilly and Others*, (2010) 4 SCC 728 — relied on; *Kishore Samrite v. State of Uttar Pradesh and Others*, (2013) 2 SCC 398 — relied on; *Prestige Lights Ltd. v. State Bank of India*, (2007) 8 SCC 449 — relied on; *Arunima Baruah v. Union of India and Others*, (2007) 6 SCC 120 — referred to; *Ramjas Foundation v. Union of India*, (2010) 14 SCC 38 — relied on; *A.V. Papayya Sastry v. Government of A.P.*, (2007) 4 SCC 221 — relied on

List of Acts / Statutes/Books

Constitution of India; Bharatiya Nagarik Suraksha Sanhita, 2023; Hindu Marriage Act, 1955; Family Courts Act, 1984.

List of Keywords

Supervisory jurisdiction; Suppression of material facts; Abuse of process of Court; Clean hands doctrine; Equitable jurisdiction; Interim maintenance; Parallel proceedings; Expeditious disposal; Compensatory costs.

Case Arising From

Petition under **Article 227 of the Constitution of India** seeking a direction for expeditious disposal of proceedings under **Section 144 of the Bharatiya Nagarik Suraksha Sanhita, 2023**, pending before the Principal Judge, Family Court, Gautam Buddha Nagar, during the pendency of connected matrimonial proceedings between the parties, in which an order granting interim maintenance under **Section 24 of the Hindu Marriage Act, 1955** had already been passed and further proceedings under Section 144 BNSS had been stayed by a coordinate Bench of the High Court.

Appearance for Parties

For the Revisionist: Anurag Shukla, Arun Kumar Soni, Kumar Anubhav, Ms. Amrita Rai Mishra

For the Respondents: Gyan Chandra, Mahendra Bahadur Singh, Vijeta Singh

(Delivered by Hon'ble Vinod Diwakar, J.)

1. Heard Shri Arun Kumar Soni and Shri Kumar Anubhav, learned counsel for the petitioner; Ms. Amrita Rai Mishra, learned Amicus Curiae; Ms. Vijeta Singh, learned counsel for the respondent; learned A.G.A. for the State-respondent, and perused the record.

2. The present petition has been filed by the petitioner-husband with the prayer to expedite the proceedings of Maintenance Case No.523 of 2025, filed under Section 144 BNSS, 2023 (Order for maintenance of wives, children and parents) titled as '*Ranjeet Singh v. Neetu Singh*', pending before the learned Principal Judge, Family Court, Etawah.

3. The brief facts arising out from the application under section 144 of BNSS, 2023 are succinctly reproduced hereinafter. The marriage of petitioner-husband and the respondent-wife was solemnized on 18.5.2019 in accordance with Hindu rites and customs at J.P. Garden, Pachavali Road, Etawah. At the time of marriage both the parties were unemployed and were preparing for competitive examinations. Since both the parties were good in their academics, their families decided to solemnize their marriage with the belief that soon they would get government employment. Soon after the marriage, the respondent-wife secured government job in High Court of Allahabad on the post of Additional Private Secretary, but the petitioner-husband did not get a government job even though he has been equally good in studies, as claimed by the petitioner. The petitioner while preparing for the competitive examinations also pursued Law and obtained LL.B. degree, and thereafter got enrolled as an Advocate with the Bar Council of Uttar.

3.1 It is further contended in maintenance application that after securing a job as an Additional Private Secretary in High Court of Allahabad, the respondent-wife started quarreling and misbehaving with the petitioner and his mother and tried every possible means to separate the petitioner-husband from his family and launched false criminal prosecution against the petitioner and his family members by influencing the police. The petitioner has no independent source of income. He is an unemployed youth, and is preparing for competitive examinations. The respondent-wife also started taunting the petitioner for being unemployed and even humiliated the petitioner in front of her colleagues at her work place. The respondent-wife started filing false FIR based on concocted story against the petitioner with the intention to spoil his career.

3.2 The petitioner has no source of income for survival and is maintaining himself by way of taking loan from his friends and relatives. Presently the petitioner has no option except of filing an application under Section 144 BNSS, 2023 for seeking maintenance from the respondent-wife. The petitioner has also contended that he has not filed any petition before any Court for seeking maintenance prior to filing of the present petition.

4. In support of the contentions raised in the maintenance application filed under section 144 of BNSS, 2023, the learned counsel for the petitioner argued that the respondent-wife has spoiled the career of the petitioner by filing two FIRs against him based on incorrect facts; (i) Case Crime No.27 of 2023, under Sections 498A, 323, 504, 506 IPC and Section 3/4 of Dowry Prohibition Act,

at P.S. Mahila Thana, Commissionerate Prayagraj, (ii) Case Crime No.043 of 2024, under Sections 406, 506 IPC, at P.S. Cantt, Commissionerate Prayagraj. The respondent-wife has also filed a divorce petition under Section 13 of the Hindu Marriage Act, 1955 registered as Marriage Case No.2504 of 2023, tilted as '*Neetu Singh v. Ranjeet Singh*', pending trial before the learned Principal Judge, Family Court, Prayagraj. The petitioner has to travel for around 400 kilometers on each fixed date to attend the court proceedings.

4.1 He next submitted that the petitioner has also filed an application under Section 9 of the Hindu Marriage Act, 1955 registered as Case No.43 of 2024 before the learned Principal Judge, Family Court, Etawah and the respondent-wife has not participated in the said proceedings. In fact, the respondent-wife preferred a Transfer Application No.883 of 2024 before this Court for transfer of the Case No.43 of 2024 pending trial before learned Family Court, Etawah. The co-ordinate Bench of this Court stayed the aforesaid proceedings vide order dated 14.11.2024.

4.2 The petitioner has to travel thousands of kilometers in a month to attend the Court proceedings with regard to numerous cases filed by the respondent-wife, and due to the same reason, the petitioner has developed serious health issues like high blood pressure, hypertension, sugar, high cholesterol, urinary problems, heart and kidney diseases.

4.3 The respondent-wife has not been appearing before the learned Principal Judge, Family Court, in the proceedings under section 144 of BNSS, 2023 and since then no effective order has been passed.

4.4 Lastly, it is submitted by way of rejoinder affidavit dated 28.11.2025 through Advocate Shri Anurag Shukla that the present petition has been filed with a limited relief seeking expeditious disposal of the application under section 144 of BNSS, 2023 and as such no counter affidavit is required. The petitioner has also filed an application no.7 of 2025 dated 15.12.2025 through Advocate Shri Arun Kumar Soni along with an affidavit seeking liberty from this Court to withdraw the present petition, which was argued by Shri O.P. Singh, learned Senior Counsel for the petitioner.

4.5 The petitioner has also filed a supplementary affidavit dated 9.12.2025, wherein he submitted that due to his sudden illness he failed to appear before this Court on 8.12.2025 and non appearance of the petitioner was intimated to this Court by post on 7.12.2025 through the petitioner's counsel to the Registrar General. The whatsapp message was also sent and the same was acknowledged by the respondent's counsel.

5. *Per contra*, Ms. Vijeta Singh, learned counsel for the respondent-wife submitted that the petitioner comes from a political family and is a registered Advocate with Bar Council of Uttar Pradesh. The petitioner has started his legal practice before this Court under the juniorship of Shri Anurag Shukla (Advocate Roll No.0127/2016). The uncle of the petitioner was the Member of 15th Lok Sabha from Etawah constituency while his mother was a Gram Pradhan. The petitioner also was in construction business. The petitioner is fraud, compulsive liar and a greedy man. He does everything to get easy money. He is a healthy and sturdy man and is addicted to alcohol and bad habits; he wants free money to live a debauched life.

5.1 The petitioner has a history of making false and misleading statements before learned Family Court and this Hon'ble Court as well. He has attempted to secure relief by suppressing and concealing true and material facts. The petitioner has misled the Court to obtain favourable orders while continuing to take benefit from the respondent wife's income. Despite being an Advocate, the petitioner has portrayed himself as a helpless and pitiable person in order to gain undue sympathy and advantage in the proceedings.

5.2 On 10.11.2020, the petitioner fraudulently, by taking the respondent-wife in confidence on false promise to purchase a plot of land, took a personal loan of Rs.11,50,000/- from the respondent's salary account in SBI Bank having branch at High Court at Lucknow- a Bench of the High Court of Judicature at Allahabad. The petitioner again on 6.10.2022, took personal loan of Rs.13,56,000/- to be repaid in six years from the respondent's salary account, in Jhalwa Branch of SBI, at Prayagraj. The respondent-wife has been paying monthly EMI of Rs.26,020/- since then, and will pay till October, 2028. The said loan was taken under the guise of purchasing a plot whereas the petitioner fraudulently kept transferring the loan amount into his personal account through UPI and exhausted all the loan amount, total amounting to Rs.13,56,000/-, on alcoholic drinks and leading luxurious life, and other nefarious activities.

5.3 It is next submitted that all the banking details, password, ATM/Debit Card of the respondent-wife were with the petitioner-husband, who without her consent and knowledge made unauthorized withdrawals and spent the entire money on leading luxurious life and consuming alcoholic drinks.

5.4 As per respondent-wife, when she confronted the petitioner regarding the account statement, and luxurious spending, initially he avoided the respondent and thereafter started perpetuating cruelty. The loan was taken under the guise of taking a plot of land and when she insisted for a visit to the plot, the petitioner became aggressive and started causing mental and physical cruelty upon the respondent. The petitioner left the respondent-wife at her maternal home and stopped contacting her. After some days, the respondent-wife visited her rented home in Kalindipuram, Prayagraj and came to know that her husband (petitioner) had run away with all the household articles, jewelries and her Vitara Brezza car bearing registration no.UP-70-EW-3661, purchased by the respondent-wife from her own funds.

5.5 She next submitted that when the respondent-wife asked the petitioner to return her car, given in the marriage, he shamelessly demanded Rs.10 lakhs from the respondent. Aggrieved by the same, the respondent lodged an FIR against the petitioner on 07.03.2024 having Case Crime No.0043 of 2024, under Sections 406, 506 IPC, at P.S. Cantt, Prayagraj. Against the aforesaid FIR, the petitioner filed a Criminal Misc. Writ Petition No.4930 of 2024 with the prayer to quash the FIR and the petition was dismissed with the observation that the FIR prima facie disclose commission of cognizable offense and the prayer to quash the FIR cannot be entertained. Even after lodging an FIR, the petitioner refused to return the car, and aggrieved by the same, the respondent-wife was further forced to file Criminal Misc. Writ Petition No.14344 of 2024 with the prayer to direct to the police to recover the vehicle registered in her name and handover to her. The same was dismissed as 'not pressed' with the understanding that the matter would be settled out of the Court in mediation proceedings.

5.6 Aggrieved by the constant physical and mental abuse by the petitioner, the respondent- wife lodged an FIR on 01.04.2023 having Case Crime No.0027 of 2023, under Sections 498A, 323, 504, 506 IPC and 3/4 Dowry Prohibition Act, at P.S. Mahila Thana, Prayagraj. Thereafter, being aggrieved by the aforesaid FIR, the petitioner has filed a Criminal Misc. Writ Petition No.6041 of 2023 before this Court with the prayer to quash the FIR which was dismissed for want of prosecution vide order dated 06.08.2024, and thereafter two FIRs have also been lodged against the petitioner-husband.

5.7 Aggrieved by the ill and reprehensible behaviour of the petitioner, leading to the mental and physical torture, the respondent-wife, filed a divorce petition under Section 13 of Hindu Marriage Act, 1955 before the learned Principal Judge, Family Court, Allahabad, which is pending for final adjudication. The respondent-wife has gone through emotional dysregulation and cognitive disturbances and a situation came where it became impossible to live with the petitioner-husband, and therefore, the respondent-wife filed the aforesaid divorce petition.

5.8 In the divorce petition, on 20.5.2025, the petitioner filed an application under section 24 of Hindu Marriage Act, 1955 seeking maintenance based on concocted and false averments. The learned Family Court vide order dated 15.9.2025 allowed the application under section 24 of the HMA with the direction to the respondent-wife to pay Rs.5,000/- per month as an interim maintenance and Rs.10,000/- towards litigation expenses. Against the order dated 15.9.2025, the respondent-wife filed a review application which is pending for adjudication before the learned Principal Judge, Family Court, Prayagraj.

5.9 She next submitted that the respondent-wife challenged the proceedings filed under section 144 of BNSS, 2023 pending adjudication before the learned Family Court, Etawah, before this Court by way of a Transfer Application (Criminal) No.517 of 2025, this Court vide order dated 3.11.2025 stayed the further proceedings arising out of Maintenance Case No.523 of 2025 filed under section 144 of BNSS, 2023 pending before the learned Family Court, Etawah.

5.10 The conduct of the petitioner clearly reflects a deliberate attempt by initiating multiple frivolous proceedings solely to delay the lawful adjudication of the matter. The petitioner despite being capable of earning has been intentionally suppressing material facts and falsely portraying himself as an unemployed person only to seek undue advantage, and has engaged the respondent-wife in multiple litigation to frustrate her.

5.11 It's next emphatically submitted that the respondent was subjected to continuous physical and mental cruelty at the hands of the petitioner-husband, which, according to her, led to severe emotional distress and depression. It has further been alleged that the petitioner is habitual drunkard and had, without lawful justification, procured substantial personal loans from the salary account of the respondent-wife, and that the withdrawn amounts were misused for gambling, drinking and other improvident activities.

5.12 Ms. Vijeta Singh, learned counsel for the respondent-wife concluded her submission by stating that a compensatory cost be imposed on the petitioner-husband, and a more realistic and pro-active approach is needed for Courts to deal with such matters. The compensatory cost may act

deterrent to vexatious or luxury litigation born out of false pretenses, ego, greed, or resorted to as a buying-time tactics. In this context, she placed reliance upon the observation made by the Supreme Court in *Ashok Kumar Mittal v. Ram Kumar Gupta*, *Vinod Seth v. Devinder Bajaj*, and *Sanjeev Kumar Jain v. Raghuvir Saran Charitable Trust*.

6. In brief, few facts and the relevant contents of the orders passed during the hearing of the petition would help to reach to a logical conclusion. The present petition was filed before this Court on 25.09.2025 and was firstly listed on 04.11.2025. On the first date, none was present on behalf of the petitioner neither any adjournment slip was moved on his behalf. This Court directed both the parties to appear in person and accordingly the Registry was directed to communicate a copy of the order to Shri Kumar Anubhav, learned counsel for the petitioner on his registered mobile number to ensure the presence of the petitioner in person on the next date of hearing. In compliance thereof a copy of the order dated 4.11.2025 was communicated to Shri Kumar Anubhav on his registered mobile no.6387317341.

6.1 On 11.11.2025, on the joint request of learned counsel for the parties, the matter was adjourned to 21.11.2025, and when the matter was taken up on 21.11.2025, again none appeared on behalf of the petitioner while the respondent's counsel was present, and on his request the case was adjourned to 25.11.2025. On 25.11.2025, the respondent-wife filed counter affidavit while time was granted to the petitioner to file rejoinder affidavit and accordingly, rejoinder affidavit was filed on 28.11.2025.

6.2 On 03.12.2025 after hearing learned counsel for both the parties, this Court called for the certified copy of the record from learned District Judge, Etawah regarding all pending cases between the parties. The learned counsel for the respondent-wife was also directed to furnish details regarding pending cases between the parties before the Allahabad District Court and High Court along with orders and the learned counsel for the petitioner was granted time to prepare with the case.

6.3 On 8.12.2025, the matter was called twice. None appeared on behalf of petitioner while the learned counsel for the respondent was present. The matter was scheduled to be taken up at 10:30 a.m. and was taken up at 12:40 p.m. still neither petitioner nor his counsel appeared on his behalf. In compliance with the order dated 3.12.2025, the respondent's learned counsel furnished details of the litigation pending between the parties before the various Courts. Learned counsel for the respondent informed the Court that the learned counsel for the petitioner was communicated on two separate occasions and petitioner's learned counsel cited his unavailability and thereafter finally deliberately refused to accept the counter affidavit. In the interest of justice, this Court had granted last and final opportunity to the petitioner to advance submissions personally or through duly engaged counsel and the copy of order was duly communicated to the petitioner on his registered mobile number through Registrar (Compliance).

6.4 On 10.12.2025, Shri Arun Kumar Soni, learned counsel for the petitioner appeared and sought time to go through the counter affidavit filed on behalf of respondent-wife and to file rejoinder affidavit, accordingly one week's time was further accorded to the learned counsel for the petitioner. Ms. Vijeta Singh, learned counsel for the respondent was heard at length and she was

directed to furnish the copy of petition to Ms. Amrita Rai Mishra, learned Advocate, who may assist the Court on behalf of the petitioner, on the next date of hearing if the petitioner's counsel fails to appear before the Court. This alternative arrangement was made because the petitioner was frequently replacing the advocates, and the Court was facing difficulty to proceed with the matter.

6.5 On 17.12.2025, Shri O.P. Singh, learned Senior Counsel, assisted by Shri Arun Kumar Soni, learned counsel appeared for the petitioner and submitted that an application for withdrawal of the case is pending before the Registry waiting clearance, therefore, either the case may be dismissed as withdrawn or the Court may wait till the time the withdrawal application is cleared by the Registry. Upon the query of this Court regarding the possibility of amicable settlement, if any, may be arrived between the parties, the learned Senior Counsel submitted that the petitioner is ready and willing to seek mutual divorce. The Court further queried regarding the terms and conditions of the mutual divorce on which the learned Senior Counsel submitted that he had no instruction in this regard and requested a discharge from this case and left the Court. Thereafter, this Court accordingly, directed Ms. Amrita Rai Mishra, learned Advocate to assist the Court as an Amicus-Curiae.

7. On 17.12.2025, Ms. Amrita Rai Mishra, learned Amicus-Curiae filed written submission, and the same has been taken on record. She contended that the petitioner is already getting maintenance of Rs.5,000/- per month and also received one time amount of Rs.10,000/- for litigation expenses. The maintenance was awarded pursuant to an application dated 20.05.2025 filed by the petitioner under Section 24 of Hindu Marriage Act, 1955 in the divorce proceedings initiated by the respondent-wife, pending trial before the learned Family Court, Prayagraj. The petitioner has not disclosed the details of the application dated 20.05.2025, filed under section 24 of Hindu Marriage Act, 1955 and an order dated 15.09.2025 passed by the learned Family Judge, Prayagraj directing the respondent-wife to pay Rs.5,000/- per month to the petitioner and Rs.10,000/- towards legal expenses, in an application filed under Section 144 BNSS, 2023 before learned Family Judge at Etawah. Learned Amicus-Curiae has drawn the attention of the Court to paragraph no.16 of the Maintenance Application No.523 of 2025, filed under 144 BNSS, 2023 wherein the petitioner has stated that no case with regard to maintenance is pending in any Court and sworn affidavit to this effect.

7.1 The learned Amicus-Curiae further stated that even if the wife is employed, the husband cannot make himself wholly dependent on his wife's income through a device under Section 24 of Hindu Marriage Act. The petitioner has not filed an affidavit of assets and liabilities as mandated in *Rajnesh v. Neha* and another⁵. She next submitted that the petitioner has sworn false affidavit before this court and before the learned Judge, Family Court both at Prayagraj and Etawah. In support of the submissions, learned Amicus-Curiae has relied upon the judgment passed by the Hon'ble Supreme Court in the case of *Rajnesh v. Neha*, (*supra*); a judgment passed by Bombay High Court in *Smt. Kanchan w/o Kamendra Sawarkar v. Kamendra*; a judgment passed by Madhya Pradesh in *Yashpal Singh Thakur v. Smt. Anjana Rajput*; and a judgment passed by High Court of Kerala in the case of *Nivya v. Shivaprasad* to substantiate that the husband is disentitled to claim maintenance under section 144 of BNSS, 2023 and there was no reason for the learned Family Judge, Etawah to entertain such a frivolous application.

7.2 Learned Amicus-Curiae further stated that petitioner is in habit of misleading Courts by placing incorrect facts and swearing false affidavits. This become grave when the petitioner himself claims to be a practicing Advocate and has been appearing in this Court regularly under the guidance of Shri Anurag Shukla, learned counsel. Contesting matrimonial litigation is one thing, and filing false and frivolous petitions along with false affidavits is another matter of grave concern. The conduct of the petitioner shall be taken seriously. On one hand, the respondent-wife is paying monthly installment of Rs.26,020/- against the loan spent by the petitioner-husband for consuming alcohol and leading luxurious life. On the other hand, the petitioner has moved two separate maintenance applications; (i) under section 144 of BNSS, 2023 and (ii) section 24 of Hindu Marriage Act, 1955 accompanied with false affidavits. Further, the petitioner is getting a maintenance of Rs.5,000/- per month by misleading the learned Family Court and received one time amount of Rs.10,000/- towards litigation expenses under section 24 of Hindu Marriage Act, 1955.

7.3 She next submitted that it can very well be understood that petitioner is a crook and lair, and leading a debauched life. The Court may proceed further with perjury proceedings against the petitioner-husband.

8. This Court has examined and given a thoughtful consideration of the records; (i) summoned from the court of learned Principal Judge, Family Court, Etawah where an application under section 144 BNNS, 2023 was filed by the petitioner, (ii) the Matrimonial Case No.2504 of 2023, pending adjudication before the learned Principal Judge, Family Court, Prayagraj and proceedings initiated before learned Family Judge on the petitioner's application under section 24 of the HMA, 1955, (iii) the affidavits sworn by the petitioner, (iv) order dated 15.9.2025 passed in Application under section 24 of HMA, 1955 by learned Family Judge, Prayagraj, and the findings recorded by the learned Judge in the last portion of para-4 of internal page-6 of the order, (v) the account statements of respondent-wife with respect to the loan amount, (vi) contents of FIR No.0027 of 2023, under sections 498A, 323, 504 and 506 IPC read with section 3/4 Dowry Prohibition Act, at P.S. Mahila Thana, Prayagraj, (vii) FIR No.0043/2024, under sections 406, 506 IPC registered at P.S. Cantt. Prayagraj, (viii) orders dated 18.03.2024, 19.04.2023 & 06.08.2024 passed by Division Bench of this Court in Criminal Misc. Writ Petition No.6041 of 2023, titled as *Ranjeet Singh v. State of U.P. and 3 others*, (ix) order dated 24.10.2024 passed by co-ordinate Bench of this Court in Matters Under Article 227 No.12641 of 2024 titled as *Neetu Singh v. Ranjeet Singh*, (x) order dated 02.04.2024 passed in Criminal Misc. Writ Petition No.4930 of 2024, titled as *Ranjeet Singh v. State of U.P. and 3 others*, (xi) order dated 02.09.2024, 25.09.2024, 22.10.2024 and 03.03.2025 passed by the Division Bench in Criminal Misc. Writ Petition No.14344 of 2024 titled as *Smt. Neetu Singh v. State of U.P. and 3 others*, (xii) order dated 14.11.2024 passed in Transfer Application (Civil) No.883 of 2024, titled as *Smt. Neetu Singh v. Ranjeet Singh*, (xiii) order dated 03.11.2025 passed in Transfer Application (Criminal) No.517 of 2025 titled as *Neetu Singh v. State of U.P. and 2 others*, and (xiv) affidavit of assets and liabilities filed by the petitioner-husband before the learned Family Court, Prayagraj.

9. Admittedly, the petitioner's marriage was solemnized with respondent on 18.5.2019 in accordance with Hindu rites and ceremonies. The marriage could not succeed and both the parties entered into litigation. The record further suggests that the respondent-wife is a resident of

Prayagraj and also got job in this Court as Additional Private Secretary. The respondent-wife got transferred to Lucknow Bench of this Court for the convenience of the petitioner-husband and remained posted there for approximately 3 years. Subsequently, when the dispute arose, the respondent-wife got transferred to Prayagraj, and started living at a rented accommodation.

9.1 The record further suggests that the respondent-wife initially has taken a personal loan of Rs.11,50,000/- on her salary account from SBI Bank branch, situated at Lucknow Bench of this Court. The loan was subsequently paid by the respondent-wife. Thereafter, the respondent-wife at the persistent request of her husband to save the matrimonial life again taken a personal loan of Rs.13,56,000/- on 6.10.2022, and since then she is paying regular monthly installments of Rs.26,020/- from her salary account.

9.2 The salary account statement of respondent-wife further reflects that the petitioner-husband transferred the entire loan amount from respondent-wife's account no.38057767739 at SBI Branch High Court to his account no.3444187141 at Central Bank of India and second Account no.3499626709 through UPI. The complete details have not been provided by the petitioner.

9.3 The Income Tax Return (ITR) of the petitioner-husband for the Assessment Year 2023-2024 shows that total income of the petitioner was Rs.4,70,540/-, and the petitioner has given a justification that the petitioner was a civil contractor before joining the legal profession in the year 2025, and therefore, filed ITR for the year 2023-2024. The petitioner has two Bank Accounts at State Bank of India, bearing Account No.3499626709 and 3948116745, as disclosed in affidavit of assets and liabilities filed by the petitioner. The petitioner has neither annexed the last three years bank account statement nor furnished the further details like name of the bank, branch and account number etc. Thus, it can safely be concluded that the petitioner has concealed the material source of income from the learned Principal Judge, Family Court, Prayagraj.

9.4 It is also admitted that besides the criminal cases filed by the respondent-wife against the petitioner, the writ petitions, and transfer petitions were filed by both the parties. A divorce petition registered as Matrimonial Case No.2504 of 2023 under Section 13 of the Hindu Marriage Act, was filed by the respondent-wife on 22.12.2023, and since then the same is pending consideration before the learned Judge Family Court, Prayagraj. The petitioner-husband had moved an application dated 20.05.2025 under Section 24 of the Hindu Marriage Act for seeking maintenance, which was allowed vide order dated 15.9.2025 with the direction to the respondent-wife to pay Rs.5,000/- per month to the petitioner and Rs.10,000/- towards legal expenses.

9.5 The respondent-wife preferred a petition under Article 227 No.12641 of 2024 seeking a direction to the learned Principal Judge, Family Court to decide the Matrimonial Suit No.2504 of 2023 filed under Section 13 of the Hindu Marriage Act, 1955 within a fixed time frame. The co-ordinate Bench of this Court placing reliance upon Section 21-B of Hindu Marriage Act, 1955, disposed of the petition with the observation that the Act of 1955 itself provides for deciding the petition within fixed period of time, therefore, there is no need for issuing a separate direction to the learned Family Court. The Family Court was directed to proceed in accordance with Section 21-B of the Act, 1955. Section 21-B of the Hindu Marriage Act, 1955 has been reproduced:

“21B. Special provision relating to trial and disposal of petitions under the Act.-(1) The trial of a petition under this Act shall, so far as is practicable consistently with the interests of justice in respect of the trial, be continued from day to day until its conclusion unless the court finds the adjournment of the trial beyond the following day to be necessary for reasons to be recorded.

(2) Every petition under this Act shall be tried as expeditiously as possible and endeavour shall be made to conclude the trial within six months from the date of service of notice of the petition on the respondent.

(3) Every appeal under this Act shall be heard as expeditiously as possible, and endeavour shall be made to conclude the hearing within three months from the date of service of notice of appeal on the respondent. ”

9.6 It is also admitted position that the petitioner-husband again instituted a fresh maintenance application under section 144 of BNSS, 2023 on 29.5.2025 before the learned Family Court, Etawah. Aggrieved by the same, the respondent-wife approached this Court through a Transfer Application (Criminal) No.517 of 2025 seeking transfer of the case from learned Family Court Etawah to Prayagraj, where both the parties to the litigation are residing, though separately. This court vide order dated 3.11.2025 issued notice to the petitioner-husband and stayed further proceedings of the aforesaid Maintenance Case No.523 of 2025.

9.7 Immediately after filing the aforesaid Maintenance Case No.523 of 2025, the petitioner-husband moved the present petition for seeking direction to expedite the aforesaid maintenance proceeding pending before the learned Family Judge, Etawah.

9.8 After examining the bank account statement of the respondent-wife, it is also an admitted position that the respondent-wife had firstly taken a personal loan of Rs.11,50,000/- on 10.11.2020 and after its repayment again took personal loan of Rs.13,56,000/- on 6.10.2022, and since then she has been paying a monthly EMI of Rs.26,020/- from her salary account. It is also admitted position that the huge amount (almost entire amount) has been transferred by petitioner into his personal account without knowledge and consent of the respondent-wife. It is also admitted position that no land has been purchased as promised by the petitioner-husband from the loan amount. The examination of the bank account statement of the respondent-wife, it is revealed that on an average, a daily withdrawal of Rs.5,000-10,000/- has been made and on many occasions Rs.49,000/- have been withdrawn. As per respondent-wife's claim, the said withdrawal has been made by the petitioner-husband to lead a luxurious life.

10. This Court on numerous occasions has interacted with the petitioner-husband and the respondent-wife, tried its level best to convince the petitioner-husband to lead a healthy professional life rather than keeping eye on the wife's income. The wife's body language and demeanor reflected that she has been physically abused and now seems to be mentally drained whereas the petitioner-husband is a well built, shameless youth, who has no respect for the hard work, sincerity, and loyalty. The petitioner-husband seems to come from a comparatively well-off family whose uncle was earlier the Member of Parliament and the mother was Ex-Pradhan of the village.

11. The petitioner admitted to be in business of construction and therefore filed a ITR of Rs.4,70,540/- for the year 2023-2024. He filed an affidavit of assets and liabilities with incorrect details of source of income. The supplementary affidavit filed by the respondent-wife suggests that; (i) the petitioner husband is a owner of two storied well furnished house at Bharthana Chauraha, District Etawah, (ii) the petitioner's mother owns a vacant plot of land next to the petitioner's house, (iii) the petitioner's mother Smt. Satyawati is an Ex-Village Pradhan. She is an illiterate woman and the petitioner used to manage all her finances and works as her representative, (iv) the petitioner also has a joint family property at village Bijauli, Bakewar, District Etawah and an agricultural farm in his name, (v) the petitioner's elder brother- Surjeet Singh also owns an agricultural farm in Etawah, (vi) petitioner's younger brother- Ajeet Singh is a government employee and owns a well furnished two storied building at Bharthana Chauraha, District Etawah, and (vii) the petitioner is also a owner of a bike and a car.

12. Contrary to the petitioner's family background, the respondent-wife comes from a modest middle class family, her father is retired from police services and her mother served in the health department as a Group-D employee. The respondent-wife qualified exam for the post of Additional Private Secretary on 14.5.2019 and joined her services on 07.06.2019 and the marriage was solemnized on 18.5.2019. Notably, the marriage was solemnized within a week of declaration of the final result of the respondent-wife.

13. Further, the material placed on record reflects that the proceedings under Section 144 BNSS, 2023 were stayed by a Coordinate Bench of this Court in the transfer application preferred by the respondent-wife, and the petitioner-husband tried to conceal the same fact from this Court. In such circumstances, the prayer for expeditious disposal of a proceeding which presently stands stayed is rendered infructuous and legally unsustainable. This Court cannot be oblivious to the submission advanced on behalf of the respondent that Section 144 BNSS, 2023 primarily contemplates grant of maintenance to wives, children and parents. Further, in the present case the petitioner-husband, being an able-bodied person and a practicing Advocate, cannot seek to project himself as wholly dependent without full and candid disclosure of his financial status, particularly in the absence of an affidavit of assets and liabilities as mandated in *Rajnesh v. Neha (supra)* with full and correct disclosure.

14. The record further suggest that the petitioner has sworn the affidavit stating that the contents of paragraphs nos.1 to 12 of affidavit are true to his personal knowledge. The perusal of the affidavit reveals the petitioner has concealed the fact that he has been getting monthly maintenance of Rs.5000/- from the respondent-wife. It was also concealed that the proceedings of the maintenance Case No.523 of 2025 filed under section 144 of BNSS, 2023 before the learned Family Judge, Etawah have been stayed by the co-ordinate Bench of this Court.

15. Interestingly, the husband is disentitled to claim maintenance from his wife under 144 of BNSS, 2023. The Madras High Court in *B. Clement v. Mcthel Thanga Annam*, observed as under:

"To read and understand the scope of Section 125 of the Code of Criminal Procedure is not a tortuous task. The words are plain and the intention is explicit. The legislature would not have intended to clothe the husband with the right to claim maintenance from his wife under this

Chapter. Though under some personal laws, the husband may be entitled to claim maintenance from the wife, it is certainly not possible under Section 125 of the Code of Criminal Procedure. "

16. A reference can also be taken from a judgment passed the Hyderabad High Court in *Malleshwaramma v. G.S. Srinivasulu*¹⁰, the court observed as under:

"It appears, the Parliament, in its wisdom, intentionally not included the words husband or spouse after the words his wife and preceding the words unable to maintain in clause (a) of Sub-section (1) of Section 125 Cr.PC; therefore, a husband is not entitled to file application under Section 125 Cr.PC claiming maintenance from the wife. "

17. The High Court is not a window shopping forum, and the petitioner has approached this Court numerous times with incorrect and misleading facts and swearing false affidavits in support of the petitions and applications. The conduct of the petitioner in suppressing material facts and pursuing parallel remedies, while seeking equitable relief, disentitles him from any indulgence by this Court.

18. So far as the issue of compensatory cost is concerned, and the judgments placed reliance by Ms. Vijeta Singh, the common thread running through all the judgments is the reiteration of three salutary principles; (i) cost should ordinarily follow the event, (ii) realistic cost should be awarded keeping in view the ever increasing litigation expenses, and (iii) the cost should serve the purpose for curbing frivolous and vexatious litigation. The words of Justice Brown in *Cropper v. Smith* (1884) aptly resonates strongly with an issue for determination of the compensatory cost- *"I found in my experience that there is one panacea which heals every sore in litigation and that is costs"*.

19. The traditional framework of *'litigation costs'* in law has largely been confined to the reimbursement of quantifiable losses or litigation expenses. However, this narrow understanding becomes inadequate when applied to the evolving realities of marital relationships, particularly in cases involving economic abuse. Where one spouse systematically depletes the financial resources of the other under the guise of marital authority or expectation, the injury inflicted transcends mere monetary loss.

20. Economic abuse within marriage operates in insidious ways-through control over income, coercive appropriation of assets, and the gradual erosion of financial independence. The aggrieved spouse, often acting in good faith and with the expectation of marital stability, may tolerate such conduct until the harm becomes irreversible. In such circumstances, limiting compensatory costs to direct financial loss fails to capture the full extent of the injustice.

21. A young professional woman, who, after qualifying for the competitive exam, secures a government job, and whose financial and personal resources have been systematically depleted by her husband, may initially endure such deprivation in the expectation that the marital relationship will eventually stabilize and fulfill its intended purpose of mutual support. However, where this expectation is frustrated, and the relationship instead becomes a vehicle for sustained economic and emotional exploitation, the law cannot remain indifferent.

22. In such circumstances, the imposition of financial liability-whether through maintenance, compensation, or restitution- serves a legitimate legal purpose. It is not merely punitive, but corrective: aimed at restoring, as far as possible, the economic position and dignity of the aggrieved spouse. This aligns with established jurisprudential principles that recognize marriage not as a license for exploitation, but as a partnership grounded in equity, good faith, and mutual obligation.

23. Jurisprudentially, there is a compelling case for expanding the scope of compensatory costs to include elements of restitution and equitable rebalancing. The doctrine of unjust enrichment provides that no person should benefit at another's expense without lawful justification. Similarly, the principle of *restitutio-in-integrum* seeks to restore the injured party to the position they would have occupied but for the wrongdoing. When applied to marital exploitation, these principles demand a broader, more nuanced approach. The law, therefore, intervenes not only to redress individual harm but also to uphold the normative ideal that justice within intimate relationships is neither illusory nor optional.

24. For the aggrieved individual, the claim to compensation is not merely a financial demand-it reflects a deeper conception of justice as something inviolable and worthy of vindication. Where exploitation has been normalized under the guise of marital duty, legal remedies serve to reaffirm that such expectations are neither lawful nor morally defensible.

25. Such an approach aligns with the constitutional commitment to dignity and equality, ensuring that legal remedies remain responsive to lived realities. Ultimately, the law must evolve to recognize that justice within marriage is not merely symbolic but materially enforceable.

26. From a jurisprudential perspective, the gap between the litigation costs and compensatory costs highlights the tension between formal legal structures and substantive justice. Legal realism reminds us that law must respond to social realities rather than remain confined to abstract doctrines. In the context of marital exploitation, this requires a shift from a purely needs-based framework to one that incorporates accountability and restitution.

27. Courts must therefore move beyond viewing marriage as a private sphere insulated from rigorous legal scrutiny. Instead, they should recognize that power imbalances within marriage can give rise to legally cognizable harm. By expanding the scope of remedies to include compensatory and restitutionary elements, the law can better address the full spectrum of injury suffered by the aggrieved spouse. Such an evolution would not undermine the institution of marriage; rather, it would reinforce its foundational values by ensuring that it cannot be misused as a tool for exploitation.

28. The pursuit of justice within intimate relationships presents unique challenges for legal systems. Unlike commercial transactions, marital relationships are characterized by trust, emotional interdependence, and informal arrangements. However, these very features can create conditions for exploitation, particularly when one party exercises disproportionate control over financial resources.

29. Equity, as a jurisprudential concept, offers a pathway forward. Rooted in principles of fairness and conscience, equity allows courts to tailor remedies to the specific circumstances of each case. In situations of economic abuse, this may involve not only compensating for direct losses but also addressing the broader consequences of dependency and dis-empowerment. This aligns with the moral intuition that justice requires both compensation for the victim and disgorgement from the wrongdoer.

30. In conclusion, the evolution of legal principles in this area is not merely desirable but necessary. As societal understandings of marriage continue to change, so too must the law adapt to ensure that justice remains both relevant and effective. In the context of the lived realities of 2026, courts are required to adopt a proactive and progressive approach in adjudicating such matters, ensuring that legal remedies evolve in step with contemporary forms of harm and exploitation.

31. Based on above said deliberations, this Court cannot lose sight of the fact that the respondent-wife on the insistence of petitioner's husband, taken personal loan twice (Rs.11,50,000/- on 10.11.2020 & Rs.13,56,000/- on 06.10.2022) against her salary account. After foreclosure of the first loan, the second loan was immediately availed, and the respondent-wife has been paying regular installment of Rs.26,020/- per month, and will pay till October, 2028, besides a maintenance of Rs.5000/- per month to the husband, and Rs.10000/- was paid towards litigation cost. Needless to mention, the entire loan amount has been unauthorizedly misused by the petitioner-husband as reflected from the pattern of withdrawal of the amount and some transaction reflects a large amount has been transferred through UPI and other similar modes.

32. In view of the aforesaid facts and circumstances, this Court is of the considered opinion that the present petition under Article 227 of the Constitution of India lacks bona-fides and does not warrant exercise of supervisory jurisdiction vests with this Court. Accordingly, the equity demands the present petition is dismissed with the compensatory cost of Rs.15,00,000/- to be given to the respondent-wife within six weeks from today by way of demand draft. The demand draft be deposited with the Registrar General of this Court, who shall in turn, hand over the same to the respondent-wife.

32.1 The justification for imposing a heavy cost rooted in the logic emerged from undisputed facts and the jurisprudential deliberations discussed herein above.

32.2 Accordingly, the instant petition is dismissed.

33. The observation made herein above have been made to decide the present petition and shall have no bearing on the case(s) pending trial before the learned Principal Family Court, Prayagraj or any other Court. The learned Principal Judge, Family Court shall decide the case(s) on its merit in accordance with law.

Further Directions:

34. The petitioner has invoked the jurisdiction vests with this Court under Article 227 of the Constitution of India, which empowers this Court with supervisory jurisdiction over all courts

within their territorial jurisdiction. It would be in the interest of justice and right, if the pending litigation between the parties be concluded at the earliest, in a free and fair manner by upholding an opportunity of hearing to both the parties, and thus following directions are issued.

34.1 The learned Principal Judge, Family Court, Prayagraj is directed to expedite the proceedings arising out of Matrimonial Case No.2504 of 2023, under Section 13 of Hindu Marriage Act, titled Smt. Neetu Singh v. Ranjeet Singh and to decide the same in accordance with the view taken by the co-ordinate Bench of this Court in Matters Under Article 227 No.12641 of 2024, titled as *Neetu Singh v. Ranjeet Singh*, vide order dated 24.10.2024.

34.2 The proceedings be decided in view of the time period mentioned in Section 21-B of the Hindu Marriage Act, 1955. No unnecessary adjournment shall be granted to either of the parties, the application(s) of personal exemption shall be decided by recording a reason, and in case repetitive personal exemption applications are filed, the same shall be decided by keeping in mind the objective of Section 21-B of HMA.

34.3 In case, the learned Advocates for the petitioner creates commotion in the Court and obstruct the course of justice by raising voice inside the court or creating an atmosphere not conducive to the effective and unbiased trial of the case, the proceedings of the case shall be immediately commenced with in-camera proceedings. In such case, only one learned Advocate along with an assisting learned Advocate shall be allowed inside the court room from both the sides. Further, in case of non-availability of the Advocates, the learned Family Court shall immediately make an alternative arrangement by appointing an Advocate from the panel of legal Aid Counsel. On such appointment, such legal aid counsel shall step into the shoes of the learned counsel for the petitioner so that the learned court may proceed with the trial effectively.

34.4 Having regard to the nature of allegations and counter-allegations between the parties and in order to ensure a fair and uninfluenced adjudication, it is directed that the evidence of the parties, including cross-examination, shall be conducted, as far as practicable, in-camera in terms of Section 11 of the Family Courts Act, 1984, so as to preserve the dignity and privacy of the parties. No person other than the parties, their duly engaged counsel and authorized Court staff shall remain present during such proceedings.

34.5 As the respondent-wife has filed an application for recall and review of the order dated 15.9.2025, passed by learned Principal Judge, Family Court Prayagraj, under Section 24 of Hindu Marriage Act in Matrimonial Case No.2504 of 2023, titled as Smt. Neetu v. Ranjeet Singh, the same may be decided within four weeks after receipt of a copy of this order.

34.6 The learned Principal Judge, Family Court, is directed to ensure that sufficient and appropriate security arrangements are made available to the respondent-wife within the Court premises to maintain a secure and congenial environment for the fair and smooth conduct of the proceedings.

34.7 The learned Principal Judge, Family Court shall further submit a quarterly status report to the Registrar (Compliance) of this Court, apprising him of the progress of the case, with a view to

ensuring its expeditious and effective disposal strictly in accordance with law, who in turn shall place the same on record of this case.

35. The justification of giving such a direction is that this Court has noticed commotion inside and outside the Court by a group of learned Advocates during the hearing of this Case. The petitioner kept on replacing his Advocates during the hearing of this case and one learned Senior Counsel sought his discharge from the case during the hearing, and left the court in middle of the arguments. This Court is trained and possessed with wisdom to defuse such a situation as and when arises. This Court understands that the learned trial court judges work on a different footings and in a different atmosphere. The facts and circumstances of this case necessitated this Court to pass the aforesaid directions.

36. This Court is of the prima-facie view that the petitioner has approached the learned Family Courts with a concealment of material facts, false averments on oath, and therefore, this Court deems it appropriate to direct the learned Principal Judge, Family Court, Prayagraj to call for an inquiry, at an appropriate stage, to examine the question of initiation of appropriate proceedings in accordance with law against the petitioner-husband for filing false affidavit and concealing material particulars. The respondent-wife shall be at liberty to file the certified copy of the petitions, affidavits or any other material as she deemed it appropriate before the learned Family Judge, Prayagraj for its record and reference. It's made clear that the learned Judge, Family Court shall apply its independent mind before taking cognizance of the issue connected hereto.

Further Directions for Realization of the Costs

37. In case, the petitioner-husband failed to deposit the cost by way of demand draft with the Registrar General of this Court, on an application of the respondent-wife, the District Magistrate, Etawah shall recover the same as an arrears of land revenue within a period of three months on expiry of the time granted to the petitioner.

37.1 Immediately after receipt of a copy of this order, the District Magistrate, Etawah shall forward a copy of this order to the concerned Sub-Registrar in whose jurisdiction, the petitioner's properties are situated. The Sub-Registrar shall ensure that no third party interest shall be created by the petitioner-husband and no sale transaction shall be permitted from today till the recovery of cost.

37.2 The District Magistrate, Etawah shall also constitute a committee to inquire into the movable and immovable assets owned and possessed by the petitioner immediately after receipt of a copy of this order, for record and compliance of the terms of this order.

38. The Registrar (Compliance) is directed to transmit forthwith a copy of this order to (i) the learned Principal Judge, Family Courts, Prayagraj & Etawah, (ii) District Magistrate, Etawah, and (iii) S.S.P. Prayagraj for providing security, I f necessary, to enable the respondent wife to appear before the leaned Family Court.

(2026) 4 ILRA 2208
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 20.04.2026

THE HON'BLE KSHITIJ SHAILENDRA, J.

**Kiran Raikwar (Since Died) ...Petitioner
State of U.P. & Anr. Versus
...Respondents**

- (i) Whether the mother of a deceased divorced daughter is entitled to receive the amount awarded to the daughter under a decree of divorce by mutual consent, where the amount remained deposited before the Family Court and the daughter died before its actual disbursement?
- (ii) Whether the amount awarded to the wife under a decree passed under Section 13-B of the Hindu Marriage Act, 1955 forms part of her estate so as to devolve upon her legal heirs under Sections 14 and 15 of the Hindu Succession Act, 1956?
- (iii) Whether the application moved by the deceased wife for release of the amount could be continued by her legal representative under Section 146 of the Code of Civil Procedure, 1908?
- (iv) Whether the Family Court was justified in withholding release of the deposited amount merely because the former husband objected to its disbursement after dissolution of marriage?

Hindu Succession Act, 1956 — Sections 14 and 15 — Divorce by mutual consent — Amount payable to wife under decree — Death before disbursement — Devolution of property.

HELD: The amount awarded to a wife under a decree of divorce by mutual consent forms part of her property within the meaning of Section 14 of the Hindu Succession Act, 1956. Where the decree does not create a restricted estate within the meaning of Section 14(2), the amount becomes the absolute property of the wife notwithstanding that actual disbursement remained pending. Upon her death intestate before receipt of the amount, succession is governed by Section 15 of the Act.

Hindu Succession Act, 1956 — Section 15 — Deceased divorced female — Succession — Former husband not an heir.

HELD: Upon dissolution of marriage by a decree of divorce, the status of the spouses as husband and wife comes to an end and the former husband ceases to have any right of inheritance in the property of the divorced wife. Consequently, where the deceased divorced woman dies issueless and without any surviving heir falling within clauses (a) and (b) of Section 15(1), her property devolves upon her parents in terms of clause (c) thereof. Where the mother is the sole surviving parent, she alone is entitled to succeed to such property.

Code of Civil Procedure, 1908 — Sections 2(11) and 146 — Legal representative — Estate of deceased — Continuation of proceedings.

HELD: Money lying deposited before the Family Court pursuant to a decree in favour of the deceased constitutes part of her estate. The mother, being the legal representative and successor of the deceased, is entitled to represent such estate within the meaning of Section 2(11) CPC. By virtue of Section 146 CPC, the application instituted by the deceased during her lifetime for release of the amount could validly be pursued by her legal representative without instituting independent proceedings.

Hindu Marriage Act, 1955 — Section 13-B — Decree of divorce by mutual consent — Amount deposited before Family Court — Release after death of wife.

HELD: Where the wife had already acquired an enforceable right to receive the amount stipulated under the decree of divorce by mutual consent and had applied for its release during her lifetime, her subsequent death before actual payment does not extinguish such right. The amount continues to remain part of her estate and is liable to be released in favour of her legal representative in accordance with the law of succession.

Constitution of India — Article 227 — Family Court — Release of deposited amount — Supervisory jurisdiction.

HELD: Where the Family Court withheld release of the amount deposited under the decree solely on account of objections raised by the former husband, despite the petitioner being the sole legal representative of the deceased divorced wife, the High Court, in exercise of its supervisory jurisdiction under Article 227 of the Constitution, rightly directed release of the amount in favour of the petitioner.

Petition allowed. Principal Judge, Family Court, Banda directed to release ₹16,00,000/- in favour of the petitioner within two weeks from the date of filing of a certified copy of the order along with a fresh application. (E-14)

Case Law Cited

Yallawva v. Shantavva, (1997) 1 SCC 159 — relied on; V. Tulasamma and Others v. Sesha Reddy (Dead) by LRs., (1977) 3 SCC 99 — relied on; Melepurath Sankunni Ezhuthassan v. Thekittil Geopalankutty Nair, (1986) 1 SCC 118 — relied on.

List of Acts / Statutes

Constitution of India; Hindu Marriage Act, 1955; Hindu Succession Act, 1956; Code of Civil Procedure, 1908; Indian Succession Act, 1925.

List of Keywords

Divorce by mutual consent; Section 13-B, Hindu Marriage Act; Property of female Hindu; Devolution of property; Deceased divorced wife; Legal representative; Estate; Release of deposited amount; Family Court.

Case Arising From

Proceedings arising out of **O.S. No. 103 of 2023** under **Section 13-B of the Hindu Marriage Act, 1955**, culminating in the decree dated **23.04.2024** passed by the Principal Judge, Family Court, Banda dissolving the marriage by mutual consent and directing payment of ₹20,00,000/- to the wife, of which ₹16,00,000/- remained deposited before the Family Court

Appearance for Parties

For the Appellants: Sri Lal Chandra Mishra and Sri Shashikant Mishra.

For the Respondents: Learned Standing Counsel for the State; none appeared for respondent No. 2 despite service.

(Delivered by Hon'ble Kshitij Shailendra, J.)

Issue Involved:- Whether mother of a deceased divorced daughter is entitled to receive amount awarded to wife under the decree of divorce.

1. Heard learned counsel for the petitioner, learned standing counsel for the State and perused the record.

2. By order dated 03.03.2025 notice was issued to respondent no.2. Office report dated 29.11.2025 indicates that notice has been delivered upon the addressee on 07.04.2025. Service of notice upon the respondent no.2 is held to be sufficient. No one has put in appearance on behalf of respondent no.2.

3. This petition has been filed with the prayer to issue a direction to the Principal Judge, Family Court Banda to release a sum of Rs. 16,00,000/- (sixteen lakh) in favour of the petitioner who is mother of late Kiran Raikwar, which amount was deposited by the respondent no.2 in O.S. No. 103 of 2023 under Section 13-B of Hindu Marriage Act.

4. It is contended by the learned counsel for the petitioner that the petition under Section 13-B was filed jointly by the parties to the marriage seeking dissolution of marriage by mutual consent. The said petition was decreed by order dated 23.4.2024 and one of the terms of the settlement between the parties was payment of Rs. 20 lakh to the wife, i.e. the petitioner's daughter.

5. Submission is that out of the aforesaid sum of Rs. 20 lakh, a sum of Rs. 4 lakh was paid to the wife, however, remaining sum of Rs. 16 lakh was deposited before the Family Court. It is contended that the wife moved an application dated 24.5.2024 seeking release of amount to her, pursuant to which a cheque of Rs. 16 lakh was prepared by the Family Court on 06.07.2024, however, before the cheque could be issued in her favour, she died on 16.7.2024.

6. Thereafter, the petitioner, who is mother of the deceased wife, moved an application in September, 2024 along with affidavit and copy of the death certificate as well as certificate issued by District Magistrate that the petitioner is the only living member in the family and request was made to release the amount in her favour.

7. It is stated that the amount is lying deposited before the concerned Family Court and only on account of an objection filed by respondent no.2, the same has not been released. The court has perused the objections preferred by respondent no.2 in which it is stated that the amount was meant for being paid to wife and for her maintenance and, therefore, mother has no right to receive the same.

8. A significant question has arisen for adjudication by this Court, that is to say that in a case divorce is granted based upon mutual consent subject to payment of certain amount to the wife and if, after the decree is passed but before the amount is received by the divorced wife, she dies, whether legal representative(s) of the deceased divorced wife would be entitled to receive the amount.

LAW OF SUCCESSION IN MONEY MATTERS

9. The Court may observe that movable and immovable properties owned by either Hindu male or female devolve by succession as per the provisions of the Hindu Succession Act, 1956 or Indian Succession Act, 1925. Since, in the present case, the amount was awarded in favour of wife and a cheque was also prepared by the Family Court on 06.07.2024 but before it could be paid to the divorced wife, i.e. daughter of the petitioner, she died on 16.07.2024, provisions of Section 14 of the Hindu Succession Act, 1956 need reference. The same read as under:-

‘14. Property of a female Hindu to be her absolute property.’

(1) **Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner.**

Explanation.?In this sub-section, “**property**” includes both movable and immovable property acquired by a female Hindu by inheritance or devise, or at a partition, **or in lieu of maintenance or arrears of maintenance**, or by gift from any person, whether a relative or not, before, at or after her marriage, or by her own skill or exertion, or by purchase or by prescription, or in any other manner whatsoever, and also any such property held by her as stridhana immediately before the commencement of this Act.

(2) Nothing contained in sub-section (1) shall apply to any property acquired by way of gift or under a will or any other instrument or under a decree or order of a civil court or under an award where the terms of the gift, will or other instrument or the decree, order or award prescribe a restricted estate in such property.

10. A bare perusal of Section 14 indicates that **any property possessed by a female Hindu shall be held by her as full owner** thereof and not as of limited owner. Explanation to sub-section (1) of Section 14 includes in the definition of “property”, movable and immovable property acquired by a female Hindu by inheritance or devise, or at a partition, **or in lieu of maintenance or arrears of maintenance or in any other manner whatsoever** However, there is a restriction provided under sub-section (2) of Section 14 to the effect that the provisions of sub-section (1) shall not apply to any property where terms of any instrument or **decree or order of a civil court or award prescribe a restricted estate in such a property.**

11. In the present case, the order passed by the Family Court does not prescribe a restricted estate in the property, i.e. the sum directed to be received by the wife and even if the order passed by the Family Court is read in a sense that the amount to be received by the wife after divorce was meant for her maintenance, although no such specification was made in the order rather qua the amount it was indicated that lump sum payment of money is a condition for grant of decree which includes **Stridhana etc.**, provisions of Section 15 of the Hindu Succession Act may come in picture which reads as under:-

15. General rules of succession in the case of female Hindus.-

(1) The property of a female Hindu dying intestate shall devolve according to the rules set out in section 16,?

(a) firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband;

(b) secondly, upon the heirs of the husband;

(c) thirdly, upon the mother and father;

(d) fourthly, upon the heirs of the father; and

(e) lastly, upon the heirs of the mother.

(2) Notwithstanding anything contained in sub-section (1),?

(a) any property inherited by a female Hindu from her father or mother shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred in sub-section (1) in the order specified therein, but upon the heirs of the father; and

(b) any property inherited by a female Hindu from her husband or from her father-in-law shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the husband.?

12. As per Section 15 of the Act, the property of a female Hindu dying intestate shall devolve according to the Rules set out in Section 16, (a) firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband; (b) secondly, upon the heirs of the husband; (c) **thirdly, upon the mother and father;**

13. In the present case, the persons falling in the category of clause (a) and (b) of sub-section (1) are not existent, inasmuch as it has come in the order of the Family Court that no issue was born out of wedlock of the parties who were residing separately for the last ten years. Further, since status of the plaintiff-respondent (husband) ceased as such after the decree of divorce was granted, there is no question of devolution of property (money) of the deceased upon any heir of the husband.

14. In the aforesaid circumstances, clause (c) of sub-section (1) of Section 15 would come into picture and property of the deceased divorced wife would devolve upon her mother and father. The petitioner being a widowed mother, as indicated in the certificate issued by the District Magistrate, no heir was left by the deceased.

LEGAL REPRESENTATIVE

15. The matter can be seen from another angle, i.e. in the light of Section 2(11) of the Code of Civil Procedure, which defines **'legal representatives'** as under:-

“2(11) ?legal representative? means a person who in law represents the estate of a deceased person, and includes any person **who intermeddles with the estate of the deceased** and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued;”

16. Word **'estate'** has been defined in 7th edition of Blacks? Law Dictionary as the amount, degree, nature and quality of a person?s interest in land other property. 2. All that a person or entity owns, including both real and personal property. 3. The property that one leaves after death; the collective assets and liabilities of a dead person. 4. A tract of land esp. one affected by an easement.”

17. In the opinion of the Court, the money lying deposited before the Family Court and not paid either to the divorced wife who is no more or to the petitioner, is covered by the word **“estate”** and the petitioner being legal representative/heir of her deceased daughter, would be entitled to receive the same. The principle of **“actionable claim”** can also be utilized in the present case for the purpose.

CONTINUANCE OF CLAIM BY A PERSON CLAIMING UNDER THE ORIGINAL

18. There is a **third dimension** of this case, which lies under Section 146 CPC, which reads as under:-

"146. Proceedings by or against representatives.-

Save as otherwise provided by this Code or by any law for the time being in force, where any proceeding may be taken or application made by or against any person then the proceeding may be taken or the application may be made **by or against any person claiming under him.**”

19. In view of Section 146, it is clear that where any proceeding may be taken or application made by or against any person, such proceeding may be taken or the application may be made **by or against any person claiming under him**. Therefore, if the application moved by the petitioner?s daughter on 24.05.2024 when she was alive, could not materialize in terms of release of payment of Rs. 16 lakh though the cheque was prepared by the Family Court on 06.07.2024, the application could be pursued by the petitioner being her mother in terms of Section 146 CPC and, for that purpose, no other proceedings were required to be instituted.

FEW PRECEDENTS TOUCHING THE ISSUE

20. The Hon'ble Supreme Court in **Yallawva Vs. Shantavva: (1997) 1 SCC 159** has discussed devolution of interest in the property of a female Hindu as per the Section 15 of the Act, 1956 and has held that in a case where divorce decree is granted, spouses do not remain husband

and wife and, therefore, the mutual rights of inheritance in each other's property on the death of either of them get extinguished. The Hon'ble Supreme Court has also discussed the effect of Section 305 of Indian Succession Act, 1925 observing that an executor or administrator has the same power to sue in respect of all causes of action that survive the deceased and may exercise the same power for recovery of debts as the deceased had when living.

21. In **V. Tulasamma and others Vs. Sesha Reddy (Dead) by Lrs.: (1977) 3 SCC 99**, the Hon'ble Supreme Court, in light of the provisions of Section 14 of the Hindu Succession Act, has held that sub-section (1) of Section 14 is large in its amplitude and covers every kind of acquisition of property by a female Hindu including acquisition in lieu of maintenance and she would become full owner of the same.

22. In **Melepurath Sankunni Ezhuthassan Vs. Thekittil Geopalankutty Nair: (1986) 1 SCC 118**, the Hon'ble Supreme Court, after dealing with the provisions of Section 306 of the Indian Succession Act, 1925, has held that rights of action of or against deceased survive to and against executor or administrator and the position must necessarily prevail in the case of legal representative and what applies to the executors and administrators, will also apply to a legal representative.

CONCLUSION

23. In view of the above discussion, this Court has no hesitation in holding that the petitioner is entitled to receive the amount of Rs. 16 lakh lying in the Family Court as a legal representative of her deceased divorced wife and as the only living successor left by her.

24. The petition is **allowed** and the Principal Judge, Family Court, Banda is directed to release the amount of Rs. 16 lakh in favour of the petitioner in furtherance of the decree drawn in Suit No. 103 of 2023, within a period of **two weeks** from the date a certified copy of this order alongwith a fresh application is filed before him.

(2026) 4 ILRA 2214
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 16.04.2026

BEFORE

THE HON'BLE DR. YOGENDRA KUMAR SRIVASTAVA, J.

Matters Under Article 227 No. 3816 of 2026

Hemant Kumar Garg

...Petitioner

Versus

Pulkit Garg

...Respondent

Issues for Consideration

- (i) Whether the proviso to Section 35(1) of the U.P. Regulation of Urban Premises Tenancy Act, 2021 requiring deposit of fifty per cent of the entire amount payable under the impugned order is confined to the amount due on the date of filing of the appeal or extends to recurring liabilities accruing during the pendency of the appeal?
- (ii) Whether the Rent Tribunal is competent to direct continued deposit of fifty per cent of the revised monthly rent during pendency of the appeal as a condition for grant of interim protection?
- (iii) Whether such a direction amounts to execution of the impugned order or constitutes an additional condition not contemplated under Section 35(1) of the Act?
- (iv) Whether interference under Article 227 of the Constitution is warranted against such an interlocutory order passed by the Rent Tribunal?

Headnotes

U.P. Regulation of Urban Premises Tenancy Act, 2021 — Section 35(1) proviso — Appeal — Pre-deposit — Condition precedent — Nature of requirement.

HELD: The proviso to Section 35(1) of the U.P. Regulation of Urban Premises Tenancy Act, 2021 engrafts a mandatory condition precedent for maintainability of an appeal. The right of appeal being a statutory right, the legislature is competent to regulate its exercise by prescribing a condition of pre-deposit. The expression "no appeal shall lie unless" employed in the proviso leaves no discretion with the appellate authority to dispense with the statutory requirement.

U.P. Regulation of Urban Premises Tenancy Act, 2021 — Section 35(1) proviso — "Entire amount payable under the impugned order" — Meaning — Recurring liability of revised rent.

HELD: The expression "entire amount payable under the impugned order" is of wide amplitude and cannot be confined to the amount quantified as on the date of institution of the appeal. Where the impugned order revises rent, thereby creating a recurring monthly liability, the statutory requirement of deposit necessarily extends to liabilities accruing during the pendency of the appeal. Restricting the deposit to the amount due on the date of filing would render the expression "entire amount payable" otiose and defeat the legislative intent underlying the proviso.

U.P. Regulation of Urban Premises Tenancy Act, 2021 — Section 35(1) proviso — Continuing pre-deposit — Direction for periodic deposit — Validity.

HELD: In cases where the impugned order gives rise to a continuing or recurring liability, the obligation of pre-deposit is not exhausted by the initial deposit made at the time of filing of the appeal. The Rent Tribunal is competent to issue directions requiring periodic deposit of fifty per cent of the recurring liability during pendency of the appeal so as to effectuate the statutory mandate embodied in the proviso. Such a direction is incidental to enforcement of the statutory condition and does not amount to imposition of any additional requirement.

U.P. Regulation of Urban Premises Tenancy Act, 2021 — Section 35(1) proviso — Periodic deposit — Interim protection — Execution of impugned order.

HELD: A direction requiring deposit of fifty per cent of the revised rent during pendency of the appeal neither amounts to execution of the impugned order nor compels compliance with the entire liability determined thereunder. Such direction merely enforces the statutory requirement of partial deposit and constitutes a balanced arrangement safeguarding the interests of both parties while interim protection continues to operate.

Constitution of India — Article 227 — Supervisory jurisdiction — Interference with interlocutory order of Rent Tribunal.

HELD: Supervisory jurisdiction under Article 227 is confined to cases involving patent illegality, perversity or jurisdictional error. Where the Rent Tribunal adopts a purposive interpretation of the proviso to Section 35(1) of the U.P. Regulation of Urban Premises Tenancy Act, 2021 and directs continued deposit of fifty per cent of the recurring revised rent during pendency of the appeal, no ground for interference under Article 227 is made out.

Petition dismissed. (E-14)

Case Law Cited

Anant Mills Co. Ltd. v. State of Gujarat, (1975) 2 SCC 175 — relied on; *Vijay Prakash D. Mehta v. Collector of Customs (Preventive), Bombay*, (1988) 4 SCC 402 — relied on; *Gujarat Agro Industries Co. Ltd. v. Municipal Corporation of the City of Ahmedabad*, (1999) 4 SCC 468 — relied on; *Har Devi Asnani v. State of Rajasthan and Others*, (2011) 14 SCC 160 — relied on; *M/s Tecnimont Pvt. Ltd. v. State of Punjab and Others*, (2021) 12 SCC 477 — relied on; *Prathama U.P. Gramin Bank v. Union of India and Others*, 2019 SCC OnLine All 3833 — relied on; *S. Sundaram Pillai v. V.R. Pattabiraman*, (1985) 1 SCC 591 — relied on; *Shah Bhojraj Kuverji Oil Mills and Ginning Factory v. Subhash Chandra Yograj Sinha*, 1961 SCC OnLine SC 60 — relied on.

List of Acts / Statutes

Constitution of India; U.P. Regulation of Urban Premises Tenancy Act, 2021.

List of Keywords

Rent Appeal; Pre-deposit; Condition precedent; Revised rent; Recurring liability; Continuing deposit; Interim protection; Rent Tribunal; Maintainability of appeal.

Case Arising From

Order dated **02.01.2026** passed by the Rent Tribunal/Additional District Judge, Court No. 26, Agra in **Rent Appeal No. 07 of 2026**, directing the appellant-tenant to continue depositing fifty per cent of the revised monthly rent during pendency of the appeal against the order dated 24.11.2025 passed by the Rent Authority, Agra in **Case No. 1196 of 2024** under Section 10(1) of the U.P. Regulation of Urban Premises Tenancy Act, 2021.

Appearance for Parties

For the Appellants: Sri Rishabh Agarwal and Sri Shashank Singh.

For the Respondents: None appeared.

(Delivered by Hon'ble Dr. Yogendra Kumar Srivastava, J.)

Heard Sri Rishabh Agarwal, learned counsel for the petitioner.

2. The present petition has been filed seeking to assail the order dated 02.01.2026 passed by the Rent Tribunal/Additional District Judge, Court No.26, Agra in Rent Appeal No. 07 of 2026.

3. The brief facts giving rise to the present petition are that the respondent filed an application under Section 10 of the U.P. Regulation of Urban Premises Tenancy Act, 2021 seeking determination and enhancement of rent, asserting that the tenanted premises had been purchased by him and that the petitioner, being a tenant under the previous owner, had defaulted in payment of rent. The petitioner, upon appearance, disputed the relationship of landlord and tenant as well as the respondent's title and raised objections regarding maintainability.

4. The Rent Authority, Agra, by order dated 24.11.2025, passed in Case No. 1196 of 2024 under Section 10(1) of the U.P. Act No. 16 of 2021, revised the rent payable by the tenant. Aggrieved thereby, the petitioner preferred Rent Appeal No. 07 of 2026. While entertaining the appeal, the Rent Tribunal, by the impugned order dated 02.01.2026, took note of the Munsarim's report indicating that 50 percent of the amount due under the impugned order had been deposited. The Tribunal thereafter directed the appellant-tenant to continue depositing 50 percent of the revised rent, i.e., Rs. 22,500/- per month (out of Rs. 45,000/-), by the 7th of each succeeding month, and granted interim protection.

5. Assailing the said direction, learned counsel for the petitioner has placed reliance upon the proviso to Section 35(1) of the U.P. Act No. 16 of 2021 to contend that the requirement of deposit stands satisfied once 50 percent of the amount due as on the date of filing of the appeal is deposited, and that no further direction for continuous deposit during pendency of the appeal could have been imposed. It is urged that the direction in effect enforces the impugned order and renders the appeal illusory.

6. The core question that arises for consideration is whether the requirement of pre-deposit under the proviso to Section 35(1) of the U.P. Act No. 16 of 2021 is confined to a one-time deposit calculated up to the date of filing of the appeal, or whether it extends to a continuing obligation covering recurring liabilities accruing during the pendency of the appeal.

7. The submission necessitates consideration of the scope and import of Section 35 of the U.P. Act No. 16 of 2021. Section 35(1) provides for a statutory appeal against an order passed by the Rent Authority. It reads as follows:

“35. Appeal.”

(1) Any person aggrieved by an order passed by the Rent Authority may prefer an appeal along with a certified copy of such order to the Rent Tribunal within the local limits of which the premises is situated, within a period of thirty days from the date of that order:

Provided that no appeal shall lie unless the appellant has deposited fifty per cent of the entire payable amount under the impugned order of the rent authority."

8. The proviso, thus, engrafts a clear and mandatory condition precedent for the maintainability of an appeal. The legislative intent is explicit—an appellant seeking to avail the statutory remedy must first comply with the requirement of depositing 50 percent of the entire amount payable under the impugned order.

9. The language employed in the proviso is clear and peremptory, making the requirement of pre-deposit a condition precedent to the very maintainability of an appeal. The right of appeal being a creature of statute, it is well within the legislative competence to condition its exercise, and such conditions are required to be strictly complied with.

10. It is, by now, well settled that the right of appeal is not an inherent right but a statutory creation, and it is always open to the legislature, while conferring such a right, to impose conditions for its exercise. The requirement of pre-deposit, as a condition precedent for the maintainability of an appeal, has consistently been upheld as a valid legislative device to regulate the exercise of the appellate remedy. In **Anant Mills Co. Ltd. v. State of Gujarat**¹, it was authoritatively held that such a condition does not take away the right of appeal but merely regulates its exercise so as to balance the right of the appellant with the interest of the successful party. This principle has been reiterated in **Vijay Prakash D. Mehta v. Collector of Customs**², wherein it was observed that the right of appeal is neither an absolute right nor an essential ingredient of natural justice, and being statutory in nature, it can be circumscribed by conditions in its grant. The consistent judicial view, as reflected in **Gujarat Agro Industries Co. Ltd. v. Municipal Corporation of Ahmedabad**³ and **Har Devi Asnani v. State of Rajasthan**⁴, is that such conditions are mandatory, and non-compliance renders the appeal not maintainable. In **M/s Tecnimont Pvt. Ltd. v. State of Punjab**⁵, the Court further emphasized that pre-deposit requirements, particularly in fiscal statutes, are designed to safeguard the interests of the successful party and cannot be diluted through interpretative processes.

11. Thus, the requirement of pre-deposit operates as a threshold bar to the very maintainability of an appeal and ensures that the appellate remedy is not invoked merely to obstruct or delay the enforcement of lawful orders.

12. A similar exposition of the law is to be found in **Prathama U.P. Gramin Bank v. Union of India**⁶, wherein, upon a comprehensive survey of precedents, it was held that the right to appeal being a creature of statute can be qualified by imposing a condition of pre-deposit, and where such requirement is couched in mandatory terms, the appellate authority is left with no discretion to entertain an appeal in the absence of compliance. It was further held that such a condition does not render the remedy illusory but merely regulates its exercise and ensures that the statutory right is not abused to the prejudice of the party in whose favour the order has been passed.

13. The nature and effect of a proviso in a statutory provision is also well settled. Ordinarily, a proviso is engrafted to qualify, carve out an exception to, or impose a condition upon the main enactment, which but for the proviso would have operated in a wider field. As explained in authoritative precedents including **S. Sundaram Pillai v. V.R. Pattabiraman**⁷ and **Shah Bhojraj Kuverji Oil Mills v. Subbash Chandra Yograj Sinha**⁸, a proviso may, depending upon its language, either qualify the main provision or, in certain cases, assume the character of a substantive enactment imposing an independent condition. Where a proviso is couched in mandatory terms, particularly employing expressions such as "no appeal shall lie unless", it operates as a substantive restriction on the right conferred under the main provision and must be strictly complied with. The proviso to Section 35(1), therefore, is not merely procedural in nature but constitutes a legislative mandate conditioning the very maintainability of the appeal, and must be construed in a manner that furthers its object rather than dilutes its effect.

14. The expression "entire amount payable under the impugned order" is of wide amplitude and admits of no artificial truncation. It cannot be read in a constricted manner so as to confine it merely to the amount quantified up to the date of filing of the appeal. The phrase is to be

interpreted contextually and must take its colour from the nature of the liability created by the impugned order.

15. In the present case, the order impugned before the appellate authority is one revising rent, which gives rise to a recurring and continuous liability accruing month after month. Therefore, the "amount payable under the impugned order" would not be a static figure but a dynamic and ongoing obligation.

16. The crucial expression occurring in the proviso is "entire amount payable under the impugned order". The word "entire" cannot be rendered otiose or confined by an artificial limitation. The expression must be construed in a manner that accords with the nature of the liability created by the impugned order. Where the order gives rise to a one-time liability, the computation may not present difficulty; however, where the liability is inherently recurring, as in the case of revised rent payable month to month, the "amount payable" cannot be frozen at a particular point of time, namely the date of filing of the appeal. It represents a continuing obligation which accrues periodically.

17. The interpretation suggested by the petitioner, if accepted, would result in freezing the statutory obligation at the stage of filing of the appeal, thereby enabling the appellant to avoid compliance with the recurring liability during pendency of the appeal. It would result in the landlord being deprived of even 50 percent of the revised rent during pendency of appeal, despite a lawful adjudication in his favour. Such an interpretation would defeat the very purpose of the proviso and render the expression "entire amount payable" redundant in the context of continuing liabilities.

18. The legislative intent underlying the provision is not only to ensure that the appeal is pursued with seriousness but also to safeguard the interest of the party in whose favour the order has been passed, pending adjudication. The rationale underlying such provisions has been emphasized by the Supreme Court in **M/s Tecnimont Pvt. Ltd.**, wherein it has been observed that conditions of pre-deposit are intended to strike a balance between the right of appeal and the need to protect the successful party.

19. At this juncture, it would be apposite to note that provisions requiring pre-deposit as a condition for maintaining an appeal are not unknown to statutory jurisprudence. Similar stipulations are found in fiscal statutes as well as rent control legislations. The consistent judicial approach in interpreting such provisions has been that they are mandatory in nature and are intended to balance the right of appeal with the need to secure the decretal or adjudicated amount.

20. In the context of fiscal statutes, courts have repeatedly held that pre-deposit requirements are conditions attached to the statutory right of appeal and must be strictly complied with. Such provisions are intended to discourage frivolous challenges and to protect the interest of the successful party pending adjudication. Likewise, under rent control legislations, provisions requiring deposit of rent during pendency of proceedings have been interpreted to impose a continuing obligation upon the tenant, particularly where the liability is recurring. The rationale underlying such interpretation is that a tenant, while availing the benefit of stay or pendency of

proceedings, cannot be permitted to withhold payment of rent, thereby causing undue prejudice to the landlord.

21. Viewed in this backdrop, the proviso to Section 35(1) must be construed in a manner that advances the legislative intent and preserves the balance between the rights of the parties. The condition of pre-deposit, though coming into operation at the stage of filing of the appeal, necessarily extends to ensuring continued compliance in respect of liabilities that accrue during pendency of the appeal. The statutory requirement of pre-deposit is not exhausted upon a one-time deposit made at the time of filing but subsists so long as the liability under the impugned order continues to operate. Any other interpretation would not only defeat the statutory mandate but would also lead to manifest inequity.

22. Rent law jurisprudence consistently recognizes that rent is a recurring obligation, and a tenant cannot retain possession while withholding payment. The principle that a litigant cannot enjoy the benefit of pendency of proceedings while avoiding corresponding obligations is well entrenched.

23. From the foregoing discussion, the following principles emerge:

23.1 Pre-deposit under the proviso to Section 35(1) of the U.P. Act No. 16 of 2021 is mandatory in nature and operates as a condition precedent to the very maintainability of an appeal; the right of appeal being statutory, its exercise remains subject to strict compliance with such condition.

23.2 The expression "entire amount payable under the impugned order" is of wide amplitude and must receive a purposive construction; it is not to be confined to the amount quantified as on the date of institution of the appeal, but extends to the whole liability arising from the impugned order in its true character.

23.3 Where the impugned order gives rise to a recurring or continuing liability, including but not limited to payment of revised rent on a monthly or periodic basis, the statutory requirement of deposit necessarily takes within its fold such continuing accruals, and cannot be restricted to a one-time computation.

23.4 The obligation of pre-deposit under the proviso, in cases involving recurring or continuing liability, is not exhausted by the initial deposit made at the time of filing of the appeal; it remains a subsisting and dynamic requirement that endures so long as the liability under the impugned order continues to accrue during the pendency of the appeal.

23.5 Any interpretation, in the context of such recurring liability, which confines the deposit to the amount due as on the date of filing would render the expression "entire amount payable" otiose and defeat the legislative intent of securing the beneficiary of the impugned order against non-payment during the pendency of appellate proceedings.

23.6 The object underlying the proviso is twofold, namely, to ensure that the remedy of appeal is invoked with due seriousness and to safeguard the interest of the party in whose favour the order has been passed; the provision, therefore, embodies a legislative balance between the right of appeal and the obligation to secure compliance.

23.7 The appellate authority, while entertaining an appeal, is empowered to issue appropriate directions to ensure continued compliance with the statutory requirement of deposit, including directions for periodic deposit in cases of recurring liability, so as to effectuate the mandate of the proviso.

23.8 A direction requiring deposit of fifty percent of the recurring liability during pendency of the appeal is neither extraneous to the statutory scheme nor an imposition of an additional condition, but is in furtherance of and incidental to the enforcement of the statutory requirement itself.

23.9 Such a direction does not amount to execution of the impugned order, inasmuch as it does not compel full compliance therewith, but only mandates partial deposit in terms of the statute, and operates as a regulatory measure governing the continuation of the appeal and the grant of interim protection.

23.10 The grant of interim protection in appeal is inherently conditional and can be validly made subject to compliance with the requirement of continued deposit, the same constituting a balanced and equitable arrangement between the parties.

23.11 Non-compliance with the requirement of continued deposit, in cases of recurring liability, would disentitle the appellant from claiming equitable relief and may legitimately invite consequences, including vacating of interim protection or dismissal of the appeal in accordance with law.

23.12 The proviso to Section 35(1) must be construed in a manner that advances the object of the enactment, prevents abuse of the appellate process, and ensures that a litigant does not retain the benefit of possession or pendency of proceedings without discharging the corresponding statutory obligation, even if to a limited extent.

23.13. The statutory mandate of pre-deposit under Section 35(1), in its application to recurring liabilities, is continuous in operation and enforceable throughout the pendency of the appeal, and any direction issued by the appellate authority to secure such compliance is legally sustainable and within jurisdiction.

24. The direction issued by the Rent Tribunal requiring the appellant to deposit 50 percent of the revised rent on a monthly basis is, therefore, not an additional or extraneous condition, but a logical extension of the statutory mandate contained in the proviso to Section 35(1). It is in consonance with the statutory scheme and an operational mechanism to ensure continued compliance with the condition precedent embodied in the proviso to Section 35(1).

25. The contention that such a direction amounts to execution of the impugned order is misconceived. The Tribunal has not directed payment of the entire revised rent but only 50 percent thereof, strictly in conformity with the statutory requirement. The grant of interim protection is conditional upon such compliance and is in the nature of an equitable arrangement to balance competing interests.

26. The supervisory jurisdiction of this Court under Article 227 of the Constitution of India is confined to cases of patent illegality, perversity, or jurisdictional error. The impugned order does not suffer from any such infirmity. On the contrary, it reflects a correct and purposive construction of the statutory provision and a balanced exercise of jurisdiction.

27. The petition lacks merit and is, accordingly, **dismissed**.

(2026) 4 ILRA 2222
ORIGINAL JURISDICTION
CIVIL SIDE
DATED: LUCKNOW 09.04.2026

BEFORE

THE HON'BLE PANKAJ BHATIA, J.

Matters Under Article 227 No. 6089 of 2025
 Connected With
 Matters Under Article 227 No. 5333 of 2025

M/S U.P. Rajya Vidyut Utpadan Nigam, Ltd. ...Petitioner
Versus
M/S Adani Enterprises Ltd. Ahmedabad & Anr. ...Respondents

Issues for Consideration

- (i) Whether an arbitral award passed against a Special Purpose Vehicle (SPV) can be executed against its constituent shareholders who were neither signatories to the arbitration agreement nor parties to the arbitral proceedings?
- (ii) Whether, in execution proceedings under Section 36 of the Arbitration and Conciliation Act, 1996 read with Order XXI Rule 11 of the Code of Civil Procedure, 1908, the executing Court is competent to implead persons other than the judgment-debtor and enforce the arbitral award against them?
- (iii) Whether the expression "**persons claiming under them**" occurring in Section 35 of the Arbitration and Conciliation Act, 1996 permits enforcement of an arbitral award against non-signatories by invoking the doctrines of alter ego, lifting of the corporate veil or group of companies?
- (iv) Whether, in the facts of the case, the constituent companies of the SPV could be treated as persons claiming under the award-debtor so as to render them liable for satisfaction of the arbitral awards?

Headnotes

Arbitration and Conciliation Act, 1996 — Sections 35 and 36 — Execution of arbitral award — Enforcement against non-signatories — Scope of expression "persons claiming under them".

HELD: Section 35 of the Arbitration and Conciliation Act, 1996 gives finality and binding effect to an arbitral award not only against the parties to the arbitration agreement but also against persons claiming under them. The expression is of wider import than the expression "party" defined under Section 2(h) of the Act and

enables enforcement of an award against a person whose legal capacity or position is derived from, and is identical with, that of a party to the arbitral proceedings. Mere absence from the arbitral proceedings is not decisive if the statutory test embodied in Section 35 is otherwise satisfied. [Paras 57 to 59]

Arbitration and Conciliation Act, 1996 — Sections 35 and 36 — Code of Civil Procedure, 1908 — Order XXI Rule 11 — Execution proceedings — Impleadment of persons against whom execution is sought.

HELD: By virtue of Section 36 of the Arbitration and Conciliation Act, 1996, an arbitral award is enforceable in the same manner as a decree of a civil court. Order XXI Rule 11 CPC expressly contemplates disclosure of the name of the person against whom execution is sought. Accordingly, where the decree-holder establishes that a person is liable under Section 35 of the Act as one claiming under the award-debtor, the executing court is not denuded of jurisdiction to examine such plea merely because that person was not formally arrayed before the arbitral tribunal. [Paras 53 to 58]

Company Law — Separate corporate personality — Alter ego — Lifting of corporate veil — General principle.

HELD: The doctrine of separate corporate personality remains the fundamental rule and the liabilities of a company cannot ordinarily be fastened upon its shareholders or constituent companies. However, the corporate veil may be lifted in exceptional situations recognised by law, including where the company is a mere façade, cloak or alter ego, or where justice so requires having regard to the statutory scheme, the realities of the commercial arrangement and the conduct of the parties. The applicability of the doctrine depends upon the facts of each case. [Paras 55 to 59]

Arbitration and Conciliation Act, 1996 — Section 35 — Domestic arbitral award — Binding effect — "Persons claiming under them" — Scope.

HELD: The expression "persons claiming under them" occurring in Section 35 of the Arbitration and Conciliation Act, 1996 is wider than the expression "party" defined under Section 2(h) of the Act. The provision extends the binding effect of a domestic arbitral award not only to the parties to the arbitration agreement but also to persons whose legal capacity or position is derived from, and is the same as, that of a party. Whether a non-signatory falls within the ambit of Section 35 depends upon the facts of each case and the source from which such person derives its rights and obligations. Mere non-participation in the arbitral proceedings is not conclusive of the issue. [Paras 57 to 59]

Arbitration and Conciliation Act, 1996 — Sections 35 and 36 — Execution of arbitral award — Non-signatories — Special Purpose Vehicle (SPV) — Alter ego — Lifting of corporate veil.

HELD: Where the materials on record establish that the Special Purpose Vehicle (SPV) was incorporated exclusively to implement the project allotted to its constituent companies; had no independent business or commercial existence; its affairs, management and finances were completely controlled by the constituent companies; and the constituent companies themselves acknowledged liability arising out of the arbitral awards in their financial statements, the Commercial Court was justified in holding that the constituent companies answered the description of persons claiming under the award-debtor within the meaning of Section 35 of the Arbitration and Conciliation Act, 1996. In such exceptional circumstances, invocation of the doctrine of alter ego and lifting of the corporate veil to enforce the arbitral awards against the constituent companies did not amount to travelling beyond the arbitral awards. [Paras 60 to 84]

Arbitration and Conciliation Act, 1996 — Section 35 — Non-signatory — Post-award stage — Distinction between reference to arbitration and enforcement of award.

HELD: The principles governing impleadment of a non-signatory at the stage of reference to arbitration are distinct from those governing enforcement of an arbitral award. While questions concerning existence of an

arbitration agreement arise at the pre-reference stage, Section 35 specifically governs the binding effect of a domestic arbitral award after its pronouncement. Consequently, precedents dealing with appointment of arbitrators or reference of disputes to arbitration cannot be mechanically applied while considering enforcement of an award against a person claiming under a party. **[Paras 57 to 74]**

Arbitration and Conciliation Act, 1996 — Sections 35 and 36 — Execution of arbitral award — Executing Court — Jurisdiction.

HELD: The executing court does not travel beyond the arbitral award merely because it examines whether a person sought to be proceeded against falls within the expression "**persons claiming under**" the judgment-debtor under Section 35 of the Act. Such enquiry is incidental to enforcement of the award and does not amount to modification or enlargement of the arbitral award. **[Paras 53 to 74]**

Constitution of India — Article 227 — Arbitration and Conciliation Act, 1996 — Sections 35 and 36 — Supervisory jurisdiction — Interference with execution orders.

HELD: The jurisdiction of the High Court under Article 227 of the Constitution is supervisory and not appellate. Where the Commercial Court has correctly appreciated the statutory scheme under Sections 35 and 36 of the Arbitration and Conciliation Act, 1996, examined the material placed before it, and recorded a reasoned finding that the constituent companies of the Special Purpose Vehicle (SPV) were liable as persons claiming under the award-debtor, no patent illegality, jurisdictional error or perversity warranting interference under Article 227 is made out. **[Paras 75 to 84]**

Both petitions dismissed. Orders dated 31.07.2025 and 29.08.2025 passed by the Commercial Court-I, Lucknow in Execution Case Nos. 277 of 2021 and 383 of 2023 upheld. (E-14)

Case Law Cited

Topanmal Chhotmal v. Kundomal Gangaram, AIR 1960 SC 388 — relied on; *Meenakshi Saxena v. ECGC Ltd.*, (2018) 7 SCC 479 — referred to; *Sanwarlal Agarwal v. Ashok Kumar*, (2023) 7 SCC 307 — referred to; *Dhanush Vir v. Dr. Ila Sharma*, 2024 SCC OnLine All 3693 — referred to; *V.K. Uppal v. Akshay International Pvt. Ltd.*, 2010 SCC OnLine Del 538 — referred to; *Anirban Roy and Another v. Ram Krishna Gupta*, 2017 SCC OnLine Del 12867 — referred to; *Electronics Corporation of India Ltd. v. Secretary, Revenue Department, Government of Andhra Pradesh*, (1999) 4 SCC 458 — relied on; *Meekin Transmission Ltd. v. State of U.P.*, 2008 SCC OnLine All 161 — relied on; *Ansal Crown Heights Ltd. v. Ansal Crown Infrabuild Pvt. Ltd.*, 2026 INSC 51 — referred to; *Rakesh Mahajan v. State of U.P.*, 2019 SCC OnLine All 4766 — referred to; *Balwant Rai Saluja v. Air India Ltd.*, (2014) 9 SCC 407 — relied on; *Ajay Gupta v. Amit Sales*, 2025 SCC OnLine Del 4703 — referred to; *Sudhir Gopal v. Indira Gandhi National Open University*, 2017 SCC OnLine Del 8345 — referred to; *Cox and Kings Ltd. v. SAP India Pvt. Ltd. and Another*, (2024) 4 SCC 1 — relied on; *Cheran Properties Ltd. v. Kasturi and Sons Ltd.*, (2018) 16 SCC 413 — relied on; *Mitsui O.S.K. Lines Ltd. v. Orient Ship Agency Pvt. Ltd. and Another*, 2020 SCC OnLine Bom 217 — distinguished; *Bhatia Industries and Infrastructure Ltd. v. Asian Natural Resources (India) Pvt. Ltd. and Others*, 2016 SCC OnLine Bom 10695 — relied on; *M/s Rana Chairs v. Director General (Town Planning), K.M.C. and Another*, 2022 SCC OnLine Cal 3355 — relied on; *Shapoorji Pallonji and Co. Pvt. Ltd. v. RattanIndia Power Ltd.*, 2021 SCC OnLine Del 3688 — referred to; *Life Insurance Corporation of India v. Escorts Ltd.*, (1986) 1 SCC 264 — relied on; *State of U.P. and Others v. Renusagar Power Co. and Others*, (1988) 4 SCC 59 — relied on; *Manohar Lal Sharma v. Principal Secretary and Others*, Writ Petition (Criminal) No. 120 of 2012 — referred to.

List of Acts / Statutes

Constitution of India; Arbitration and Conciliation Act, 1996; Code of Civil Procedure, 1908; Companies Act, 2013; Coal Mines (Special Provisions) Act, 2015.

List of Keywords

Arbitral award; Execution; Commercial Court; Persons claiming under; Special Purpose Vehicle (SPV); Separate corporate personality; Alter ego; Lifting of corporate veil; Group of companies doctrine; Non-signatory; Domestic arbitral award; Execution proceedings.

Case Arising From

Order dated **29.08.2025** passed by the Commercial Court-I, Lucknow in **Execution Case No. 383 of 2023, M/s Adani Enterprises Ltd. v. UCM Coal Company and Others**; and order dated **31.07.2025** passed in **Execution Case No. 277 of 2021, M/s Adani Enterprises Ltd. v. UCM Coal Company and Others**.

Appearance for Parties

For the Appellants: Shri K.M. Nataraj, learned Additional Solicitor General, assisted by Shri Pritish Kumar, learned Additional Advocate General, Shri Suyash Manjul, Shri Vibhanshu Srivastava and Shri Sharath Nambiar.

For the Respondents: Shri Vikram Nankani, learned Senior Advocate, assisted by Shri Pranjal Krishna, Shri Abhishek Dwivedi and Shri Sumeet Nankani.

(Delivered by Hon'ble Pankaj Bhatia, J.)

1. Writ Petition being Matters Under Article 227 No.6089 of 2025 has been filed by the petitioners challenging the order dated 29.08.2025 passed by learned Commercial Court □ I, Lucknow in Execution Case No.383 of 2023 (M/s Adani Enterprises v. UCM Coal Company and Ors.) whereby objections filed by the petitioners have been rejected in respect of the execution sought by respondent no.1 for execution of the final arbitral award dated 20.11.2018.

Writ Petition being Matters Under Article 227 No.5333 of 2025 has been filed by the petitioners against the order dated 31.07.2025 passed by learned Commercial Court □ I, Lucknow in Execution Case No.277 of 2021 (M/s Adani Enterprises v. UCM Coal Company and Ors.) whereby the objections of the petitioners were dismissed. The said execution proceedings were initiated by respondent no.1 for execution of the interim award dated 31.01.2017.

2. As the facts and issues are same and the parties are also same, both the petitions are being decided together by this common judgment.

3. For the sake of brevity, facts of Writ Petition being Matters Under Article 227 No.6089 of 2025 are being recorded for deciding the matters.

FACTS OF THE CASE :

4. Ministry of Coal invited bids for allocation of coal mines and petitioner nos.1, 2 & 3 being desirous of participating applied and were allocated coal mines at Chandipada □ I and Chendipada □ II coal blocks at Odisha vide allocation dated 25.07.2007 (Annexure □ 2). In terms of the allocation letter, the allottees were entitled to float a company for excavation and development of the coal block and in pursuance to the said provision, the petitioner nos.1, 2 & 3 formed a company known as UCM Coal Company Ltd. (hereinafter referred to as □SPV□). The petitioner nos.1, 2 & 3 were the shareholders in the percentage in which they were allotted the coal blocks by the Ministry of Coal. Copy of the Articles of Association of the SPV are on record as

Annexure □ 3. It also bears from record that a share holder agreement was executed inter se in between petitioner nos.1, 2 & 3 on 11.11.2008 (Annexure □ 4) which specified the manner in which a company (SPV) would be incorporated.

5. The SPV □ respondent no.2 herein □ floated a request for proposal on 27.09.2009 through an international competitive bidding for selection of suitable mine operator for the coal mines located at Chendipada I and II. Respondent No.1 was desirous of obtaining the contract and submitted its bid and was selected as successful for which a Letter of Award dated 27.10.2010 was issued by the SPV to respondent no.1 (Annexure □ 5). Subsequently, a mining contract dated 05.02.2011 was also entered into inter se between respondent no.1 and respondent no.2 (Annexure □ 6). The said agreement also contained an arbitration clause.

6. It is claimed that after the issuance of Letter of Award several work contracts and sub-contracts were issued by respondent no.1 which according to the petitioners, were in violation of the agreement.

7. It is on record that subsequently the Hon□ble Supreme Court while hearing the matters with regard to allegations of improper allocation of coal mines and ultimately the Hon□ble Supreme Court in the case of *Manohar Lal Sharma v. The Principal Secretary & Ors.; Writ Petition (Criminal) No.120 of 2012* set aside the entire coal block allotments and vide its judgment dated 24.09.2014 entire 204 coal blocks were de-allocated. After the cancellation of the coal blocks, mining contract dated 05.02.2011 became impossible to perform and respondent no.1 raised claims through letter/notice dated 28.02.2015 for restitution of the expenses and cost incurred by them towards performance of the obligations under the contract. The said letter/notice dated 28.02.2015 is on record as Annexure □ 7.

8. In view of the dispute arising inter se in between respondent no.1 and respondent no.2, the same was referred to the Arbitral Tribunal comprising of three arbitrators who entered into the reference of the dispute in between respondent no.1 and respondent no.2. Before the Arbitral Tribunal, respondent no.1 moved an application for interim award for payment of Rs.73.94 crores which was granted in favour of respondent no.1 against respondent no.2 on 31.01.2017. Subsequently, the Arbitral Tribunal proceeded and ultimately a final award came to be passed on 20.11.2018 in favour of respondent no.1 against respondent no.2. The interim award and the final award are contained in Annexures □ 8 & 9. The final award dated 20.11.2018 was challenged before the Commercial Court under Section 34 of Arbitration and Conciliation Act (hereinafter referred to as □the Act□) which was dismissed on 31.03.2023. The said order of dismissal came to be challenged before the High Court under Section 37 of the Act in an appeal being Appeal Under Section 37 of Arbitration and Conciliation Act 1996 No. - 52 of 2023. Subsequently, it bears from record that the said appeal also came to be dismissed on 23.09.2025 and SLP preferred by respondent no.2 was dismissed on 19.01.2026.

9. It also bears from record that the interim award passed in favour of respondent no.1 on 31.01.2017 was never challenged by respondent no.2 through separate objections under Section 34 and in fact, a partial payment out of the said amount awarded has also been paid by respondent no.2 in the execution proceedings. Respondent no.1 ultimately preferred an execution of the interim

award dated 31.01.2017 through an application filed under Order XXI Rule 11 read with Section 151 of CPC and Section 37 of the Act on 29.09.2021 which was registered as Execution Case No.277 of 2021 before the Commercial Court, Lucknow.

Similarly, respondent no.1 filed a separate execution case being Execution Case No.383 of 2023 seeking execution of the final award dated 20.11.2018. In the said execution cases, apart from respondent no.2, the petitioners who were the constituents of the SPV (respondent no.2) were also arrayed as judgment debtors.

As both the execution cases were being heard together, the petitioners herein filed an application seeking deletion of their names in in Execution Case No.277 of 2021 which came to be rejected on 22.05.2023.

10. The petitioners preferred a writ petition being Matters Under Article 227 No.3254 of 2025 challenging the order dated 22.05.2023 which came to be decided finally on 09.01.2025 whereby the writ Court refused to interfere with the order and gave liberty to the parties to raise all the pleas available to them in the execution proceedings which was directed to be decided in accordance with law.

11. The petitioners herein filed detailed objections in Execution Case No.383 of 2023 which are on record as Annexures □ 13, 14 & 15. The decree holder/respondent no.1 filed its objection to the objections filed by petitioner nos.1, 2 & 3 through replies dated 27.05.2025 (Annexures □ 16 & 17). Learned Commercial Court finally decided the execution case on 29.08.2025 and the objections filed by the petitioners were rejected and orders were passed against the petitioners to satisfy the award. The said order dated 29.08.2025 is under challenge in the present proceedings.

ARGUMENTS :

12. In the backdrop of the facts, in brief as narrated above, Shri K M Nataraj, learned A.S.G. assisted by Shri Pritish Kumar, learned A.A.G., Shri Suyash Manjul, Shri Vibhanshu Srivastava and Shri Sharath Nambiar, learned counsel(s) argued and submitted his written submission in terms of the directions given by this Court.

13. It is argued that the Commercial Court has erred in directing enforcement of the arbitral awards (interim as well as final) against the petitioners, even though the said awards were rendered in proceedings inter se between respondent no.1 and respondent no.2 and the petitioners were not parties. It is argued that it is well settled that an executing Court cannot go behind the decree. The Commercial Court has failed to appreciate the settled principles governing the doctrine of □alter ego□ and □lifting of corporate veil□ as well as limited scope of persons □claiming under a party□ under Section 35 of the Act as well as the parameters for invoking the doctrine of □group of companies□ and has erred in directing the enforcement of the award against the petitioners who were not the parties in the arbitration agreement or the proceedings.

14. It is argued that Section 35 of the Act cannot come to the rescue to bind non-signatories to an arbitration agreement or award by invoking Section 35 of the Act as their scope, foundation and legal tests are different. The alter ego doctrine to lift or pierce the corporation veil can be applied only on satisfying the proof of alter ego. It is argued that respondent no.1 for filing the execution proceedings against the petitioners had argued that petitioner nos.1, 2 & 3 are the promoters and share holders of respondent no.2 □ SPV □ and exercise control over its management and affairs, and were the initial allottees of the coal blocks and the respondent no.2 is a mere creature of these three entities, whereas in the present case, three State owned companies from three different states are the share holders of the company against which the award has been passed, as such, there could be no alter ego at all.

15. It is argued that only when the company is a facade, sham or instrumentality of another person or entity, the Court can treat them as one of the same legal personality.

16. It is argued that the doctrine of group of companies is based on the principle that a non signatory company within the same corporate group may be bound by an arbitration agreement if it was intended to be part of the transaction which depends on various factors such as common intention of the parties to bind the group entities, direct participation of the non signatory in the negotiation, performance or termination of the contract.

17. It is argued that Section 35 of the Act specifies that the award shall be binding on the parties and the persons claiming under them. The same embodies a statutory concept rather than a judicial doctrine whereby the binding effect of an arbitral award may be extended to persons who derive successor or derivative rights from a party to the arbitration.

18. It is argued that before the executing Court, respondent no.1 confined his pleadings only to the invocation of doctrine of alter ego without there being any pleadings of the foundational facts and without there being any pleadings of fraud, sham and misuse of the corporate form which are essential for lifting the corporate veil.

19. It is argued that the execution proceedings are confined to decree holder and the judgment debtor, and the executing Court cannot widen the scope of decree by impleading strangers or third parties who are neither the parties to the suit nor bound by the decree and the impleadment of the third part would amount to granting relief not contemplated by the decree. The executing Court cannot travel beyond the terms and scope of the decree. The attempt to implead third party who are neither parties to a suit or bound by the decree is impermissible in law and amounts to enlarging or modifying the decree.

20. To support the argument that the executing Court is bound by the decree and cannot go beyond it, reliance is placed upon judgment of the following judgments:

Topanmal Chhotmal v. Kundomal Gangaram; AIR 1960 SC 388;

Meenakshi Sadana v. ECGC Limited; (2018) 7 SCC 479;

Sanwarlal Agarwal v. Ashok Kumar; (2023) 7 SCC 307;

Dhanush Vir v. Dr. Ila Sharma; 2024 SCC OnLine All 3693;

V.K. Uppal v. Akshay International Pvt.; 2010 SCC OnLine Del 538;

Anirban Roy and Anr. v. Ram Kishna Gupta; 2017 SCC OnLine Delhi 12867

21. It is argued that the company is separate and distinct legal entity from its shareholders. It is argued that the shareholders cannot be treated as company and vice versa, and shareholders cannot be proceeded against for the liabilities of the company, except in situations recognized by law, and thus, the properties and liabilities of the company are its own and not that of the shareholders even if the shareholders hold majority of the shareholding. For the said proposition, reliance is placed upon the following judgments:

Electronics Corpn. of India Ltd. v. Secy., Revenue Deptt. Govt. of A.P.; (1999) 4 SCC 458

Meekin Transmission Ltd. v. State of U.P.; 2008 SCC OnLine All 161

22. In support of the submission that doctrine of alter ego and lifting of the veil is permissible only in exceptional circumstances and not as a rule, reliance is placed upon the following judgments:

Ansal Crown Heights v. M/s Ansal Crown Infrabuild; 2026 INSC 51

Rakesh Mahajan v. State of U.P.; 2019 SCC OnLine All 4766

Balwant Rai Saluja v. AIR India Limited; (2014) 9 SCC 407

Ajay Gupta v. Amit Sales; 2025 SCC OnLine Del 4703

Sudhir Gopal v. IGNO; 2017 SCC OnLine Del 8345

Cox and Kings Ltd. v. SAP India Private Limited and Anr.; (2024) 4 SCC 1

23. It is argued that the concept of Group of Companies doctrine cannot be invoked at the execution stage. The said doctrine has no applicability in the present case as petitioners are separate and independent corporate entities and do not form part of the single economic unit or group structure. There is no common controlling entity having pervasive control over the day to day affairs of the petitioners companies. It is also argued that in the absence of the same, the attempt to invoke Group of Companies doctrine at the execution stage is impermissible. In support of the same, reliance has been placed on the following judgments:

Cox & Kings Ltd. v. SAP India Private Limited and Anr.; (2024) 4 SCC 1

Cheran Properties Limited v. Kasturi & Sons; (2018) 16 SCC 413

24. It is argued that the expression "claiming under" used in Section 35 of the Act is confined to persons who derive their legal rights or liabilities from arbitration agreement or award and the said expression cannot be expanded to include independent third parties or group companies merely on the basis of corporate association and for impleading a party invoking Section 35 it is essential that the entity must derive its rights and obligation from the party itself.

It is argued that no foundational facts were pleaded before the executing Court to demonstrate as to how the petitioners could be treated as "persons claiming under" under Section 35 of the Act. To support his argument, reliance is placed upon the following judgments:

Cox & Kings Ltd. v. SAP India Private Limited and Anr.; (2024) 4 SCC 1

Cheran Properties Limited v. Kasturi & Sons; (2018) 16 SCC 413

25. During the course of the argument, although not forming a part of the written arguments, an attempt was made to argue that the execution of the award was barred by the provisions of the Coal Mines (Special Provisions) Act, 2015, however, as no pleadings were existing, the said argument was not pressed very fairly by learned A.S.G. and thus, did not even form a part of the written arguments.

26. Shri Vikram Nankani, learned Senior Advocate assisted by Shri Pranjal Krishna, Shri Abhishek Dwivedi and Shri Sumeet Nankani, learned counsel for respondents extensively drew my attention to the initial bids by petitioner nos.1, 2 & 3 and the events leading to allocation of coal blocks.

27. It is argued that the coal blocks were jointly allocated to petitioner nos.1, 2 & 3 who were required to carry out the mining activity and were solely to be used for the benefit of power stations owned by petitioner nos.1, 2 & 3 only. Mining leases were to be executed by petitioner nos.1, 2 & 3 and the bank guarantees were also submitted by them. It is argued that respondent no.2 was only an SPV created by petitioner nos.1, 2 & 3 for sole purpose of exploiting the coal blocks through a shareholders agreement for holding the shares in the ratio of 50%, 31.47% and 18.53% respectively by petitioner nos.1, 2 & 3.

28. It is also argued that all the Directors were to be appointed by the petitioners and in fact, the Managing Director of petitioner no.2 is the Chairman of the Board of respondent no.2 and Managing Director of petitioner no.1 is the Managing Director of respondent no.2. It is argued that respondent no.2 had no other business except the coal blocks which was allotted to petitioner nos.1, 2 & 3 and its incorporation and end were subject to the sole business of exploiting the coal blocks to be availed by the petitioners only.

29. It is stated that the Company Secretary of the petitioners and respondent no.2 was the same and the Letter of Award was marked to the petitioner nos.1, 2 & 3 which is not a common practice. It is stated that the mining contract was signed on all pages by petitioner nos.1, 2 & 3 in

their individual capacities as mine owners. The Directors were to be appointed from petitioner nos.1, 2 & 3 and the resources were to be used by petitioner nos.1, 2 & 3 only.

30. It is stated that respondent no.2 has no assets, resources or business of its own and survives and operates solely through the financial infusions and equity contributions made by petitioner nos.1, 2 & 3, and in fact the cost of arbitration was also borne by petitioner nos.1, 2 & 3.

31. My attention is also drawn to the financial statement wherein the liability arising out of award are shown as contingent liability in proportion to its shareholding. My attention is also drawn to the fact that in respect of the petitioner no.3 the auditor had raised certain objections in respect of contingent liability shown in the balance sheet by them which was clarified subsequently and accepted.

32. It is argued that in respect of petitioner no.1 in the financial statement for the year 2021 □ 22, a provision was made that all the three will continue their share in the ratio as agreed for satisfying the awards in respect of the interim award made. It is argued that in the financial statement of petitioner no.1 it has been stated that once the coal blocks have been satisfied, company's winding up proceedings will begin.

33. It is argued that the Company Secretary of petitioner no.1 and respondent no.2 are the same and operate from the same office, reflecting the clear control over the operations and finances by petitioner no.1 over respondent no.2 and even the present petition, has been signed by the same Company Secretary.

34. It is further argued that this Court had formulated four questions of law vide its order dated 24.09.2025 in writ petition being Mattes Under Article 227 No.5333 of 2025 to be decided, however, as the issues are identical, the same are being answered collectively.

35. It is argued that the arbitral award can be executed between a party which is not party to the arbitral proceeding and the executing Court has the power to lift the corporate veil by execution of an award against non-parties. As respondent no.2 □ the SPV □ is nothing but an alter ego of the petitioners which is recognized both under Section 35 of the Act as well as Order XXI Rule 11 and Order XXI Rule 41 of CPC. Reliance is placed upon the judgment of the Cheran Properties Ltd. v. Kasturi & Sons; (2018) 16 SCC 413.

36. It is argued that in terms of the mandate of Order XXI Rule 11 of CPC, there is a provision for including the name of the persons against whom the execution of the decree is sought and in terms of the mandate of Order XXI Rule 41 of CPC, a decree holder has a right to apply for examination of not only the judgment debtor but also any other person to ascertain whether the judgment debtor has means to satisfy the decree.

37. It is also argued that under the Act, the binding nature of the domestic arbitral award differs from that of a foreign arbitral award. While the former is governed by Part I of the said Act, latter is governed by Part II. Section 35 of the Act falls under Part I, which is reproduced in the later part of the judgment.

38. It is argued that language of Section 35 differs from Section 46 which falls under Part II and reads as under:

“46. When foreign award binding-Any foreign award which would be enforceable under this Chapter shall be treated as binding for all purposes on the persons as between whom it was made, and may accordingly be relied on by any of those persons by way of defence, set off or otherwise in any legal proceedings in India and any references in this Chapter to enforcing a foreign award shall be construed as including references to relying on an award.”

39. In the light of the said, it is argued that while a foreign award under Section 46 of the Act only binds the parties to the arbitral proceedings, the domestic award issued under Part I of the Act not only binds the parties to the arbitral proceedings but also the persons claiming under them.

40. It is argued that in view thereof, reliance of the petitioner, during argument, on the judgment of *Mitsui OSK Lines Ltd. (Japan) v. Orient Ship Agency Pvt. Ltd. & Anr.*; 2020 SCC OnLine Bom 217 is wholly misplaced as the same arose in respect of a foreign award governed by Section 46 of the Act and not Section 35.

41. Learned counsel for the respondents places reliance on the judgment of the Supreme Court in respect of Section 35 in the case of *Cheran Properties Ltd. (supra)* wherein the following was recorded:

29. The decision in *Indowind [Indowind Energy Ltd. v. Wescare (India) Ltd., (2010) 5 SCC 306 : (2010) 2 SCC (Civ) 397]* arose from an application under Section 11 of the Arbitration and Conciliation Act, 1996. Indowind was not a signatory to the contract and was held not to be a party to the agreement to refer disputes to arbitration. *Indowind [Indowind Energy Ltd. v. Wescare (India) Ltd., (2010) 5 SCC 306 : (2010) 2 SCC (Civ) 397]* held that an application under Section 11 was not maintainable. The present case does not envisage a situation of the kind which prevailed before this Court in *Indowind [Indowind Energy Ltd. v. Wescare (India) Ltd., (2010) 5 SCC 306 : (2010) 2 SCC (Civ) 397]*. The present case relates to a post award situation. The enforcement of the arbitral award has been sought against the appellant on the basis that it claims under KCP and is bound by the award. Section 35 of the Arbitration and Conciliation Act, 1996 postulates that an arbitral award shall be final and binding on the parties and persons claiming under them respectively (emphasis supplied). The expression claiming under, in its ordinary meaning, directs attention to the source of the right. The expression includes cases of devolution and assignment of interest (Advanced Law Lexicon by P. Ramanatha Aiyar [3rd Edn., Vol. I, p. 818.]). The expression persons claiming under them in Section 35 widens the net of those whom the arbitral award binds. It does so by reaching out not only to the parties but to those who claim under them, as well. The expression persons claiming under them is a legislative recognition of the doctrine that besides the parties, an arbitral award binds every person whose capacity or position is derived from and is the same as a party to the proceedings. Having derived its capacity from a party and being in the same position as a party to the proceedings binds a person who claims under it. The issue in every such a case is whether the person against whom the arbitral award is sought to be enforced is one who claims under a party to the agreement.

31. *The submission which was urged on behalf of the appellant, proceeds on the basis that since the appellant was not impleaded as a party to the arbitral proceedings, proceedings for the enforcement of the award will not lie against it. This line of submissions clearly misses the central facet of Section 35, which is that a person who claims under a party is bound by the award. The fact that the appellant was not a party to the arbitral proceedings will not conclude the question as to whether the award can be enforced against it on the ground that it claims under a party. Essentially, the Court is called upon to consider whether the test embodied in Section 35 is fulfilled in the present case, so as to bind the appellant.*

42. Reliance is also placed upon the judgment of the Division Bench of the Bombay High Court in the case of ***Bhatia Industries & Infrastructure Limited v. Asian Natural Resources (India) Pvt. Ltd. & Ors.***; 2016 SCC OnLine Bom 10695 to argue that the corporate veil can be pierced in execution proceedings also in situations where a view is formed that the company is a creature of the group and the mask which is held before its face is an attempt to avoid recognition by the eye of equity or is a mere cloak or sham and in truth the business was being carried on by one person and not by the company as a separate entity.

It is argued that the judgment of the Bhatia Industries (supra) was not interfered in the SLP, although, in the order passed by the Hon^{ble} Supreme Court it was recorded that the question of law was kept open.

43. Reliance is also placed upon judgment of the Calcutta High Court in the case of ***M/s Rana Chairs v. Director General (Town Planning) K.M.C. & Anr.***; 2022 SCC OnLine Cal 3355 wherein the application for impleadment of the person as judgment debtor was allowed. Relevant paragraph of the said judgment is reproduced herein below:

“12. Filing an appeal by the Kolkata Municipal Corporation to set aside the ex-parte decree on the grounds whatsoever shows that though Kolkata Municipal Corporation was not eo nomine party but interested in such right, that means the other persons i.e. Kolkata Municipal Corporation and the Commissioner of Kolkata Municipal Corporation must come under the same title as those represented by names. The reason is that, if we read the provisions of Code of Civil Procedure in a technical or a restricted sense then the difficulty would be that the persons who are really entitled to the benefits of a decree or persons who are really burdened by a decree would escape the benefit or a liability under the decree and, therefore, the decree would be in-fructuous.”

44. It is reiterated by learned counsel for the respondents that from the Memorandum of Association of respondent no.2 it is clear that the same was incorporated as a vehicle for the purpose of exploiting coal for the power plant owned by the petitioners, and for their benefits, rights and entitlements and respondent no.2 has no independent business or existence of its own. The main object of the company □ respondent no.2 □ as per their Memorandum of Association is as under:

“A. THE MAIN OBJECTS TO BE PURSUED BY THE COMPANY ON ITS INCORPORATION ARE:-

1. The Company shall be primarily in the business of implementing the joint-venture project between UPRVUNL □ MAHAGENCO □ CMDC □ for the purpose of exploitation and share the output from the blocks of coal mines allotted by the Government of India, in a manner that is conducive, for the captive consumption of the joint venture partners.”

45. It is once again reiterated that as per the Shareholders□ Agreement of respondent no.2 □ the SPV □ the petitioners are recognized as both the promoters as well as the only shareholders of respondent no.2. It is argued that the SPV□s Board comprises only the officials from the petitioners □ the Chairman being the Managing Director of petitioner no.2. The SPV is intrinsically and entirely managed, controlled and operated by the petitioners. The petitioners were also actively involved in the arbitral proceedings. It is again reiterated that the petitioners are signatories to the Mining Contract and they have signed on each and every page thereof including the pages containing the arbitration clause.

46. My attention is also drawn to the judgment of the Delhi High Court in the case of ***Shapoorji Pallonji and Co. Pvt. Ltd. v. Rattan India Power Ltd.; 2021 SCC OnLine Del 3688***, which observed as under:

“29. Gary B. Born in his book, International Commercial Arbitration, Volume I, (Third Edition), p. 1546, had explained the concept of alter ego as under:

□ Definitions of □ alter ego □ vary materially in different legal systems, and are applied in a number of different contexts. Nonetheless, the essential theory of the □ alter ego □ doctrine in most jurisdictions is that one party so thoroughly dominates the affairs of another party, and has sufficiently misused such control, that it is appropriate to disregard the two companies' separate legal forms, and to treat them as a single entity. In the context of arbitration agreements, demonstrating an □ alter ego □ relationship under most developed legal systems requires convincing evidence that one entity dominated the day-to-day actions of another and/or that it exercised this power to work fraud or other injustice or inequality on a third party or to evade statutory or other legal obligations.

The □ alter ego □ doctrine differs from principles of agency or implied consent in that the parties' intentions are not decisive; rather, the doctrine rests on overriding considerations of equity and fairness, which mandate disregarding an entity's separate legal identity in specified circumstances.”

47. In short, it is submitted that the most crucial element of the factual matrix available on record is the complete inseparability of respondent no.2 with the petitioners. The shareholding of respondent no.2 is based on the same proportion as per the ratio of coal allocation given in the Letter of Allocation. The entire management of respondent no.2 □ the SPV □ are derived from the petitioners and all the key managerial positions are manned by the persons either working with the petitioners or nominated by them. The entire action on behalf of respondent no.2 and the petitioners have been carried out as a single economic entity.

48. It is argued that the broad parameters for lifting the corporate veil were laid down by a Constitution Bench of the Supreme Court in the case of ***Life Insurance Corporation of India v. Escorts Ltd.***; (1986) 1 SCC 264, which reads as under:

“90. It was submitted that the thirteen Caparo companies were thirteen companies in name only; they were but one and that one was an individual, Mr Swraj Paul. One had only to pierce the corporate veil to discover Mr Swraj Paul lurking behind. It was submitted that thirteen applications were made on behalf of thirteen companies in order to circumvent the scheme which prescribed a ceiling of one per cent on behalf of each non-resident of Indian nationality or origin, or each company 60 per cent of whose shares were owned by non-residents of Indian nationality/origin. Our attention was drawn to the picturesque pronouncement of Lord Denning M.R. in *Wallersteiner v. Moir* [(1974) 3 All ER 217] and the decisions of this Court in *Tata Engineering and Locomotive Co. Ltd. v. State of Bihar* [AIR 1965 SC 40 : (1964) 6 SCR 885], *CIT v. Sri Meenakshi Mills Ltd.* [AIR 1967 SC 819 : (1967) 1 SCR 934 : (1967) 63 ITR 609] and *Workmen v. Associated Rubber Industry Ltd.* [(1985) 4 SCC 114] While it is firmly established ever since *Salomon v. A. Salomon & Co. Ltd.* [1897 AC 22] was decided that a company has an independent and legal personality distinct from the individuals who are its members, it has since been held that the corporate veil may be lifted, the corporate personality may be ignored and the individual members recognised for who they are in certain exceptional circumstances Pennington in his *Company Law* (4th Edn.) states:

“Four inroads have been made by the law on the principle of the separate legal personality of companies. By far the most extensive of these has been made by legislation imposing taxation. The government, naturally enough, does not willingly suffer schemes for the avoidance of taxation which depend for their success on the employment of the principle of separate legal personality, and in fact legislation has gone so far that in certain circumstances taxation can be heavier if companies are employed by the taxpayer in an attempt to minimise his tax liability than if he uses other means to give effect to his wishes. Taxation of companies is a complex subject, and is outside the scope of this book. The reader who wishes to pursue the subject is referred to the many standard text books on corporation tax, income tax, capital gains tax and capital transfer tax.

The other inroads on the principle of separate corporate personality have been made by two sections of the Companies Act, 1948, by judicial disregard of the principle where the protection of public interests is of paramount importance, or where the company has been formed to evade obligations imposed by the law, and by the courts implying in certain cases that a company is an agent or trustee for its members.”

In *Palmer's Company Law* (23rd Edn.), the present position in England is stated and the occasions when the corporate veil may be lifted have been enumerated and classified into fourteen categories. Similarly in *Gower's Company Law* (4th Edn.), a chapter is devoted to lifting the veil and the various occasions when that may be done are discussed. In *Tata Engineering and Locomotive Co. Ltd.* [AIR 1965 SC 40 : (1964) 6 SCR 885] the company wanted the corporate veil to be lifted so as to sustain the maintainability of the petition, filed by the company under Article 32 of the Constitution, by treating it as one filed by the shareholders of the company. The request of the company was turned down on the ground that it was not possible to treat the

company as a citizen for the purposes of Article 19. In CIT v. Sri Meenakshi Mills Ltd. [AIR 1967 SC 819 : (1967) 1 SCR 934 : (1967) 63 ITR 609] the corporate veil was lifted and evasion of income tax prevented by paying regard to the economic realities behind the legal facade. In Workmen v. Associated Rubber Industry Ltd. [(1985) 4 SCC 114] resort was had to the principle of lifting the veil to prevent devices to avoid welfare legislation. It was emphasised that regard must be had to substance and not the form of a transaction. Generally and broadly speaking, we may say that the corporate veil may be lifted where a statute itself contemplates lifting the veil, or fraud or improper conduct is intended to be prevented, or a taxing statute or a beneficent statute is sought to be evaded or where associated companies are inextricably connected as to be, in reality, part of one concern. It is neither necessary nor desirable to enumerate the classes of cases where lifting the veil is permissible, since that must necessarily depend on the relevant statutory or other provisions, the object sought to be achieved, the impugned conduct, the involvement of the element of the public interest, the effect on parties who may be affected etc.”

49. Relying on the judgment in **Life Insurance Corporation of India (supra)**, Hon’ble Supreme Court in the case of **State of U.P. & Ors. v. Renusagar Power Co. & Ors.**; (1988) 4 SCC 59, held as under:

“66. It is high time to reiterate that in the expanding horizon of modern jurisprudence, lifting of corporate veil is permissible. Its frontiers are unlimited. It must, however, depend primarily on the realities of the situation. The aim of the legislation is to do justice to all the parties. The horizon of the doctrine of lifting of corporate veil is expanding. Here, indubitably, we are of the opinion that it is correct that Renusagar was brought into existence by Hindalco in order to fulfil the condition of industrial licence of Hindalco through production of aluminium. It is also manifest from the facts that the model of the setting up of power station through the agency of Renusagar was adopted by Hindalco to avoid complications in case of take over of the power station by the State or the Electricity Board. As the facts make it abundantly clear that all the steps for establishing and expanding the power station were taken by Hindalco, Renusagar is wholly owned subsidiary of Hindalco and is completely controlled by Hindalco. Even the day-to-day affairs of Renusagar are controlled by Hindalco. Renusagar has at no point of time indicated any independent volition. Whenever felt necessary, the State or the Board have themselves lifted the corporate veil and have treated Renusagar and Hindalco as one concern and the generation in Renusagar as the own source of generation of Hindalco. In the impugned order the profits of Renusagar have been treated as the profits of Hindalco.

68. The veil on corporate personality even though not lifted sometimes, is becoming more and more transparent in modern company jurisprudence. The ghost of Salomon case [1897 AC 22] still visits frequently the hounds of Company Law but the veil has been pierced in many cases. Some of these have been noted by Justice P.B. Mukharji in the New Jurisprudence [Tagore Law Lectures, p. 183].”

50. It is also argued that the attempt to argue on the basis of enactment of the Coal Mines Act, 2015 was untenable as the same relate to disputes between the mine developers and the prior allottees of the mine and does not address or govern the dispute inter se in between prior allottees and the subsequent allottees.

51. In the light of the said, it is argued that the petition under Art. 227 of Constitution having limited scope is liable to be dismissed.

DISCUSSION :

52. Considering the submissions made by the parties and recorded above, the undisputed facts are that the three petitioners before this Court had constituted a SPV □ respondent no.2. The SPV had executed the agreement with respondent no.1. The interim and the final awards were passed by arbitral Tribunal which have been affirmed and have attained finality. It is also accepted that petitioner nos.1, 2 & 3 were not party before the arbitral Tribunal and were impleaded for the first time in the execution proceedings.

53. In the light of the said admitted positions, the question that arise for consideration is whether the interim and the final awards passed in between respondent no.1 and respondent no.2 can be executed against petitioner nos.1, 2 & 3 ?

Whether the petitioner nos.1, 2 & 3 could be impleaded as parties in the execution proceedings, they not being a party to the arbitral proceedings, would be governed by Section 36 of the Act which provides that the award can be enforced in accordance with the provisions of Code of Civil Procedure in the same manner as if a decree of the Court ?

54. The right of the decree holder to implead the petitioner nos.1, 2 & 3 flows from Order XXI Rule 11 of CPC. Section 36 of the Act and Order XXI Rule 11 of CPC are quoted herein below:

“11. Oral application. □ (1) *Where a decree is for the payment of money the Court may, on the oral application of the decree-holder at the time of the passing of the decree, order immediate execution thereof by the arrest of the judgment-debtor, prior to the preparation of a warrant if he is within the precincts of the Court.*

(2) Written application. □ *Save as otherwise provided by sub-rule (1), every application for the execution of a decree shall be in writing, signed and verified by the applicant or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case, and shall contain in a tabular form the following particulars, namely: □*

(a) the number of the suit;

(b) the names of the parties;

(c) the date of the decree;

(d) whether any appeal has been preferred from the decree;

(e) whether any, and (if any) what, payment or other adjustment of the matter in controversy has been made between the parties subsequently to the decree;

(f) *whether any, and (if any) what, previous applications have been made for the execution of the decree, the dates of such applications and their results;*

(g) *the amount with interest (if any) due upon the decree, or other relief granted thereby, together with particulars of any cross-decree, whether passed before or after the date of the decree sought to be executed;*

(h) *the amount of the costs (if any) awarded;*

(i) *the name of the person against whom execution of the decree is sought; and*

(j) *the mode in which the assistance of the Court is required whether*

(i) *by the delivery of any property specifically decreed;*

(ii) *by the attachment, or by the attachment and sale, or by the sale without attachment, of any property;*

(iii) *by the arrest and detention in prison of any person;*

(iv) *by the appointment of a receiver;*

(v) *otherwise, as the nature of the relief granted may require.*

(3) *The Court to which an application is made under sub-rule (2) may require the applicant to produce a certified copy of the decree.*

XXX XXX XXX

36. Enforcement. *□(1) Where the time for making an application to set aside the arbitral award under section 34 has expired, then, subject to the provisions of sub-section (2), such award shall be enforced in accordance with the provisions of the Code of Civil Procedure, 1908 (5 of 1908), in the same manner as if it were a decree of the court.*

(2) *Where an application to set aside the arbitral award has been filed in the Court under section 34, the filing of such an application shall not by itself render that award unenforceable, unless the Court grants an order of stay of the operation of the said arbitral award in accordance with the provisions of sub-section (3), on a separate application made for that purpose.*

(3) *Upon filing of an application under sub-section (2) for stay of the operation of the arbitral award, the Court may, subject to such conditions as it may deem fit, grant stay of the operation of such award for reasons to be recorded in writing:*

Provided that the Court shall, while considering the application for grant of stay in the case of an arbitral award for payment of money, have due regard to the provisions for grant of stay of a money decree under the provisions of the Code of Civil Procedure, 1908 (5 of 1908).

Provided further that where the Court is satisfied that a Prima facie case is made out that, □

(a) the arbitration agreement or contract which is the basis of the award; or

(b) the making of the award, was induced or effected by fraud or corruption, it shall stay the award unconditionally pending disposal of the challenge under section 34 to the award.

Explanation. □ For the removal of doubts, it is hereby clarified that the above proviso shall apply to all court cases arising out of or in relation to arbitral proceedings, irrespective of whether the arbitral or court proceedings were commenced prior to or after the commencement of the Arbitration and Conciliation (Amendment) Act, 2015.

55. As regards the arguments of the petitioners founded on the cited judgments to argue that the SPV company is a separate juristic personality, independent of its constituent companies and the liabilities of the SPV company cannot be enforced against its shareholders or the Directors, this legal proposition as argued by learned counsel for the petitioners is fairly settled as was decided by the Constitution Bench of the Supreme Court in the case of **Cox and Kings Ltd. (supra)** wherein under the Heading □E□ of the said judgment, the arguments with regard to separate legal personality of the companies separate from its shareholder and director were considered after analyzing judgments in the cases starting from Aron Salomon (Pauper) v. A. Salomon & Co. Ltd.; 1897 AC 22 (HL) upto the judgment of the Supreme Court in the case of **Vodafone International Holdings BV v. Union of India, (2012) 6 SCC 613 : (2012) 3 SCC (Civ) 867**. The Supreme Court analyzed and crystallized, after discussing the case-laws with regard to separate legal personality of a company in Para 94, which is as under:

“94. From the above discussion, we can infer that entities within a corporate group have separate legal personality, which cannot be ignored save in exceptional circumstances such as fraud. The distinction between a parent company and its subsidiary is fundamental, and cannot be easily abridged by taking recourse to economic convenience. [Bank of Tokyo Ltd. v. Karoon, 1987 AC 45 : (1986) 3 WLR 414 (CA)] Legally, the rights and liabilities of a parent company cannot be transferred to the subsidiary company, and vice versa, unless, there is a strong legal basis for doing so.”

56. To that extent, there cannot be any dispute with the proposition as argued by learned counsel for the petitioners.

57. In the present case, the issue as arising inter se in between the parties is to be interpreted in the backdrop of mandate of Section 35 of the Act and the definition of □party□ as defined under Section 2(h) of the Act. Section 35 of the Act reads as under:

“35. Finality of arbitral awards. □ Subject to this Part an arbitral award shall be final and binding on the parties and persons claiming under them respectively. ”

Section 2(h) of the Act however, reads as under:

“2. Definitions. - (1) *In this Part, unless the context otherwise require, -*

(h) *“party” means a party to an arbitration agreement.”*

58. The issue as to whether a person/entity who is not a party to the arbitration agreement can be proceeded against in terms of the language of Section 35 of the Act which uses the phrase *“persons claiming under them”*. Section 35 is distinct insofar as the said section binds the party to the agreement and the *“person claiming under them”*. This aspect was considered in the light of mandate of Section 35 by the Supreme Court in the case of *Cheran Properties Ltd.* (supra) wherein the Supreme Court observed as under:

“23. As the law has evolved, it has recognised that modern business transactions are often effectuated through multiple layers and agreements. There may be transactions within a group of companies. The circumstances in which they have entered into them may reflect an intention to bind both signatory and non-signatory entities within the same group. In holding a non-signatory bound by an arbitration agreement, the court approaches the matter by attributing to the transactions a meaning consistent with the business sense which was intended to be ascribed to them. Therefore, factors such as the relationship of a non-signatory to a party which is a signatory to the agreement, the commonality of subject-matter and the composite nature of the transaction weigh in the balance. The group of companies doctrine is essentially intended to facilitate the fulfilment of a mutually held intent between the parties, where the circumstances indicate that the intent was to bind both signatories and non-signatories. The effort is to find the true essence of the business arrangement and to unravel from a layered structure of commercial arrangements, an intent to bind someone who is not formally a signatory but has assumed the obligation to be bound by the actions of a signatory.

29. *The decision in Indowind [Indowind Energy Ltd. v. Wescare (India) Ltd., (2010) 5 SCC 306 : (2010) 2 SCC (Civ) 397]* arose from an application under Section 11 of the Arbitration and Conciliation Act, 1996. Indowind was not a signatory to the contract and was held not to be a party to the agreement to refer disputes to arbitration. Indowind [Indowind Energy Ltd. v. Wescare (India) Ltd., (2010) 5 SCC 306 : (2010) 2 SCC (Civ) 397] held that an application under Section 11 was not maintainable. The present case does not envisage a situation of the kind which prevailed before this Court in Indowind [Indowind Energy Ltd. v. Wescare (India) Ltd., (2010) 5 SCC 306 : (2010) 2 SCC (Civ) 397]. The present case relates to a post award situation. The enforcement of the arbitral award has been sought against the appellant on the basis that it claims under KCP and is bound by the award. Section 35 of the Arbitration and Conciliation Act, 1996 postulates that an arbitral award “shall be final and binding on the parties and persons claiming under them respectively” (emphasis supplied). The expression “claiming under”, in its ordinary meaning, directs attention to the source of the right. The expression includes cases of devolution and assignment of interest (Advanced Law Lexicon by P. Ramanatha Aiyar [3rd Edn., Vol. I, p. 818.]). The expression “persons claiming under them” in Section 35 widens the net of those whom the arbitral award binds. It does so by reaching out not only to the parties but to those who claim under them, as well. The expression “persons claiming

under them is a legislative recognition of the doctrine that besides the parties, an arbitral award binds every person whose capacity or position is derived from and is the same as a party to the proceedings. Having derived its capacity from a party and being in the same position as a party to the proceedings binds a person who claims under it. The issue in every such a case is whether the person against whom the arbitral award is sought to be enforced is one who claims under a party to the agreement.

30. Mr Sibal has sought to make a distinction between the provisions of Section 45 and the unamended Section 8. Section 45, forms a part of Part II dealing with the enforcement of foreign awards to which the New York Convention applies. It contemplates a reference by a judicial authority to arbitration at the request of one of the parties or any person claiming through or under him, where there is an arbitration agreement. The submission of Mr Sibal is that a similar expression any person claiming through or under him has been introduced in the amended provisions of Section 8 (substituted by Act 3 of 2016 with effect from 23-10-2015) but that this expression did not find place in the unamended provision. The submission is a non sequitur. Both Sections 8 and 45 operate in the sphere of the duty of a judicial authority to refer parties to arbitration. In the present case Section 35 is the material provision, which expressly stipulates that an arbitral award is, final and binding not only on the parties but on persons claiming under them.

31. The submission which was urged on behalf of the appellant, proceeds on the basis that since the appellant was not impleaded as a party to the arbitral proceedings, proceedings for the enforcement of the award will not lie against it. This line of submissions clearly misses the central facet of Section 35, which is that a person who claims under a party is bound by the award. The fact that the appellant was not a party to the arbitral proceedings will not conclude the question as to whether the award can be enforced against it on the ground that it claims under a party. Essentially, the Court is called upon to consider whether the test embodied in Section 35 is fulfilled in the present case, so as to bind the appellant.

59. The said principle was further discussed and affirmed in the case of **Cox and Kings Limited (supra)** in the context of Section 35 in the following paragraphs:

“145. Section 35 of the Arbitration Act provides that an arbitral award shall be final and binding on the parties and persons claiming under them respectively. In *Cheran Properties v. Kasturi & Sons Ltd.*, (2018) 16 SCC 413 : (2019) 1 SCC (Civ) 486, this Court rightly observed that the expression persons claiming under them is a legislative recognition of the doctrine that besides the parties, an arbitral award binds every person whose capacity or position is derived from and is the same as a party to the proceedings. It was further observed that [h]aving derived its capacity from a party and being in the same position as a party to the proceedings binds a person who claims under it. Similarly, Section 73 also provides that a settlement agreement signed by the parties shall be final and binding on the parties and persons claiming under them respectively”

146. Sections 8, 35, and 45 use the phrase parties or any person claiming through or under. The word or is used in Sections 8 and 45 as a disjunctive particle to express an alternative or give a choice between parties or any person claiming through or under.

Consequently, either the party to an arbitration agreement or any person claiming through or under the party can make an application to the judicial authority to refer the dispute to arbitration. It is in the interest of respecting the intention of the parties and promoting commercial efficacy, that the above provisions allow either the party or any person claiming through or under him to refer the disputes to arbitration.

147. On the other hand, Sections 35 and 73 use the phrase "parties and persons claiming under them". The use of the word "and" in Sections 35 and 73 conveys the idea that "parties" is to be added or taken together with the subsequent phrase "any person claiming through or under". The above provisions provide that an arbitration award binds not only the parties but also all such persons who derive their capacity from the party to the arbitration agreement. Again, the foundational basis for this provision is commercial efficacy as it ensures that an arbitral award leads to finality, such that both the parties and all persons claiming through or under them do not re-agitate the claims. Moreover, the use of the word "and" in Sections 35 and 73 leads to an unmistakable conclusion that under the Arbitration Act, the concept of a "party" is distinct and different from the concept of "persons claiming through or under" a party to the arbitration agreement.

60. The other judgments cited by learned counsel for respondent no.1 need not be gone into in view of the clear pronouncements of the Supreme Court on the interpretation of true scope and intent of Section 35 of the Act in the case of ***Cheran Properties Limited (supra)*** as affirmed in the case of ***Cox and Kings Limited (supra)***.

61. Once Section 35 and the phrase "any person claiming through or under him" has been interpreted by the Supreme Court to hold that the arbitral award binds every person whose capacity or possession is derived from and is the same as party to the proceedings, leaves no room for interpretation that the petitioners would be persons falling within the phrase "any person claiming through or under".

62. In the present case, what emerges from the pleadings is that from the stage of shareholders agreement, all the petitioners and their officers were involved. The SPV was created in terms of the mandate of the Ministry of Coal and all the officers of petitioner nos.1, 2 & 3 were involved from the process of creation of the SPV, which was created for the sole purpose of dealing with the allocated coal. The company was created for the benefit of petitioner nos.1, 2 & 3. The Company Secretaries of petitioner no.1 and respondent no.2 are the same. Respondent no.2 is nothing but a skeletal company drawing all its funds from its three major shareholders namely petitioner nos.1, 2 & 3. In fact, the office bearers of respondent no.2 who are also the office bearers of petitioner nos.1, 2 & 3 participated before the arbitral proceedings and at all stages of their dealing, the same was done by petitioner nos.1, 2 & 3 and their officers for and on behalf of respondent no.2. Also that part of interim award was satisfied by the petitioner by infusing funds. The SPV, respondent no.2, is same as petitioner nos.1, 2 & 3.

63. The argument that petitioner nos.1, 2 & 3 ought to have been made party before the arbitral Tribunal loses significance in view of the mandate of Section 35 which enables execution even against a non party but falling within the expression "persons claiming under them".

CONCLUSION :

64. Thus, the upshot of the reasoning recorded above is that a normal decree passed by a competent Court of law against a company can be executed only against the judgment debtor company and not against its shareholders/directors unless ingredients of lifting the corporate veil is established, however, an award passed under the Arbitration and Conciliation Act can be executed against the □party□ or any □person claiming under them□.

65. Finding that all the material on record clearly suggests that from the initial stage of inception up till the conclusion and in fact till the winding up of respondent no.2, it was the petitioners who would fall within the phrase □persons claiming under them□ as used in Section 35 of the Act, thus, I have no hesitation in holding that the order of execution passed by the Commercial Court does not warrant any interference in exercise of powers under Art. 227 of the Constitution.

66. Both the petitions are accordingly *dismissed* with direction to the Executing Court to execute the decree with all expedition forthwith.

67. Direction(s) given by the Commercial Court on 29.08.2025 & 31.07.2025 shall be complied with, with all expedition by the petitioners.

68. Before parting with the judgment, I would like to put in word of appreciation for Ms. Rajshree Lakshmi, Research Associate for her dexterity in research and superlative assistance in drafting this judgment.

(2026) 4 ILRA 2243
APPELLATE JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 09.04.2026

BEFORE

THE HON'BLE SANDEEP JAIN, J.

First Appeal No. 277 of 2026

Smt. Sunita Gupta & Anr.

...Appellants

Versus

Smt. Prem Gupta & Ors.

...Respondents

Issues for Consideration

(i) Whether a plaint seeking declaration that immovable property standing in the name of the mother is HUF property could be rejected under Order VII Rule 11 CPC on the ground that it discloses no cause of action and is barred by limitation?

(ii) Whether, at the stage of deciding an application under Order VII Rule 11 CPC, the Court is required to confine itself to the averments in the plaint and the documents relied upon by the plaintiff?

(iii) Whether a plea that the property was purchased from the nucleus of a Hindu Undivided Family, despite standing in the name of the mother since 1966, disclosed a triable cause of action in the absence of any prima facie material regarding the existence and nucleus of the HUF?

(iv) Whether the plaintiffs, who asserted co-ownership since birth but instituted the suit nearly six decades after the purchase of the property, could avoid the bar of limitation by pleading refusal to share rental income from the year 2022?

Headnotes

Code of Civil Procedure, 1908 — Order VII Rule 11 — Rejection of plaint — Cause of action — Limitation — Scope of enquiry.

HELD: While deciding an application under Order VII Rule 11 CPC, the Court is required to examine the averments contained in the plaint together with the documents relied upon by the plaintiff. The defence set up in the written statement or the documents produced by the defendants cannot ordinarily be looked into. However, if from the plaint itself it is evident that the suit is barred by law or discloses no enforceable cause of action, the plaint is liable to be rejected at the threshold. [Paras 34 to 45]

Code of Civil Procedure, 1908 — Order VII Rule 11(d) — Limitation — Declaration of co-ownership in alleged HUF property — Property purchased in 1966 in mother's name — Suit instituted in 2025 — Rejection of plaint.

HELD: The plaint itself disclosed that the property had been purchased in the exclusive name of defendant no.1 through a registered sale deed dated 11.04.1966 and that the plaintiffs claimed to be co-owners since birth. Having attained majority decades earlier, the plaintiffs could have asserted their alleged rights within the period prescribed by law. Institution of the suit in the year 2025 seeking declaration of co-ownership was ex facie barred by limitation. The plea that the cause of action arose only in September, 2022 on refusal to share rent did not revive or extend the limitation for seeking declaration of title. [Paras 46 to 54]

Hindu Law — Hindu Undivided Family (HUF) — Property standing in name of female member — Burden to establish HUF nucleus — Absence of prima facie material.

HELD: A mere assertion that the consideration for purchase flowed from the nucleus of a Hindu Undivided Family is insufficient. Where the plaint itself failed to disclose any prima facie material regarding the existence of the HUF, its income, or a sufficient ancestral nucleus capable of purchasing the property, and the registered sale deed recorded the mother as absolute purchaser, no enforceable right in favour of the plaintiffs was disclosed. [Paras 46 to 54]

Hindu Succession Act, 1956 — Section 14 — Property purchased in name of Hindu female — Absolute ownership — Effect.

HELD: The registered sale deed conferred title upon defendant no.1 in her individual capacity. In the absence of any prima facie material establishing that the property belonged to a Hindu Undivided Family, defendant no.1 was to be treated as the absolute owner under Section 14 of the Hindu Succession Act, 1956, and the plaintiffs failed to disclose any legally enforceable right to challenge her ownership. [Paras 46 to 54]

Civil Procedure — Cause of action — Artificial pleading to overcome limitation — Rental income dispute.

HELD: The plea that the defendant stopped sharing rental income from September, 2022 did not constitute an independent cause of action for seeking declaration of title where the plaintiffs' own case was that they had been co-owners since birth. In the absence of any documentary material supporting previous sharing of rent or co-ownership, such pleading was merely an attempt to bring an otherwise time-barred suit within limitation and did not create a fresh cause of action. [Paras 52 to 54]

Code of Civil Procedure, 1908 — Order VII Rule 11 — Rejection of plaint — Appellate interference.

HELD: Since the plaint itself disclosed that the plaintiffs had no subsisting cause of action and that the suit seeking declaration was hopelessly barred by limitation, the trial court rightly exercised jurisdiction under Order VII Rule 11 CPC in rejecting the plaint. No interference under Section 96 CPC was warranted. The appeal was accordingly dismissed and the judgment and decree of the trial court affirmed. [Paras 54 to 56]

First Appeal dismissed. Judgment and decree rejecting the plaint under Order VII Rule 11 CPC affirmed. (E-14)

Case Law Cited

P.V. Guru Raj Reddy Rep. by LRs. v. P. Neeradha Reddy and Others, (2015) 8 SCC 331 — relied on; Shailesh Kumar v. Vibha Gupta, 2025 SCC OnLine All 6320 — relied on; Shreya Vidyarthi v. Ashok Vidyarthi and Others, (2015) 16 SCC 46 — relied on; Om Prakash Gupta v. Radhey Shyam Gupta, 2026 (1) AWC 874 — relied on; Sunil Kumar Dublith v. Ramesh Chandra Dublith and Others, 2026 SCC OnLine All 310 — relied on; Khatri Hotels (P) Ltd. and Another v. Union of India and Another, (2011) 9 SCC 126 — relied on; Dahiben v. Arvindbhai Kalyanji Bhanusali (Gajra) (Dead) through LRs. and Others, (2020) 7 SCC 366 — relied on; Rajendra Bajoria and Others v. Hemant Kumar Jalan and Others, (2022) 12 SCC 641 — relied on; The Correspondent, RBANMS Educational Institution v. B. Gunashekar and Another, 2025 SCC OnLine SC 793 (2025 INSC 490) — relied on; Azhar Hussain v. Rajiv Gandhi, 1986 Supp SCC 315 — referred to; Liverpool & London S.P. & I. Association Ltd. v. M.V. Sea Success I and Another, (2004) 9 SCC 512 — referred to.

List of Acts / Statutes

Code of Civil Procedure, 1908; Hindu Succession Act, 1956; Limitation Act, 1963; Specific Relief Act, 1963; The Benami Transactions (Prohibition) Act, 1988 (held inapplicable).

List of Keywords

Rejection of plaint; Cause of action; Limitation; Hindu Undivided Family (HUF); HUF nucleus; Coparcenary property; Property standing in the name of mother; Registered sale deed; Section 14, Hindu Succession Act, 1956; Absolute ownership of Hindu female; Declaration of title; Co-ownership; Fiduciary capacity; Gift deed; Rental income.

Case Arising From

Judgment and decree dated **10.07.2025** passed by the Additional District Judge, Court No. 11, Agra in **Original Suit No. 59 of 2025, Smt. Sunita Gupta and Another v. Smt. Prem Gupta and Others.**

Appearance for Parties

For the Petitioner: Sri Ved Prakash Shukla

For the Respondents: Sri Kushagra Vaibhav Singh and Sri Pradeep Kumar Singh

(Delivered by Hon'ble Sandeep Jain, J.)

1. The instant appeal has been filed by the plaintiffs under Section 96 CPC against the impugned judgment and decree dated 10.7.2025 passed by the Additional District Judge, Court no. 11, Agra in O.S.no. 59 of 2025, Smt.Sunita Gupta and another vs. Smt.Prem Gupta and others, whereby the application no. 27-C of defendant no.1 and 2 under Order VII Rule 11 CPC has been allowed and consequently, the plaint has been rejected.

Plaint case

2. The plaintiffs who are the daughter and son of defendant no.1 Smt. Prem Gupta and sibling of defendant no. 2 Smt.Anju Gupta filed O.S. No. 59 of 2025 with the averments that plaintiffs and defendant no.1 and 2 are the members of the HUF who are originally resident of Mahavir Ganj,Aligarh. There was an ancestral house of their grandfather late Babulal Gupta , who was having a business of Aadat. Their father Omprakash Gupta left Aligarh and joined service as Senior Asst. in the office of the Joint Development Commissioner(JDC) Agra much prior to 1955 and thereafter, married defendant no.1 in or about 1955 who was very poor,hand to mouth person and was totally dependent upon their father. **It was further submitted that their grandfather Babulal Gupta also winded up his business from Aligarh and distributed the money to their sons.**

3. It was further averred that after the marriage of defendant no.1 with their father Omprakash Gupta, their father purchased disputed suit properties, which are mentioned at the foot of the plaint, **from the fund of the HUF** in the name of his wife defendant no.1 Smt.Prem Gupta, in love and affection and in trust for the benefit of himself and all his family members from Smt.Munni Devi through registered sale deed dated 11.4.1966 which was subsequently registered in the office of sub-registrar Agra on 09.6.1966, **hence the property in suit is HUF property**, in which the plaintiffs and defendant no.1 and 2 have equal share.

4. It was further averred that at the time of the above sale deed, the plaintiff no.1 was about 3 years old and plaintiff no. 2 was in womb and defendant no. 2 was not in existence. At the time of purchase of property of schedule 'A' it was residential house consisting of 2 rooms with tinshed and lobby on the ground floor. Thereafter, their father raised 3 storeyed building consisting of 17 rooms from the HUF fund.

It was further averred that at the time of purchase of another property bearing Nagar Nigam no. 5/13,was in the nature of plot.Thereafter, their father also raised a residential house on it consisting of 4 rooms on the ground floor and one store,latrine-bathroom on the 1st floor from HUF fund.

5. It was further averred that the defendant no.1 i.e.mother of the plaintiffs is a housewife, **having no Stridhan with her and no source of income, all the investment in purchase of the property and raising construction on it was made by their father only from the ancestral nucleus i.e. from the HUF funds.**

6. It was further averred that the plaintiff no.1 and defendant no.1 and 2 are residing in house no. 5/13 in 7 rooms and remaining 10 rooms are rented with different tenants, from which defendant no.1 is **receiving about ₹ 50,000/- per month as rent on behalf of all the heirs of Late Omprakash Gupta**. It was further averred that the plaintiffs and defendants no.1 and 2 are living in house no. 5/13 Madia Katra,Agra since very inception and **part of the property in suit is rented,which is realised by defendant no.1 for herself and other co-owners.**

7. It was further averred that the marriage of plaintiff no. 2 was solemnised in the year 1986 thereafter, the father of the plaintiffs completed the constructions of the plot no. 5/13-A and since then plaintiff no. 2 is residing in the house with his family.

8. It was further averred that their father Omprakash Gupta being the Karta of HUF realised the rent of 10 rooms from the tenants till his death and after his death, the rent is being realised by the defendant no.1 for herself and for the benefit of the HUF. It was further averred that the plaintiff no.1 and defendant no. 2 are residing in house no. 5/13 Madia Katra, Agra since very inception as co-owner and being the member of the HUF, and have equal share in the properties in suit. It was further averred that all the rent realised by **the defendant no.1 was in representative capacity in which plaintiffs have equal share, the defendant no.1 used to give lump-sum amount to the plaintiffs and defendant no. 2 in lieu of their share in rent upto the month of October, 2022** but thereafter, the defendant no.1 failed to give any amount to the plaintiffs and when the plaintiffs demanded their share of rent then the defendant no.1 became furious and told them that the properties are in her name and threatened to dispossess the plaintiffs and has also started to negotiate its sale with different persons. The plaintiffs further asked the defendant no.1 to give the details of the rent since the month of September 2022 to which she refused.

9. It was further averred that on 23.1.2025 the defendant no. 3 Ferhan Khan with 4 other persons contacted the plaintiffs and informed that he is going to purchase the disputed property from defendant no.1 and asked the plaintiffs to vacate the properties and otherwise threatened them with dire consequences. The plaintiffs told the defendant no. 3 that they are the owners in possession of the disputed property jointly with their mother defendant no.1. The plaintiffs immediately on the same day contacted their mother defendant no.1 and enquired about the impending sale to which no satisfactory answer was given by her but later on, the defendant no.1 asked the plaintiffs to leave the house and also threatened that she is the absolute owner and shall sale the disputed properties. The plaintiffs requested their mother not to sell the disputed properties but their mother was adamant to sell it to defendant no. 3 or any other person of her choice.

10. It was further averred that on 24.1.2025 the defendant no. 3 with some person again came to the disputed house of the plaintiffs and threatened them that they will take possession of the disputed properties forcibly after purchasing the properties. The plaintiffs tried to register FIR regarding this incident, but they could not.

11. It is the specific case of the plaintiffs that the defendant no.1 has no right to sell any share in the disputed properties to defendant no. 3 or any other person, since the disputed property is of HUF in which as members, the plaintiffs have also got right title and interest since inception and they are also residing peacefully with their families and defendant no.1 is under obligation to give details of the rent received by her and also to give rent to other co-owners. It was further averred that the plaintiffs have preferential rights to purchase the share of other members of HUF in suit property, since they are the owners in possession and have every right to protect their properties.

12. In the above backdrop, the plaintiffs have claimed the following reliefs :-

(A) That a decree of declaration that the property in suit is HUF property and plaintiffs and defendants no.1 and 2 are members of the said HUF and have equal share in suit property and are also entitled to equal share in rent and decree of permanent prohibitory injunction be passed in favour of the plaintiffs against the defendant no.1 not to transfer or alienate the properties in suit to the defendant no. 3 or to any other person without partition and restraining the defendants, their associates, agents or any other persons claiming through them from interfering in the ownership and possession of the plaintiffs in property in suit by changing the nature of property in suit or by dispossessing the plaintiffs or by any other manner whatsoever.

(B) Decree of mandatory injunction to give account of rent realised from tenant since September 2022 and defendant no. 1 be directed to give share of rent of property in suit along with 18% interest per annum since September 2022 to the date of actual payments.

(C) The cost of the suit be awarded to the plaintiffs against the defendants.

(D) Any other relief to which the Hon'ble Court deems and proper in the circumstances of the case be also granted to the plaintiffs against the defendants.

Defendants application under Order VII Rule 11 CPC

13. The defendant no.1 and 2 moved an application no. 27 □ C under Order VII Rule 11 read with 151 CPC with the averments that according to the plaint the disputed property was purchased by defendant no.1 through registered sale deed on 11.4.1966 and the plaintiffs have also alleged that the cause of action for filing the suit has arisen on 11.4.1966. It was further averred that the disputed property was self acquired property of the defendant no.1, hence the plaintiffs have got no cause of action for filing the instant suit. Further, the plaintiff's suit was time barred and was also barred by Section 41 of the Specific Relief Act since the plaintiffs have not claimed the efficacious relief of cancellation of gift deeds executed by defendant no.1 in favour of defendant no. 2. With these averments, it was prayed that the plaintiff's suit be dismissed under Order VII Rule 11 CPC.

Objections filed by the plaintiffs against the above application of the defendants

14. The plaintiffs averred that the sale deed dated 11.4.1966 was executed in favour of the defendant no.1 in fiduciary capacity and as trustee for the benefit of all the members of the HUF. The issue of limitation is mixed question of law and fact which cannot be a ground under Order VII Rule 11 CPC. The alleged gift deed was not in the knowledge of the plaintiffs at the time of the filing of the suit. Further, the gift deed was nullity from inception upto the extent of the share of the plaintiffs in the disputed property. Since the disputed property is of HUF the plaintiffs are its co-owners since their birth and defendant no.1 has got no right or authority to transfer the share of the plaintiffs to the defendant no. 2 or any other person by alleged gift or in any other manner of transfer. Hence, the plaint cannot be rejected on this ground also. It was averred that the application of the defendants was misconceived and was liable to be rejected with cost.

Reasoning of the trial court

15. The trial court opined that in the sale deed dated 11.4.1966 it was not mentioned that the property belongs to HUF. To the contrary, it is mentioned that the defendant no.1 is the absolute owner in possession of the disputed property. The sale deed also mentions that the consideration has also been paid by the defendant no.1. The trial court further opined that the plaintiffs have not led any evidence to prove the existence and nucleus of HUF, that their grandfather was having a Aadat, the income generated from Aadat and the expenditure incurred from it.

16. The trial court further opined that the plaintiffs father Omprakash Gupta was a Senior Assistant, who was getting salary, which is contrary to the plaintiffs assertion that the disputed property is of HUF. The trial court opined that the disputed property was purchased through sale deed dated 11.4.1966, of which defendant no.1 is the absolute owner in possession and according to Section 14 of the Hindu Succession Act, 1956 if any property is acquired by any Hindu woman after the commencement of this Act, then she will be treated as the absolute owner of that property, not limited owner.

17. The trial court opined that the plaintiffs have claimed that they are co-owner of the disputed property but they have failed to prove it. The trial court further opined that the plaintiffs claimed that the sale deed was executed on 11.4.1966 but the suit has been filed on 28.1.2025 whereas, the limitation under Article 110 of the Limitation Act, 1963 was only 12 years, hence the plaintiffs suit was also time barred.

18. The trial court further opined that the plaintiffs have claimed that the cause of action has arisen to them in September 2022 when the defendant no.1 refused to share with them rents realised from the disputed property, but the plaintiffs have not filed any documentary evidence to prove that they were getting any rent previously. Trial court opined that the plaintiffs have failed to prove that they have got any cause of action to file the suit. In view of the above reasoning, the plaint was rejected under Order VII Rule 11 CPC, aggrieved against which, the plaintiffs have filed the instant appeal under Section 96 CPC.

Submissions of the learned counsel of the parties

19. Learned counsel for the plaintiff appellants submitted that the plaintiffs mother/defendant no.1 belonged to poor family, who had no Stridhan, who was not having any income to purchase the disputed property through sale deed dated 11.4.1966 for a consideration of ₹ 6,000/-, which was a princely amount at that time. Learned counsel further submitted that the consideration of the above sale deed came from the income/nucleus of the HUF of plaintiffs grandfather Babulal Gupta and father Omprakash Gupta and others, who were having a flourishing business of Aadat.

20. It was further submitted that at the stage of deciding application under Order VII Rule 11 CPC only the plaint averments and documents submitted by the plaintiff are to be considered. The written statement and the documents of the defendants are not to be considered, but the trial court has considered the house tax, water tax and the electricity bills produced by the defendants.

Further, the trial court cannot examine the veracity of the plaint averments, whatever is alleged by the plaintiff, is to be presumed true at this stage.

21. It was further submitted that the trial court has considered the issue of limitation, which is a mixed question of fact and law, which cannot be considered at the stage of deciding application under Order VII Rule 11 CPC.

22. It was further submitted that the plaintiffs are residing in the disputed property since their birth, as members of the HUF, and they are co-owners of the disputed property, hence, the defendant no.1 has no right to sell it to any person. It was further averred that since the plaintiffs were not aware at the time of the filing of the suit, that a gift deed of the disputed property has been executed by defendant no.1 in favour of defendant no. 2 as such, the relief of its cancellation has not been claimed by the plaintiffs. It was further averred that the plaintiffs have claimed that the cause of action has arisen to them only in the month of September 2022 when their mother refused to share with them the rents realised from the disputed property, hence no question of the suit being barred by limitation arises.

23. Learned counsel further submitted that all the issues raised by the defendants can only be adjudicated after trial, after the parties have led evidence, which cannot be determined at this stage, hence, the trial court has erred in rejecting the plaint under Order VII Rule 11 CPC at the threshold. With these submissions, it was prayed that the appeal be allowed, and the matter be remanded to the trial court for deciding it on merits. In support of his contention learned counsel has relied on the following case law :-

(i) P.V. Guru Raj Reddy Rep. By vs. P. Neeradha Reddy and ors. (2015) 8 SCC 331.

(ii) Shailesh Kumar vs. Vibha Gupta 2025 SCC OnLine All 6320.

(iii) Shreya Vidyarthi vs. Ashok Vidyarthi & ors. (2015) 16 SCC 46.

(iv) Om Prakash Gupta vs. Radhey Shyam Gupta 2026 (1) AWC 874.

(v) Sunil Kumar Dublith vs. Ramesh Chandra Dublith and ors. 2026 SCC OnLine All 310

24. Per contra, Sri Pradeep Kumar Singh learned Senior counsel for the contesting respondents submitted that the plaintiffs have alleged that there was a HUF of their grandfather and father but no prima facie evidence in this regard has been submitted. Learned counsel further submitted that the plaintiffs have also failed to prima facie prove what was the income of the alleged HUF and whether it was also having a substantial nucleus, from which the alleged property could have been purchased on 11.4.1966 for consideration of ₹ 6,000/-. Learned counsel further submitted that the plaintiffs have to prima facie show that there was a HUF which was having substantial income, from which the disputed property could have been purchased in the year 1966. It was further alleged that as per the plaint, the HUF was dissolved and the property was distributed among the members. Learned counsel submitted that if the HUF stood dissolved and if property was distributed among its members, then the whole case of the plaintiffs is demolished.

25. It was further submitted that the plaintiffs are claiming their ownership rights in the disputed property since their birth, but they have waited for about 60 years to assert their rights in the disputed property. Learned counsel further submitted that the plaintiff no.1 has averred that she was about 3 years old when the property was purchased in the year 1966 and the plaintiff no. 2 was in womb of his mother/defendant no.1, hence, within 3 years of attaining majority, the plaintiffs could have asserted their rights in the disputed property because they knew from their birth that they are co-owners in the disputed property, which belongs to HUF. It was submitted that in view of the above facts, the plaintiffs suit was grossly barred by limitation.

26. It was further submitted that the plaintiffs have claimed that upto the month of October 2022, the rents realised from the disputed property by defendant no.1 was being shared with them, because they were members of the HUF, but no prima facie evidence has been submitted in this regard by the plaintiffs. It was further submitted that there is also no evidence that their name is recorded as co-owner in the municipal records.

27. It was further submitted that the disputed property has already been gifted by the defendant no.1 to her daughter/defendant no. 2, which is in the knowledge of the plaintiffs, but they have not claimed the relief of cancellation of the gift deed, hence, the plaintiffs suit was barred by Section 41(h) of the Specific Relief Act.

28. It was further submitted that the defendant no.1 was the absolute owner of the disputed property in accordance with Section 14 of the Hindu Succession Act 1956, as such, the plaintiffs cannot claim any right title and interest in the disputed property.

29. It was further submitted that the plaintiffs have disclosed in the plaint that the plaintiffs father, who was also the husband of defendant no.1, was in government job since much prior to the year 1955, who was getting a decent salary, in view of this also, the averments of the plaintiffs that the disputed property was purchased from the income/nucleus of HUF in the year 1966, stands demolished.

30. Learned counsel further submitted that it is true that the written statement and the documents of the defendants are not to be considered at this stage, but it is also well settled that the plaintiff has to prove his case prima facie on the basis of some documentary evidence, which the plaintiffs have failed to submit. Learned counsel further submitted that the plaintiffs have to prove that they have got cause of action to file the instant suit, but in this case, it is prima facie proved from the plaint averments that neither the plaintiffs have got any cause of action to file the suit nor the suit has been filed within the prescribed period of limitation. Learned counsel submitted that the plaintiffs suit was grossly barred by limitation and hence, this issue can be examined at the stage of deciding application under Order VII Rule 11 CPC. It was submitted that in view of the above facts, the trial court has not erred in rejecting the plaint under Order VII Rule 11 CPC. With these submissions, it was prayed that the appeal is meritless and be rejected. In support of his contention, learned counsel has relied on the following case law :-

(i)Khatri Hotels Private Ltd. & anr. Vs. Union of India & anr.(2011) 9 SCC 126.

(ii) *Dahiben vs. Arvindbhai Kalyanji Bhanusali (Gajra) Dead through LR's & ors.* (2020) 7 SCC 366.

(iii) *Rajendra Bajoria & ors. Vs. Hemant Kumar Jalan & ors.* (2022) 12 SCC 641.

(iv) *The Correspondence, RBANMS Educational Institution vs. B. Gunashekar & anr.* 2025 INSC 490.

31. I have heard the learned counsel of the parties and perused the record of the lower court and the case law submitted by them.

32. The case laws submitted by the learned counsel for the appellants deal with the interpretation of Order VII Rule 11 CPC as well as with the applicability of The Benami Transactions (Prohibition) Act, 1988. In the instant case, the provisions of the Act of 1988 are not applicable since the alleged sale deed was executed on 11.04.1966, which is before the enforcement of the above Act.

33. The case laws submitted by the learned counsel for the respondents deal with the provisions of Order VII Rule 11 CPC as well as the issue of limitation, which has been subsequently dealt in this judgment.

Interpretation of Order VII Rule 11 CPC

34. The Apex Court in the case of Correspondence, RBANMS ***Educational Institution vs. B. Gunashekar and Anr.*** 2025 SCC OnLine SC 793, while considering the scope and purpose of Order VII Rule 11 CPC, has held as under:-

“14. Let us first examine the scope and purpose of Order VII Rule 11 CPC. This Court in Dahiben v. Arvindbhai Kalyanji Bhanusali (Gajra) dead through legal representatives (2020) 7 SCC 366, explained in detail the applicable law for deciding the application for rejection of the plaint. The relevant paragraphs of the said decision are reproduced below:

“23.1 “

23.2. The remedy under Order VII Rule 11 is an independent and special remedy, wherein the Court is empowered to summarily dismiss a suit at the threshold, without proceeding to record evidence, and conducting a trial, on the basis of the evidence adduced, if it is satisfied that the action should be terminated on any of the grounds contained in this provision.

23.3. The underlying object of Order VII Rule 11 (a) is that if in a suit, no cause of action is disclosed, or the suit is barred by limitation under Rule 11 (d), the Court would not permit the plaintiff to unnecessarily protract the proceedings in the suit. In such a case, it would be necessary to put an end to the sham litigation, so that further judicial time is not wasted.

23.4. In *Azhar Hussain v. Rajiv Gandhi* 1986 Supp SCC 315 this Court held that the whole purpose of conferment of powers under this provision is to ensure that a litigation which is meaningless, and bound to prove abortive, should not be permitted to waste judicial time of the court, in the following words : (SCC p.324, para 12)

“12. □The whole purpose of conferment of such power is to ensure that a litigation which is meaningless, and bound to prove abortive should not be permitted to occupy the time of the Court, and exercise the mind of the respondent. The sword of Damocles need not be kept hanging over his head unnecessarily without point or purpose. Even in an ordinary civil litigation, the Court readily exercises the power to reject a plaint, if it does not disclose any cause of action.”

23.5. The power conferred on the court to terminate a civil action is, however, a drastic one, and the conditions enumerated in Order VII Rule 11 are required to be strictly adhered to.

23.6. **Under Order VII Rule 11, a duty is cast on the Court to determine whether the plaint discloses a cause of action by scrutinizing the averments in the plaint read in conjunction with the documents relied upon, or whether the suit is barred by any law.**

23.7. Order VII Rule 14(1) provides for production of documents, on which the plaintiff places reliance in his suit, which reads as under:

“14. Production of document on which plaintiff sues or relies.-(1) Where a plaintiff sues upon a document or relies upon document in his possession or power in support of his claim, he shall enter such documents in a list, and shall produce it in Court when the plaint is presented by him and shall, at the same time deliver the document and a copy thereof, to be filed with the plaint.

(2) Where any such document is not in the possession or power of the plaintiff, he shall, wherever possible, state in whose possession or power it is.

(3) A document which ought to be produced in Court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint but is not produced or entered accordingly, shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.

(4) Nothing in this rule shall apply to document produced for the cross examination of the plaintiff's witnesses, or, handed over to a witness merely to refresh his memory.”

23.8. **Having regard to Order VII Rule 14 CPC, the documents filed alongwith the plaint, are required to be taken into consideration for deciding the application under Order VII Rule 11(a). When a document referred to in the plaint, forms the basis of the plaint, it should be treated as a part of the plaint.**

23.9. In exercise of power under this provision, the Court would determine if the assertions made in the plaint are contrary to statutory law, or judicial dicta, for deciding whether a case for rejecting the plaint at the threshold is made out.

23.10. *At this stage, the pleas taken by the defendant in the written statement and application for rejection of the plaint on the merits, would be irrelevant, and cannot be adverted to, or taken into consideration (2004) 3 SCC 137.*

23.11. The test for exercising the power under Order VII Rule 11 is that if the averments made in the plaint are taken in entirety, in conjunction with the documents relied upon, would the same result in a decree being passed. This test was laid down in Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success which reads as : (SCC p.562, para 139)

“139. Whether a plaint discloses a cause of action or not is essentially a question of fact. But whether it does or does not must be found out from reading the plaint itself. For the said purpose, the averments made in the plaint in their entirety must be held to be correct. The test is as to whether if the averments made in the plaint are taken to be correct in their entirety, a decree would be passed.”

23.12. *In Hardesh Ores (P.) Ltd. v. Hede & Co. (2007) 5 SCC 614 the Court further held that it is not permissible to cull out a sentence or a passage, and to read it in isolation. It is the substance, and not merely the form, which has to be looked into. The plaint has to be construed as it stands, without addition or subtraction of words. If the allegations in the plaint prima facie show a cause of action, the court cannot embark upon an enquiry whether the allegations are true in fact. D. Ramachandran v. R.V. Janakiraman (1999) 3 SCC 267.*

23.13. *If on a meaningful reading of the plaint, it is found that the suit is manifestly vexatious and without any merit, and does not disclose a right to sue, the court would be justified in exercising the power under Order VII Rule 11 CPC.*

23.14. *The power under Order VII Rule 11 CPC may be exercised by the Court at any stage of the suit, either before registering the plaint, or after issuing summons to the defendant, or before conclusion of the trial, as held by this Court in the judgment of Saleem Bhai v. State of Maharashtra (2003) 1 SCC 557. The plea that once issues are framed, the matter must necessarily go to trial was repelled by this Court in Azhar Hussain (supra).*

23.15. *The provision of Order VII Rule 11 is mandatory in nature. It states that the plaint □shall□ be rejected if any of the grounds specified in clause (a) to (e) are made out. If the Court finds that the plaint does not disclose a cause of action, or that the suit is barred by any law, the Court has no option, but to reject the plaint.*

24. □Cause of action□ *means every fact which would be necessary for the plaintiff to prove, if traversed, in order to support his right to judgment. It consists of a bundle of material facts, which are necessary for the plaintiff to prove in order to entitle him to the reliefs claimed in the suit.*

24.1. *In Swamy Atmanand v. Sri Ramakrishna Tapovanam (2005) 10 SCC 51 this Court held:*

“24. A cause of action, thus, means every fact, which if traversed, it would be necessary for the plaintiff to prove an order to support his right to a judgment of the court. In other words, it is a bundle of facts, which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act, no cause of action can possibly accrue. It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded”

24.2. In T. Arivandandam v. T.V. Satyapal (1977) 4 SCC 467 this Court held that while considering an application under Order VII Rule 11 CPC what is required to be decided is whether the plaint discloses a real cause of action, or something purely illusory, in the following words : (SCC p. 470, para 5)

“5. □ The learned Munsif must remember that if on a meaningful - not formal - reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order VII, Rule 11 CPC taking care to see that the ground mentioned therein is fulfilled. And, if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing □”

24.3. Subsequently, in I.T.C. Ltd. v. Debt Recovery Appellate Tribunal (1998) 2 SCC 70 this Court held that law cannot permit clever drafting which creates illusions of a cause of action. What is required is that a clear right must be made out in the plaint.

24.4. If, however, by clever drafting of the plaint, it has created the illusion of a cause of action, this Court in Madanuri Sri Ramachandra Murthy v. Syed Jalal (2017) 13 SCC 174 held that it should be nipped in the bud, so that bogus litigation will end at the earliest stage. The Court must be vigilant against any camouflage or suppression, and determine whether the litigation is utterly vexatious, and an abuse of the process of the court.

....

28. A three-Judge Bench of this Court in State of Punjab v. Gurdev Singh (1991) 4 SCC 1 held that the Court must examine the plaint and determine when the right to sue first accrued to the plaintiff, and whether on the assumed facts, the plaint is within time. The words □right to sue□ means the right to seek relief by means of legal proceedings. The right to sue accrues only when the cause of action arises. The suit must be instituted when the right asserted in the suit is infringed, or when there is a clear and unequivocal threat to infringe such right by the defendant against whom the suit is instituted. Order VII Rule 11(d) provides that where a suit appears from the averments in the plaint to be barred by any law, the plaint shall be rejected.”

14.1. Thus, it is clear that the above provision viz., Order VII Rule 11 CPC serves as a crucial filter in civil litigation, enabling courts to terminate proceedings at the threshold where the plaintiff's case, even if accepted in its entirety, fails to disclose any cause of action or is barred by law, either express or by implication. The scope of Order VII Rule 11 CPC and the authority of the courts is well settled in law. There is a bounden duty on the Court to discern and identify fictitious suit, which on the face of it would be barred, but for the clever pleadings

disclosing a cause of action, that is surreal. Generally, sub-clauses (a) and (d) are stand alone grounds, that can be raised by the defendant in a suit. However, it cannot be ruled out that under certain circumstances, clauses (a) and (d) can be mutually inclusive. For instances, when clever drafting veils the implied bar to disclose the cause of action; it then becomes the duty of the Court to lift the veil and expose the bar to reject the suit at the threshold. The power to reject a plaint under this provision is not merely procedural but substantive, aimed at preventing abuse of the judicial process and ensuring that court time is not wasted on fictitious claims failing to disclose any cause of action to sustain the suit or barred by law. Therefore, the appeal before us requires careful consideration of the scope of rejection of the plaint under Order VII Rule 11 CPC, particularly, in the context of the suit filed based on an agreement to sell against third parties in possession.

15. Order VII Rule 11(a) CPC mandates rejection of the plaint where it does not disclose a cause of action. In *Om Prakash Srivastava v. Union of India* (2006) 6 SCC 207, this Court pointed out that cause of action means every fact which, if traversed, would be necessary for the plaintiff to prove in order to support their right to judgment. It consists of bundle of facts which narrate the circumstances and the reasons for filing such suit. It is the foundation on which the entire suit would rest. Therefore, it goes without saying that merely including a paragraph on cause of action is not sufficient but rather, on a meaningful reading of the plaint and the documents, it must disclose a cause of action. The plaint should contain such cause of action that discloses all the necessary facts required in law to sustain the suit and not mere statements of fact which fail to disclose a legal right of the plaintiff to sue and breach or violation by the defendant(s). It is pertinent to note here that even if a right is found, unless there is a violation or breach of that right by the defendant, the cause of action should be deemed to be unreal”.

17. At the same time, we are conscious of principle that only averments in the plaint are to be considered under Order VII Rule 11 CPC. While it is true that the defendant's defense is not to be considered at this stage, this does not mean that the court must accept patently untenable claims or shut its eyes to settled principles of law and put the parties to trial, even in cases which are barred and the cause of action is fictitious. In *T. Arivandandam (supra)*, this Court emphasized that where the plaint is manifestly vexatious and meritless, courts should exercise their power under Order VII Rule 11 CPC and not waste judicial time on matters that are legally barred and frivolous.”

(emphasis supplied)

35. The Apex Court in the case of *Raghwendra Sharan Singh vs. Ram Prasanna Singh (Dead) By Lrs.* (2020)16 SCC 601, while considering whether the suit was barred by limitation for the purpose of Order VII Rule 11 CPC, held as under:-

“7. Applying the law laid down by this Court in the aforesaid decisions on exercise of powers under Order 7 Rule 11 CPC to the facts of the case in hand and the averments in the plaint, we are of the opinion that both the courts below have materially erred in not rejecting the plaint in

exercise of powers under Order 7 Rule 11 CPC. It is required to be noted that it is not in dispute that the gift deed was executed by the original plaintiff himself along with his brother. The deed of gift was a registered gift deed. The execution of the gift deed is not disputed by the plaintiff. It is the case of the plaintiff that the gift deed was a showy deed of gift and therefore the same is not binding on him. However, it is required to be noted that for approximately 22 years, neither the plaintiff nor his brother (who died on 15-12-2002) claimed at any point of time that the gift deed was showy deed of gift. One of the executants of the gift deed, brother of the plaintiff during his lifetime never claimed that the gift deed was a showy deed of gift. It was the appellant herein-original defendant who filed the suit in the year 2001 for partition and the said suit was filed against his brothers to which the plaintiff was joined as Defendant 10. It appears that the summon of the suit filed by the defendant being TS (Partition) Suit No. 203 of 2001 was served upon Defendant 10-plaintiff herein in the year 2001 itself. Despite the same, he instituted the present suit in the year 2003. Even from the averments in the plaint, it appears that during these 22 years i.e. the period from 1981 till 2001/2003, the suit property was mortgaged by the appellant herein-original defendant and the mortgage deed was executed by the defendant. Therefore, considering the averments in the plaint and the bundle of facts stated in the plaint, we are of the opinion that by clever drafting the plaintiff has tried to bring the suit within the period of limitation which, otherwise, is barred by law of limitation. Therefore, considering the decisions of this Court in T. Arivandandam [T. Arivandandam v. T.V. Satyapal, (1977) 4 SCC 467] and others, as stated above, and as the suit is clearly barred by law of limitation, the plaint is required to be rejected in exercise of powers under Order 7 Rule 11 CPC.

8. At this stage, it is required to be noted that, as such, the plaintiff has never prayed for any declaration to set aside the gift deed. We are of the opinion that such a prayer is not asked cleverly. If such a prayer would have been asked, in that case, the suit can be said to be clearly barred by limitation considering Article 59 of the Limitation Act and, therefore, only a declaration is sought to get out of the provisions of the Limitation Act, more particularly, Article 59 of the Limitation Act. The aforesaid aspect has also not been considered by the High Court as well as the learned trial court.

9. Now, so far as the application on behalf of the original plaintiff and even the observations made by the learned trial court as well as the High Court that the question with respect to the limitation is a mixed question of law and facts, which can be decided only after the parties lead the evidence, is concerned, as observed and held by this Court in Sham Lal [Sham Lal v. Sanjeev Kumar, (2009) 12 SCC 454 : (2009) 4 SCC (Civ) 741] ; N.V. Srinivasa Murthy [N.V. Srinivasa Murthy v. Mariyamma, (2005) 5 SCC 548 : AIR 2005 SC 2897] as well as in Ram Prakash Gupta [Ram Prakash Gupta v. Rajiv Kumar Gupta, (2007) 10 SCC 59] , considering the averments in the plaint if it is found that the suit is clearly barred by law of limitation, the same can be rejected in exercise of powers under Order 7 Rule 11(d) CPC.”

(emphasis supplied)

36. The Apex Court in the case of **Shri Mukund Bhavan Trust and others vs. Shrimant Chhatrapati Udayan Raje Pratapsinh Maharaj Bhonsle and another (2024)15 SCC 675**, was

considering whether the suit was barred by limitation while deciding application under Order VII Rule 11 CPC. It was held as under:-

*“13. As settled in law, when an application to reject the plaint is filed, **the averments in the plaint and the documents annexed therewith alone are germane**. The averments in the application can be taken into account only to consider whether the case falls within any of the sub-rules of Order 7 Rule 11 by considering the averments in the plaint. The court cannot look into the written statement or the documents filed by the defendants. The civil courts including this Court cannot go into the rival contentions at that stage”*

*25. Continuing further with the plea of limitation, the courts below have held that the question of the suit being barred by limitation can be decided at the time of trial as the question of limitation is a mixed question of law and facts. **Though the question of limitation generally is mixed question of law and facts, when upon meaningful reading of the plaint, the court can come to a conclusion that under the given circumstances, after dissecting the vices of clever drafting creating an illusion of cause of action, the suit is hopelessly barred and the plaint can be rejected under Order 7 Rule 11”.***

*40. At this juncture, we wish to observe that we are not unmindful of the position of law that limitation is a mixed question of fact and law and the question of rejecting the plaint on that score has to be decided after weighing the evidence on record. **However, in cases like this, where it is glaring from the plaint averments that the suit is hopelessly barred by limitation, the courts should not be hesitant in granting the relief and drive the parties back to the trial court.** We again place it on record that this is not a case where any forgery or fabrication is committed which had recently come to the knowledge of the plaintiff. Rather, the plaintiff and his predecessors did not take any steps to assert their title and rights in time. The alleged cause of action is also found to be creation of fiction.”*

(emphasis supplied)

37. It is apparent from the above law laid down by the Apex Court in the case of ***Correspondence, RBANMS Educational Institution*** (supra) that at the time of deciding Order VII Rule 11 CPC application, the court has to look into only the averments made in the plaint and the documents submitted by the plaintiff. The court has not to examine the written statement of the defendant or the documents submitted by it.

38. It is also apparent that the test for exercising the power under Order VII Rule 11 CPC is if the averments made in the plaint are taken in entirety, in conjunction with the documents relied upon, would the same result in a decree being passed. The plaint should also disclose a real cause of action and if clever drafting has created the illusion of a cause of action, then it should be nipped in the bud at the 1st hearing, so that bogus litigation will end at the earliest stage. The court should

also be vigilant against any camouflage or suppression, and determine whether the litigation is utterly vexatious, and an abuse of the process of the court.

39. It is also apparent that the court is not bound to accept patently untenable claims or shut its eyes to settled principles of law and put the parties to trial, even in cases which are barred and the cause of action is fictitious. In such situation the courts should not waste judicial time on matters that are legally barred and frivolous.

40. It is also apparent from the law laid down by the Apex Court *in Raghwendra Sharan Singh* (supra) and *Shri Mukund Bhavan Trust* (supra) that if from the plaint averments it is found that the suit was hopelessly barred by law of limitation then the same can be rejected in exercise of powers under Order VII Rule 11 CPC.

Conclusion of this Court

41. The Apex Court in the case of *Angadi Chandranna vs. Shankar and others 2025 SCC OnLine SC 877*, while considering whether there is presumption that a Hindu family merely because it is joint, possesses any joint property, held as under:-

“13. Further, it is a settled principle of law that there is no presumption of a property being joint family property only on account of existence of a joint Hindu family. The one who asserts has to prove that the property is a joint family property. If, however, the person so asserting proves that there was nucleus with which the joint family property could be acquired, then there would be presumption of the property being joint and the onus would shift on the person who claims it to be self-acquired property to prove that he purchased the property with his own funds and not out of joint family nucleus that was available. That apart, while considering the term □nucleus□ it should always be borne in mind that such nucleus has to be established as a matter of fact and the existence of such nucleus cannot normally be presumed or assumed on probabilities. This Court in R. Deivanai Ammal (Died) v. G. Meenakshi Ammal, dealt with the concept of Hindu Law, ancestral property and the nucleus existing therein. The relevant paragraphs are extracted below for ready reference:

“13. First let us consider the nature of the suit properties, namely, self-acquired properties of late Ganapathy Moopanar or ancestral properties and whether any nucleus was available to purchase the properties. Under the Hindu Law it is only when a person alleging that the property is ancestral property proves that there was a nucleus by means of which other property may have been acquired, that the burden is shifted on the party alleging self-acquisitions to prove that the property was acquired without any aid from the family estate. In other words the mere existence of a nucleus however small or insignificant is not enough. It should be shown to be of such a character as could reasonably be expected to lead to the acquisition of the property alleged to be part of the joint family property. Where the doctrine of blending is invoked against a person having income at his disposal and acquiring property, the reasonable presumption to make is that he had the income at his absolute disposal unless there is evidence to the contrary. If a coparcener desires to establish that a property in the name of a female member of the family or in the name of the manager himself has to be accepted and treated as property acquired from the joint

family nucleus, it is absolutely essential that such a coparcener should not only barely plead the same, but also establish the existence of such a joint family fund or nucleus. Even if the joint family nucleus is so established, the prescription that the accretions made by the manager or the purchases made by him should be deemed to be from and out of such a nucleus does not arise, if there is no proof that such nucleus of the joint family is not an income-yielding apparatus. The proof required is very strict and the burden is on the person who sets up a case that the property in the name of a female member of the family or in the name of the manager or any other coparcener is to be treated as joint family property. There should be proof of the availability of such surplus income or joint family nucleus on the date of such acquisitions or purchases. The same is the principle even in the cases where moneys were advanced on mortgages over immoveable properties. The onus is not on the acquirer to prove that the property standing in his name was purchased from joint family funds. That may be so, in the case of a manager of a joint family, but not so in the case of all coparceners. For a greater reason it is not so in the case of female members.

14. The doctrine of blending of self-acquired property with joint family has to be carefully applied with reference to the facts of each case. No doubt it is settled that when members of a joint family by their joint labour or in their joint business acquired property, that property, in the absence of a clear indication of a contrary intention, would be owned by them as joint family property and their male issues would necessarily acquire a right by birth in such property. But the essential sine qua non is the absence of a contrary intention. If there is satisfactory evidence of an intention on the part of the acquirer of such property to treat it as his own, but not as joint family property, the presumption which ordinarily arises, according to the personal law of Hindus that such property would be regarded as joint family property, will not arise.

15. It is a well-established principle of law that where a party claims that any particular item of property is joint family property, the burden of proving that it is so rests on the party asserting it. Where it is established or admitted that the family possessed some joint property which from its nature and relative value may have formed the nucleus from which the property in question may have been acquired, the presumption arises that it was joint property and the burden shifts to the party alleging self-acquisition to establish affirmatively that the property was acquired without the aid of the joint family. But no such presumption would arise if the nucleus is such that with its help the property claimed to be joint could not have been acquired. In order to give rise to the presumption, the nucleus should be such that with its help the property claimed to be joint could have been acquired. A family house in the occupation of the members and yielding no income could not be nucleus out of which acquisitions could be made even though it might be of considerable value.

16. In a Hindu joint family, if one member sues for partition on the foot that the properties claimed by him are joint family properties then three circumstances ordinarily arise. The first is an admitted case when there is no dispute about the existence of the joint family properties at all. The second is a case where certain properties are admitted to the joint family properties and the other properties in which a share is claimed are alleged to be the accretions or acquisitions from the income available from joint family properties or in the alternative have been acquired by a sale or conversion of such available properties. The third head is that the properties

standing in the names of female members of the family are benami and that such a state of affairs has been deliberately created by the manager or the head of the family and that really the properties or the amounts standing in the names of female members are properties of the joint family. While considering the term "nucleus" it should always be borne in mind that such nucleus has to be established as a matter of fact and the existence of such nucleus cannot normally be presumed or assumed on probabilities. The extent of the property, the income from the property, the normal liability with which such income would be charged and the net available surplus of such joint family property do all enter into computation for the purpose of assessing the content of the reservoir of such a nucleus from which alone it could, with reasonable certainty, be said that the other joint family properties have been purchased unless a strong link or nexus is established between the available surplus income and the alleged joint family properties. The person who comes to Court with such bare allegations without any substantial proof to back it up should fail.

17. It is also a well-established doctrine of Hindu Law that property which was originally self-acquired may become joint property if it has been voluntarily thrown by the coparcener into the joint stock with the intention of abandoning all separate claims upto it. But the question whether the coparcener has done so or not is entirely a question of fact to be decided in the light of all the circumstances of the case. It must be established that there was a clear intention on the part of the coparcener to waive his separate rights and such an intention will not be inferred from acts which may have been done from kindness or affection. The important point to keep in mind is that the separate property of a Hindu coparcener ceases to be his separate property and acquires the characteristics of his joint family or ancestral property, not by mere act of physical mixing with his joint family or ancestral property, but by his own volition and intention by his waiving or surrendering his special right in it as separate property. Such intention can be discovered only from his words or from his acts and conduct."

17. ...However, as per Hindu law, after partition, each party gets a separate and distinct share and this share becomes their self-acquired property and they have absolute rights over it and they can sell, transfer, or bequeath it as they wish. Accordingly, the properties bequeathed through partition, become the self-acquired properties of the respective sharers.

18. ***

19. As reiterated above, after the joint family property has been distributed in accordance with law, it ceases to be joint family properties and the shares of the respective parties become their self-acquired properties....

(emphasis supplied)

42. It is the plaintiff's case that the disputed property was purchased through sale deed on 11.4.1966 for consideration of ₹ 6,000/- in the name of their mother/defendant no.1 Smt.Prem Gupta, who was very poor, who was not having any independent income, who had no Stridhan and as such, she could not have purchased the property.

43. The plaintiffs have further alleged that the above property was purchased from the funds of HUF, consisting of their grandfather Babulal Gupta, father Omprakash Gupta and others, but the plaintiffs have not submitted any documentary evidence to prove the above fact. The initial burden is upon the plaintiffs to prove the existence of the above HUF, who were its members, its income, when it came into existence, when it was dissolved, what was its assets, whether it was having sufficient nucleus to purchase the above property of ₹ 6,000/-, but this burden has not been prima facie discharged by the plaintiffs.

44. The plaintiffs have only filed the certified copy of the above sale deed dated 11.4.1966 which discloses that defendant no.1 is the absolute owner in possession of the disputed property, which was purchased for a consideration of ₹ 6,000/- from Smt.Munni Devi. Nowhere the sale deed mentions that the consideration has been paid from the funds of the HUF, or it has been paid by the husband of defendant no.1. From the perusal of the sale deed, it is not disclosed that the property has been purchased from the funds provided by the alleged HUF. In view of the above facts, the plaintiffs assertion that the disputed property has been purchased from the funds of the alleged HUF is not prima facie proved.

45. The plaint further discloses that the plaintiff's father was in government job since much prior to the year 1955. It is apparent that if the plaintiff's father was in government job, then the HUF which was a business concern, could not have remained in simultaneous existence and further, the plaintiff's father could not have been its member, because a government servant is not allowed to do business while remaining in government job. A government servant cannot be part of a business, while he is in government service. The plaintiffs have themselves disclosed in the plaint that their grandfather winded his business from Aligarh and distributed the money to his sons, the plaintiff's father being one of them. The plaintiffs have not disclosed when the business of their grandfather was winded and the property distributed among the members. It is further apparent that after the dissolution of the joint family, the property given to its members or coparceners becomes their self-acquired property, as such, the plaintiffs cannot assert their ownership in it in any manner whatsoever.

46. It is apparent that the plaintiffs are alleging that the HUF was dissolved and its property was distributed among its members, but when this was done, and what amount was given to its each member on dissolution, has not been disclosed in the plaint. In the absence of above material facts, it is not open to the plaintiffs to allege that a HUF was in existence when the property was purchased on 11.4.1966. The plaintiffs have further failed to prove that the alleged HUF was having sufficient income and funds/nucleus, from which the disputed property could have been purchased.

47. It is further apparent that the disputed property was purchased when the plaintiff's father Omprakash Gupta, who is also the husband of defendant no.1, was alive, who was earning a decent salary in government job, who according to the plaintiffs was in government job much prior to the year 1955, who was having sufficient means to purchase the property, who has not challenged the title of his wife in the disputed property. Even if for the sake of argument it is presumed that the defendant no.1 was not having any income to purchase the disputed property, even then her husband Omprakash Gupta was getting a decent salary in the government job, who could have

provided the consideration of the sale deed. It is not the case of the plaintiffs that their father was also not earning anything. There was/is no legal bar that the husband cannot purchase property in the name of his wife. Even, Section 3(2) of The Benami Transactions (Prohibition) Act of 1988, permits the husband to purchase the property for the benefit of his wife or the unmarried daughter.

48. Now the question arises, if the consideration of the disputed property was provided by the husband of the defendant no.1 then what is the status of the defendant no.1 insofar as the ownership of the disputed property is concerned ?

49. Section 14 of the Hindu Succession Act, 1956 reads as under:-

14. Property of a female Hindu to be her absolute property -(1) *Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner.*

Explanation □ *In this subsection, "property" includes both movable and immovable property acquired by female Hindu by inheritance or devise, or at a partition, or in lieu of arrears of maintenance, or by gift from any person, whether a relative or not, before, at or after her marriage, or by her own skill or exertion, or by purchase or by prescription, or in any other manner whatsoever, and also any such property held by her as stridhana immediately before the commencement of this Act.*

(2) Nothing contained in sub-section(1) shall apply to any property acquired by way of gift or under a Will or any other instrument or under a decree or order of a Civil Court or under an award where the terms of the gift, Will or other instrument or the decree, order or award prescribe a restricted estate in such property.

50. It is apparent from Section 14 of the Hindu Succession Act, 1956 that any property purchased by female Hindu whether before or after the commencement of the Act shall be held by her as full owner thereof and not as a limited owner. In this case, the defendant no.1 has purchased the property after the commencement of the Act on 11.4.1966, and the sale deed does not mention that her rights are limited in the disputed property. To the contrary, the sale deed mentions that she is the absolute owner of the disputed property. In view of this, the plaintiffs' assertion that they are the co-owner of the disputed property, which was purchased from the funds of the alleged HUF, is not even prima facie proved.

51. The plaintiff averments disclose that plaintiff no.1 was 3 years old, when the property was purchased through sale deed on 11.4.1966 and the plaintiff no. 2 was in womb of his mother, whereas the defendant no. 2 was not in existence. The plaintiffs are claiming that they are the members of the HUF since birth and are asserting that they are co-owners in the disputed property. It is further apparent that the plaintiffs have filed the suit on 29.1.2025 asserting their rights in the disputed property, when they were well aware that they are co-owner of the disputed property since their birth. The plaintiffs have claimed declaration of their rights in the disputed property that it belongs to HUF and they are members of it along with the defendants no.1 and 2 and have got also equal share in the property.

52. It is further apparent that from 11.4.1966 till the filing of the suit on 29.1.2025, the plaintiffs were very well aware that their mother/defendant no.1 was the absolute owner of the disputed property, in which they are claiming co-ownership, but they never asserted their co-ownership in the disputed property during the lifetime of their father Omprakash Gupta. The plaintiffs were in legal disability being minor on 11.4.1966, but they could have subsequently, within 3 years of attaining majority, in accordance with Section 8 of the Limitation Act, 1963 challenged the exclusive ownership of their mother and claimed the relief of declaration of co-ownership in the disputed property, but no such suit was filed by the plaintiffs. It is apparent from the plaint that at the time of filing of the suit in the year 2025, the plaintiff no.1 was aged about 61 years and plaintiff no. 2 was aged about 58 years. In view of this, the plaintiff's suit for the relief of declaration that the disputed property belongs to HUF and they are its co-owner, is grossly time barred.

53. The plaintiffs have further alleged in the plaint that previously they were getting their share of the rent, which was realised from the tenant's of the disputed property but no documentary evidence has been adduced to prove this fact. The plaintiffs have asserted that the cause of action of the suit has arisen to them in the month of September, 2022 when the defendant no.1 failed to share with them the rents realised from the disputed property but no document has been produced to prove that tenants were residing in the disputed property from whom rent of ₹ 50,000/- per month was being collected, which was being shared with them. The plaintiffs have also failed to prove that their name is also entered as co-owner in the municipal records. It appears that in order to bring the suit within the limitation, this artificial fact of rent realisation has been pleaded by the plaintiffs which is not supported by any documentary evidence. It is apparent that the plaintiffs have tried to bring the suit within the prescribed period of limitation by claiming that cause of action has arisen after the month of September, 2022 which is not correct, because the plaintiffs were well aware at least since attaining majority, that their mother was the absolute owner of the disputed property. It is apparent that the whole controversy has arisen after the death of plaintiff's father.

54. From the above analysis it is evident that the plaintiffs have asserted their rights in the disputed property on the basis that they are its co-owner but prima facie it is not proved. The plaintiffs have failed to prove that the disputed property was purchased from the funds/nucleus of HUF. There is no evidence on record to prove that the plaintiffs have got any right title and interest in the disputed property. It is also evident that the plaintiffs suit for the relief of declaration is time barred. The plaintiffs have also failed to prove that they are entitled to any share of the rent, if any, realised from the disputed property by defendant no.1, who is the true owner of the disputed property, hence the plaintiffs have got no cause of action to file the instant suit and further, the suit is also grossly barred by limitation.

55. For the aforesaid reasons, the trial court has not erred in allowing the defendants application under Order VII Rule 11 CPC and consequently, rejecting the plaint. This appeal has got no merit and is liable to be dismissed at the admission stage.

56. Accordingly, this appeal is dismissed at the admission stage under Order 41 Rule 11 CPC with costs throughout. Consequently, the impugned judgment and decree of the trial court passed in O.S. no. 59 of 2025 dated 10.7.2025 is affirmed.

57. Interim order, if any, stands vacated.

58. Office is directed to send back the record of the trial court, forthwith.

(2026) 4 ILRA 2265
APPELLATE JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 28.04.2026

BEFORE

THE HON'BLE SANDEEP JAIN, J.

First Appeal From Order No. 69 of 2026

The New India Assurance Comp. Ltd. ...Appellant
Versus
Taiyyab Alam & Anr. ...Respondents

Issues for Consideration

- (i) Whether the Employees' Compensation Commissioner committed an error in applying an incorrect relevant factor under Schedule IV of the Employees' Compensation Act, 1923 while computing compensation?
- (ii) Whether a driver who suffered 45% permanent physical disability resulting in inability to drive any vehicle is entitled to compensation by treating the loss of earning capacity as 100% functional disability?
- (iii) Whether the Commissioner was justified in computing compensation on the basis of minimum wages despite categorical admission by the employer regarding the claimant's monthly wages?
- (iv) Whether interest under Section 4A of the Employees' Compensation Act, 1923 is payable on the amount awarded towards reimbursement of medical expenses?

Headnotes

Employees' Compensation Act, 1923 — Sections 4 and Schedule IV — Compensation — Relevant factor — Incorrect application of factor — Effect.

HELD: The claimant was aged 31 years on the date of accident and the relevant factor prescribed under Schedule IV of the Employees' Compensation Act, 1923 was 205.95. The Commissioner committed a manifest error in applying the factor of 295.95 while calculating compensation. The award was liable to be modified by applying the correct statutory factor. [Paras 15 and 25]

Employees' Compensation Act, 1923 — Section 4 — Compensation — Monthly wages — Admission by employer — Evidentiary value.

HELD: Where the employer unequivocally admitted in the written statement that the claimant was employed as a driver on monthly wages of Rs.15,000/-, there was no justification for the Commissioner to ignore such admission and determine compensation on the basis of minimum wages. In the absence of any evidence to the contrary, compensation was liable to be computed on the admitted monthly wages. [Paras 16 and 17]

Employees' Compensation Act, 1923 — Section 4 — Permanent physical disability — Functional disability — Driver rendered incapable of driving — Loss of earning capacity.

HELD: Assessment of compensation cannot be based merely upon the percentage of physical disability. The decisive consideration is the impact of the injury on the earning capacity of the injured workman. Although the Medical Board assessed the claimant's permanent physical disability at 45% on account of right-side

hemiplegia, the claimant, being employed as a driver, had become wholly incapable of driving any vehicle. Consequently, he suffered 100% functional disability and complete loss of earning capacity, entitling him to compensation on that basis. [Paras 18 to 22]

Employees' Compensation Act, 1923 — Sections 4 and 4A — Medical expenses — Reimbursement — Interest — Liability.

HELD: Reimbursement of medical expenses awarded under the Employees' Compensation Act forms an integral part of compensation. Consequently, interest under Section 4A is payable not only on the amount awarded towards compensation for loss of earning capacity but also on the amount reimbursed towards medical expenses. The claimant was entitled to interest at the rate of 12% per annum on both amounts from the date of accident till actual payment. [Paras 23 to 26]

Employees' Compensation Act, 1923 — Section 30 — Appeals by insurer and claimant — Modification of award.

HELD: Since the Commissioner applied an incorrect statutory factor, ignored the admitted wages of the claimant, failed to assess functional disability in accordance with settled principles, and omitted to award interest on medical reimbursement, the award required modification. The insurer's appeal lacked merit and was liable to be dismissed, whereas the claimant was entitled to enhancement of compensation. [Paras 25 to 30]

Insurer's appeal dismissed. Claimant's appeal allowed. Impugned award modified. Insurance company directed to deposit the enhanced compensation within two months after adjusting the amount already deposited. (E-14)

Case Law Cited

Mamta Devi and Others v. The Reliance General Insurance Co. Ltd. and Another, 2023 INSC 566 — relied on; Raj Kumar v. Ajay Kumar and Another, (2011) 1 SCC 343 — relied on; Sarnam Singh v. Sriram General Insurance Co. Ltd. and Others, (2023) 8 SCC 193 — relied on; Chandrasekaran v. P. Marappan and Another, CMA No. 2581 of 2021 (Madras High Court, decided on 13.02.2024) — relied on; K. Sivaraman and Others v. P. Sathishkumar and Others, 2020 ACJ 1361 — referred to.

List of Acts / Statutes

Employees' Compensation Act, 1923.

List of Keywords

Employees' Compensation; Functional disability; Permanent disability; Loss of earning capacity; Driver; Monthly wages; Admission; Relevant factor; Medical reimbursement; Interest; Hemiplegia.

Case Arising From

Order dated **24.10.2025** passed by the Employees' Compensation Commissioner/Deputy Labour Commissioner, Moradabad in **E.C.A. Case No. 01 of 2022, Taiyyab Alam v. Farooq and Another.**

Appearance for Parties

For Appellant: Sri Anubhav Sinha

For Respondent: Sri Mohd. Asim Zulfiquar.

(Delivered by Hon'ble Sandeep Jain, J.)

1. FAFO No. 69 of 2026 under Section 30 of the Employees' Compensation Act, 1923 has been filed by the insurer, The New India Assurance Company Limited, challenging the impugned order dated 24.10.2025 passed by the Employees' Compensation Commissioner/Deputy Labour Commissioner, Moradabad in ECA Case No. 01 of 2022, Taiyyab Alam vs. Farooq and another, whereby for the injuries sustained by the claimant in the course of his employment as a driver, compensation of Rs.9,04,222/- along with interest @ 12% per annum and Rs.3,38,103/- towards reimbursement of medical expenses has been awarded, which has been ordered to be indemnified by the insurer of Truck No. UP-21-CN-8245.

2. FAFO No. 42 of 2026 has been filed by the claimant under Section 30 of the Employees' Compensation Act, 1923 against the aforesaid impugned order seeking enhancement of compensation on the ground that the amount awarded by the Commissioner is not commensurate with the injuries suffered by him.

3. Since both the appeals arise out of the same impugned order, they were heard together and are being decided by this common judgment.

4. The factual matrix of the case is that the claimant was employed as a driver on Truck No. UP-21-CN-8245 owned by respondent no.2, Farooq. During the course of his employment, on 14.10.2021, when the truck was being driven by claimant from Bihar to Bahraich, then at Pandeypur within the jurisdiction of Police Station Ekauna, District Shravasti, a stray animal suddenly came in front of the vehicle. In an attempt to save the animal, the driver, Taiyyab Alam, lost control of the vehicle, which overturned and fell into a ditch, causing grievous injuries to the claimant, who was thereafter admitted to a private hospital for treatment. In the accident, both legs of the claimant were fractured and he also sustained injuries to his head and other parts of the body. It is the case of the claimant that he incurred expenditure of Rs.7,00,000/- towards his treatment, which is still continuing, and that he was treated at Medanta Hospital and RR Health Care (Dr. Khare Hospital), Delhi Road, Moradabad.

5. The claimant asserted that at the time of the accident he was drawing a salary of Rs.15,000/- per month besides daily diet allowance of Rs.100/-, and was aged about 30 years. An FIR in respect of the accident was lodged by Farooq on 16.10.2021 at Police Station Ekauna, District Shravasti.

6. Before the Commissioner, the employer/respondent no.2 Farooq appeared and admitted in his written statement that the claimant was employed as a driver on his truck and was being paid salary @ ₹15,000/- per month. He further disclosed that the vehicle was insured with the appellant-insurance company for the period 03.12.2020 to 02.12.2021 and, therefore, the insurer was liable to indemnify any compensation awarded by the Commissioner.

7. The insurance company contested the claim by filing its written statement, disputing both the occurrence of the accident and the claimant's employment with respondent no.2, and put the claimant to strict proof thereof. It was further contended that the claimant had not suffered any permanent disability so as to entitle him to compensation.

8. On the pleadings of the parties, the Commissioner framed the following issues:

-Whether the claimant, namely Taiyyab Alam, was employed as a driver on Truck No. UP-21-CN-8245 owned by defendant no.1, who became completely disabled due to injuries suffered in the accident dated 14.10.2021 while working under the directions of the owner? If yes, its effect?

- *Whether on 14.10.2021 the vehicle of defendant no.1 was insured with defendant no.2 and was being plied with all valid documents? If no, its effect"*

-*Whether on the date of the accident the claimant possessed a valid driving licence? If no, its effect"*

- *Whether the claimant is entitled to any compensation, and if yes, to what amount and from whom?*

9. The claimant examined himself and one Wajid Hussain in support of his claim, whereas no oral evidence was adduced either by the owner or by the insurer. The claimant also produced a disability certificate dated 02.12.2022 disclosing 45% locomotor disability.

10. The Commissioner, while applying the provisions of the Act, took 60% of the monthly wages of Rs.11,316/-, which amounted to Rs. 6,789.60 and after applying a factor of 295.95 assessed compensation at Rs.9,04,222/-. The Commissioner also awarded Rs.3,38,103/- towards verified medical bills and directed payment of interest @ 12% per annum from the date of accident on only the compensation of Rs.9,04,222/-.

11. Assailing the award, learned counsel for the insurer submitted that as per Schedule IV of the Employees' Compensation Act, 1923, for the age of 31 years the relevant factor is 205.95, whereas the Commissioner erroneously applied the factor of 295.95. It was further contended that mere production of a disability certificate showing 45% disability could not ipso facto establish corresponding loss of earning capacity or functional disability. It was also argued that the certificate relied upon was provisional in nature and subject to reassessment.

12. Per contra, learned counsel for the claimant fairly conceded that the correct factor for the age of 31 years is 205.95. He, however, submitted that pursuant to directions of this Court, the claimant was re-examined by the Chief Medical Officer, Jyotiba Phule Nagar in duly constituted Medical Board on 10.02.2026, whereupon a permanent disability certificate certifying 45% permanent disability was issued on account of right-side hemiplegia. It was further contended that although the physical disability is assessed at 45%, the claimant, being a driver, has suffered 100% functional disability as he is no longer capable of driving any vehicle. It was also urged that in view of the categorical admission of the employer regarding wages of Rs.15,000/- per month, there was no justification for the Commissioner to reduce the monthly wages to Rs.11,316/- and compute compensation on minimum wage basis. It was lastly contended that interest ought to have been awarded even on the amount reimbursed towards medical expenses.

13. I have heard learned counsel for the parties and perused the impugned judgment as well as the material brought on record. Both the appeals are admitted on the following substantial question of law:-

(1) Whether the Commissioner has erred in determining the compensation by applying factor of 295.95?

(2) Whether the claimant has become 100% permanently disabled due to the injuries suffered in the accident?

(3) Whether the claimant is entitled to more compensation for the future loss of earning capacity?

(4) Whether the claimant is entitled to interest @12% per annum on the medical reimbursement amount awarded by the Commissioner?

14. In the present case, the factum of accident and the claimant's employment as a driver on the truck owned by respondent Farooq is not disputed by the appellant insurance company. The principal controversy is with regard to the extent of disability and the quantum of compensation payable.

15. It is undisputed that the claimant was aged 31 years at the time of accident. Therefore, the relevant factor under Schedule IV of the Act is 205.95. The Commissioner manifestly erred in applying the factor of 295.95.

16. The Apex Court in the case of ***Mamta Devi and others vs. The Reliance General Insurance Co. Ltd. and another*** 2023 INSC 566 has held that if the employer accepts in his written statement that the deceased was drawing Rs.6,000/- per month as wages, then there is no reason to disbelieve him keeping in view the minimum wages prevalent at that time.

17. It is further apparent that the claimant pleaded monthly wages of Rs.15,000/-, which were unequivocally admitted by the employer in his written statement. In view of such categorical admission and the judgment of the Apex Court in the case of ***Mamta Devi*** (supra), the Commissioner was not justified in discarding the admitted wages and substituting them with minimum wages of Rs.11,316/-. Accordingly, compensation is liable to be computed on the basis of monthly wages of Rs.15,000/-.

18. This Court had occasion to summon the claimant and interact with him personally. Upon close observation of his physical condition, it was found that he was unable to stand properly and was wholly incapable of driving any vehicle.

19. The Apex court in the case of ***Raj Kumar vs. Ajay Kumar and Another***, (2011) 1 SCC 343, while analysing how to determine compensation in cases of permanent disability, has held as under:-

"10. Where the claimant suffers a permanent disability as a result of injuries, the assessment of compensation under the head of loss of future earnings would depend upon the effect and impact of such permanent disability on his earning capacity. The Tribunal should not mechanically apply the percentage of permanent disability as the percentage of economic loss or loss of earning capacity. In most of the cases, the percentage of economic loss, that is, the percentage of loss of earning capacity, arising from a permanent disability will be different from the percentage of permanent disability. Some Tribunals wrongly assume that in all cases, a particular extent (percentage) of permanent disability would result in a corresponding loss of earning capacity, and consequently, if the evidence produced show 45% as the permanent disability, will hold that there is 45% loss of future earning capacity. In most of the cases, equating the extent (percentage) of loss of earning capacity to the extent (percentage) of permanent disability will result in award of either too low or too high a compensation.

11. What requires to be assessed by the Tribunal is the effect of the permanent disability on the earning capacity of the injured; and after assessing the loss of earning capacity in terms of a percentage of the income, it has to be quantified in terms of money, to arrive at the future loss of earnings (by applying the standard multiplier method used to determine loss of dependency). We may however note that in some cases, on appreciation of evidence and assessment, the Tribunal may find that the percentage of loss of earning capacity as a result of the permanent disability, is approximately the same as the percentage of permanent disability in which case, of course, the Tribunal will adopt the said percentage for determination of compensation. (See for example, the decisions of this Court in *Arvind Kumar Mishra v. New India Assurance Co. Ltd.* [(2010) 10 SCC 254 : (2010) 3 SCC (Cri) 1258 : (2010) 10 Scale 298] and *Yadava Kumar v. National Insurance Co. Ltd.* [(2010) 10 SCC 341 : (2010) 3 SCC (Cri) 1285 : (2010) 8 Scale 567])"

20. The Apex Court in the case of ***Sarnam Singh vs. Sriram General Insurance Co. Ltd. & Ors.* (2023) 8 SCC 193**, while analysing when partial disability will amount to 100% earning capacity loss, held as under:-

"10. As to how compensation, in case where permanent disability of an injured affects his functional disability, is to be assessed has been considered by this Court, repeatedly. Reference can be made to the judgment of this Court in *Mohan Soni v. Ram Avtar Tomar* [*Mohan Soni v. Ram Avtar Tomar*, (2012) 2 SCC 267 : (2012) 1 SCC (Civ) 747 : (2012) 1 SCC (Cri) 641] . In the aforesaid case the injured was working as a cart puller. As a result of the accident, his left leg was amputated. His permanent disability was assessed at 60%. The Tribunal assessed the compensation taking the loss of earning at 50% on the theory that he can still do some other work while sitting. The High Court did not disturb the finding regarding loss of income on account of disability. This Court found that the Tribunal was in error in taking the loss of earning at 50% as the injured was 55 years of age and it may be difficult for him to find a job at that stage. In fact, any physical disability resulting from an accident has to be judged with reference to the nature of the work being performed by the person who suffered disability. The same injury suffered by two different persons may affect them in different ways. Loss of leg by a farmer or a rickshaw puller may be end of the road as far as his earning capacity is concerned. Whereas, in case of the persons engaged in some kind of desk work in office, loss of leg may have lesser effect. This Court enhanced the loss of earning capacity from 50% to 90%.

11. Applying the same principle to the case in hand, we find that the appellant herein was working as a gunman with Bharat Hotel Limited. On account of amputation of his right leg above the knee, he was terminated from service w.e.f. 31-5-2015. It is not a matter of dispute that a person with his right leg amputated cannot perform the duty of a gunman. This is his functional disability. He was 50 years & 5 months old at the time of accident. Considering the aforesaid facts, in our view, the Tribunal was right in assessing the loss of earning capacity of the appellant at 100% and assessing the compensation accordingly. The High Court was in error in reducing the loss of earning capacity to 80%, relying upon the judgment [Shri Ram General Insurance Co. Ltd. v. Sarnam Singh, 2017 SCC OnLine Del 13011] of the High Court, despite there being a judgment of this Court available on the issue."

21. It is apparent that earlier a temporary disability certificate was issued to the petitioner disclosing 45% disability, but the subsequent certificate dated 10.02.2026, has confirmed that the petitioner has suffered 45% permanent disability due to hemiplegia affecting right side of the body.

22. Applying the settled principle of law laid down by the Apex Court in the case of **Raj Kumar** (supra) and **Sarnam Singh** (supra) the real test is the impact of the injury on earning capacity and ability to pursue the avocation previously undertaken. Since the claimant was employed as a driver and is now incapable of driving, he has suffered 100% functional disability notwithstanding the medical assessment of 45% physical disability.

23. The High Court of Madras in the case of **Chandrasekaran vs. P. Marappan and Another in CMA No.2581 of 2021 decided on 13.02.2024**, has held as under:-

"19. The next question of law related to the payment of interest for the medical expenses. Sub section 1 of 4(A), states that the compensation under section 4 shall be paid as soon as it falls due. As stated in the earlier paragraph, the claimant is entitled to get compensation for the medical expenses. **Since the payment of medical expenses forms part of the compensation as prescribed under section 4 of the Act, 1923, this compensation is entitled for interest since sub section 3(a) of 4(A) prescribes that where the employer is entitled to pay compensation due under the Act is liable to pay interest for the compensation. The reimbursement of medical expenses could not be termed that it is not part of compensation, the reimbursement of medical expenses also forms part of compensation prescribed under Section 4(A), it carries interest in case of delay. This interest is liable to be paid as soon it falls due, as interpreted by the Apex Court in K. Sivaraman and others vs. P. Sathishumar and others [2020 ACJ 1361] that the interest shall paid from the date of accident. Accordingly, the respondents is liable to pay the interest for the medical expenses also.** Accordingly, the second question of law raised in this appeal is answered."

(emphasis supplied)

24. The Commissioner has awarded Rs.3,38,103/- towards medical reimbursement but omitted to grant interest thereon. The claimant is entitled to interest @ 12% per annum on the said amount as well, from the date of accident i.e. 14.10.2021.

25. Accordingly, the claimant is entitled to compensation for loss of future earning capacity as follows:

(Rs.15,000X60/100) X 205.95=Rs.18,53,550/-

26. The claimant shall also be entitled to Rs.3,38,103/- towards reimbursement of medical expenses, together with interest @ 12% per annum on both amounts from the date of accident, i.e., 14.10.2021, till actual payment.

27. Accordingly, the impugned order dated 24.10.2025 passed by the Commissioner is modified to the aforesaid extent.

28. FAFO No. 69 of 2026 preferred by the insurer stands dismissed, whereas FAFO No. 42 of 2026 preferred by the claimant for enhancement of compensation is hereby allowed.

29. Interim order, if any, stands vacated.

30. The insurance company is directed to deposit the enhanced amount of compensation before the Commissioner within a period of two months after adjusting the amount already deposited.

(2026) 4 ILRA 2272
APPELLATE JURISDICTION
CIVIL SIDE
DATED: ALLAHABAD 29.04.2026

BEFORE

THE HON'BLE ABDUL SHAHID, J.

First Appeal From Order No. 2226 of 2025

M/S Hapur Roller Flour Mills & Anr. ...Appellants
Versus
M/S Shri Vardhman Roller Flour Mills & Ors. ...Respondents

Issue for Consideration

(i) Whether the trial court was justified in exercising powers under Section 319 Cr.P.C. to summon the unmarried sisters of the husband as additional accused on the basis of general allegations contained in the F.I.R. and the depositions of prosecution witnesses?

(ii) Whether reiteration during trial of allegations already available before the Investigating Officer and found insufficient for prosecution constitutes fresh evidence warranting exercise of powers under Section 319 Cr.P.C.?

(iii) Whether the trial court could invoke Section 319 Cr.P.C. by relying upon the F.I.R. and statements recorded under Section 161 Cr.P.C. instead of the evidence adduced during trial?

Headnotes

Arbitration and Conciliation Act, 1996 — Section 8 — Reference to arbitration — Stage for invoking arbitration agreement — Application filed beyond prescribed period for filing written statement — Maintainability.

HELD: The right to seek reference of the parties to arbitration under Section 8 of the Arbitration and Conciliation Act, 1996 must be exercised with due diligence and before submission of the first statement on the substance of the dispute. Where the defendants, despite entering appearance, neither filed the written statement nor invoked Section 8 within the prescribed period of ninety days, the application seeking reference to arbitration was rightly held to be belated and not maintainable. The trial court committed an error in entertaining such application after expiry of the statutory period. [Paras 22 to 30]

Arbitration and Conciliation Act, 1996 — Section 8 — Arbitration agreement — Participation in civil proceedings — Filing of interlocutory applications — Effect.

HELD: Mere existence of an arbitration clause does not entitle a party to seek reference to arbitration at any stage of the proceedings. Where the defendants actively participated in the suit by filing an application under Order XXXIX Rule 4 CPC and other interlocutory applications, while failing to invoke Section 8 of the Act within the prescribed time, such conduct disentitled them from seeking reference to arbitration at a belated stage. A party cannot invoke the arbitral process at its own convenience after having participated in the proceedings before the civil court without due diligence. [Paras 23 to 30]

Arbitration and Conciliation Act, 1996 — Section 8 — Reference to arbitration — Due diligence — Requirement.

HELD: The statutory right to seek reference to arbitration is conditioned upon timely invocation of the arbitration agreement. A litigant who continues to participate in the civil proceedings and omits to invoke Section 8 within the period contemplated by law cannot subsequently seek dismissal of the suit on the basis of the arbitration clause. Due diligence is an essential requirement for exercise of the statutory remedy under Section 8 of the Act. [Paras 26 to 30]

Arbitration and Conciliation Act, 1996 — Section 8 — "First statement on the substance of the dispute" — Meaning and scope — Written statement — Participation in proceedings — Effect.

HELD: The expression "first statement on the substance of the dispute" occurring in Section 8(1) of the Arbitration and Conciliation Act, 1996 ordinarily refers to the written statement filed by the defendant. However, where the defendant, after entering appearance, continuously participates in the proceedings by filing applications under various provisions of law and yet neither files the written statement within the prescribed period nor invokes Section 8 within such period, the right to seek reference to arbitration cannot be preserved indefinitely. The expression cannot be interpreted so as to permit a party to delay invocation of the arbitration agreement while simultaneously prosecuting proceedings before the civil court. **[Paras 22 to 30]**

Arbitration and Conciliation Act, 1996 — Sections 8(1) and 8(2) — Application for reference to arbitration — Compliance with statutory requirements — Failure to produce arbitration agreement and invoke jurisdiction within prescribed time — Effect.

HELD: Compliance with the requirements of Sections 8(1) and 8(2) of the Arbitration and Conciliation Act, 1996 is mandatory. Where the application seeking reference to arbitration was filed beyond the stipulated period and the defendants failed to establish compliance with the statutory requirements contemplated under Section 8(2), no case for reference to arbitration was made out. The appellate court rightly set aside the order of the trial court referring the parties to arbitration and restored the suit to its original number. **[Paras 29 and 30]**

Code of Civil Procedure, 1908 — First Appeal From Order — Order restoring civil suit after setting aside reference to arbitration — Appellate interference.

HELD: The appellate court rightly found that the trial court had acted contrary to the settled principles governing Section 8 of the Arbitration and Conciliation Act, 1996 in entertaining the defendants' application

after considerable participation in the suit proceedings and beyond the permissible stage. The impugned judgment restoring the civil suit did not suffer from any illegality or irregularity warranting interference in appeal. **[Paras 30 and 31]**

Appeal dismissed. (E-14)

Case Law Cited

Rashtriya Ispat Nigam Ltd. and Another v. Verma Transport Co., (2006) 7 SCC 275 — relied on; Booz Allen and Hamilton Inc. v. SBI Home Finance Ltd. and Others, (2011) 5 SCC 532 — relied on; Krishan Radhu v. Emaar MGF Construction Pvt. Ltd., CS (OS) No. 3281 of 2014, decided on 21.12.2016 (Delhi High Court) — relied on; SSIPL Lifestyle Private Limited v. Vama Apparels (India) Private Limited and Another, 2020:DHC:1211 — relied on.

List of Acts/Statutes

Arbitration and Conciliation Act, 1996; Code of Civil Procedure, 1908; Indian Partnership Act, 1932.

List of Keywords

Arbitration agreement; Reference to arbitration; First statement on the substance of the dispute; Written statement; Waiver; Participation in proceedings; Tenancy agreement; Due diligence; Arbitration clause.

Case Arising From

Judgment and order dated **15.07.2025** passed by the Additional District Judge-I, Hapur in **Civil Appeal No. 24 of 2025, M/s Vardhman Roller Flour Mills v. Rajendra Sharma and Others**

Appearance for Parties

For the Appellant: Ms. Akanksha Gaur.

For the Respondents: Sri Anurag Sharma and Sri Rahul Sahai

(Delivered by Hon'ble Abdul Shahid, J.)

1. Heard learned counsel for the defendants/appellants and learned counsel for the plaintiffs/respondent nos. 1 and 2.

2. The present appeal has been filed against the impugned judgement and order dated 15.07.2025 passed by Additional District Judge, Ist, Hapur, in Civil Appeal No. 24 of 2025 (M/S Vardhman Rollers Flour Mills Vs. Rajendra Sharma and others).

3. Learned counsel for the appellants/defendants has submitted that, as per Clause 19 of the Tenancy Agreement dated 07.03.2024, it has been clearly stated and agreed between the appellants and the respondents that, in case of any change in the partnership, such change shall be incorporated only after obtaining prior approval of the appellants. She has further submitted that Clause 25 of the Tenancy Agreement dated 07.03.2024 clearly stipulates that, in the event of any dispute between the parties to the agreement, the matter shall be referred to an arbitrator, who shall be appointed with the consent of the parties, and the proceedings shall be governed in accordance with the Arbitration and Conciliation Act, 1996.

4. Learned counsel for the appellants has further submitted that, by way of a notarized partnership deed/agreement dated 21.10.2024, a new partner, namely Shri Ashish Jain, S/o Shri Ashok Kumar Jain, has been inducted by the respondents (first set), and Smt. Amita Jain, with

whom the appellants had entered into the tenancy agreement dated 07.03.2024, has retired from the partnership firm of the respondents. The respondents failed to inform the appellants about the aforesaid development, inasmuch as such addition is in clear violation of Clause 19 of the Tenancy Agreement dated 07.03.2024.

5. Therefore, in view of Clause 19 of the Tenancy Agreement, Respondent No. 2, who has been inducted as a partner and has been granted power of attorney pursuant to the deed dated 10.09.2024, does not have any locus to file the instant original suit, since Respondent Nos. 2 and 3 did not inform the appellants about the said change in the partnership or the appointment of Respondent No. 2 as the power of attorney holder. She has relied upon Section 8 of the Arbitration and Conciliation Act, 1996, which is quoted hereinbelow:

"8. Power to refer parties to arbitration where there is an arbitration agreement.-(1) A judicial authority, before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party to the arbitration agreement or any person claiming through or under him, so applies not later than the date of submitting his first statement on the substance of the dispute, then, notwithstanding any judgment, decree or order of the Supreme Court or any Court, refer the parties to arbitration unless it finds that prima facie no valid arbitration agreement exists.

(2) The application referred to in sub-section (1) shall not be entertained unless it is accompanied by the original arbitration agreement or a duly certified copy thereof:

Provided that where the original arbitration agreement or a certified copy thereof is not available with the party applying for reference to arbitration under sub-section (1), and the said agreement or certified copy is retained by the other party to that agreement, then, the party so applying shall file such application along with a copy of the arbitration agreement and a petition praying the Court to call upon the other party to produce the original arbitration agreement or its duly certified copy before that Court.

(3) Notwithstanding that an application has been made under sub-section (1) and that the issue is pending before the judicial authority, an arbitration may be commenced or continued and an arbitral award made."

6. Learned counsel for the appellants has further submitted that the first statement on the substance of dispute does not include; (i) applications relating interim application, (ii) jurisdictional objections or (iii) procedural matters as relied upon by her on law laid down by the Hon'ble Supreme Court in **Rashtriya Ispat Nigam Limited and another Vs. Verma Transport Co. (2006) Volume 7 SCC 275** wherein it is held that the first statement needs the written statement and not every application or reply filed prior thereto. She has further submitted that in view of **Booz Allen and Hamilton Inc. Vs. SBI Home Finance Ltd. and others (2011) Volume 5 SCC 532**, the court clarified that if a defendant wants to seek reference to the arbitration under Section 8 of the Arbitration and Conciliation Act, the application must be filed before or at the time of filing the written statement. She has further submitted that the partnership firm of the respondent is a unregistered firm and therefore in view of the Section 9 of the Indian Partnership Act, 1932; (1) no

suit to enforce a right arising from a contract or conferred by this Act shall be instituted in any court by or on behalf of any person suing as a partner in the firm against the firm or any person alleged to be or to have been a partner in the firm unless the firm is registered and the person suing is or has been shown in the register of firms as a partner in the firm. No suit to enforce a right arising from a contract shall be instituted in any court by or on behalf of a firm against any third party unless the firm is registered and the person suing are or have been shown in the register of firms as partners in the firm.

7. Learned counsel for the appellants has submitted that the judgment and order passed by the learned Additional District Judge in Civil Appeal No. 24 of 2025 (M/s Sri Vardhman Roller Flour Mills and another v. Rajendra Sharma and others), decided on 15.07.2025, is not in accordance with law and is liable to be set aside, and that the appeal deserves to be allowed.

8. The said civil appeal has arisen from the proceedings of Original Suit No. 174 of 2024 (*M/s Vardhman Roller Flour Mills and others v. Rajendra Sharma and others*). The learned appellate court has held that the appellant/defendant filed his first statement on the substance of the dispute in Application No. 15-C under Order XXXIX Rule 4 CPC, seeking modification of the ex parte injunction order. Hence, the application under Order XXXIX Rule 4 CPC, which was submitted on 07.10.2024 before the learned trial court, constituted his first statement on the substance of the dispute.

9. Thereafter, the application under Section 8 of the Arbitration and Conciliation Act, 1996 could not have been presented. The learned appellate court has further held that the appellant/defendant filed the application under Section 8 of the Act, 1996 on 23.10.2025. It has also been noted that the learned trial court, contrary to the settled principles of law, not only entertained the said application but also allowed it and dismissed the suit in violation of the provisions of law. Accordingly, the said order was set aside, and Original Suit No. 174 of 2024 was restored to its original number vide judgment and order dated 15.07.2025. Hence, the present appeal has been filed.

10. Original Suit No. 174 of 2024 was filed before the Civil Judge (Senior Division)-II, Hapur by M/s Vardhman Roller Flour Mills as plaintiff no. 1 and Ashok Kumar Jain as plaintiff no. 2 against defendant no. 1, Rajendra Sharma; defendant no. 2, Balvir Sharma; and defendant no. 3, M/s Hapur Roller Flour Mills, seeking the relief of permanent injunction to the effect that the plaintiffs shall not be evicted from the premises in question and that the defendants shall not interfere with their functioning except in accordance with due process of law.

11. The tenancy agreement relied upon by learned counsel for the appellants/defendants, dated 07.05.2024, was executed between Rajendra Sharma (defendant no. 1) and M/s Shree Vardhman Roller Flour Mills (plaintiff no. 1) through its partner, Amit Jain. The said tenancy agreement is for a period commencing from 01.03.2024 to 28.02.2033.

12. Learned counsel for the appellants has relied upon Clause 25 of the said tenancy agreement, which is a registered document, stipulating that in the event of any dispute arising between the parties, an arbitrator shall be appointed with the consent of both parties, and the award

passed by the arbitrator shall be binding upon them. The entire process shall be conducted in accordance with the Arbitration and Conciliation Act, 1996.

13. Learned counsel for the appellants has also filed a supplementary affidavit stating that the respondents have vacated the disputed premises; however, they are not permitting the appellants to enter the premises under the garb of the interim order dated 17.09.2024 passed by the learned Civil Judge-II, Hapur, allegedly with a view to extract money from the appellants.

14. It is further submitted by learned counsel for the appellants that the respondents have failed to pay the electricity dues to the electricity department, due to which the electricity connection was disconnected. Upon becoming aware of these facts, the appellants deposited the entire outstanding dues on behalf of the respondents in order to prevent disconnection of the electricity supply.

15. Learned counsel for the respondents has filed objections and submitted that, on 07.03.2024, a registered tenancy agreement was executed between Rajendra Sharma, partner of M/s Hapur Roller Flour Mills (defendant-appellant/owner of the property), and M/s Shri Vardhman Roller Flour Mills through its partner, Smt. Amita Jain (tenant). The aforesaid tenancy agreement was registered, and the tenancy was valid for a period of nine years, w.e.f. 01.03.2024 to 28.02.2033, at a monthly rent of Rs. 1,00,000/- plus GST. A total sum of Rs. 19,00,000/- (Rs. 14,00,000/- and Rs. 5,00,000/- as security) was paid to the defendants/appellants, and the rent was to be increased by 15% after three years. After execution of the agreement, the plaintiffs took possession of the flour mill and carried out maintenance and repairs of the plant and machinery. In order to maintain the quality and standard of their products, the plaintiffs spent Rs. 27,00,000/-, which was to be adjusted towards rent payable to the defendants/owners. The rent was accordingly paid till July, 2024.

16. It is further submitted that, on 14th 15 August, 2024, defendant no. 1 restrained the plaintiffs and attempted to forcibly evict them and their workers in order to stop their manufacturing business. Again, on 20.08.2024, the defendant created pressure and attempted to evict the plaintiffs from the flour mill. On 25.08.2024, the defendants and their agents allegedly used criminal force to restrain the plaintiffs from continuing their manufacturing activities and attempted to evict them forcibly. These facts giving rise to the cause of action have been set out in paragraph 9 of the civil suit filed on 17.09.2024.

17. In the meantime, a letter dated 08.08.2024 was issued to the defendants/appellants by the State Bank of India, Hapur Main Branch, regarding renewal of the credit facility and setting out various compliances/directions for sanction of a credit facility to the tune of Rs. 10 crores for the purchase of plant and machinery. The bank directed defendant no. 2 (Rajendra Sharma) to cancel the registered lease agreement bearing Serial No. 3175 dated 07.03.2024, executed by M/s Hapur Roller Flour Mills in favour of Shri Vardhman Roller Flour Mill.

18. The State Bank of India further stated that the renewal of the credit facility had been due since 30.03.2024 and that nearly five months had elapsed; as per RBI guidelines, the account would be classified as a non-performing asset (NPA) on 26.09.2024. The property/flour mill in

dispute had already been mortgaged/hypothecated to the bank against the credit facility availed, and the defendants were directed to furnish a non-encumbrance certificate by cancelling the lease deed.

19. Thus, the property forming the subject matter of the tenancy agreement dated 07.03.2024 had been mortgaged against the credit facility availed by the defendants, and the bank had directed them to cancel the said agreement. This fact has been stated in paragraph 12 of the civil suit.

20. The defendant/appellant has committed fraud by executing the tenancy agreement and concealing the material fact that the property was mortgaged against the credit facility availed by the defendant. The defendant/appellant has also used criminal force to restrain and evict the plaintiff from his peaceful possession. Accordingly, the plaintiff has rightly filed the civil suit before the competent court.

21. He has further submitted that the well recognized examples of non-arbitral disputes are: (i) disputes relating to rights and liabilities which give rise to or arise out of criminal offences; (ii) matrimonial disputes relating to divorce, judicial separation, restitution of conjugal rights, child custody; (iii) guardianship matters; (iv) insolvency and winding up matters; (v) testamentary matters (grant of probate, letters of administration and succession certificate); and (vi) eviction or tenancy matters governed by special statutes where the tenant enjoys statutory protection against eviction and only the specified courts are conferred jurisdiction to grant eviction or decide the disputes. The present appeal lacks merit and is liable to be dismissed.

22. Learned counsel for the appellants/defendants has relied on paragraph 14 of **Krishan Radhu v. Emaar MGF Construction Pvt. Ltd., decided by the High Court of Delhi at New Delhi in CS (OS) No. 3281/2014, IA No. 7709/2015 (under Section 8 of the Arbitration and Conciliation Act), and OA No. 210/2015, dated 21.12.2016** that there is no dispute as to the meaning of the words "first statement on the substance of the dispute" used in Section 8 (1) of the Act, either before or after amendment. In the context of civil suit, such expression obviously would mean the "written statement" required to be filed in terms of the provision contained in Order 8 Rule 1 of the Code of Civil Procedure, 1908 (CPC). But, for the purposes of proceedings before other judicial authorities or forums where the Code of Civil Procedure may not strictly apply, it would mean and include the response (or reply) filed by the party against whom action is brought to explain his defences. In *Rashtriya Ispat Nigam (supra)*, the Supreme Court observed that this expression must be contra-distinguished with the expression 'written statement'. It implies submission of the party to the jurisdiction of the judicial authority and, therefore, what is needed is a finding on the part of judicial authority that the party has waived his right to invoke the arbitration clause. If an application is filed before filing the first statement on the substance of the dispute, the party cannot be said to have waived his right or acquiesced himself to the jurisdiction of the court.

23. Learned counsel for the plaintiffs/respondent nos. 1 and 2 has submitted that the appellants/defendants put in appearance on 04.10.2024 and has relied upon the supplementary affidavit filed by the appellants/defendants. Thereafter, the appellants/defendants consistently

participated in the proceedings of the original suit on 07.10.2024, 08.10.2024, 10.10.2024, 11.10.2024, 18.10.2024, 24.10.2024, 29.10.2024, 07.11.2024, 14.11.2024, 26.11.2024, and 28.11.2024. The appellants/defendants filed an application under Order XXXIX Rule 4 CPC for modification of the ex parte injunction and also filed an application under Section 8(1) of the Act on 23.01.2025.

24. Learned counsel for respondent nos. 1 and 2 has submitted that the appellants/defendants first put in appearance on 04.10.2024; therefore, the period of limitation for filing the written statement expired on 04.01.2025. However, the appellants/defendants did not file the written statement within the stipulated period and instead filed the application under Section 8(1) of the Act on 23.01.2025.

25. Learned counsel for respondent nos. 1 and 2 has relied upon the law laid down by the High Court of Delhi at New Delhi in **SSIPL Lifestyle Private Limited v. Vama Apparels (India) Private Limited and another, 2020:DHC:1211**, wherein paragraph 22 it is held as follows:...

"22. Thus, as per the above decision, in view of the amended language in Section 8, the limitation for filing of the written statement under CPC for non-commercial suits and under the Commercial Courts Act for commercial suits would be applicable for filing of an application under Section 8. In view thereof, the Court concluded that the maximum period would be 90 days for ordinary civil suits and 120 days for commercial suits."

26. It is admitted that the appellants/defendants first put in appearance before the learned trial court in the original suit on 04.10.2024. Thereafter, the appellants/defendants filed an application under Order XXXIX Rule 4 CPC for modification of the interim injunction and also filed applications under other provisions of law, thereby consistently participating in the proceedings of the original civil suit. However, within the stipulated period of 90 days, the appellants/defendants did not file a written statement before the learned trial court.

27. The appellants/defendants have taken the plea that they had not yet filed their first statement on the substance of the dispute, and that the aforesaid applications cannot be be considered as such, as only the written statement is to be treated as the first statement on the substance of the dispute. The appellants/defendants have, however, consistently participated in the matter and filed various applications, including an application under Order XXXIX Rule 4 CPC. Despite the expiry of the stipulated period of 90 days for filing the written statement, the appellants/defendants did not file any application under Section 8 of the Arbitration and Conciliation Act, 1996.

28. The submission of the appellants/defendants that the period of 90 days is directory and not mandatory cannot be accepted in the present case. Such relaxation may be considered where the defendants have failed to submit the written statement within the stipulated period despite due diligence. However, in the present case, the appellants/defendants consistently participated in the proceedings and filed applications under various provisions of law, yet neither submitted a written statement within 90 days nor filed an application under Section 8 of the Act within the said period.

29. The appellants/defendants have also failed to satisfy the Court that they complied with the provisions of Section 8(2) of the Act. It is an admitted position that the application under Section 8(1) of the Act was filed on 23.01.2025, which is clearly beyond the stipulated period of 90 days. The appellants/defendants cannot be permitted to invoke the process of law at their convenience and without due diligence.

30. In view of the facts and circumstances of the case, and the nature of the dispute between the parties in Original Suit No. 963 of 2025, this Court is of the view that there is neither any illegality nor irregularity in the impugned order dated 15.07.2025 passed by the Additional District Judge-I, Hapur, in Civil Appeal No. 24 of 2025 (*M/s Vardhman Rollers Flour Mills v. Rajendra Sharma and others*), arising out of Original Suit No. 174 of 2024.

31. Accordingly, the appeal is liable to be dismissed and is hereby dismissed.
